



RESTRUCTURING TO RESCUE DISTRESSED STATE-OWNED ENTERPRISES AND JOINT-VENTURE COMPANIES

Michael Sumaila Nlasia, Esq

Private Legal Practitioner

Correspondence

Email:

marcusgarvey.snr@gmail.com

Abstract

This article outlines the steps the Ghanaian government can take to rescue insolvent SOEs and JVCs instead of liquidating them to guarantee job security and promote wider economic prosperity. The Ghanaian government must give precedence to the restructuring of SOEs and JVCs in distressed circumstances. This will increase their efficiency and restore their operational and financial viability. The approach to restructuring a distressed company depends on the nature of the challenges, the interests of the parties involved, and the results of a thorough business review. Debt restructuring, in the area of financial restructuring, for instance, will help avoid the acceleration of existing debt or trigger cross-default on any other financial agreements that the SOEs and JVCs may have.

1. INTRODUCTION

On March 3, 2025, during the National Economic Dialogue (NED), Dr. Cassiel Ato Forson, Minister of Finance and Economic Planning, expressed concern about the severe operational and financial difficulties facing Ghana's state-owned enterprises (SOEs) and joint venture companies (JVCs), cautioning that immediate reforms are required to stop further economic decline.¹ According to him, a greater number of SOEs and JVCs, spanning critical sectors such as energy and agriculture, have been identified for restructuring as the government seeks to curb fiscal risks and improve efficiency.

SOEs and JVCs show mounting operational and financial

S/N	Name of Entity	2021 (GHS'm)	2022 (GHS'm)	2023 (GHS'm)
1	Electricity Company of Ghana	-1,458.78	-8,068.47	-5,964.00
2	Ghana Grid Company	300.05	-93.52	-86.56
3	Volta River Authority	112.76	-277.18	-380.82
4	PSC Tema Shipyard (Subsidiary of GPHA)	0.00	-25.53	-21.91
5	Ghana Railway Company Limited	298.81	-28.49	-9.37
6	Ghana Cylinder Manufacturing Company Limited	-4.24	-0.63	-6.95
7	GHOC Distilleries	1.27	-25.13	-25.63
8	GNPA Limited	-1.91	-0.94	-0.87
9	Precious Minerals Marketing Company	-12.45	-2.73	12.12
10	Accra Digital Centre	-0.39	-3.97	-4.29
11	AirtelTigo Ghana Limited	439.13	-434.60	-599.74
12	Ghana Post Company Ltd.	-4.52	-1.20	0.77
13	Graphic Communications Group Ltd	-3.04	-4.34	-15.18
14	Ghana Cocoa Board	-2,437.89	-3,835.39	2,286.09
15	Consolidated Bank Ghana	72.26	-1,505.46	-542.96
16	Ghana Commodity Exchange	-5.00	-6.64	3.71
17	Ghana Integrated Aluminium Development Corporation	2.76	-7.10	-0.71
1	Kumasi Abattoir Comp. Ltd.	-0.44	-1.64	0.11
2	ADB Bank Limited	81.60	-371.28	-402.75

In 2023, Cocobod's apparent profitability was due to the suspension of debt service payments during debt restructuring.

Source: SGA

Ministry of Finance, Professional, Ethical, Efficient, Responsive – Transforming Ghana Beyond All

Source: Ministry of Finance at NED

Hitherto, in Ghana, the fate of a distressed or an insolvent company has been liquidation, which results in a permanent end to the company and the distribution of its assets to creditors, since the company's liabilities far exceed its assets and it cannot pay its debts as they become due. While this cause of action remains a viable option, it poses threats to job losses and their ripple effects, as well as a general loss of government revenue through taxes.²

¹ Daily Graphic, 'Ghana's SOEs in crisis – Finance Minister warns' (GO, 3 March 2025)

<https://www.graphic.com.gh/business/business-news/ghanas-state-owned-enterprises-in-crisis-finance-minister-warns.html>
accessed 9 April 2025

² Prosper Melomey, 'Restructuring for Growth: Debt Restructuring – Options for financially distressed companies' (B&FT Online, 12 August 2024) <https://thebftonline.com/2024/08/12/restructuring-for-growth-debt-restructuring-options-for-financially-distressed-companies/> accessed 9 April 2025.

However, the introduction of the Corporate Insolvency and Restructuring Act, 2020 (Act 1015)³, commonly referred to as CIRA, has presented a significant paradigm shift for distressed companies in Ghana. CIRA provides the possibility of rescuing a company struggling to meet its debt obligations. The situation involves either making adjustments in the company's operations or modifying its balance sheet to restore the business to financial stability and health. Additionally, rescuing the business aims to preserve its operations and resources to ensure job security and contribute to wider economic prosperity.⁴

Although the preamble of CIRA states that it provides for the administration and official winding-up of insolvent companies and other body corporates and for related matters, SOEs, which are body corporates not registered under the Companies Act, 2019 (Act 992), undergo administration or restructuring under the provisions of CIRA.

Additionally, troubled SOEs and JVCs might choose to go through administration rather than default to liquidation under receivership, which had been the main goal of earlier legislation. Under the guidance of a designated Administrator or Restructuring Officer, CIRA will let them to carry on as a going concern during the restructuring process. This procedure will temporarily suspend the rights of creditors regarding the company's assets, including the ability to apply to the court for business winding up and liquidation.⁵ Furthermore, it will make it easier to carry out a restructuring plan, which could result in greater benefits for all parties involved than quick liquidation.

To reiterate, restructuring is a viable option to rescue distressed Ghanaian SOEs and JVCs. This opinion is further buttressed by the fact that restructuring focuses on identifying where the value lies in the business through thorough business and financial analysis, valuations, revised forecasts, and business planning.⁶

³ The goal of CIRA is to give troubled enterprises access to a regulatory structure of resolution procedures and some significant changes for Ghana's corporate insolvency legislation.

⁴ Nikolai R. et al, *'Restructuring for corporate success: socially sensitive approach'* (2005)

https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_emp/documents/publication/wcms_142327.pdf accessed on 4 April 2025

⁵ CIRA, Section 32, *provides that during the administration of a company, a person shall not commence or continue proceedings in a Court against the company or in relation to any property of the company except with leave of the Court or the terms the Court considers appropriate.*

⁶ *Ibid* at page 2 para. 3

To expound on the assertion above, the discussion will be broken down into seven parts: Part One serves as the introduction. Part Two explores the involvement of State Interests and Governance Authority (SIGA) in the restructuring of SOEs, JVCs, and other designated bodies within the framework of government policy. Part Three discusses restructuring methods. Part Four provides a diagnostic assessment of the challenges facing SOEs by focusing on the legal and institutional framework as well as the financial and operational performances of these organizations. Part Five provides a detailed explanation of the formulation of the restructuring plan. Part Six discusses the restructuring implementation plan, and the last part is the conclusion.

2. INVOLVEMENT OF SIGA IN RESTRUCTURING

The State Interests and Governance Authority (SIGA), established under the State Interests and Governance Authority Act, 2019 (Act 990), is mandated to oversee and administer the State's interest in Specified Entities, including SOEs, JVCs, and other State Entities. Section 4 of Act 990 stipulates the functions of SIGA to include the following:

4. The Authority will (a) consult with the relevant sector ministers in order to evaluate the mandates of State-owned enterprises and other government agencies and recommend changes to the relevant sector minister; (ii) assess the organizational structures and strategic plans of State-owned enterprises and other State entities and recommend changes to the relevant sector minister in order to accomplish the goals outlined in section 3.

As part of its obligations under Act 990, the State Ownership Policy and the Public Financial Management Regulations, 2019, (L.I. 2378), SIGA conducts an annual performance review and publishes the official list of Specified Entities under its oversight.⁷ Thus, SIGA's annual reports are useful to guide SOEs and JVCs. The guidance may consider the need to undertake a restructuring, which involves the process of changing the organizational structures of SOEs, JVCs, and other State Entities to enhance their operational or financial performances, usually in response to crises. In the restructuring, SIGA helps SOEs and JVCs with performance management and recapitalization to ensure these organizations run profitably, effectively, and efficiently to advance Ghana's socioeconomic growth.

⁷ Public Financial Management Regulations, 2019 (L.I. 2378) Regulation 192(2)

In light of the above, restructuring of the distressed SOEs and JVCs should be considered by SIGA rather than divesting. This is because restructuring generates significant advantages. For instance, when a business wants to improve its overall performance or change its place in the market without having to sell up important assets, divestiture should not be considered. Through restructuring, businesses can preserve ownership, assets, and control while streamlining operations, increasing productivity, and fostering collaboration across several divisions. Divestiture, even though it can be advantageous in some circumstances, can result in a loss of strategy alignment and possible disruption of the company, such as when selling off non-core assets or restructuring debt.

3. METHODS OF RESTRUCTURING

Even though SOE and JVC restructuring can mean different things in different milieus and different corporations, at its core, it is a comprehensive set of steps taken by the management and shareholders to restore the operational and financial viability of the SOEs and the JVCs.

An SOE or a JVC has to be restructured when it faces significant financial difficulties or when there are issues with the calibre and volume of its goods and services. Most of the time, it is a vital component of a larger economic reform program that aims to lessen the fiscal risks and budgetary burden provided by the SOE and JVC while also improving the governance and efficacy in providing essential services. Restructuring usually involves modifications across two main dimensions:

a. Financial: Focuses on restoring the SOE's solvency and liquidity

This is driven by the need to reduce the SOE's financial load on public coffers, both explicitly and implicitly, particularly by lowering the fiscal risks that go along with it. Operational restructuring and financial measures like debt workouts, arrears clearance, asset sales, and capital infusions are frequently combined in such restructuring. A thorough inventory of current liabilities by creditor category, instrument type, and maturity profiles is typically necessary for this process.⁸

⁸ Integrated State-Owned Enterprise. Thematic Guidance Note: Restructuring State-Owned Enterprises prepared by the World Bank in July 2021

b. Operational: Focuses on restoring the SOE's future performance and viability

This can be achieved, for example, by redefining the SOE's organization, business model, and product mix; by dividing, merging, relocating, or selling off portions of its operations; by enhancing capital intensity and product quality through the acquisition of new machinery, technology, or other assets while altering the workforce's skill mix; and by reducing expenses across all areas of operations. In many cases, SOE reform also involves staff reduction.

Generally, three steps are involved in a successful SOE restructuring. First, identifying the challenges the SOE is facing is essential. If the diagnosis shows that the SOE may be viable and should remain under state control, the next stage is to formulate a plan and consider restructuring possibilities. The final phase entails executing the plan, monitoring developments, assessing results, and making any necessary adjustments in consultation with stakeholders. By implementing these restructuring methods, insolvent SOEs and JVCs are expected to navigate the quagmire of their saddling debt to achieve a healthy financial status.

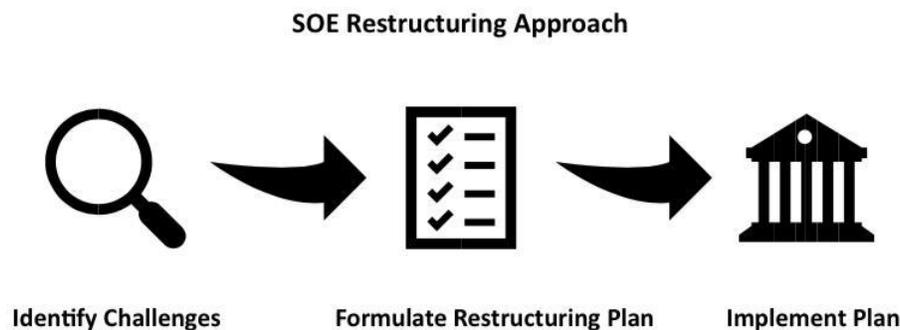


Fig 1: An illustration of the three steps approach for restructuring SOEs

4. IDENTIFYING CHALLENGES FACING SOES AND JVCs

The crucial initial step before launching an SOE or a JVC restructuring program is to thoroughly diagnose the enterprise's situation and issues. In this article, the following diagnostic assessment shall apply:

- a. the legal and institutional framework that governs SOE.

- b. the SOE's financial performance.
- c. the SOE's operational performance and organizational effectiveness.

A licensed Insolvency Practitioner (IP) carries out diagnostic analyses and reports of this type as the basis for the restructuring.⁹

a. Legal and institutional frameworks

The government will need to review the legal framework and identify any necessary changes or obstacles when SOE restructuring, or even general private enterprise restructuring, becomes necessary. Laws and institutional frameworks that can have a significant impact on the restructuring process include those that govern property rights, such as land; collateral, including registries; courts that oversee insolvency, debt recovery, and enforcement; and taxation that affects debt reductions or other financial actions that may be part of SOE restructuring.

Additionally, although the government is the majority owner of SOEs and the minority owner of JVCs, ownership arrangements are typically outlined in the established SOE and JVC legal and institutional framework.¹⁰ The types of SOEs and JVC restructuring are frequently impacted by ownership policies and laws, so it is necessary to evaluate and consider this when planning a restructuring program.

Generally, the legal and institutional framework will define the following:

- i. the objective of the company;
- ii. the type of company;
- iii. the criteria under which the company operates (commercial or non-commercial);
- iv. the roles and responsibilities of specific oversight and regulatory institutions or agencies;
- v. the roles of the boards of directors, management, and staff;
- vi. the fiduciary duties of boards and management; and
- vii. the guideline on how to handle disputes.

⁹ The Chartered Institute of Restructuring and Insolvency Practitioners, Ghana, 2024 (Act 1117) commonly referred to as CIRIP is an Act to regulate the professional body of insolvency practitioners in Ghana. Assented to on July 26, 2024, the aim is to establish a formalized Institute dedicated to the education, training, and ethical standards of insolvency practitioners in Ghana.

¹⁰ Per the shareholder register the State is the majority shareholder in SOEs but the minority shareholder in JVCs.

A diagnostic assessment in line with the above criteria would help identify impediments in an SOE or JVC's functions. This would also contribute to finding challenges in the company's financial performance and operational and organizational structure.

b. Financial performance

An important diagnostic step is a comprehensive review of the SOE or JVC financial performance. This review should be based on their audited financial statements and management reports, additional internal financial reports, performance monitoring reports from their oversight agencies, as well as reports from the finance ministry and the tax and customs authorities regarding the history of the SOE's financial relations with the government.

This assessment must gather information for at least five years to provide sufficient data to evaluate performance trends over time. Additionally, the evaluation of the SOEs and JVCs performance in the context of their financial performance should be benchmarked against indicators of other striving SOEs and JVCs where such comparative information is available.¹¹

c. Operational performance and organizational effectiveness

Determining whether and how restructuring might be appropriate requires a critical analysis of the operational performances and organizational effectiveness of the SOEs and JVCs. Their financial statements can provide insight into their operational performance—for example, cost breakdown ratios, which show the contributions to total costs of administrative expenses, payroll, and maintenance. In addition, as with financial performance assessment, the SOEs and JVCs' operational performance should be compared with indicators of other striving SOEs and JVCs where such comparative information is available.¹²

5. FORMULATING A RESTRUCTURING PLAN

Given the rigorous diagnostic steps outlined above, the next step is to evaluate whether the SOEs and JVCs can be revived through restructuring, considering the challenges they face. First, the fiscal costs of

¹¹ Ibid at page 3, para 4

¹² World Bank, *Corporate Governance of State-Owned Enterprises: A Toolkit* (WB 2014) <https://openknowledge.worldbank.org/handle/10986/20390> accessed 23 April 2025.

maintaining the status quo compared to restructuring costs should be assessed. Also, the cost of liquidation and closure, privatisation, public-private partnerships, and management contracts should be measured against the restructuring of the SOEs and JVCs. This is because, costs normally required in SOE restructuring, such as new capital investment, labour reduction, and social mitigation measures, need to be balanced against the long-term potential fiscal gains.¹³

Following the preliminary assessment, if restructuring is considered the best solution, it should point to the following areas that need to be addressed through the restructuring process and the types of actions it would entail:

- a. Changes to the legal and institutional framework.
- b. Financial restructuring.
- c. Operational and organizational restructuring.

The restructuring plan must be presented as a comprehensive business plan that includes performance goals for the duration of the plan as well as operational and financial projections.

a. Changes to the legal and institutional framework

To begin with, statutory laws should be applied equally to distressed companies as to other corporate entities. The government ought to impose strict budgetary restrictions on them, prohibit tax exemption incentives including import and export duties, preferential access to capital, land, and buildings, as well as access to markets through, for instance, government interventions or procurement policies. The importance of this is to strengthen these companies in their post-recovery operations to prevent a default of the institutions with political interference from the government.

Further, they should be held to the same corporate governance compliance for financial and operating performance as other corporate entities, particularly strict adherence to CIRA. As part of the restructuring, if the enactments that established the SOEs hinder the institutions' well-being, the government may consider their review or amendment. Thus, the objective is to rebuild the institutions through their laws and regulations, rather than simply reviving them, in consideration of the interests of the State in the companies.

b. Financial restructuring

¹³ Supra

The main issue these SOEs and JVCs face with restructuring is their heavy indebtedness. These debts often need to be restructured for these companies to regain financial viability and autonomy, including the capacity to borrow from commercial banks or issue shares. In some cases, these companies' debt may have been incurred over several years to finance accumulated losses. In such situations, they are likely not represented by any assets on the balance sheet. A transfer of some of these debts to the government can be considered the first significant step.

Governments may consider restructuring in response to pressure from creditors, especially regarding guaranteed loans. Key to financial restructuring is debt restructuring, which seeks to rescue the company from defaulting on its existing debts by providing a less expensive alternative to bankruptcy for the benefit of both the borrower and the lender. However, some of these debts might be restructured through discussions with creditors, depending on the anticipated financial capacity of the restructured SOE and JVC.

- i. negotiating a reduction in the principal amount with creditors (i.e., partial write-offs or “haircuts” or “bail-in”).
- ii. interest rate reductions.
- iii. loan tenor extensions (or “reprofiling” of maturities).
- iv. Other forms of debt exchange which included the exchange of variable-rate debt for fixed-rate debt.
- v. sale of assets, particularly non-productive assets, or in cases where downsizing or elimination of non-core activities will be part of the proposed restructuring process.
- vi. debt-to-equity conversions, particularly in companies with high debt/equity ratios and good chances of successful restructuring.

The injection of new equity in this way can be an important contributor to the companies' future viability, not only because it puts the companies on a more financially stable footing but also because it can bring in commercial know-how, better accountability, and access to additional financing.¹⁴

In addition to this, the Public Finance Management Regulation provides a regulatory framework for the recapitalisation of distressed SOEs under restructuring. Regulation 199 states as follows:¹⁵

¹⁴ Supra.

¹⁵ Public Financial Management Regulation, 2019 (L.I. 2378). The

- (1) *A public corporation and state-owned enterprise may be recapitalised by the Finance Minister (Minister) on the recommendation of the central oversight body, the Budget Office, and Divisions responsible for public investment and debt management in the Ministry.*
- (2) *The Minister may recapitalise a public corporation or a state-owned enterprise through*
- (a) a capital injection from the annual budget;*
 - (b) a gift of Government securities;*
 - (c) a gift of Government assets;*
 - (d) a relief of debt owed to the Government;*
 - (e) a debt-equity swap; or*
 - (f) any other means.*
- (3) *A request for recapitalisation under subregulation (1) shall be submitted by a public corporation or a state-owned enterprise to the Minister through the central oversight body.*
- (4) *The request for recapitalisation under subregulation (1) shall include*
- (a) a detailed explanation of the proposed scheme of the recapitalisation;*
 - (b) a detailed justification for the recapitalisation including a fiscal impact analysis;*
 - (c) a business plan of the public corporation or state-owned enterprise;*
 - (d) a restructuring plan of the public corporation or state-owned enterprise, including*
 - (i) the detailed financial projections for the ensuing five years;*
 - (ii) the restructuring measures to be taken for the ensuing five years;*
 - (iii) the financial targets for the ensuing five years; and*
 - (iv) the time period for the repayment of the costs incurred by the Government for the recapitalization by the public corporation or state-owned enterprise.*

From the above, the central oversight body, i.e., SIGA, is mandated to place a formal of the SOEs to the Finance Ministry to undertake the essential financial restructuring involving recapitalisation.

c. Operational and organizational restructuring

Operational restructuring of SOEs and JVCs can involve a variety of components and take many different forms. The business model may be redesigned, big conglomerates may be unbundled, break-ups, partial divestiture or mergers of discrete operations, changes to the organization structure, general across-the-board cost reductions, improvements in operational efficiency, and environmental impact.

Restructuring SOEs and JVCs in commercial ventures may entail altering the product mix, the business model, or the target market segments in terms of clients, regions, or even export markets. The adoption of new technologies may also be one of these changes. Improving the SOE's corporate governance, which includes enhancing accountability and autonomy and professionalizing the makeup and functions of the board of directors, is a crucial part of many restructuring procedures.

In the case of SOEs, public-private partnerships, asset leasing, and management contracts are crucial restructuring strategies for SOEs that can enhance their operational and financial performance and reduce the burden of SOEs on public finances. Significantly, many SOEs have employed a significantly larger workforce than required for efficient operations. Low labour productivity and high wage costs are the results of this, and they have a effect on SOE operations and financial performance. And, investing in technology or automated service as part of a restructuring to increase efficiency raises capital intensity and results in labor losses.¹⁶

This procedure may reduce labour in the restructured companies, which may have major social and political consequences. Therefore, restructuring plans must include measures to reduce the adverse social effects.¹⁷ This would require careful consultations with organized labour in that respect.

6. IMPLEMENTING THE RESTRUCTURED PLAN

The implementation should be conducted under the supervision of SIGA.¹⁸ SOE and JVC restructuring, like private enterprise restructuring, aims for some short-term successes but is usually a medium- to long-term process that could take up to ten years to finish.¹⁹ In many cases, it can be a permanent, continuing process.

¹⁶ Fretwell DH, 'Mitigating the Social Impact of Privatization and Enterprise Restructuring' (Social Protection Discussion Paper Series No 0405, World Bank 2004) <http://documents.worldbank.org/curated/en/207211468781818946/Mitigating-the-social-impact-of-privatization-and-enterprise-restructuring> accessed 28 April 2025

¹⁷ Supra.

¹⁸ Section 4(e) of Act 990 and Section 4.6.1 on "Reporting Requirements" of the State Ownership Policy enjoin SIGA to prepare the Annual Assessment Report on the Governance and Institutional Performance of SOEs and JVCs. This mandate will help monitor and evaluate the performance of the companies undergoing restructuring.

¹⁹ European Bank for Reconstruction and Development (EBRD). 2018. "State-Owned Enterprise Restructuring in Croatia," Invitation for Expressions of Interest. Available at: <https://www.ebrd.com/cs/Satellite?c=Content&cid=1395271842258&d=Mobile&pagename=EBRD%2FContent%2FContentLayout> (accessed 4th May 2025)

It requires careful and detailed planning, continuous monitoring and evaluation, and fine-tuning as necessary during implementation. It makes sense to appoint a restructuring implementation team to oversee the process and to continue the process of consulting stakeholders as changes take place.²⁰

The difficulty of the restructuring process will be inevitable, but while at it, there must be rigorous monitoring and evaluation of the process. A results framework must be developed for a thorough analysis of the periodic performance of the company.²¹ Continuous monitoring and evaluation of the results framework is also necessary to assess the extent to which the desired benefits are being achieved and whether the unfolding costs are in line with the original projections.

The restructuring should be conducted by a licensed insolvency practitioner under the Chartered Institute of Restructuring and Insolvency Practitioners, Ghana, 2024 (Act 1117) following the guidelines in CIRA. Section 39 (1) of CIRA states as follows:

(2) A person cannot be designated to be a restructuring officer unless they are either (a) qualified to practice insolvency or (b) have given their written approval and haven't revoked it at the time the restructuring agreement is signed.

This is because the responsibility for the preparation, implementation, monitoring, and evaluation of the restructuring plan should be assigned to a specialized agency or individual vested in the skill of corporate restructuring.

7. CONCLUSION

This article highlights the processes the government of Ghana can undertake to rescue insolvent SOEs and JVCs rather than liquidating them. The government of Ghana needs to prioritize the restructuring of SOEs and JVCs in distressed situations to improve their efficiency, reduce inefficiency, and restore financial stability to ensure job security and contribute to wider economic prosperity. The approach to restructuring

²⁰ Supra.

²¹ An explicit articulation (graphic presentation, matrix, or summary) of the various layers, or chains, of results anticipated from a specific intervention—project, program, or development strategy—is known as a results framework. By giving a clear picture of how the project's actions are anticipated to result in the desired improvements, it aids in monitoring and assessment.

a distressed company depends on the nature of the challenges, the interests of the parties involved, and the results of a thorough business review. Debt rescheduling in the area of financial restructuring, for instance, will help avoid the acceleration of existing debt or trigger cross-default into any other financial agreements that the SOEs and JVCs may have.