issues; (ii) a JV contract; and (iii) the Articles of Association. Essentially, the contract details the objectives and the overall scope of the arrangement, including the registered capital and responsibilities of each party to the JV, while the Articles of Association provide the organizational framework for management, structure, etc. According to the JVL Regulations, if the JV agreement is in conflict with the contract, it is the contract which shall prevail.

This primer will examine three types of joint ventures:

1) contractual JVs
2) equity JVs
3) hybrid JVs

On certain issues, differences among them are non-existent, while on others, substantial. You will need to carefully consider the respective merits and drawbacks of each type of venture to choose the most likely path to success.

Contractual Joint Ventures

Contractual joint ventures, otherwise referred to as co-operative enterprises and co-management ventures, entail the creation of a business enterprise to perform a specific activity over a specific period. Virtually anything, barring that which would contravene existing legislation, is a possible subject for negotiation and inclusion in the contract. The end result should be a document which clearly delineates the respective rights and obligations of each party.

The flexibility of the contractual joint venture is apparent when it is compared with the equity joint venture, which is governed by a relatively large body of Chinese legislation. For example, a contractual JV does not require that equity contributions by each partner be strictly evaluated and a corresponding distribution between the two agreed on. (You shall see in a later section that this is required in equity JVs and is, therefore, a major problem with them.) If indeed an equity ratio is determined under a contractual JV, the profits or losses need not later be apportioned accordingly. This is a significant benefit to foreign partners who wish to realize disproportionate returns on their capital contributions during the early years of the JV. To many firms, the shorter payback period on their initial investment that a contractual JV provides is a deciding factor in embarking on one.

Under a contractual JV, a clear separation between the corporation entities remains, with each paying its own taxes, bearing its own liability for losses, etc. The JV does not become a limited liability company and is not a separate legal entity under Chinese law. Contractual JVs, are, therefore, more akin to the traditional Western concept of a joint venture, i.e., a purely contractual arrangement along the lines of an unincorporated association.

Since they are not separate legal entities under Chinese law, contractual JVs must have a joint governing body preside over the management of the company, rather than a board of directors. Also, each party is responsible for the debts of the JV in relation to its pro rata share of the venture.