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Research Article

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The Necessity of Contracting in Oil and Gas Industry. Why does the Oil and Gas Industry Often use Joint Operating Agreements (JOAs)?

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Abstract

Oil and gas contracting have emerged as a very critical area of research in petroleum industry. While the industry is a beehive of contracting, it has often used Joint Operating Agreements (JOAs). The reasons for usage of JOAs in oil and gas industry is pedigreed on volatility and risky endeavour of the industry. The study has argued the concept of JOA. It also clearly brought out reasons why oil and gas industry uses JOA. Besides, the study discussed the apportionment of rights and duties between and amongst the parties to a JOA. Moreover, the study has explained terms, purpose and effect of sole risk, non-consent and default clauses in JOA. Using process tracing method to discern case studies of Sudan and South Sudan oil and gas industry, the study's findings noted that JOAs are useful for contractual obligations, enhancement of good relationships between and amongst the parties, allocation of expenses/costs and profits, determination of the responsibilities for obligations and liabilities, allocations of risks as well as mechanisms for disputes resolutions in the riskiest oil and gas industry.

The study critically assessed the apportionment of rights and duties between and amongst the parties in the JOA and found out that such rights and duties can be apportioned as the participation interests/shares of the parties in the JOA, selection or appointment of an operator, work programme & budget (WPB), risks allocation and withdrawal from the JOA. It has surfaced that parties in the JOA have clearly defined rights and duties in the model JOA that the parties enjoy. While the study discussed the purpose and effect of sole risk, non-consent and default setting, it has interestingly appeared that sole risk, non-consent and default setting are great provisions in the JOA. However, they must be carefully used so that they don't disrupt the working relations of the parties in the JOA. The study concludes that JOAs should help enhance relations amongst the parties and not for court disputes resolutions. Further research is hereby recommended to oil and gas contracting scholars to investigate why JOA is regarded as "unincorporated" principal document that govern the "horizontal" relationship between the oil companies.

Keywords: contracting, joint operating agreement (JOA), operating committee (Opcom), appointment, rights, shares, obligations, disputes, sole risk clause, non-consent clause, default clause

1. Introduction

Oil and gas industry is a very uncertain business endeavor beginning from geological, petrophysical, structural, acquisition, processing and interpretation. It is also a worrying investment that requires enormous finances, technology and that is why today petroleum is known as capital and technological intensive resource. It is tormented by various risks such as political, economic, social and environmental which have made many international operating companies paused to reflect on their investments in this lucrative, dirty and rewarding industry (Greg et al, 2011). With all those risks and uncertainties, no any sound mind investor in oil and gas exploration, appraisal, development, drilling and production can take such risks and worries alone. Hence, companies will come together and establish a joint venture that will operate under Joint Operating Agreement (JOA) to share such burdens and worries. Thus, Joint Operating Agreements (JOAs) are not only legal tools governing the relations of the operator and non-operator in the petroleum business industry but they are also contracts that govern the vertical relationships between International Oil Companies (IOCs) and National Oil Companies (NOCs) as well as governing horizontal relations amongst the IOCs. While JOAs have their ancient origin from the United States and the United Kingdom, they are now useful instruments in governing relations of the IOCs in exploration, production and decommissioning of petroleum resources. Although JOAs are taken by petroleum novices as the engines of the entire functioning of the IOCs including petroleum profits sharing, JOAs fundamentally share production via barrels production not profits. While JOA is a mere contract and not real law of establishing ventures, JOA serves protective purpose as well as building relations role. Given its foundation in apportioning of rights and duties between and amongst the parties in petroleum endeavor, JOA has endured as a very imperative as well as relevant contract in oil and gas industry. Then, what is JOA? Why does oil and gas industry uses JOAs? How is apportionment of rights and duties between the parties to a Joint Operating Agreement done? How can terms, purpose and effect of sole risk, non-consent and default clauses in a Joint Operating Agreement (JOA) be explained? Are default clauses enforceable in court of law? These pertinent questions shall be answered in this study. The study is outlined as follows: section one introduces the question. Section two discusses the concept of JOA. Section three analyzes reasons why oil and gas industry uses JOAs. Section four discusses the apportionment of rights and duties between the parties to a JOA. Section five discusses

the terms, purpose and effect of sole risk, non-consent and default clauses in JOA and asks if the default clauses are enforceable in court of law. Section six concludes and section seven gives pointers for further research.

2. The Concept of Joint Operating Agreement (JOA)

The concept of JOA has been widely debated and extensively described by various towering oil and gas contracting scholars in the upstream segment of petroleum industry. Scholars such as Stephen Kojo, Aithiyabi Polityka, Alexander Black, Eduardo Pereira, Marc Hammerson, Peter Roberts, Greg Gordon, William Hughes, Tim Martin, Ernest Smith to mention but a few have conceptualized and defined JOA in diverse viewpoints. However, they consented that JOA is a contract that manages relations of various parties in a joint venture consortium during petroleum extractions for commercial purposes. JOA defines how parties in the exploration, development and production shares obligations, rights and responsibilities including liabilities in the daily running of the oil and gas upstream projects in a given country (Hughes, 2016). While it may have varieties of templates, host states, represented by their host governments through the National Oil Companies (NOCs) ensure that the partners use a template of the JOA that is national in design and character but drawn from the international model of the JOA. This is because the provisions of the JOA should not contradict the domestic laws of the country and should not be too strange to the partners who have worked in their countries in oil and gas sector. It should be a template that inspires all and one that investors may see as simple, neutral, progressive, flow in language and legally correct using petroleum legal jargons.

A typical JOA will stretch across numerous facets of the partners' pool of investment and is usually intended to last for the lifetime of oil and gas projects, from exploration through drilling and production and its will include issues of equities sharing for the project and not to forget the necessity of the default mechanisms in the flop of partner to act in accordance with the JOA provisions (Jensen and Abul-Failat, 2013). JOA usually assigns an operator to execute activities and issue the rules on how the operator will run the joint venture in the consortium under the auspices of other parties in the project (Pereira, 2016). The operator as it is also acknowledged in many petroleum laws and regulations of the country have an agreed name by the partners to reflect their cultures and the region the exploration and production of oil and gas is taking place. Nonetheless, the partners may agree to use one name of partner who will act as an operator. Choosing an appropriate name for an operator is very important because it must be a company name that has an international reputation in areas of governance, management, environment and financing that the public should adore and respect. Given that an operator is a mirror for the companies in a Joint Venture Agreement (JVA), it means that it must be a suitable legal nomenclature.

Although the JOA typically grants an operator the main amount of power in regard to the oil and gas upstream projects, it oversees, supervises the activities such as the work program budget (WPB), monitor the execution of WPB, report to the host government to ensure acquiescence, project actions with all the relevant applicable laws and uphold the license by satisfying all the necessary set circumstances and requirement by the regulator (Kojo, 2005). There are diverse types of models for JOA. These models are from UK, USA, Canada, Australia and Norway to mention but a few. Nonetheless, the extensively accepted model is the international JOA model founded by the Association of International Petroleum Negotiators (AIPN) which is now known as Association of International Energy Negotiators (AIEN) headquartered in Houston, Texas in the United States. To be sure, the latest international model is for 2022.

3. Reasons why oil and gas industry use JOAs

I. Contractual obligations. Although the JOA administers the upstream segment of business of the oil and gas in a joint venture, it sets out the significant and extensive relations among parties in a consortium from the commencement of exploration to the ultimate production of oil and gas (Tim et al, 2020). While JOA assigns an operator to manage the activities, operations and programs and tags the other remaining parties as non-operators, the overall simple aims of a JOA are to enhance a proper decision-making procedure in a given arena amongst the companies in a joint venture agreement (JVA); permits the conduct and support the joint venture agreement methods' in executing their rights, responsibilities and tasks under the indicated tools; allocates revenues, liabilities and other costs amongst the parties based on their respective equities in the consortia of companies or in a JVA, tags an operator to administers the joint programs on behalf of the JOA partners; and assigns mechanisms to allow all parties to conduct activities effectively and efficiently and in a contractual manner (Black and Dundas, 1993).

II. Enhancement of good relationships between and amongst the parties. As discussed earlier in the introduction, JOAs are tools to govern and promote essential good working relationships between an operator and companies in the joint venture agreement, which are usually known as the companies in the consortium (Polityka, 2021). This relationship is very key for the purpose of exploitation of the hydrocarbon resources in a legal manner so that it doesn't lead to confusion and conflict amongst the parties. When parties relate well in the JVA, then the exploitation of the petroleum resources can benefit all the parties in maximization of their profits as well as minimization of their risks. When any dispute arises, then this can be discussed at the Operating Committees (OpComs) meeting or in the Management Committees (MCs) meeting, cementing the relations amongst the parties. This enhancement of good working relations also stretches to the regulator, which in most cases is designated as the Ministry of Petroleum, Energy or Hydrocarbon Resources in many jurisdictions for the proper and smooth running of the JVA consortium or operatorship in that particular state.

III. Allocation of expenses/costs and profits. Exploration is a very exciting endeavor yet very expensive undertaking all over the world. Thus, finding oil is extremely hard because it requires enormous financial resources, highly trained human resources and reigning technology. While that is the case, it is proper to note that reserves are exceedingly depleting due to different poor reservoir characterizations and poor technologies coupled with outdated drilling machines and techniques in the world and particularly, in Africa. Hence, it is vital that companies partner to lessen the cost and other conundrums in the commercialization of oil and gas.

IV. Determination of the responsibilities for obligations and liabilities. JOA determines the responsibilities to main obligations and liabilities to the parties in joint venture agreement. It denotes that all the expenses, obligations, costs and liabilities accruing from and accrued in association with joint operations shall be the role of the parties depending on their

respective percentages in the equities or shareholdings (Model JOA, 2022). Although these obligations and liabilities perhaps sometimes become problematic to follow by the parties in the consortium, the responsibilities, obligations and liabilities are so crucial for the goal of executing upstream segment business activities (Smith, 1993).

V. Allocation of risks. Risks are common occurrence in petroleum exploration, development and production. It is highly known and industry jargon that petroleum is a very unpredictable resource which has economic, political, economic, geological and environmental risks. Hence, JOAs are formed and crafted out well to manage risks by restraining, transferring and apportioning the risks amongst the parties in the joint venture. This is conducted to ensure that risks are allocated amongst parties in tandem to each party participation interests.

VI. Mechanisms for disputes resolutions. JOAs are designed in away that disputes that may arise in the course of doing petroleum business are amicably resolved. However, if such disputes cannot be amicably resolved then any of the parties can initial a litigation proceeding against the operator, co-operator or both the operator and co-operator can initial the litigation proceeding against any party. Nonetheless, this can only happen after the matter has first been attempted by the operating committee and the committee could not address it.

4. Apportionment of rights and duties between and amongst the parties to a JOA

This is the heart of any JOA. It indicates clearly the rights and duties of parties so that each party is allocated it rights and perform it duties without any hindrance. The JOA acknowledges that all the rights, duties, costs, obligations, expenses and liabilities accumulating from or accumulated in association with joint operations shall be the responsibility of the parties with their indicated participation interests. The JOA further articulates that all the rights with respect to joint petroleum resources, all joint property, claims against third parties under joint operations shall be owned by the parties in which the title shall be immediately passed in accordance with participation interests of each party and all other rights such as right of ownership of technology under joint operations shall be decided in accordance with the principles of the JOA (Model JOA, 2022).

Indeed, as explained above, the apportionment of rights and duties between and amongst the parties has been the purpose of any JOA. Thus, a typical model JOA apportions the rights and duties to the parties as follows:

I. Participation interests/shares. This is often referred to as percentage interests in many of the JOAs. For instance, the JOA for block 5A in South Sudan articulates in article 4, section 4.1 and subsection 4.11 the percentage interests of Petronas Carigali Nile Limited with 67.875%, OGNC Videsh Limited with 24.125% and NILEPET with 8% (Block 5A JOA, 2011). It further emphasizes that each party shall own its interest rights and also takes responsibility for the obligations and liabilities.

II. Selection of an operator. It is a requirement for JOA partners to select an operator to execute the business of exploration and production on behalf of other petroleum companies. There is need for co-operator as well as non-operator. Co-operator assists the operator in the daily running of the operating company. Non-operator refers to that company which has surrendered the running of the operations to one company or joint operating company (JOC). For the case of block 5A South Sudan, rights and duties of exploitation of oil through an operator is stressed in the JOA, article 6, section 6.1, 6.1.1, 6.1.2 and 6.1.3. The article with its sections and sub-sections summarized the rights and duties of parties to select and appoint an operator with the agreement of the parties and endorsement of the Ministry of Petroleum (MOP). For block 5A, a joint operating company called Sudd Petroleum Operating Company (SPOC), which was created via Companies Act, 2012, was selected as an operator. All companies in JVA such as Petronas Carigali Nile Limited, OGNC Videsh Limited and NILEPET became non-operators. The main function of SPOC is the administration and managing of block 5A on behalf of equities holders.

III. Work Program and Budget (WPB). This is very essential in an execution of any petroleum project. In the JOA, WPB is clearly stipulated and it is apportioned as a duty and a right of each party for success of any project. For example, JOA for block 5A, stresses in article 8, sections 8.1 and subsections 8.1.1 and 8.1.2 that WPB should be an obligation of the parties in the joint venture agreement (Block 5A JOA, 2011). The requirement of endorsing the WPB lies in the hands of operating committee which should have at least 2 representatives from each partner in the Joint Operation Sharing Agreement (JOCSA). The final endorsing authority of WPB is prerogative of the Ministry of Petroleum. Yet, the management, supervision and M & E of WPB execution lies with SPOC-the operator.

IV. Risks Allocations. In JOA, risks are common occurrence in the production of oil as indicated earlier. Risks allocations is one of the rights and duties to apportion. Indeed, as parties are entitled to profits, so are the entitled to own risks. Article 10, section 10.1 and subsections 10.1.1-10.1.9 of the JOA for block 5A recapitulate that each partner shall take part in the risk project. Indeed, the risks should be apportioned and all the parties (Petronas, ONGC and NILEPET) should participate in risk mitigation.

V. Withdrawal from the JOA. It is a firm right and an absolute duty of any party to withdraw from the JOA in the stipulated time. Using block 5A as an example, the JOA in article 16, sections 16.1 and 16.2 articulate that each partner is free to withdraw from the agreement so long it has provided a notice for 60 days to all other partners (Block 5A JOA, 2011). Nonetheless, the withdrawing partner shall take the responsibility for any liability of its percentage interests of all the expenses and costs endorsed under WPB and these liabilities must be paid through joint account.

5. Explanation of the terms, purpose and effect of sole risk, non-consent and default clauses in JOA

1. The purpose and effect of sole risk clause in JOA

Sole risk clause is not only essential but it is very critical in the JOA. While it is often a neglected clause, it is paramount in the administration and execution of the activities and programs of the JOA. Sole risk in the JOA defines activities which have not been approved by Operating Committee (OpCom) and which a party can implement and be solely liable for doing those activities (Harris and Cheng, 2014). Indeed, sole risk provisions are valuable deadlock provisions in circumstances where a proposal sent to the OpCom fails to get the necessary endorsements. To be sure, sole risk clauses take care of the dire situations in which a party to the JOA which strongly in support of a proposal doesn't obtain the necessary approval from OpCom so as to achieve the requisite cut mark for the proposed project to proceed as a joint one, but still wishes to execute the project alone (Taylor and Tyne, 1992). The general principle guarding the JOA is that whatever proposal submitted to the

OpCom should be approved and participating parties in the JOA are supposed to be bound by any decisions and directives emanating from the approved proposals of the OpCom. The Operating Committee further guaranteed to partake in the expenditure and costs of such activities and more importantly share in any of the outcomes of sure activities.

The purpose of sole risk clause is to allow minority party or parties who was or were in support of project proposal which was vetoed by OpCom to carry out the project without participation of majority and do so on it or their own risk (Marshall, 2016). This proposed project could either have been to rescue an emergency situation or a proposal to bring more profits to the operating company. Most sole risk projects include seismic, appraisal drilling, drilling, testing and development. With the greatest degree of exception to the traditional method, JOA also offers for two sets of restricted and sort out situations in which a party which is outwitted may quit from its support position of joint venture operations benefit and problem. The first situation is where a party desires to undertake an activity which the Operating Committee has declined to undertake at that particular time. In the set-out circumstances, a party may undertake an activity for its own sole risk and account. This is referred to in the JOA as a sole risk project. The second situation of sole risk is showcased in a circumstance where a party who desires not to participate in an activity in which the Operating Committee has decided to undertake take a sole decision that later resulted into enormous liabilities. In such situation, a party or an individual will not blame the OpCom but itself or himself/herself. However, in normal circumstances, the party may choose out of the responsibility to contribute to the costs of the activity and rescue the situation that warranted sole risk.

The effect of sole risk is both negative and positive. It is negative because a minority party do a proposal which the OpCom will not approve. This definitely affect the relationships between the minority party (parties) and the majority party (parties) because the minority party action will seem to have created a sub-joint venture in the JOA which work contrary to the aims and functions of joint venture (Roberts, 2008). Besides, conducting a proposal on sole risk of the minority without the contribution of the majority redefines the scope of JOA which make minority to act as sub-venturer against the co-venturers. This is not good as it affects the trust of the parties and create division. This division affects the joint property, the taxation fiscal regime of the sole risk project and its outcomes flow to the sub-venture and JOA parties as whole (Wilson, 1986). More importantly, sole risk action can change the rights and obligations of the parties in the JOA. Nonetheless, sole risk become a loss to the minority party in term of resources both finance and human that have been put in and the project doesn't succeed.

The only positive effect is that sole risk will remain as a warning to OpCom in case the failed proposal which was not approved, later on effect the company. For instance, if the sole risk proposal was for the mitigation of environmental pollution and this later failed because the OpCom did not endorse it and environmental pollution worsen leading to the suspension of the company license, the OpCom members will regret their failure to approve the proposal and to participate in it by contributing required funding. This will serve as a great lesson for future. Hence, sole risk decisions are very important and especially to the minority parties and they need to be endorsed by the senior management committee of the company. The essence of sole risk is to promote flexibility nature of JOA which is a hallmark of the cooperation to allow minorities to undertake a certain project they feel necessary to pursuit. However, this flexibility should not be overused as this can disrupt the joint venture cooperation. The sole risk clause is very critical, that is why it is stipulated in article 7 of the model JOA.

2. The purpose and effect of non-consent clause in the JOA

Non-consent clause is defined as a situation where the non-participation members from minority party (parties) who voted against the project and the project later on get approved by the OpCom are encouraged to participate in the project. In other words, it is a provision to protect the minority parties. In non-consent situation, the majority consent to conduct the project and will share costs, risks and benefits and will exempt the minority party or parties from these expenses and risks (Shaw, 1996). While non-consent clauses are very important, they are not always provided except during the discovery and development of oil which involved high costs and risks. Although the non-consent clauses are not common in the UK and Australia JOAs, they are very popular with America JOAs.

The purpose of non-consent clause is to encourage the participation of all the parties in the joint approved work programs and to ensure that none of the parties feel exclude and isolate. This strengthens the trust and bond of the parties in the JOA and to ensure that no any minority party feel unwanted in the project. It also reaffirms the rights and obligations of the parties in the JOAs. Indeed, non-consent clause usually relieves a party from a defaulting situation due to failure to contribute its expenses or cash calls to the joint operating company or to the OpCom. This failure or defaulting situation usually put a greater burden on the rest of the participating parties who will then take care of the costs, risks and benefits (if any) of the project according to their percentage interests. This has been a common situation of the National Oil Company (NOC) of South Sudan, Nile Petroleum Corporation (NILEPET) which has continued to be serve with non-consent notices and its cash calls (related cost oil expenses) are being borne by other participating parties in the three JOAs of Dar Petroleum Operating Company (DPOC) for block 3 & 7, Sudd Petroleum Operating Company (SPOC) for block 5A and Greater Pioneer Operating Company (GPOC) for block 1, 2 &4. While there is a clause for penalty or failure to pay the cash calls, NILEPET given its niche as the national oil company has never been taken to court to clear its accumulated cash calls.

The effect of non-consent clause is that it works against objectives and goals of JOA which in summary, directly works against the interest of joint sharing of all benefits, costs and risks throughout the life of a license (Roberts, 2008). The clause intends to assist minority parties to have their own investment strategy to feel free to invest their capital in another important project which they consider to be more beneficial and rewarding and thus, the parties opt for non-consent right. It is vital to be noted that non-consent clauses in JOA shall neither be exchanged nor applied to license obligations, which parties acknowledged from the start (Shaw, 1996). As alluded to earlier, non-participation of minority parties to the approved joint project activity put greater load and pressure on participating parties which directly works contrary to the underlying philosophy of JOA that emphasizes common participation of parties during the life of the license. This participation has a negative effect on the operating company balance sheet, cost

sharing, profit sharing, penalty related matters and other activities of JOA.

3. The purpose and effect of default clause in JOA

This is defined as a situation in which a party or parties failed to abide by certain obligations in the JOA (Jensen and Abul-Failat, 2013). These obligations may include failure to fund cost related activities, provision of technical services or approval delays of critical decisions. The purpose of any JOA is sharing of financial burden and if such sharing is affected by a party or parties not paying their share based on their participation interests or percentages then there is a problem and this problem is known as default and it is taken care of in the JOA by a clause.

The purpose of default clause is ensured that each party pays for its related costs as indicated in JOA and failure of which can leads to litigation in a competent court of law. Hence, a default party has a fundamental right to pay its default cost together with an accumulated interest within a stated period of time which is characteristically set at 60 days in most commonwealth JOAs (UK Model JOA, 2009). After the 60 days elapse, the default party will surmount escalating penalties such as loss of right to vote in OpCom, loss of access to incredible information; loss of right to production proceeds and property entitlements; weakening of the default interest; and eventually and in extreme cases, forfeiture. From 2000-2010, Sudan National Petroleum Corporation (Sudapet) defaulted several times to Petro Dar Operating Company (PDOC), Greater Nile Petroleum Operating Company (GNPOC) and White Nile Petroleum Operating Company (WNPOC) in paying its cash call. The accumulated cash call Sudapet owned to the then three operating companies amounts to 106 M USD. For instance, Sudapet had an outstanding cash call balance of 66 M USD to PDOC, 30 M USD to GNPOC and 10 M USD to WNPOC. From the JOA of PDOC parties, it is stipulated that parties should monthly pay at most 25% of their oil production revenues to PDOC management as the cost related expense and take 75% as its revenues. However, Sudapet defaulted from 2000-2010. While Sudapet defaulted for ten consecutive years, this did not lead parties to take litigation or forfeiture procedures against Sudapet for a simple reason of Sudapet being a government owned company. However, parties in OpCom decided to go for a friendly solution of reducing the monthly revenues percentage accrued to Sudapet between 2000-2005 from 75% to 50%. This indicated that the PDOC took 50% as a cash call and gave 50% as revenues for Sudapet. But from 2006-2011, this formula changed, instead of giving Sudapet 50% cash call and 50% revenues, PDOC management decided to increase Sudapet cash call payment to 70% and reduced the revenue to 30%. But given that the Sudan split into two on 9th July 2011 with Republic of the Sudan and Republic of South Sudan, the Presidential Order of South Sudanese President issued on November 2011 transferred all the Sudapet shares to NILEPET without any encumbrances because all the oilfields thereto belong to Republic of South Sudan. Thus, for any other outstanding cash call with its partners, Sudapet has obligation to settle it in the competent court of law for any defaulting. This is the greatest effect of default clause in the JOA. In the Model JOA, default clauses are stipulated in article 11.

4. Are default clauses enforceable in court of law?

Litigations are supposed to be last resort in the resolutions of disputes in the petroleum industry and particularly, during the implementation of the JOA. Other alternative disputes mechanisms such as prevention, negotiation, executive negotiation and mediation should first be given extensive opportunity. The reason litigation should be discouraged is because it is very tedious, expensive and it is a seed that sow bitter relationships. As such, parties in the JOA are always requested under any circumstance to ensure they amicably resolve whatever disputes that arise amidst their operations and this the main work of the OpCom and the BoDs of the operating company is to find adequate time to exhaust issues that continued to affect the business and the operations of the JOA.

However, if the issues are recurrent and cannot be resolved amicably, they can then be litigated. For example, continuous defaulting of a party to pay its financial obligations in the JOA is a critical matter that requires sustainable solution. While parties in JOA through the operator and the OpCom will issue default, notices based on the JOA default provisions, proceeding straight to the court of law is not recommended. There are steps that default party go through first such as the remedy of default, restraining the default party to have no right to petroleum or hydrocarbons, no right to voting or representation in the OpCom, then forfeiture of the defaulting party proportionate share to the default interest by non-defaulting parties and finally acquisition of the defaulting party interest in the license free of any charges or encumbrances (Jensen and Abul-Failat, 2013).

Once the interest of defaulting party has been acquired by the non-defaulting parties, it is likely that the defaulting party will proceed to the court of law. In the court, the applicable law or substantive law or *lex arbitri* covers that jurisdiction will then be applied in hearing and final award of the judge. While in some jurisdictions default clauses are not enforceable in the court of law, they are enforceable in other jurisdictions. Take for example, in the United Kingdom and to more extent the commonwealth countries, default clauses are enforceable. It is argued that English law is always the law of choice or law of the forum in high value and complicated contracts where matters such as sole risks, non-consents, remedies, defaults and shortcoming of liabilities and financing are imperative and enforced (Scott, 1990). Besides, English law always ensures that parties in the joint venture find comfort that their joint venture agreement will be litigated according to its own terms and conditions and cannot be pronounced and annulled on technical and commercial basis as if no any existence of organized legal structures. While the behaviors of the English courts persist indefinite on the question of forfeiture and whether such a therapy would be considered to be a penalty, parties in the joint venture agreement must be very careful when consenting the inclusion of the default clauses in their JOAs. Although it may be prudent for parties in the joint venture agreement to choose the alternate default stipulations to forfeiture such as buy out options and withering provisions on the excuse that this will bring parties to safer position, these legal stipulations themselves may keep away some risks though not visibly but hidden and more associated with absolute forfeiture clauses. Like other types of judgments, default judgments will be enforceable for a period of years set by a given law in that particular jurisdiction (Roberts, 2008). Many jurisdictions allow the renewal of judgments that are almost to expire, as long as more time for the complainant to follow up collection remedies is granted.

6. Conclusion

The study has presented a very elaborate, interesting and timely arguments about JOA. While it begun by defining JOA, it went down and questioned why oil and gas industry use JOAs. Through the surveyed empirical literature, it found that JOAs are used for contractual obligations, for enhancement of good relations amongst the parties, for allocation of costs, profits and risks, for determination of responsibilities, obligations, rights and risks and it is a mechanism for disputes resolutions. Besides, the study critically assessed the apportionment of rights and duties between and amongst the parties in the JOA and found such rights and duties can be apportioned as the participation interests/shares of the parties in the JOA, selection or appointment of an operator, work programme & budget (WPB), risks allocation and withdrawal from the JOA. It has surfaced that parties in the JOA have clearly defined rights and duties in the model JOA that the parties enjoy. Finally, the study discussed the purpose and effect of sole risk, non-consent and default setting, it has interestingly appeared that sole risk, non-consent and default setting are great provisions in the JOA but must be carefully used so that they don't disrupt the working relations of the parties in the JOA. Although each of these clauses is uniquely triggered and applied, all of them must be applied in collaborative discussion with OpCom which is the administrative body that run day to day business of the operating companies. JOAs should help enhance relations amongst the parties and not for court disputes resolutions.

Recommendation for further

Although the study has elaborately discussed the JOA and its associated issues, further research is hereby recommended to oil and gas contracting scholars to investigate why JOA is regarded as "unincorporated" principal document that govern the "horizontal" relationship between the oil companies.

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