

and (ii) if the use of technology outside the home country adversely and significantly affects the imports and exports of goods in the home country. The laws apply to any joint venture that unreasonably results in the restraint of trade or the reduction of competition in a given market.

## 5. Foreign trade rights and foreign currency transfers

*Foreign trade rights:* The parties may wish to make a provision in the contract that the company will itself import the raw materials, components, production equipment etc. to enable it to carry out its activities and/or export the products or services it produces. If this is contemplated, appropriate steps should be taken to obtain a foreign trade permit or licence from the host country authorities.

*Foreign currency transfers :* Joint ventures need convertible currencies for the following purposes: repatriation of profits of the foreign partner, transfer abroad, in the case of liquidation of the company, his share in the company as well as the proceedings of the liquidation and transfer abroad part of the salaries of expatriate employees of the company and contributions to their social security and pension schemes in their home countries, payment for raw materials, components, know-how, or patent licences, and other imports necessary for the production of the company and repayment of credits in foreign currency and their interests. The basic rules regarding foreign exchange transactions are contained either in the host country legislation or the investment protection treaties concluded by it. Although these laws and treaties permit such repatriation and transfers, they obligate the parties to adhere to the requirement that all foreign payments by the joint venture be made only out of its foreign currency assets or earnings. The foreign exchange issue had generated considerable debate between the Chinese authorities and foreign investors in respect of operations under the Chinese Joint Venture Law. Joint ventures that are not export-oriented have not been successful in generating enough foreign exchange to cover repatriation of their profits. The difficulties experienced by the foreign investors were significantly remedied by new regulations in 1986, which set out the following procedure for a venture to supplement its foreign-exchange earnings : (i) Import substitution (ii) Reinvestment of *renminbi* profits in Chinese foreign exchange generating enterprises open to foreigners; (iii) Export of products purchased from other Chinese enterprises for *renminbi*; and (iv) 'Adjustment' of foreign-

exchange surpluses and deficits among related joint ventures established by the foreign investor.<sup>19</sup>

## 6. Accounts and Audit

*Accounts :* The company laws of the Asian-African countries often prescribe rules as to how the account of the various kinds of companies should be kept. These invariably refer to the book-keeping, the currency to be used for the book-keeping, settlement of accounts, fiscal year of the company, language in which accounts will be made up, whether books can be kept other than those required by the host country legislation, and the accounting principles to be followed in such parallel book-keeping, and who shall bear the costs of parallel book-keeping.

*Audit :* Most countries in the Asian-African region have regulations in regard to auditing. Upon acquainting themselves with the provisions of the host country regulations, the parties should include the necessary stipulations in the joint venture contract. A common approach is to agree that an internationally recognized firm will be retained unless competent local expertise is available. If available, local auditors offer the important advantages of lower costs and increased familiarity with local accounting practices. The latter consideration may be significant where methods of reporting profitability on the joint venture's books have local tax implications.

## 7. Incorporation

*Practical steps :* The parties should provide in the contract as to which party shall be responsible for the incorporation of the company and how the costs thereof shared. Usually, the local partner is asked to organize the incorporation, but in that case the contract should provide that the other party shall render him all necessary assistance. The parties can also provide a time-schedule in the contract regarding the incorporation of the company. Three deadlines could be set. Firstly, the contract might stipulate a date by which each party must have undertaken those steps which the host country legislation or the contract obligated him to take in view of the approval of the joint venture project. A second date might be agreed by which the joint

19. UNCTC. *Joint ventures as a form of International Economic Cooperation*. (United Nations, New York, 1988), p. 20.

venture must have been approved by the host country authorities. The third date could be the date by which the joint venture must have been registered in accordance with the host country legislation. As a sanction, the joint venture contract could stipulate that non-observance of these deadlines would entitle either party to rescind the contract by written notice with immediate effect.

It could conceivably happen that the registering authority may not approve certain provisions included in the contract. In view of this possibility, the parties should state in the contract how those provisions would be altered, during the incorporation process, in order to comply with the requirements of the appropriate authority.

*Name* : The name under which the company is to operate is often of importance to the parties. The name will also have to be included in the incorporation documents. If it is not possible to ascertain before hand whether the name agreed on by the parties will be acceptable to the incorporating authority, provision should be made for alternative names. The parties should also agree in advance what will happen to the name of the company in the event that the joint venture contract is terminated and the company dissolved. To cover these situations, appropriate provisions should be made in the contract.

*Registered office and Branch offices* : The contract should specify the place in which the company is going to have its registered (Head) office. Normally, this is the place where the company has its principal operation facilities. If the parties intend that the company should establish branch offices in the host country or abroad, they should provide for such a possibility in the contract.

*Location of the Project* : The regional dispersal of industries and location of industries in less developed regions of the country, and in particular, the avoidance of over-crowding of industries in metropolitan areas have become important objectives in all developing countries, including those in Asia and Africa. As a matter of fact, most Asian-African countries offer substantial incentives for location of industries in backward areas of the country, besides prohibiting their establishment in congested metropolitan areas. Thus, keeping in view the requirements of the host country legislation in this regard, the contract should provide for location of the project/plant.

*Articles of Association* : The articles of association of the company should be drawn up in accordance with the requirements of the host

country legislation. As a rule, such legislation sets forth the issues which must be dealt with in the articles of association.

## 8. Statutory Capital and Capital Contributions

*Parties' Share of the Statutory Capital* : It is an avowed political objective of most developing countries that majority ownership and control of joint ventures should be in domestic hands, at least within a period of time, and that local personnel ultimately should take over the key management positions. But policies in respect of these issues have been kept flexible by most countries with a view to attracting foreign investment, especially in high-priority areas and to facilitating trade-offs involved among ownership, management, risks and benefits in specific projects. Within this conceptual framework, once the parties have agreed on the size of the statutory capital and on ownership ratios, they should introduce the respective provisions in the joint venture contract and the articles of association. Thus, they should indicate the total amount of the statutory capital and the way in which it will be broken down into individual shares. If there are different classes of shares, this should be indicated as well as the difference which exists between different classes (for example, different voting rights.)

*Subscriptions* : The joint ventures contract should set out the number of shares which each party will subscribe, the price of each share when applicable and the total price of sets of shares to be subscribed by each party. The contract should also state clearly in which currency the payments will be made, and if made in a currency other than that of the host country, the rate at which the payments will be converted into the local currency.

*Cash payments*. The parties should agree in the contract on the manner in which cash payments for the ownership interests or shares are made. It may be that not all of the moneys due as cash payments from the parties are needed at once. If this is the case, the parties may wish to agree in the contract that only part of the payments will be made upon signing the contract, and that the balance will be paid later, in accordance with the company's total requirements. The contract should state clearly by whom the remaining payments will be called in, and within what time period from the call the respective payments should be made.

*Non-cash contributions* : The contributions of the foreign partner can take many forms ranging from the provision of finance to the

provision of machinery and intangibles, such as industrial property rights and know-how. In a joint venture, the contributions of the host country and foreign entity can also take the above forms, particularly if it is a going concern, as well as infrastructure, a resource, or even a local market. Most of the Asian and African countries allow payments for share subscriptions to be made also in kind rather than cash. Often the law which permits this contains stipulations on how these contributions will be capitalized. Therefore, if the parties agree that a part of the capital contributions will be made in forms other than cash, the contract should describe, and indicate the value of, each such contribution. The documentation which substantiates the indicated values of the contributions should be referred to in the joint venture contract, and, where appropriate, appended thereto. The contract should also contain stipulations on how and when the different contributions will be handed over to the company, who will accept them on behalf of the company, and when these contributions will be entered in the books of the company.

## 9. Facilities

*Local Regulations* : Before agreeing on the details concerning the facilities which the company will need in order to carry out its activities, the parties should get acquainted with the applicable host country regulations relating to localization of the manufacturing programme, use of domestic raw materials and resources, employment generation, impact on domestic enterprises in same or related fields, forward and backward linkages and environmental protection. In the manufacturing sector, the rapid localization of the manufacturing activity is considered to be of considerable importance by most Asian and African countries. The utilization of domestic raw materials and resources is another aspect to which these countries have attached importance in the screening process. Although foreign investment generally tends to be in capital intensive projects and generates less employment than traditional domestic manufacturing, the employment potential of the project and the education and training of domestic personnel are two aspects that are insisted upon by most of the developing countries. Similarly, foreign investment in industries which would impede or eliminate domestic enterprises in related fields is also not encouraged. Moreover, the sourcing of inputs from domestic suppliers to the maximum extent feasible is increasingly being insisted upon by most countries. Whilst the environmental protection standard in most developing countries may not be as strict and sophisticated

as in the industrialized part of the world, they do require that adequate safeguards be taken against pollution and damage to the environment. These regulations may greatly affect the way in which the agreement will be conceived.

*Description of facilities* : The parties should agree in the joint venture contract on the requirements concerning the joint venture facilities. In the case of a production plant, the contract might define, in an appendix, if necessary—the production capacity of the plant, the needed equipment, machinery, instruments, commissioning equipment and spares and other items necessary for production.

*Plant Building* : When appropriate, the contract might also define the terms and conditions concerning the construction or leasing, as the case may be, of the building where the plant is going to be installed. The contract should further state who shall take care of the necessary practical steps to have the building constructed or leased, and within what time-limits.

## 10. Products

*Description, knowhow and patents, national standards and technical norms* : In order to define precisely the products which are to be manufactured by the company, the contract should contain sufficiently detailed descriptions of each of the products in question. The contract should also stipulate, regarding each product, whether it is to be produced by the company on an exclusive or non-exclusive basis. When appropriate, the contract could further specify some key technical characteristics which the products should not possess, these characteristics being typical of the products reserved for the exclusive production by one or the other of the joint venture parties.

If the company is to use specific knowhow, patents or patent applications in its production, these should be identified in the joint venture contract. Often it will also be necessary to refer to the national standards and technical norms of the host country which will have to be observed in the production.

*Terms and Conditions* : If the foreign party is to make available to the company its proprietary technology for manufacturing of its products, the parties will have to agree on the terms and conditions of that use. This is, however, mostly done in a separate licensing agreement, to be concluded between the company and the grantor of the licensed rights. The licensing agreement will, however, be concluded only after the company has been formed. It is usually in

the interests of both parties that the terms and conditions of the licensing agreement are known and agreed to at the time when the joint venture contract is signed. Also host country authorities may require that such conditions are included in the joint venture application. Therefore, if a separate licensing agreement is to be concluded, it could be negotiated simultaneously with the joint venture contract. In the joint venture contract the parties would make a reference to this licensing agreement and agree that, as soon as the company is incorporated, an identical licensing agreement will be concluded between the company and the grantor of the licensed rights.

*Research and Development* : The applicable laws in Asian-African countries require that the joint venture contract should contain provisions regarding research and development. Three approaches are possible. It can be agreed that the company will have its own research and development unit. Or the parties can decide that all development work is done by the foreign partner and that the terms and conditions under which the results of such work will be made available for the company will be spelt out in the licensing agreement. A third alternative would be that both the company and the licensor will perform development work, and that the results will be available to the other party under agreed terms and conditions.

*Product quality*—Since it should be the aim of the joint venture that its products be competitive in the national and international markets the parties may wish to agree in the joint venture or the licensing agreement on certain basic principles regarding the quality of the products. If the products are based on the technology of one of the parties, and if this party manufactures similar or corresponding products, the contract could stipulate, for example, that the composition, specifications, performance, and durability of the joint venture products should correspond to those of the products manufactured by the said party. In order for the company to meet this requirement it could also be agreed that *that party* shall furnish the company with upto date knowhow and technology and with the documentation on quality standards and control procedures which are in force from time to time for those products. Where appropriate, it may also be agreed that the party which has furnished the technology will control from time to time the quality of the products produced by the joint venture company.

## 11. Organization and Management

Before starting the negotiations on the organization of the joint venture company, the parties should get acquainted with the relevant provisions of the host country legislation. Once they have identified the various organs prescribed or allowed, they should find out exactly which matters fall within the jurisdiction of each of the different organs and to what extent the rules establishing the internal division of powers and responsibilities between such organs are mandatory and to what extent the parties may deviate from this division by common agreement. Thus, keeping in view the provisions of the host country legislation, the parties must spell out the provisions in the joint venture contract not only on the composition and/or functioning of the statutory organs of the company but also on the operational structure of the company and on the functions and responsibilities of the various divisions and units.

The rules regarding the statutory organs of the joint venture companies are contained either in the general company legislation of the host country or in the specific regulations concerning joint ventures with foreign participation, or in both. In a joint venture company, there are normally two managing bodies, one being the highest decision-making organ, and the other being responsible for the day-to-day management of the company.

In a number of Asian and African countries, the relevant legislation contains mandatory rules according to which a minimum proportion of the members of the given company organs must be nationals of the host country and/or that certain posts, such as that of the chairman of the board of directors or the managing director can be occupied only by such nationals. For example, the Joint Venture Law of China requires the chairman of the board of directors to be appointed by the local partner. In India, the Government can appoint official directors to the Board if it is in '*public interest*'. Thus, taking into account the applicable rules, the parties may include in the joint venture contract, or in the charter, as the case may be, provisions regarding the allocation of the number of management posts in the company organs, or specific posts in such organs, between the parties.

The company or joint venture laws in the Asian-African region have different rules with regard to the term of office of the members of the various organs of companies. These rules should be studied and, if the parties want to agree otherwise and deviation from them is possible, a corresponding provision should be included in the charter.

The parties may wish to include in the charter provisions regarding the quorum necessary for the making of decisions in the management organs. Such provisions might stipulate, for example, that the quorum necessary for the transaction of any business in the respective organs consists of a majority of the member of that organ, provided, however, that at least one appointee of each joint venture party is present.

## 12. Employees and Conditions of Employment

It may be necessary to agree in the joint venture contract on the principles to be applied when employees are recruited for the company. In particular, it may be in the interest of the company that the foreign party, or its nominees in the company management, have a sufficient say in the recruitment, so that a suitable and qualified work force will be engaged by the company. On the other hand, the company should have full advantage of the experience and contacts of the local party in this respect. If certain posts are to be manned by persons engaged with the foreign partner, the joint venture contract should specify these posts and indicate whether they shall be manned in the agreed way permanently or for a limited period only.

The joint venture should contain sufficiently detailed provisions concerning the specific conditions of the employment contracts of the individual employees of the company. Also regarding these matters the joint venture laws contain certain provisions. In accordance with the applicable host country legislation, the parties should agree on the salary levels of the various posts or employee groups in the company, and on the principles that will be applied for the salary increases.

With regard to employees who are not nationals of the host country, the parties should specify the currency in which their salaries will be paid. Often part of the salary is paid in local currency, while another part is paid in some other currency. When stipulating on these matters the parties should make sure that the foreign employees will be permitted to repatriate their foreign currency earnings.

As a rule, labour disputes involving nationals of the host country will be covered by that country's legislation. On the other hand, other principles may often be applicable to labour disputes with employees who are not citizens of the host country. The parties should agree on these principles so that they can be reflected in the respective employment contracts.

The parties may wish to include in the joint venture provisions regarding the steps to be taken by either party in order to ensure that foreign employees are granted expeditiously all necessary authorisations such as *visas* and *work permits*. Similar provision may be included regarding the arrangements to be made with regard to accommodation, schooling and other social services for the foreign employees and their dependents.

## 13. Training

It may be that some of the persons to be engaged by the company as employees must receive special training in order to meet the qualifications agreed on by the parties. If this is the case, the joint venture contract should set forth necessary details concerning such training. Usually, the training is carried out at the foreign party's place or at the plant of the joint venture company, or at both places. The joint venture contract should specify where training is to be imparted.

With regard to the training the following details might be specified in the joint venture contract : (i) the aggregate number of persons to be trained; (ii) maximum aggregate length of training; (iii) maximum number of trainees to be trained at any time; (iv) the general professional qualifications to be met by the trainees etc. The joint venture contract should specify how the costs of the training will be covered, i.e. whether they will be borne by one of the parties only or will be divided between the parties in a specified way.

## 14. Purchases and Marketing

*Purchases* :The host country legislation in many countries of the Asian-African region contain provisions regarding the purchase of raw materials, components, etc. necessary for the operation of the joint venture. In this respect, a distinction must be made between the purchases necessary for the joint venture operations which are made in the host country on the one hand, and purchases from abroad, on the other.

As regards domestic purchases, in a number of countries the joint ventures operate under the same conditions as local enterprises. The joint venture contract should specify the manner in which the necessary materials, components etc. will be purchased within the framework of the host country legislation. When applicable, the contract should

also include stipulations regarding the supply of water, electric power and other basic factors of production to the company. When finalizing their agreement in this respect, the parties may have to approach the host country authorities in order to have their assent to the arrangement.

In the countries of the Asian-African region, joint ventures are generally permitted to make purchases from abroad provided the convertible currency to pay for such imports originates from the company's own resources. In most of these countries, it may be necessary to obtain a licence or permit for the purpose.

**Marketing :** The parties should agree on the basic principles which will be applied in the marketing of the company's products both domestically and abroad. One of the questions to be agreed in this connection is to what extent the existing distribution networks of the parties will be used for the marketing and sale of the joint venture products. These principles can be incorporated either in the joint venture contract itself or appended to it as a model distributorship contract to be concluded between the company and the respective distributor once the company has been incorporated. To the extent that either of the parties would act as distributor, the joint venture contract should contain a commitment by both parties that they will cause such agreement to be concluded upon incorporation of the company.

For a joint venture intended to produce products for export, a key problem is how to balance the company's legitimate interest in gaining access to the maximum range of export markets against the foreign partner's interest in not having to compete with itself through its overseas affiliates. Usually joint venture partners have no dispute with regard to the venture's access to markets within the host country.

Difficulties generally arise with respect to the home-country market or markets in third countries. What frequently impedes joint venture access to the latter markets are prior licences granted by the foreign partner to third parties. Therefore, as one prerequisite for joint venture negotiations is that the local partner should obtain following information from the foreign partner :

- the industrial property rights owned by or licensed to foreign partner which affect the products to be produced by the joint venture;
- relevant licences granted by the foreign partner to third parties, their dates of expiration, geographical area covered, conditions

under which they can be terminated by the foreign partner, the products and industrial property included in each licence, and the royalties payable under each licence.

Armed with this information, the local partner would be in a much better position to bargain for the largest practicable market area for the joint venture. For example, where licences have been granted elsewhere, the joint venture contract could stipulate that those markets will open to the venture upon expiration or termination of those licences, whichever event occurs earlier. Since many licences are for a duration of 10 or less years, this technique opens markets to the joint venture in the near future as its production capacity expands. Also worth examining by the local partner is possible home country anti-trust law affecting the foreign partner's network of licences. If that law prohibits territorial restrictions on marketing areas, there may be room for negotiating the transfer of some of those markets from the foreign partner to the joint venture.

The joint venture can greatly benefit from access to all information available to the foreign partner regarding the promotion, advertising and sale of the joint venture's products. This may be as true for host country markets as for exports. The local partner should negotiate for acquisition by the venture of all of this information at marginal cost. And included in the arrangements should be improvements and innovations in the facilities made during the life of the venture. The same principles apply to the venture's sharing of the services of the foreign partner's international marketing organization, including selling, advertising, merchandising and after sales servicing. The contract may even provide for purchase by the foreign partner and its overseas affiliates of the joint venture's products for distribution in export markets. In that case, negotiation of mutually-acceptable prices will be crucial.

## 15. Transfer of Shares and Withdrawal of Participation

*Transfer of shares*—The parties may wish to include in the joint venture contract provision concerning the transfer of the company's share from one party to another or from one party to a third party. The basic framework for the drafting of such a provision in the contract is provided by the host country legislation which either limits the share of foreign ownership of joint venture shares to a certain maximum, or impose the requirement of a minimum shareholding by national investors or by the general public or stipulate the requirement

of 'fade out' or 'spin off to minority' except perhaps in the case of high priority areas, the law indicating the time-period by which such fade out or dilution should occur. Moreover, where such transfers are allowed, the approval of the host country is generally insisted upon. Where such transfers are possible, the contract should stipulate that all the terms and provisions of the contract must be made binding upon, and shall also be to the benefit of, and be enforceable by, the respective transferee. The joint venture contract can further provide whether the transfer of the shares will release the transferor from his obligations under the contract.

*Withdrawal of participation* : The foreign partner may wish to withdraw from an unsatisfactory relationship, while the local partner wishes to be assured that a new partner will be compatible. Thus, the local partner may insist on an absolute prohibition against transfer or that the transfer be only to another local enterprise. In such a case, the parties must provide in the joint venture contract either a right of first refusal, a consent requirement, or both. The right of first refusal requires the foreign partner to offer his share to the local partner prior to selling it to a third party. A consent clause requires that either the approval of the local partner, the approval of the host government, or both, be obtained before any transfer.

## 16. Termination & Liquidation

In many of the developing countries, rescission or cancellation of the joint venture contract prior to the expiration date is possible when provided for in the joint venture contract. Grounds for cancellation may include incursion of losses over several years, the failure to attain the goals of the joint venture, the breach of an essential obligation, *force majeure*, amendment of the tax law adversely affecting the foreign partner, and a substantial change in circumstances from those prevailing at the signing of the contract. The parties should therefore include in the joint venture contract or the charter provisions concerning the agreed grounds for termination. The provisions should also define the corporate organ which takes the decision, and the manner in which a decision on the termination is to be made (unanimity or qualified majority).

Although the joint venture is envisioned as a long-term enterprise, the duration of the foreign partner's participation may be required to be specified in the contract. In such a case, the contract should contain the method to be used in the dissolution or liquidation. Host

country legislation in some of the developing countries simply require the local partner or host government to buy out the foreign partner. The method employed to calculate the value of the withdrawing partner's share must be spelled out in the contract. The right to repatriate invested capital is guaranteed by legislation in the developing countries although the terms may vary with each contract. Some contracts provide either for the retention of title to the invested assets by the foreign partner, or for a right to have the assets returned. The assets must, therefore, be specifically identified in the contract. The currency to be used for capital repatriation must also be stipulated, although repatriation may be in the form of goods or equipment.

## 17. Applicable Law

Four different groups of legal relationship can be distinguished in an international joint venture—namely, those between the joint venture parties, those between the company and one of the parties, those between the company and outside third parties, and those between the company and its employees. In the developing countries, the relations between the joint venture parties and between the joint venture and the national party are invariably subjected to the host country legislation. The legal relations between the joint venture and foreign entities may or may not be subjected to the national law. As a general rule, the relationship between the company and the employees who are citizens of the host country is governed by the law of that country whereas other principles may often be agreed on in relation to foreign employees of the company.

## 18. Adaptation and Amendment of the Joint Venture Contract

A joint venture being a long-term project, the parties may wish to include in the joint venture contract provisions dealing with changes in circumstances which result in the disturbance of the initial economic and financial equilibrium of the contract while not rendering it incapable of performance. The joint venture contract should also state the conditions under which it can be amended or supplemented. It could state that this is possible only by an instrument in writing executed by and between the parties and with the necessary governmental approval.

## 19. Confidentiality

The joint venture contract should specify which information is to be treated as confidential and state that both parties are precluded from disclosing such information. The parties should further agree on how long confidentiality should be maintained. Confidentiality provisions normally go beyond the term of the contract. The contract should also provide for the consequences resulting from violation of the confidentiality provisions.

## 20. Settlement of Disputes

The joint venture contract must provide for ways of resolving disputes between the foreign investor and the domestic partner in the operation of the joint venture. Disputes between the partners can take place in many matters, including management appointments, payment of dividends, reinvestment of earnings, joint venture expansion, new financing, salaries and benefits, pricing policies, advertising and promotion, brand management, expansion of product lines, modernization of plant, purchase of raw materials, intermediate and component costs, quality controls, distribution channels for products and export development. As stated earlier, the joint venture contract should deal with these vital matters comprehensively so that a substantial degree of consensus exists between the partners.

Still as the operation proceeds, misunderstandings and disputes could occur between the foreign and national partners on some of those issues. Some of the disputes can be resolved by face-to-face meeting and give-and-take discussion between the parties. An executive committee of the key managers representing both parties can also deal with disputes. Disagreements involving major managerial policies can be referred to the Board of Directors, where both partners are adequately represented. A Board of Directors could have outside directors agreeable to both partners, and those outside directors can play an important role in resolving disputes.

A major problem with the joint ventures is the deadlocked disputes which arise on account of even numbered board of directors and veto rights. Different contractual methods of dealing with deadlocks should be devised. If these methods are not provided, for paralysis of the joint venture may result. However, the issues and types of disputes for which these methods may be used should be restricted otherwise they may be utilized too frequently or before there has been sufficient opportunity or effort to reach a compromise. Disputes

that do not require resolving in order for the joint venture to continue operating normally should not be included.

To prevent a deadlocked problem, the board of directors may be constituted by an odd number of members with a neutral director or directors. This approach is worthwhile only when the partners do not retain a right of veto. However, when such veto is retained and the board is deadlocked, another approach utilized is mediation through a representative of each of the partners who attempt to resolve the matter *inter se*. Additionally, the matter may be addressed by the respective foreign and national heads of the board. If a decision cannot be reached, then the matter might be remitted to the general managers of each side. Some joint ventures simply refer the matter back to the parent bodies. This method is advisable in that the partners will have more latitude in which to compromise on serious disputes.

When a solution cannot be reached using the above methods, the partners have to choose between court litigation and arbitration. In practice, international commercial arbitration represents the most suitable way of settling joint venture disputes. The advantages of arbitration are even more obvious when the dispute involves on one side a State or governmental undertaking and on other side a private enterprise, generally, the foreign partner. The foreign investor for obvious reasons of neutrality, and the State party for reason of sovereignty, will wish to avoid litigation in the other party's home courts. Therefore, international arbitration provides the necessary middle ground. In addressing the issue of arbitration, the partners must make a choice as to the decision-making forum, such as the Regional Centres for Arbitration established by the AALCC in Cairo and Kuala Lumpur and insert the arbitration clause of either of those Centres in the joint venture contract.

It would, however, be preferable to reach a solution in a more amicable fashion. The comment has been made that once a dispute reaches arbitration stage, the partnership arrangement has suffered a fundamental and perhaps irretrievable breakdown. Nonetheless, an arbitration provision may have a persuasive influence on the parties to strive for an amicable settlement.