I. INTRODUCTION

A. The proliferation of international construction joint ventures

A recent survey revealed that over three-quarters of the top world-wide construction firms had "joint ventured with a general contractor from a foreign firm". The numbers will continue to grow as contractors come to realise that the joint venture business form can provide extensive benefits to those firms that are willing to work together on lucrative construction projects. Attorneys who specialise in construction matters will therefore be encountering this form of joint enterprise more frequently and will be well advised to stay conversant with joint venture laws, both at home and abroad.

In the Middle East, while economic development is progressing rapidly, the area is characterised as one in general need of economic development. The area is diverse in its social, political and legal structures. It has monarchies, democracies and the equivalent of dictatorships. It contains oil-rich Saudi Arabia and Kuwait, and oil-poor Egypt and Jordan. It is thus difficult to generalise for all states in the Middle East area, although many common features may be discussed.

As the Middle East states build their infrastructure in housing, mechanised agriculture, manufacturing, housing and defence, the laws of these states are designed not only to direct foreign investment into needed areas of economic and social development, but also to sustain long-term economic gains in the region. Long-term gains are thought by most Middle Eastern states to be achieved only if the knowledge necessary to sustain and continue the growing technology is learned by Arab nationals. This is commonly called "transfer of technology". Thus, laws regulating the entry of foreign business in the area to perform work are characterised by requirements that local participants be included in the ownership of domestic companies, that some material part of the work is performed by local business, and that the foreign technology is simultaneously transferred to local participants.

To further these policies, the trend throughout the Gulf countries is for business to be carried on in conjunction with nationals in order to stimulate local expertise and, it is hoped, to effect a transfer of technology. The concept is simple. The foreign company with its technical expertise and management skills will join with a local company

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2 The "Middle East" at least comprises Saudi Arabia, the United Arab Emirates, the other states of the Arab Gulf and Peninsula, Iraq, Syria, Jordan, Lebanon, and Egypt.
with its existing local organisation, contacts and ability to deal with local governments and federal ministries.

One of the most prevalent forms for foreigners to do business in the Middle East is the joint venture. This can be accomplished by direct joint ventures where local law makes them desirable, or through a mixed locally incorporated company which is the successor to the pre-incorporation joint venture agreement setting the terms of the relationship between the parties. In other words the shareholders' relationship to the locally formed company is governed by the underlying pre-incorporation joint venture agreement. Many different varieties are possible. The joint venturers can agree in their joint venture agreement to form a limited liability company and the manner in which the capital will be contributed and the shares will be held—often in the same proportions as in the joint venture. Sometimes the limited liability company becomes a third joint venturer to the joint venture agreement. The gravaman is that the joint venture agreement usually controls the rights and obligations of the joint venturers between each other, and the same legal relationship is usually reflected in the limited liability company.

The purpose of this paper is to introduce the basic concepts of joint venture law from the foundation of its common law heritage, and to discuss its development in typical civil law form and in the joint venture “company” form prevalent in the Middle East. The paper focuses on the joint venture enterprise, its legal composition, the legal relationships between venturers and others, and the heart of the joint venture relationship—the joint venture agreement. Special “international” considerations are raised and this paper will also briefly touch on various other pertinent business and legal considerations. The paper attempts to assess the benefits, costs and implications of doing business as an international construction joint venture, with special emphasis on the common law heritage of joint ventures and on legal principles drawn from American law.

No lawyer from outside the Arab region is qualified to attempt to explain Islamic jurisprudence and the possible application of the immutable religious laws of the Shari'a to commercial transactions. In some Arab states the Shari'a will not be applied and domestic commercial law will govern. In others, the possible effects of the application of the overriding principles of the Shari'a may possibly affect certain aspects of a commercial transaction. No attempt will be made in this paper to describe the possible or actual effects of the Shari'a on joint venture transactions. Any such effort should be pursued in conjunction with learned local counsel in the Arab state in which the joint venture transaction is contemplated. Suffice it here to note that in general the observance of contracts is a fundamental part of the principles of Islam, and thus commercial contracts are in general respected.

B. Forming the joint venture: an “economic marriage”

An international construction joint venture is very much like an “economic marriage” between the firms involved. Like marriage itself, a joint venture offers substantial

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