“Joint Operating Agreements are a common feature of oil production. A discussion of their nature with a reference to the legal relationship that is created between the participants.”

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Abstract

I

t could be argued that the Joint Operating Agreement is a common form of conducting a business in the oil and gas industry, and involves each party submitting an idea or point of view for approaching the business effectively. It has also been said that due to the longevity of conducting a business in the oil and gas industry, and the variety of sensitive matters which may result in challenges or jeopardising the joint venture, the purpose of the Joint Operating Agreement should be to address the above issues and to supply a collection of clauses that will oversee the joint venture members for the entire term of the business.

This essay aims to tackle likely legal issues that may emerge from the Joint Operating Agreement, issues such as liability and accountability between the parties. Therefore, in order to adequately address such matters, this paper will be divided into parts as follows: firstly, a brief background about Joint Operating Agreements; secondly, defining the parties of the joint venture; thirdly, the legal issues that arise such as fiduciary duty and the pre-emption right with particular reference to the United Kingdom’s approach to pre-emption right; fourthly, discussion of the event of default and suggested solutions; fifthly, the issue of decommissioning; sixthly, an examination of other issues, such as sole risk and non-consent; and finally, a conclusion drawing together the various aspects of this paper with some recommendations.

Introduction

Firstly, let us consider the definition of the Joint Operating Agreement. It has been said that it is a joint venture involving two or more unconnected parties cooperating to pursue an enterprise through their contribution of efforts, money, skills or other forms of asset. Currently, it is argued that this type of business is conducted through limited

liability method. However, confusion could arise due to the fact that an assumption is often made that it is created by transfer of existing assets. Furthermore, in terms of the oil and gas industry, it may be said that two or more people assign expenses and share production of a certain enterprise (Hammerson, 2011).

In contrast, in Australia the case of *United Dominions Corporation limited v Brian Property limited* [1984-1985] 157 clr 1, a radical approach was suggested to Joint Venture, as despite the fact that the business was labelled as a joint venture, Mason, Brennan and Dean JJ asserted that ”[i]t connotes an association of persons for purposes of a particular trading,....with a view to mutual profit, with...each participant.....contributing money,...,skill. Such a joint venture will often be a partnership.” (ibid, p. 173-174; Duncan, 2005, p. 3).

In terms of the roots of the Joint Operating Agreement, according to Al-Emadi (2010), prior to the middle of the last century the most popular form of conducting a shared oil exploration, especially in the developing countries in the middle east, was in the form of so-called Concession Agreements. These grant an ownership and operational control over oil to foreign oil companies. However, a radical shift to a new form of contractual relationship was invented as a reaction to this monopoly by the oil companies. This shift was also related to many factors, such as that host countries were criticising these agreement as they precluded the host countries from playing a key role in administrating a valuable national source of wealth. Another factor was the development of the legal and political systems of the host countries, and furthermore, the establishment of the Organisation of Petroleum Exporting Countries (OPEC) which enforced the bargaining power of its members and received the support of the United Nations through the resolution on sovereignty over natural resources.

A final factor that initiated the founding of the so-called Joint Operating Agreement was the development of new technology, thus the establishment of this type of agreement helped to facilitate operations in the new era of contracting in the oil industry. Furthermore, despite the ambiguity with regard to joint venture as a term, it could be said that it

became a device to facilitate business purposes among companies by uniting their skills and resources to tackle a project efficiently as well as creating access to new markets, which meant that the evolving of the joint venture related to a business notion rather than a legal one (ibid).

From legal concern, it is imperative to distinguish between joint venture and other legal vehicles of participation and commercial conduct. The work of Williston as cited in Al-Emadi (2010, p.12) laid down the essential components that comprise a joint venture,"[a]contribution by the parties of money, property, effort, knowledge, skill or other asset to a common undertaking; a joint property interest in the subject matter of the venture; a right of mutual control or management of the enterprise; expectation of profit, or the presence of adventure, as it is sometimes called; a right to participate in the profits; most usually, limitation of the objective to a single undertaking or ad hoc enterprise". From the above statement, commentators have praised the work, saying that it provides a group of factors endeavouring to differentiate joint venture from partnership and confirmed joint venture as a unique entity.

However, there are some reservations with regard to "expectation of profit" and "limitation of the objective to a single undertaking", because it has been said that joint venture is meant to reduce or distribute risk of the project. Furthermore, by excluding the element of "expectation of profit", co-venturers are able to preclude the business from being categorised under the definition of partnership which means the co-venturers will be vulnerable to the risk of unlimited liability. Therefore, joint ventures in oil and gas prefer to create a partnership or establish a new joint company, but for it to be contractual between the parties (ibid, p. 13).

In terms of "single undertaking", this is an insignificant aspect in identifying a joint venture, as such an aspect may be affected by the length of the period of the business. Nowadays, in contrast, in oil and gas single projects may last for more than 25 years (ibid).

The parties of Joint Operating Agreement

The operator

Often there is a single operator and its nomination is usually determined according to the Joint Operating Agreement. Internationally, the operator owns the largest portion of interest in the licence which will show substantial commitment to the parties of the joint licence. Furthermore, the parties assume that the operator is capable, technically and financially, of performing the operations. However, in some countries, the governmental department which is in charge of supervising petroleum operations must approve the appointment of the operator (Etteh, 2011).

The operator often does not receive payment for its role, but instead will be reimbursed for its expenses. However, members are willing to act as an operator because of the privilege of control over the project, and it is assumed that they are likely to be in return of a larger profit.

As for the removal of the operator, commonly the Joint Operating Agreement contains provisions for replacement and removal of the operator by another member. For example, in America the case of El Paso Court of Appeals in *Tri-Star Petr. Corp. v. Tipperary Corp* [2003] 103 S.W.3d 583 (Curry, 2009, p. 9), the court upheld the removal of the operator.

With regards to liabilities, similar to the other Joint Operating Agreement members, the operator is liable jointly and severally. Furthermore, in case of the operator conducting a business related to the project, the fact that it is acting as agent on behalf of the Joint Operating Agreement members raises agent-principal issues, as the operator owes a duty of care to the other members. However, as a standard in the oil and gas industry, in the absence of deliberate misconduct or gross negligence there will be no liability on the part of the operator, even in the event of a loss of profits or production (ibid; Hammerson, 2011).

The non-operators

It has been argued that the main role of the non-operator members of the Joint Operating Agreement is the duty to provide a proportion of the funds whenever there is a cash-call. However, commentators believe that there is another essential role for non-operators to play, which is the key role in the management of the joint venture. This can be illustrated

in their role in the joint operation committee, as this committee constitutes representatives of all members of the joint venture. This committee is designed to control and oversee all the issues related to the joint operation. Furthermore, it imposes resolutions or pass-marks according to the voting procedure of the Joint Operating Agreement which often reflects the interest of each participating member (Abidemi, 2009).

Legal Issues Emerging from the Joint Operating Agreements

This part of this investigation will be dedicated to exploring and analysing vital aspects arising as a consequence of engagement in a Joint Operating Agreement. These issues include the so-called fiduciary duty, the pre-emption rights, and other contractual issues among the parties, whether operators or non- operators.

Fiduciary duty

It could be argued that English law does not provide for an assumption of duty of good faith or fair dealing being implied within commercial agreements. However, practically speaking, courts do tend to impose such standards. For example, in the English law regarding the case of *Interfoto picture library ltd v stiletto visual programmes Ltd* [1988] 1 AII ER 348, LJ Bingham states that "[t]he law of obligations recognises... an overriding principle that in making and carrying out contracts parties should act in good faith. This does not...mean that they should not deceive each other, a principle which any legal system must recognise; its effect is perhaps most aptly conveyed by such metaphorical colloquialisms as 'playing fair', 'coming clean' or 'putting one's cards face upwards on the table'" (Beale, Bishop and Furmston, 2008, p. 338).

Furthermore, the above may correlate with the general good faith principle of the American Association of Professional Landmen model on Joint Operating Agreements. This is also supported by the Canadian Association of Professionals when they rejected trust and fiduciary duties but emphasised the duty of good faith. In contrast there was a silence on this issue in the United Kingdom's oil and gas model and the Association of Petroleum negotiation (Hammerson, 2011).

Turning to New Zealand, It could be said that in terms of oil and gas, it is open to the courts to decide on duties under a Joint Operating Agreement. This can be illustrated in the case of *Chirnside v Fay* [2006] NZSC 68 (Barrow, 2008, p. 46), where the Supreme Court of New Zealand ruled that joint members owed each other fiduciary duties out of mutual loyalty. Despite the fact that the operator is acting on principles of no loss no gain, this does not mean that lack of profit dismisses fiduciary obligation, thus a fiduciary relationship is a creation of equity rather than contract - for example, guardians to their wards. However, in spite of this, English courts are reluctant to supply a definition of fiduciary. Some explanation is provided in Millett LJ's statement on the case of *Bristol & West Building Society v Mothew* [1998] 1 CH 18: "[a] fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to relationship of trust and confidence" (Briks and Pretto, 2002, p. 71).

From the above, it seems that an existence of fiduciary may add further obligations to the parties as they must look to the governing, legal fiduciary relationships. This, in turn, means that it proves difficult to decide when fiduciary or contractual obligations have been breached by the operator, as a fiduciary breach here may trigger legal consequences different from those resulting from other duties. In this regard, Millett LJ shows support for Southin's J comments on the case of *Girardet v Crease&Co* [1987] 11 BCLR (2d) 361, 361: "[u]nless the expression is so limited it is lacking in practical utility. In this sense it is obvious that not every breach of duty by a fiduciary is a breach of fiduciary duty", as he states that the word 'fiduciary' seems to apply to all breaches of duties (Van Setten, 2009, p. 104; Hammerson, 2011, p. 192).

In contrast, Hammerson (2011) suggests that a Joint Operating Agreement shapes the range of fiduciary duty as it depends on the provisions of the agreement. For instance, if the privilege of the discretionary power that the operator enjoys is wide, a fiduciary duty needs to be imposed to bridge the gap to protect non-operators. On the other hand, a Joint Operating Agreement states that each member may

exercise its participation in the decision-making process according to its proportion share, which means a unique position for each party in the negotiation of the pass-mark process. To illustrate this issue, there are some areas that can serve as examples.

Firstly, in terms of voting at the operation committee, it is commonly agreed that exercise of voting power may exclude liability of fiduciary duty. Secondly, a number of issues are approved by the operation committee, and it is argued that the court will be guided by the Joint Operation Agreement procedure, in governing these issues. Such issues include accepting contracts with a third party, and approval of the work programme or the budget and expenditure. However, the courts may go further and consider that the operator is an agent so must act in the best interest of the beneficiaries, which means imposing fiduciary duty (ibid, 2011).

Other issues on fiduciary may arise where the relationship between an operator and non-operator is based on trust and confidence principles, and where they owe fiduciary duties to each other. For example, with regards to shipping joint venture, in the English case of *Global Container Liners Ltd v Bonyad Shipping Co* [1998] 1 Lloyd's Rep 528 (Moffat, 2005, p. 842; O'Donovan, 2005, p. 236), the court ruled that competition with a joint venture is permitted by an existing member of that joint venture, and no fiduciary duty was imposed to prevent such conduct. However, the case was considered as an alert to the court not to make a universal assumption that fiduciary should unquestionably exist between an operator and non-operators.

Nevertheless, (Roberts, 2008a) suggests two factors which make it difficult to avoid fiduciary duty. Firstly, concerning the concept of agency, it has been submitted that implementing the contract on behalf of non-operators may establish an agent –principal relationship. For instance, sometimes an operator engages in contracts on behalf of the members without obtaining an approval from the operation committee. Moreover, finalising contractual details will require the operator to utilise the agency power, which means altering non-operating legal positions without confirmation. In addition, signing of the contract will

require the operator to act as agent on behalf of the non-operators to administer it. In contrast, it may be that the principle of consent to a conduct does not alter the fiduciary duty, but may limit the range of its application. However, there are other fiduciary commitments, such as avoiding conflict of interests, and keeping records of the accounts.

Secondly, there is the concept of joint property. Since the Joint Operating Agreement is an unincorporated body, it is inappropriate for it to own a property, thus ownership may be achieved through the legal personality of one of the parties. Usually, the operator holds the property in the capacity of a trust, therefore fiduciary duty is created (ibid).

In terms of the ambit of fiduciary duty, it seems that the context of the Joint Operation Agreement has laid out the range of the application of fiduciary duty. It would be impractical and unusual from a commercial point of view to enforce fiduciary beyond the range or the delivery point, as in the Court of Appeal's decision in case of *Ass v Benham* [1891] 2 Ch 244 (Ramjohn, 2008, p. 191-192) where the court ruled that a partner's involvement in a separate business was contrasting to the terms of a partnership, as even though the trading did not compete with the partnership, there was a record of profits acquired by information that was obtained through the business partnership.

Another factor concerning the ambit is the time that the parties embark on the enterprise. This means that the earliest point of commencement of fiduciary duties will be from the time that the parties begin relying on the actions of the other Joint Operating Agreement parties. This could be extended to the time period before entering into the joint bidding agreement as it is the first written contract. On the other hand, the latest point of creating fiduciary duty may be the point of granting the licence. Therefore, courts are reluctant to rule that there is a gap in fiduciary obligations depending on implementation, as shown in the case of *United Dominions Corporation Ltd v Brian Pty Ltd* [1929] 42 CLR at p 408 where the court stated that "[i]t was submitted....that no fiduciary...exist and no fiduciary duties arose between the ...participants...until the joint venture...was actually executed....a

fiduciary relationship can arise and fiduciary duties can exist between parties who have not reached, and who may never reach, agreement" (Hammerson, 2011, p. 201; Duncan, 2009, p. 10).

Pre-emption rights

Critics and commentators agree that pre-emption is a right that prohibits a co-venturer from selling all or part of its interest or rights unless the other members in the joint venture have first had the offer to purchase the interest pro rata. The rationale of this right is mainly to protect current co-venturers' interests from either dilution or an outsider buyer (Companies Act, 2006, p.271).

According to Garba (2011) the United Kingdom has approached this issue by combining the regulatory body with the participation of the oil and gas industry. This industry has a great deal of participation in previous Joint Operating Agreements that have influenced the preclusion of the pre-emption clause in current Joint Operating Agreements. To this extent, the United Kingdom has offered unique protection to the joint venture members in general through two streams. The first is to prevent an unwanted outsider joining their venture by means, for example, of a licence interest transfer at the asset level. Such a license would require their consent to permit transfers with the condition that the interest is undivided. Also, in Joint Operating Agreements it could be permitted to transfer no less than the entire participating interest.

The second is the privilege of the pre-emption rights, which means the intended transfer must be offered to existing members, as must right of first refusal which triggers rights prior to any outsider sale process having been conducted. Furthermore, there are the provisions of change control which act in favour of other members in case of a conduct affecting them negatively (ibid).

With regards to the so-called share sale, it may be considered as one of the means of avoiding the pre-emption right, as it simply involves selling shares in the holding company instead of selling the joint venture's interest. This is because Joint Operating Agreements do not usually include clauses tackling transfer of shares in a company holding

an interest. However, an activation of pre-emption rights could occur in the instance of change of control or ownership, or sometimes in sale of a subsidiary. For example, in the unreported case of *Texas Eastern Corporation (Delaware) and Ors v Enterprise Oil Plc* (ibid, p. 7), Texas Eastern engaged in a deal to sell TENSI to Enterprise Oil. The Texas's joint licensees (British Gas and Amerada) invoked the pre-emption clause. However, the court of first instance dismissed the applicability of the right as it considered the approach of pre-empting ambiguous.

In contrast, the English Court of Appeal reversed the rule where Dillon LJ stated: "[*t]here were a contract for sale at a reasonable price, and.....the parties have not agreed whether the appropriate method of valuing is so many years' purchase of expected rent or so much per square foot of evidence as to what is the appropriate method. The court would say it is to be the reasonable method in the circumstances of effecting the valuation which will produce the reasonable price."* (ibid, p. 7-8). Despite the criticism of this ruling as a rewriting of the clause for the venturers, there was support for its application in Australia in the case of *Beaconsfield Gold NL and Ors v Allstate Prospecting Property Ltd* [2006] VSC 320 (Osadare, 2010, p.8).

Moving on to the conflict between Joint Operating Agreement parties and the host government, the industry has witnessed many conflicts on transfer of interests in the oil and gas industry. This relates to governments usually being focused on maximising production and profit, which demands a large scale of investment and development, which may be difficult and challenging to afford for an existing licensee unable or reluctant to transfer its interests. Therefore, the authority seeks to maintain that the licence is run by an enthusiastic licensee than by one locked in a project surrounded by anti-assignment provisions (Garba, 2011; Osadare, 2010).

In contrast, oil companies may approach this matter differently. The Joint Operating Agreement is commercial in nature, and specifies that a main feature of a partnership is the ability to organise alliance. From this, Joint Operating Agreement members are expected to bear the results of permitting a new entrant into the licence (Garba, 2011).

Furthermore, they are jointly and severally accountable for each other so they are understandably aware of, firstly, the identity of a new member, and secondly, the risk of default by one member of the licence which will result in a material impact on all other members. Because of these reasons, the Joint Operation Agreement may be treated as a relational instead of a proprietary contract (ibid).

From the above, it seems that the absence of government and industry efforts in this area will lead rights of pre-emption to rely on the provision approved by the founders of the Joint Operating Agreement. Therefore, some Joint Operation Agreements will require either an executed acquisition agreement subject to conditions precedent that no Joint Operating Agreement party may exercise its right of pre-emption within a specified period, or partially agreed commercial terms.

The UK and pre-emption

Until just a decade ago, the application of the pre-emption clause in Joint Operating Agreements in the United Kingdom Continental Shelf (UKCS) was widespread. However, because of the maturity of the field and the developments of the industry, a new approach has been introduced which is in favour of liberating the transfer of interests in the Joint Operating Agreement. This development came as a reaction to pre-emption rights becoming a tool to hold back against the demands of the oil and gas industry. In an attempt to find a permanent way out of this dilemma, the Department of Trade and the major oil companies formed a team known as PILOT aiming to pursue research into the United Kingdom Continental Shelf and offer means to enhance and increase commercial and business activities. The working committee of PILOT agreed that pre-emption provisions were a hindrance to the industry's and government's desire to encourage new and diverse investment into the UKCS. As a result, the government announced that other than in special circumstances, it would not award licences to parties with pre-emption provisions in their Joint Operating Agreements (Hammerson, 2011;Garba, 2011; Osadare, 2010).

Master deed

The industry did not accept the abolition of pre-emption provisions contained in the Joint Operating Agreement entered into prior to the 20th licensing round. However, the vast majority of the industry has now signed into the so-called Master deed which harmonises existing Joint Operating Agreement provisions through a set of standard clauses without pre-emption provisions (DECC, 2003). To conclude the United Kingdom's approach to pre-emption right, critics suggest that the UK system places ownership in the hands of private oil companies which can be illustrated in the absence of state-participation interest. However, in contrast, the vast majority of oil producing countries have National Oil Companies (NOC) who are key shareholders in the industry. The NOC tends to seek to boost its participation through pre-emption. Furthermore, The NOC may be cautious in allowing a change of members, for instance, the government of Ghana is refusing to permit the sale of Kosmos Energy interest in Jubilee Field to ExxonMobil (Garba, 2011).

Default

Default matters are concerned with protection of long-term operations, and parties' interests and rights in the joint venture. It is commonly agreed that financial obligations are shared among the members of the Joint Operating Agreement, therefore the most significant duty of all parties is to supply funds whenever there is a request of cash-call by the operator. A problem arises in case of a member breaching its financial commitment by not providing the required share of the cash-call, which leads to complications for other members as they will have to fill the gap. Therefore, the Joint Operating Agreement needs to contain a provision to protect the parties from being obliged to cover the defaulter member's share of fund. The following discussion is a proposed method of addressing the default situation in the Joint Operating Agreement:

Suspension of Rights

In the event of default, the Joint Operating Agreement often instructs that some of the defaulting members' rights become suspended, for example, the right to attend and vote in the joint operation committee, or the right to receive information. However, commentators believe that it

is difficult to suspend some rights while continuing to pursue other commitments of the joint venture, and this seems an insufficient measure against the defaulter (Boigon, 1987). Furthermore, according to the Joint Operating Agreement , forfeiture is the ultimate remedy against continuing defaulting parties.

Forfeiture

It has been argued that forfeiture is a compulsory transfer of the defaulting member's participating interest to the other members within the joint venture. According to the Association of International Petroleum Negotiators, instead of forcing the defaulting party to transfer the documents which may raise risk of refusal by the defaulter, the Joint Operation Agreement is better off supplying a forfeiture option to be one of the remedies in the event of default. On the other hand, forfeiture could be assumed as a penalty in the instance of the amount being unconscionable compared to the loss that could be conceived from the breach, as in the English case of *Dunlop Pneumatic Tyre Co., Ltd. v. New Garage and Motor, Ltd.*, [1915] A.C. 79 (Koffman and Macdonald, 2007, p. 289).

Another remedy was suggested by Roberts (2008c), who proposed the so-called withering interest to ease the effect of forfeiture and to avoid being described as a penalty clause. Under the withering interest clause, the defaulting member’s interest is reduced in proportion to the amount of its default. Despite the fact that the withering interest clause is complicated to invoke, it reduces the level of the penalty rather than eliminating the risk. Moreover, another aspect of this clause is that it is appealing to defaulting members, as it may be able to redeem the forfeited interest by paying the whole defaulted amount at a later date. Moreover, when invoking forfeiture remedy, the courts seem to award the debtor time to pay the debt, and most Joint Operating Agreements contain a provision to govern such a period.

Also worth mentioning, is that under English law and Australian law for example, there is a forfeiture clause which arguably may frustrate the function of insolvency law. It may be described as an unfair clause which rejects creditors’ rights to share in the assets of the insolvent

defaulter. To illustrate this point, where the court did not uphold the forfeiture clause, see the Australian case of *Mosaic Oil NL v Angari Pty Ltd* [1990] 8 ACLC 780 (NSW Supreme Court) (Duncan, 2005, p. 207).

Buying out

It has been suggested that the implementation of forfeiture clauses is rather complicated, thus joint venture parties seek to include in the Joint Operation Agreement a buy-out option. The mechanism involves an independent specialist to evaluate the participating interest on a fair value and to prevent any dispute between the members. In Canada in this regard, the Canadian Association of Petroleum is supportive of a compulsory sale of the defaulting member's interest, where the price is evaluated according to the open market. In addition, a priority of purchase over other Joint Operation Agreement parties may be given to the operator, and sometimes the operator may possess the defaulter's interest and then offer it for sale on reasonable terms (Etteh, 2011).

Decommissioning

Since the law of the host countries obliges the joint venture parties to pursue the cost of decommissioning, it is increasingly occupying a large portion of discussion and concern in the oil and gas industry. It has been stated that the Joint Operating Agreement stipulates that members are severally and jointly liable for the decommissioning cost, which means that each party is responsible for contributing, proportional to its share of interest. It is vital to members in the joint venture that such a clause is included. Particularly, it could be a major problem for the parties in the event that they face decommissioning in parallel with one of the members going bankrupt, as this means that other members of the venture might have to fulfil the bankrupted party's share in the decommissioning cost. Therefore, as a practical measure to avoid such a scenario, Joint Operating Agreements usually contain authorisation of many types of security such as a stand by letter of credit, on-demand bonds, or a corporate guarantee. Moreover, many regulators often require certain provisions to be included in the Joint Operation Agreement. For instance, the Oil and Gas UK standard joint-operating agreement 2007 requires the attachment of the so-called

Decommissioning Cost Provision Deed, which can serve as a reference to such an issue if it occurs (Blinn, et al, 2009).

Other issues relating to the Joint Operation Agreements

Sometimes the voting procedure or other measures in the Joint Operating Agreement may not be enough to protect all the parties' interests. For example, members with minor participating interest are unwilling to be obliged to participate in activities that they cannot afford. On the other hand, those members with major participating interest seek to invest more in the project which may secure a better yield, and do not wish to face any obstacles to this from other parties. Therefore, Joint Operating Agreements usually authorise the so-called non-consent and sole risk operations (Roberts, 2008b; Daintith and Willoughby, 1984).

Firstly, in regard to sole risk, a provision permits members to carry out a project refused by a majority of the joint venturers. The consequences of this provision are that all expenses and all privileges from the project will be entirely on the sole risk member. The rationale of such a clause is that the suggested development may be deemed to be beneficial to some parties but fails to obtain the pass-mark. For instance, the so-called "exclusive operations" is a mechanism that facilitates a member to suggest or conduct an operation which may be outside the joint operation programme with a free option to other parties to participate or not (Roberts, 2008b).

Secondly, non-consent supplies that no party can be obliged to contribute in any major undertaking, such as drilling, without its consent. Where this provision is invoked, the action is considered to be external to the scope of the joint venture, and the objecting parties will be excluded from any responsibility or liability arising from the proposed action, which means that only the approving members will be liable individually (ibid).

However, despite the fact that valuable protection may be secured for non-operational members who are unwilling to participate in projects beyond the main scope of the Joint Operating Agreement, some critics believe that non-consent and sole risk rights are controversial, as they

contrast with the philosophy of the Joint Operating Agreement which champions the principles of majority rule and shared participation (ibid).

CONCLUSION

From the above discussion, it appears that the Joint Operation Agreement is a significant method for development and operation within the oil and gas industry. This attempt to answer the proposition that has been discussed in this paper has met with some difficulties in reaching a definitive answer with regard to the legal aspects and nature of the relationship between the Joint Operating Agreement members. This relates to the fact that the operations and the provisions are subject to the parties of the joint venture on the one hand, and on the other hand, as this document has shown, to the fact that the courts sometimes contradict the will of the parties.

However, the study shows that the Joint Operating Agreement serves as an instrument of trading, transferring and protecting the interests of the parties.

Another function of the Joint Operating Agreement is to highlight fundamental legal elements such as the fiduciary duty that the operator owes to the members of the joint venture.

In addition, the pre-emption rights are operational among the joint venture members in order to protect their interests against any attempt to dilute them, or in the event of an outsider entering the venture. In addition, this paper has presented the United Kingdom's unique approach as an example of how to assist other oil producing countries in case they wish to utilise such an approach to maximise commerciality and profit.

With regard to the default event, parties in a Joint Operating Agreement have often tackled such an incident by applying suitable solutions and remedies, such as forfeiture, buying out, and suspension of the rights of the defaulter.

In terms of decommissioning, this paper revealed that such an event must be addressed in the agreement, in order to prevent any disputes that may arise from it.

As for other challenges that may appear from the joint operating agreement, these can be overcome by offering a way out for unsatisfied members through invoking the sole risk exclusion and non-consent operations.

Despite a lack of previous studies on this issue, this essay has found that it is challenging for investors to foresee any scenario or outcome in the instance of a dispute, and recommends that in the event of invocation of any provision, there will be uncertainty in terms of the consequence and the court verdict. For these reasons, it is reasonable to submit that the oil and gas industry is a risky economic system, and that investors, whether they are operators or non-operators or other participants, must accept the risk of losing their investment.

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