

The AIEN 2023 International Model Joint Operating Agreement

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A discussion of the 2023 Model Form of Joint Operating Agreement of the Association of International Energy Negotiators (AIEN). This Article examines its main provisions, including rights and duties of the operator, operating committee, work programs and budgets, contract awards, greenhouse gas provisions, exclusive operations, default, decommissioning and abandonment, transfers of interests, changes in control, withdrawal, anti-bribery and anti-corruption, economic sanctions, and human rights. It also addresses key issues that parties must consider when drafting and negotiating a joint operating agreement based on this model form.

International operations for the exploration, development, and production of hydrocarbons are subject to the petroleum laws and regulations of the host jurisdiction and the relevant license, concession, petroleum or other government agreement or instrument (Contract) issued by or on behalf of the host government or its regulatory authority (Government). Because of the magnitude of risks and the technical and financial commitments involved, companies often team up to pursue international hydrocarbon ventures. When two or more entities (Parties) are awarded an interest under the same Contract, the Parties typically formalize the business and legal relationships among them through an unincorporated joint venture that is governed by a joint operating agreement (JOA).

The Association of International Energy Negotiators (AIEN) is an independent, not-for-profit professional membership association that supports energy negotiators around the world. The AIEN develops model form contracts for use by practitioners in the international oil and gas sector, and its model form JOA is one of the international energy industry's most widely accepted model forms. It was first published in 1990, revised in 1995, 2002, 2012, and most recently updated in February 2023 (2023 Model JOA).

This Article discusses the 2023 Model JOA, examines its main provisions, and addresses key issues and considerations for practitioners when drafting and negotiating a JOA using the 2023 Model JOA as their starting point.

The 2023 Model JOA can be obtained directly from the AIEN (see [AIEN: Model Contracts](#)). For a short summary of changes introduced by the 2023 Model JOA, see [Article, AIEN's New Model Form Joint Operating Agreement: Main Changes](#).

Other model form JOAs have been developed and are used for petroleum operations. Some are more widely used in specific jurisdictions, such as:

- The [Offshore Energies UK JOA](#), commonly used for operations in the United Kingdom Continental Shelf.
- The American Association of Professional Landmen (AAPL) JOA (AAPL-610, 2015), commonly used for onshore operations in the US (see [Practice Note, Model Form of Onshore Oil & Gas Joint Operating Agreement AAPL 610-2015: Overview](#)).
- The AAPL Model Form of Offshore Deepwater Operating Agreement (AAPL-810, 2015), commonly used for offshore deepwater operations in the US Outer Continental Shelf.

For general guidance and information on joint operating agreements, see [Practice Note, Joint operating agreements: key issues for drafting, reviewing and negotiating](#).

Purpose of a JOA

When two or more Parties hold an interest under the Contract, they typically are jointly and severally liable to the Government, and even a minority interest holder could

be held responsible for all the resulting obligations and liabilities. To manage these risks and their obligations under the Contract, the Parties often enter into a JOA that:

- Allocates rights, benefits, obligations, and liabilities under the Contract among the Parties. This allocation includes establishing each Party's:
 - entitlement to hydrocarbons produced from the Contract area; and
 - obligation to contribute to cash calls.
- Designates one of the Parties as the operator, responsible for conducting joint operations under the Contract on behalf of the joint venture.
- Establishes an operating committee (OpCom) as the body that manages and supervises the joint operations.

The JOA is designed to maintain the Parties' rights and benefits granted under the Contract and should be drafted in a manner that preserves them.

The 2023 Model JOA

The AIEN's model contracts result from a collaborative drafting process, drawing on contributions from its diverse membership of international energy professionals. The first AIEN model form JOA was published over three decades ago and since then has been widely used in international upstream oil and gas joint ventures. The AIEN model form JOA is a helpful starting point for international JOA negotiations because its terms are well understood in the industry and are representative of the international industry practice.

Using the 2023 Model JOA as the basis for JOA negotiations allows drafters to direct their negotiating efforts to commercial, operational, or contractual issues that are unique to the specific joint venture or Contract, while minimizing the time spent on clauses considered to reflect the industry standard position.

Consistent with previous AIEN model form JOAs, the 2023 Model JOA contains standard text and various optional and alternative clauses. The standard text reflects positions that are widely accepted in the industry, while the options and alternatives address commonly negotiated issues and variances.

The changes made by the 2023 Model JOA compared to the 2012 model form JOA cover several issues, including:

- Decommissioning and abandonment (see Decommissioning and Abandonment).

- Anti-bribery and anti-corruption (see Anti-Bribery and Anti-Corruption).
- Default (see Default).

The 2023 Model JOA also introduces a few new provisions, including clauses seeking to address:

- The impact of economic sanctions (see Economic Sanctions).
- Respect for human rights (see Human Rights).
- The management of greenhouse gas emissions (see Greenhouse Gas Provisions).

The Operator

The 2023 Model JOA contemplates that one of the Parties is designated to act as operator, while the other Parties have a non-operator capacity (2023 Model JOA, Art. 4.1). The operator has the exclusive right to conduct joint operations on behalf of the Parties under the supervision of the OpCom. This operating model is common in the international upstream oil and gas industry.

The 2023 Model JOA attempts to provide a balanced starting point between operators and non-operators, although drafters may achieve a different balance during the negotiations. Because a JOA is designed to remain in place for the life of the Contract, practitioners should ensure that the JOA is not excessively operator or non-operator friendly and is sufficiently flexible to withstand changes to the type of party performing as operator. This flexibility is particularly important in the current market, in which industry newcomers and smaller or indigenous players are starting to take operatorship roles, replacing more established players that are electing to divest non-core assets.

Rights and Duties of the Operator

Under the 2023 Model JOA, the operator's key rights and duties include:

- Maintaining the Contract in force according to good and prudent petroleum industry practices.
- Performing the Parties' obligations under the Contract (such as making payments of taxes and royalties on their behalf).
- Employing or engaging employees, contractors, consultants, agents, and secondees.
- Representing the Parties in dealings with the Government (subject to the right for non-operators to observe certain meetings, if applicable).

- Keeping the joint property free from encumbrances.
- Maintaining insurance policies.
- Administering the joint account and the accounting of funds under the JOA's accounting procedure (see [AIEN: Model Contracts: Accounting Procedure](#)).
- Preparing and submitting work programs and budgets to the OpCom for approval (see [Work Programs and Budgets](#)).
- Providing non-operators with information, data, and reports relating to the joint operations.
- Establishing and implementing policies to:
 - facilitate compliance with economic sanctions and anti-bribery and anti-corruption laws (see [Economic Sanctions and Anti-Bribery and Anti-Corruption](#)); and
 - manage joint operations in a manner that respects human rights (see [Human Rights](#)).

(2023 Model JOA, Art. 4.2.)

Article 4.2.B.20 of the 2023 Model JOA also has optional rights and duties for the operator that the drafter may adopt, including:

- Conducting joint operations in a manner that either limits or mitigates greenhouse gas emissions from joint operations (see [Greenhouse Gas Provisions](#)).
- Ensuring that any contractors engaged by the operator:
 - perform their contracts with respect for human rights (see [Human Rights](#)); and
 - establish policies to facilitate compliance with economic sanctions laws (see [Economic Sanctions](#)).

Liability of the Operator

A widely accepted feature of international upstream joint ventures is that the operator neither profits nor suffers a loss from performing the role of operator (no gain, no loss principle). Under the 2023 Model JOA, each Party bears its participating interest share of, and must indemnify the operator and its affiliates, directors, officers, and employees from, any losses that arise from the performance of the role of operator, including any losses from the gross negligence, willful misconduct, or other legal fault of the operator (or its indemnified related Parties). The Party that acts as operator must still bear its participating interest share of any losses and liabilities suffered by the operator, but the no gain, no loss principle protects the Party designated as operator from suffering disproportionate losses and liabilities.

The 2023 Model JOA has an optional exception to the no gain, no loss principle, which drafters commonly adopt. This option provides that if any losses are proven to be caused by an act of gross negligence or willful misconduct of the operator's senior supervisory personnel, the operator is responsible for losses according to one of the following alternatives:

- All resulting losses.
- Only the actual costs of removing or replacing any lost or damaged joint property.
- All resulting losses up to a financial cap, with any losses above that cap borne by all the Parties based on their participating interest shares.

The terms gross negligence/willful misconduct are defined in the 2023 Model JOA as "any act or failure to act ... by any person or entity that was intended to cause, or was in reckless disregard of or wanton indifference to, harmful consequences such person or entity knew, or should have known, such act or failure would have on the safety or property of another person or entity" (2023 Model JOA, Art. 1.1). This definition sets a high bar for negligence or misconduct of the operator.

The standard text of the 2023 Model JOA defines senior supervisory personnel as directors or officers and individuals that function at or superior to specified levels of management (with optionality for the drafter to select the role most relevant to the management structure within the proposed operator's organization) (2023 Model JOA, Art. 1.1). When defining senior supervisory personnel in a JOA, practitioners should consider the organizational structure of the Party that is expected to serve as operator and ensure the definition is suitable. If the operator changes over the life of a JOA, the Parties should also consider whether the definition still fits the organizational structure of the new operator or whether they should seek an amendment.

Changes of Operator

The 2023 Model JOA recognizes that there may be changes to the operator during the life of a JOA, for example, because:

- The Party designated as operator intends to divest all or a significant portion of its interest in the Contract and JOA.
- The operator wants to resign and assign operatorship to an affiliate or another Party (see [Resignation of Operator](#)).

The 2023 Model JOA also gives non-operators the ability to remove the operator in certain circumstances (see Removal of Operator).

In many jurisdictions the Government must approve the appointment of the initial operator and any replacement to ensure that the operator has the competencies and resources to perform its role and otherwise meets applicable legal requirements. This is reflected in the 2023 Model JOA by requiring that any Governmental consent be obtained as a pre-condition to any change of operator (2023 Model JOA, Art. 4.11.E).

Resignation of Operator

Under the 2023 Model JOA, the operator may resign from its role with 120 days' prior notice to the non-operators although the resignation remains subject to the appointment of a replacement by the OpCom (2023 Model JOA, Art. 4.9). This 120-day notice period reflects a widely accepted term for the transition to a successor operator and the orderly handover of operations from the outgoing to the incoming operator. The drafter should consider whether a longer or shorter period is more appropriate in the specific circumstances.

Removal of Operator

The non-operators have the right to remove the operator:

- On the insolvency, receivership, or liquidation of the operator.
- If the operator is in material breach of the JOA and has failed to either:
 - begin cure of the breach within 30 days following a notice detailing the alleged breach; or
 - diligently pursue the cure to completion.

(2023 Model JOA, Art. 4.10.)

The 2023 Model JOA also sets out optional grounds for the removal of the operator, including:

- For the operator's violations of economic sanctions laws (2023 Model JOA, Arts. 4.10.B.3 and 4.10.B.4) or anti-bribery laws (2023 Model JOA, Arts. 4.10.B.5 to 4.10.B.7).
- If the operator's participating interest falls below certain percentage (2023 Model JOA, Art. 4.10.C).
- If the operator undergoes a change of control (2023 Model JOA, Art. 4.10.D).

- If the non-operators (excluding the affiliates of the operator) vote to remove the operator without cause (2023 Model JOA, Art. 4.10.E).

Under the 2023 Model JOA, a decision by the non-operators to remove the operator for a material breach of the JOA or for violation of anti-bribery or economic sanctions laws requires an affirmative vote of the non-operators holding a combined participating interest in the JOA and Contract equal to or above a specified threshold, excluding the vote of any affiliates of the operator (2023 Model JOA, Art. 4.10.B).

Any removal of the operator typically requires Government approval and is therefore unlikely to be immediate (see Changes of Operator). If the operator disputes the alleged breach or failure to cure a material breach and initiates dispute resolution proceedings, the 2023 Model JOA provides that the operator must remain appointed pending conclusion or abandonment of these proceedings (2023 Model JOA, Art. 4.10.B).

The Operating Committee

The OpCom is the body established by the JOA to supervise and direct joint operations and ensure they are conducted in a manner that fulfills the Parties' obligations under the Contract (2023 Model JOA, Art. 5.1). Each Party nominates a representative (or alternate) that is authorized to represent and bind the nominating Party on proposals coming before the OpCom (2023 Model JOA, Arts. 5.1 and 5.3). The OpCom may establish additional subcommittees to serve in an advisory capacity, for example, a technical or a financial sub-committee (2023 Model JOA, Art. 5.4).

OpCom Meetings

The operator has the right to call the meetings of the OpCom, but any non-operator may also request an OpCom meeting by giving notice to all other Parties (2023 Model JOA, Art. 5.5). OpCom meetings may be held in person at the location designated in the JOA or as determined by the OpCom, including remotely by video or teleconference (2023 Model JOA, Art. 5.7).

Voting and Pass Marks

Each Party's OpCom representative (or alternate) is entitled to a vote equivalent to the Party's participating interest in the JOA and Contract (2023 Model JOA, Art. 5.3).

Most proposals coming before the OpCom require the affirmative vote of a designated number of Parties collectively holding a percentage of the participating interests that is equal to or greater than a specified pass mark (2023 Model JOA, Art. 5.9). For example, the pass mark specified in the JOA may require the affirmative vote of two or more Parties that are not affiliates holding at least 70% of the participating interests. In addition, JOAs often specify a higher pass mark or unanimity for a limited subset of key decisions, like a decision regarding whether a discovery is commercial (2023 Model JOA, Arts. 5.9.A through 5.9.C).

The voting pass marks typically are negotiated by the Parties. Parties holding a larger participating interest (for example, greater than 50%) may want the flexibility to push through decisions with little resistance from minority interest holders, while holders of smaller interests may try to include a greater number of minority protections in the JOA (like higher pass marks or unanimity for certain key decisions to allow them to block proposals by voting against them). Parties should pay close attention to the voting procedure in the JOA and review them over the life of the joint venture because:

- Acquisitions and dispositions are common in the industry.
- The composition of the joint venture may change over time.
- Pass marks in the original JOA may no longer be sensible or may slow down the decision-making processes.

Work Programs and Budgets and Contract Awards

Work Programs and Budgets

The operator must prepare and submit a proposed annual work program and corresponding budget (WP&B) to the OpCom by a specified date each year, detailing the JOA operations to be performed and the estimated costs and expenditures to be charged to the joint account during the immediately following calendar year. A multi-year WP&B may be used for JOA operations that cannot be efficiently completed in a single calendar year. The OpCom may approve, modify, or reject the proposed WP&B. (2023 Model JOA, Art. 6.1.)

The Contract or applicable law often requires the Parties to submit the WP&B to the Government by a specified deadline each year. The 2023 Model JOA permits the

operator to submit the WP&B to the Government on behalf of the Parties once it has been approved by the OpCom. If the OpCom has not approved the WP&B by the Government's deadline, the operator has the right to submit a WP&B setting out operations that are consistent with either:

- The requirements of any minimum work obligations under the Contract.
- The commitments of any previously approved WP&B, appraisal plan, or development plan.

(2023 Model JOA, Art. 6.1.G.) This right empowers the operator to take the minimum action necessary to keep the Contract in full force, even if the OpCom has not reached agreement.

The 2023 Model JOA also recognizes that different types of WP&B are appropriate at different points during the lifecycle of the field. Accordingly:

- If a discovery of an accumulation of hydrocarbons is made that the OpCom has determined merits appraisal, the operator must submit a proposed appraisal plan and WP&B for consideration by the OpCom (2023 Model JOA, Art. 6.2.D).
- If the OpCom determines that the discovery is commercially viable, the operator must deliver a proposed development plan and WP&B for the first year of development (or a multi-year WP&B) for consideration by the OpCom (2023 Model JOA, Art. 6.3).
- Before first commercial production, the operator must deliver a proposed production WP&B for consideration by the OpCom (2023 Model JOA, Art. 6.4).
- If the JOA has decommissioning and abandonment provisions, the operator must submit a provisional decommissioning WP&B to the OpCom for each proposed development, to be periodically updated (2023 Model JOA, Art. 6.5.B; see Decommissioning WP&B).

The standard text of the 2023 Model JOA permits the operator to incur overcommitments and over-expenditures up to ten percent over the authorized amount for any line item of an approved WP&B without further OpCom approval if the cumulative total of all over-expenditures and overcommitments in any calendar year does not exceed five percent of the total annual WP&B in question (2023 Model JOA, Art. 6.9.A). This provision gives the operator flexibility to implement operations without having to get further OpCom approval unless the proposed expenditure is materially over budget.

Contract Awards

Under the 2023 Model JOA, the drafter has the option to either:

- Allow the operator to directly award contracts without a tender process to the best qualified contractor based on the costs and ability to perform, except for contracts with affiliates exceeding a stated dollar amount, which require OpCom approval (Article 6.7.A, Alternative 1).
- Require the operator to award contracts under one of the following procedures, depending on the contract amount and type of operation (exploration and appraisal, development, production, or decommissioning):
 - **Procedure A.** A direct award based on cost, quality, ability to perform on time, within budget, and in compliance with applicable law and contracts. However, the operator requires OpCom approval before contracting with its own or non-operator affiliates for contracts exceeding a stated amount (2023 Model JOA, Art. 6.7.B);
 - **Procedure B.** A tender issued by the operator to entities proposed by the operator and other entities reasonably requested by any non-operator, with the operator directly selecting the winning contractor and then informing the other Parties of the results, including a competitive analysis of the bids with the reasons supporting the award (2023 Model JOA, Art. 6.7.C); or
 - **Procedure C.** A tender (like Procedure B), but with the operator preparing and circulating an analysis of the bids to the other Parties, including its recommended winner, the supporting reasons, and the technical, commercial, and contractual terms for OpCom approval (2023 Model JOA, Art. 6.7.D).

Greenhouse Gas Provisions

A significant new feature of the 2023 Model JOA is the introduction of model clauses addressing greenhouse gas emissions from JOA operations. These new provisions resulted from close collaboration among industry players and subject-matter experts.

The 2023 Model JOA defines a Greenhouse Gas as “the following six gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride, or as an internationally recognized body (such as the [Intergovernmental Panel on Climate Change](#) (IPCC)) may determine from time to time,” with the intent to allow flexibility for changes over time (2023 Model JOA, Art. 1.1).

The standard text of the 2023 Model JOA requires the operator to report greenhouse gas emissions quarterly, according to either:

- The reporting standards required under applicable laws and the Contract.
- The guidelines for reporting greenhouse gas emissions under [IPIECA/API/IOGP petroleum industry guidelines for reporting greenhouse gas emissions](#) (2nd Edition, May 2011) if no reporting standards are specified by applicable laws or the Contract, or where the obligations under applicable laws and the Contract do not meet the requirements of these petroleum industry guidelines.

(2023 Model JOA, Art. 4.4.A.16.)

All other model clauses relating to greenhouse gas emissions in the 2023 Model JOA are optional because the drafting committee acknowledged that this is a new and rapidly evolving area and that greenhouse gas limitation or mitigation options and strategies vary widely from jurisdiction to jurisdiction and project to project.

The 2023 Model JOA optional greenhouse gas clauses require the operator to:

- Design a health, safety, and environmental plan to limit or mitigate greenhouse gas emissions in the conduct of joint operations (2023 Model JOA, Art. 6.6.A.1).
- Use available technologies and processes to limit or mitigate the emission of greenhouse gases (2023 Model JOA, Art. 6.6.A.4).
- Periodically analyze energy efficiency and greenhouse gas abatement opportunities and present them to the non-operators (2023 Model JOA, Art. 6.6.A.5).

Exclusive Operations

The 2023 Model JOA is designed to encourage joint action but, recognizing this is not always possible, allows certain actions or decisions to be pursued by fewer than all the Parties through exclusive or sole-risk operations.

Availability of Exclusive Operations

Under Article 7 of the 2023 Model JOA, exclusive operations are generally available only if:

- The OpCom has not timely approved an operation proposed as a joint operation.
- A Party votes against a proposal (dissenting Party) approved by the OpCom of a type that can be conducted as an exclusive operation and the dissenting Party exercises its right not to participate in that operation.

- In the reasonable judgment of the operator, circumstances occur that make the continuation of a joint operation for drilling, deepening, testing, sidetracking, plugging back, completing, recompleting, reworking, or plugging of a well unwarranted or impractical. In these circumstances, if the operation stops, any Party wishing to pursue it has the right to propose its continuation as an exclusive operation.

The Party or Parties participating in an exclusive operation (the consenting parties) are responsible for the costs and liabilities of the exclusive operation in the proportions determined under the JOA (2023 Model JOA, Art. 7.3.A).

Because of the disadvantages associated with the breakdown of the joint venture and the practical difficulties involved in implementing an exclusive operation successfully, the exclusive operation provisions are infrequently used and more commonly serve as a negotiating tool. In practice, the threat of a Party starting an exclusive operation is often enough to drive the other Parties to consensus or compromise.

Under the 2023 Model JOA, only certain types of operations may be conducted as exclusive operations, including:

- Acquiring geological, geophysical, geochemical, and similar data.
- Drilling, deepening, sidetracking, plugging back, reworking, completing, or recompleting an exploration or appraisal well.
- Testing an exploration or appraisal well.
- Declaring a commercial discovery.

(2023 Model JOA, Art. 7.1.D.)

Conduct of Exclusive Operations

Exclusive operations are conducted by the consenting Parties acting as the OpCom, and the operator generally continues acting as operator. If the operator is a non-consenting Party, the operator may resign its role or the consenting Parties may unanimously request its resignation and elect one of the consenting Parties as operator for the exclusive operation (2023 Model JOA, Art. 7.12). The limitation of the operator's liability under the JOA for joint operations equally applies to the operator or other Party serving as operator for the exclusive operation (see Liability of the Operator).

Right of Reinstatement

The non-consenting Parties have a limited opportunity to reinstate their previously relinquished rights and to

participate in the exclusive operation. This opportunity arises if the consenting Parties decide to:

- Appraise a discovery made during an exclusive operation.
- Develop a discovery made or appraised during an exclusive operation.
- Deepen, test, complete, sidetrack, plug back, recomplete, or rework a well drilled as an exclusive operation, if this activity was not part of the original exclusive operation proposal.

(2023 Model JOA, Art. 7.4.C.)

A non-consenting Party that decides to reinstate its rights must:

- Bear its participating interest share of the cost of the further operation.
- Within 30 days after exercising its option, make a lump sum payment of its participating interest share of all the costs and liabilities already incurred in the exclusive operations relating to the discovery or the well in which it has elected to reinstate its rights.
- Pay a premium to the consenting Parties to compensate them for the risk of undertaking the exclusive operation. This premium is typically a multiple of the non-consenting Party's participating interest share of specified categories of the costs and liabilities incurred in the exclusive operations that contributed to the discovery.

Default

A Party is in default if it fails to:

- Pay its share of joint account charges (including cash calls) when due.
- Provide when due or maintain any security required by the Contract or the JOA.
- Perform its indemnity obligations under the Contract or the JOA (this is an optional provision in the 2023 Model JOA).

(2023 Model JOA, Art. 8.1.A.)

In practice, the most common default is a Party's failure to pay cash calls when due. A common trend in recent years is for smaller companies (some of which are new entrants to the market) to enter JOAs by acquiring upstream assets from more established companies. These new entrants sometimes own only the single asset or pool of assets in the same or similar geographies and are more

susceptible to the effects of fluctuations in commodity prices or political risk, exposing the other Parties to their heightened credit risk. The drafter should consider the default provisions of the JOA against this backdrop given the greater likelihood of a default. The drafter should also ensure that the default remedies are legally enforceable in the host country and under the applicable law of the JOA.

Under a new provision of the 2023 Model JOA, a Party is not in default of the JOA for failure to pay its share of joint account charges if the reason for the nonpayment is that paying would put that Party in violation of economic sanctions laws (2023 Model JOA, Art. 8.1.A(i)). This new provision does not address the consequences of the Party not paying its share of JOA costs because of economic sanctions laws or how the joint venture should handle these cash call shortfalls. The drafter should consider these issues on a case by case basis (for example, whether the other Parties should bear the shortfall).

Consequences of Default

The 2023 Model JOA provides that the default period:

- Starts on the fifth business day after the defaulting Party receives the default notice.
- Runs until the defaulting party pays the total amount in default.

(2023 Model JOA, Art. 1.1.)

To discourage a Party from using the joint venture as a source of financing, the total amount in default is defined as the sum of:

- The default amount.
- Third-party costs of obtaining and maintaining any security.
- Reasonable costs incurred by the Parties resulting from the default (such as legal fees and expenses).
- Interest at the default rate set in the JOA.

(2023 Model JOA, Art. 1.1.)

During the default period, the defaulting Party loses some of its JOA rights but not its obligations. The standard text of the 2023 Model JOA provides that, during the default period, the defaulting Party has no right to:

- Call or attend OpCom or subcommittee meetings.
- Vote.
- Access data from JOA operations.
- Consent to or reject:

- data trades or to access data received in these trades; or
- transfers by a Party of its participating interest.
- Receive its entitlement share of production or its proceeds (2023 Model JOA, Art. 8.4.A).
- Take assignment of another Party's participating interest resulting from that Party's default or withdrawal.
- Transfer all or part of its participating interest (unless otherwise agreed in writing by all non-defaulting Parties), except to non-defaulting Parties.
- Propose or participate in exclusive operations.

(2023 Model JOA, Art. 8.2.A.)

The non-defaulting Parties are typically affected by a default because they must make up the defaulter's share of cash calls or provide any outstanding security to ensure the joint venture continues to perform operations and comply with the Contract and applicable law. The 2023 Model JOA provides that each non-defaulting Party must pay its proportionate share (calculated as the ratio of its participating interest to the total of the participating interest of the non-defaulting Parties) of:

- The amount in default.
- The funds to allow the operator to post and maintain any security required by the Contract or the JOA.
- The costs incurred by a non-defaulting Party relating to the defaulting party's failure to perform its indemnity obligations under the Contract or the JOA.

(2023 Model JOA, Art. 8.3.A.) If a non-defaulting Party fails to satisfy these obligations, it become a defaulting Party (2023 Model JOA, Art. 8.3.B).

Remedies

During the default period, the operator (if it is not in default) or the non-defaulting Parties are entitled to take certain measures against the defaulting Party, including selling the defaulting Party's hydrocarbons entitlement on arm's-length terms. The net proceeds from this sale may be either:

- Paid to the non-defaulting Parties in proportion to the amounts they are owed by the defaulting Party.
- Applied towards the creation of a reserve fund to cover the defaulting Party's share of future costs of decommissioning and cessation of operations.

(2023 Model JOA, Arts. 8.4.A and 8.4.C.)

If the defaulting Party has not cured the default by the 30th day of the default period, any non-defaulting Party has the option to require the defaulting Party:

- To completely withdraw from the JOA and Contract and transfer its participating interest to the non-defaulting Parties at no cost (2023 Model JOA, Arts. 8.4.D.1 and 8.4.E). In some jurisdictions there is a risk that this option may be legally unenforceable, so the drafter should consider other or additional remedies.
- To sell and transfer its participating interest to any non-defaulting Parties wishing to purchase it, typically at a discount from its fair market value and deducting the default amount from the sale price (2023 Model JOA, Arts. 8.4.D.2. and 8.4.F).
- If the default occurred under an approved development plan, to transfer a portion of its participating interest in the corresponding exploitation area to any non-defaulting Parties wishing to accept the transfer. Under this option, each defaulting Party grants the non-defaulting Parties the right and option to acquire part of the defaulting Party's participating interest in the exploitation area in which the defaulting Party is in default (the withering option). (2023 Model JOA, Arts. 8.4.D.3 and 8.4.G.) The withering option is less commonly adopted by drafters because it can be complex to negotiate.
- Foreclosing any mortgage and security interest against the defaulting Party's participating interest and all products and proceeds from it (2023 Model JOA, Arts. 8.4.D.4 and 8.4.H).

To discourage repeated defaults, the 2023 Model JOA includes an optional provision that reduces the 30-day cure period to 15 days for defaults occurring within 12 months of a preceding default (2023 Model JOA, Art. 8.4.D).

Because the transfer of all or part of the defaulting Party's participating interest to the non-defaulting Parties likely needs Government approval, the 2023 Model JOA requires that the non-defaulting Parties use reasonable endeavors to assist the defaulting Party in obtaining this approval. If all Government approvals are not timely obtained, the defaulting Party may be required to hold its participating interest in trust for the benefit of the non-defaulting Parties, if permitted under applicable law and the Contract. The drafter should consider whether this trust mechanism is appropriate for the particular JOA because:

- Trusts are not recognized by all systems of law.
- In some jurisdictions, a trust arrangement may violate the applicable law by giving a Party the benefit of certain rights under the Contract before securing all required Government approvals.

A defaulting Party whose interest is transferred to the non-defaulting Parties retains the same liability for decommissioning costs as if it had withdrawn under the JOA withdrawal provisions (2023 Model JOA, Arts. 8.4.J and 13; see Withdrawal). In practice, it is likely difficult for the non-defaulting Parties to obtain security for decommissioning costs from a Party in default (especially if the default results from insolvency), but this provision may deter Parties from engineering a default by the end of the life of a field to avoid paying their share of decommissioning and abandonment costs.

Operator Default

The 2023 Model JOA contains special provisions regarding the operator's default (2023 Model JOA, Art. 8.3.D). At the outset, it is likely difficult for a non-operator to immediately recognize when an operator is in default because the operator has the greatest visibility and oversight over the finances of the joint venture. Indicators could include that third-party payments (for example payments to contractors) are not being made or that the operator is making advance cash calls for funds.

When an operator is in default, the Party that issues the notice of default to the operator must carry out some of the operator's functions to ensure the venture's financial responsibilities are met. In this role, the notifying Party must:

- Maintain the joint account funds it collects in a separate account, applying them only to payments for joint operations.
- Bill or issue cash calls to the other non-defaulting Parties, as necessary.

(2023 Model JOA, Art. 8.3.D.1.) The liability of the Party serving as notifying Party is the same as if that Party had the status of operator (see Liability of the Operator).

The defaulting operator must continue to perform its other functions that have not been transferred to the notifying Party, although the non-operators may remove or initiate the process to remove the operator (2023 Model JOA, Art. 8.3.D.2; see Removal of Operator).

Deemed Withdrawal Following Default

If all Parties are in default, they are deemed to have collectively decided to withdraw from the JOA but are still bound by the JOA until they:

- Wind up their affairs with the Government.
- Satisfy any requirements of the Contract and applicable laws.

- Handle the sale, disposition, or abandonment of joint property.

(See, 2023 Model JOA, Art. 8.3.E.)

Decommissioning and Abandonment

Parties to a JOA typically must conduct and make provision for the decommissioning and abandonment of the joint property as required under the Contract or applicable law. Drafters must pay careful attention to the JOA decommissioning and abandonment provisions because:

- Decommissioning and abandonment obligations often are costly.
- Under the Contract or applicable laws in the jurisdiction, the Government may have the right to pursue any Party for all the decommissioning and abandonment obligations.
- By the time the Parties decide to decommission and abandon (and have to incur the necessary costs), the hydrocarbon production and its revenues from the field will likely have stopped.

Larger entities that are well capitalized should be particularly concerned if the other Parties have weaker credit or only hold a single asset or small pool of assets at similar stages of development.

Some jurisdictions have well-defined and established decommissioning regimes, for example, the United Kingdom, but many less mature basins are likely to have less developed regimes. The Parties sometimes enter into a decommissioning security agreement (DSA) to apportion decommissioning liability and to ensure that suitable security is put in place or funding is set aside to cover future decommissioning costs. However, the Parties may prefer to agree and define the procedures for the future decommissioning and abandonment of the Contract area in the JOA itself.

The 2023 Model JOA contains optional procedures to allow the Parties to estimate and fund or provide suitable security to ensure the due payment of cash calls to pay decommissioning and abandonment costs, either by:

- Funding a decommissioning fund or escrow account.
- Providing decommissioning security.

(2023 Model JOA, Exhibit E.)

Decommissioning WP&B

The operator must prepare a proposed decommissioning WP&B for approval by the OpCom at an agreed point in time before the Parties are due to start funding their share of decommissioning costs (see Work Programs and Budgets).

Trigger Date

The obligations of the Parties to provide for decommissioning costs (by paying into a trust fund or escrow account) or to deliver security generally start on a date known as the trigger date. The trigger date may be:

- The date on which the operator's estimate of the remaining net value of the joint venture (taking into account forecast hydrocarbons sales, the value of joint property, and costs) is less than an agreed percentage of the cost of decommissioning, discounted at an agreed discount rate.
- The date on which the remaining proven and probable (2P) reserves recoverable within the remaining Contract term are less than an agreed percentage of the total 2P reserves recoverable as set out in the development plan.
- The date determined under the development plan for the exploitation area.

(2023 Model JOA, Exhibit E, Section 4.2.)

Funding of Decommissioning Trust Fund or Escrow Account and Decommissioning Security

If the Parties choose to establish a decommissioning trust fund or escrow account for future decommissioning costs, the operator cash calls the Parties for their share of the operator's estimate of decommissioning costs starting from the trigger date (2023 Model JOA, Exhibit E, Sections 4.1 and 4.2).

Instead of paying cash into a decommissioning trust fund or escrow account, the JOA may permit a Party to provide security to the trustee or escrow agent (as applicable) in the form of one of the following:

- An irrevocable standby letter of credit or irrevocable commercial bank guarantee.
- An on-demand bond issued by a surety corporation.
- An irrevocable guarantee issued by a corporation or government.

- Any other financial security required by the Contract or unanimously agreed by the Parties.

Any bank, surety, corporation, or government issuing the security must have sufficient net worth to pay all the reasonably foreseeable JOA obligations of the security provider and must meet the credit rating specified in the JOA (2023 Model JOA, Exhibit E, Section 5 and Art. 1.1). The Parties may agree to an alternative arrangement for the provision of security for decommissioning and abandonment costs (2023 Model JOA, Exhibit E, Section 7).

The Parties typically are required to maintain sufficient funds in the decommissioning trust fund or escrow account, or suitable decommissioning security, until all decommissioning is completed under the terms of the decommissioning WP&B, the Contract, and applicable laws.

Transfers of Interests, Changes in Control, and Liens

Parties want some control over new entrants to their joint venture, whether through a transfer of an existing Party's participating interest or through the corporate acquisition of a Party or its affiliate:

- To ensure that new entrants have sufficient technical and financial capacity.
- For compliance reasons.

Transfers

The 2023 Model JOA provides that no transferee of a participating interest has any rights in the Contract or JOA unless:

- The transferee undertakes, in an instrument reasonably satisfactory to other Parties, to perform the obligations of the transferor under the Contract and JOA to the extent of the transferred interest.
- The transferee obtains any necessary government approval and delivers to the Government any guarantees required as a pre-condition to the transfer.
- Except where the transferee is an affiliate of the transferor, each Party has consented in writing to the transfer. This consent can only be denied if the transferee has failed to establish to the reasonable satisfaction of each non-transferring Party its:
 - financial capacity;
 - ability to comply with the compliance and conduct provisions of Article 20.1 of the 2023 Model JOA; and

- technical capability to contribute to the planning and conduct of joint operations, if applicable.

(2023 Model JOA, Art. 12.2.D.)

As an additional safeguard, the 2023 Model JOA specifically provides that a transfer is not permitted if it would violate, or cause another Party to violate, economic sanctions laws (2023 Model JOA, Art. 12.2.E).

The 2023 Model JOA tries to balance protecting the rights of the existing Parties by giving them a reasonable degree of control over new entrants, while giving them flexibility to divest when commercial needs or opportunities arise. Depending on the composition of the specific joint venture, the level of political risk in the jurisdiction where operations take place, or other unique features, the drafter should consider amending the standard provisions to give existing Parties stronger consent rights over transfers.

The 2023 Model JOA specifies that a Party must hold a minimum participating interest (2023 Model JOA, Art. 12.2.A). Drafters often select a level of around five percent. Parties may not sell part of their participating interest if, as a result, their or the transferee's participating interest falls below that minimum percentage. Applicable law or the Contract sometimes imposes a requirement for a Party to hold a minimum participating interest, in which case the JOA obligation should be consistent.

Preferential Rights or Rights of First Refusal

Optional provisions in the 2023 Model JOA give the non-selling Parties the benefit of preferential rights or rights of first refusal over the selling Party's proposed transfer of all or part of its participating interest to a non-affiliate.

Preferential Rights

Under the preferential rights, a proposed transfer by a selling Party of all or part of its participating interest for cash or cash equivalent gives all non-selling Parties the right to acquire the interest on the same terms and conditions as the third-party offer. If the proposed transfer is not for cash or involves other properties in a wider transaction, the non-transferring Parties have the right to acquire only the participating interest under the relevant JOA at the cash value specified by the proposed buyer (or otherwise determined by an independent expert) on the same or similar terms and conditions as those negotiated by the selling Party with the proposed buyer. (2023 Model JOA, Art. 12.2.G, Alternative 1.)

Right of First Refusal

Under the right of first refusal, when a Party decides to sell its participating interest, the non-selling Parties have the right to submit offers for the participating interest subject to the sale. The selling Party may then either negotiate with any offering Party or, if no offer is an acceptable basis for negotiation or no offers are received from the Parties within 30 days, negotiate and conclude the sale with the proposed purchaser in a specified period. (2023 Model JOA, Art. 12.2.G, Alternative 2.)

Changes in Control

A change in control is defined in the 2023 Model JOA as a direct or indirect change in the control of a Party (except where the same ultimate parent continues to control the Party). For these purposes, control means the ownership of at least 50% of the voting rights in an entity (2023 Model JOA, Art. 1.1).

The change in control definition has an optional component that restricts a change in control to a change in which the market value of the relevant Party's participating interest represents more than a specified percentage of the aggregate market value (determined on an arm's-length basis between willing parties) of the assets of the Party and its affiliates that are subject to the change. This optional market value component is designed to prevent asset-level preemption from interfering with transactions in which the participating interest represents only a small component in value terms of the pool of assets that are subject to the change in control transaction. This often favors larger companies with a larger pool of assets allowing them to avoid the change in control restrictions in the JOA, while a Party with a single asset or small pool of assets may not have the same benefit.

The 2023 Model JOA obliges any Party that is subject to a change in control to obtain all applicable government approvals and furnish any replacement security required by the Government or the Contract (2023 Model JOA, Art. 12.3.A).

Unlike a transfer by a Party of its participating interest, the Party subject to the change in control may be the subsidiary of the parent company that is directly involved in or subject to the change in control, and it may therefore be difficult for that subsidiary Party to notify the other Parties of the change in control before the transaction takes place.

Optional text in the 2023 Model JOA requires the Party subject to a change in control to provide evidence reasonably satisfactory to the other Parties that, after the change in control, it will maintain the financial capability

to satisfy its obligations. If it fails to do so, the other Parties may require the changed Party to deliver security satisfactory to the other Parties (2023 Model JOA, Art. 12.3.C). The Parties have complete discretion to determine whether the requested security is satisfactory, and the failure to provide this security when required puts the changed Party in default.

If a change in control of a Party violates economic sanctions law or causes another Party to violate them, the Party subject to the change in control becomes a defaulting Party until the violation is corrected. In practice, this means that the Party subject to the change in control must cause the change in control transaction to be reversed or else risk losing its participating interest under the default remedies in the JOA.

Preemptive Rights and Rights of First Negotiation

The drafter may also elect to give the other Parties the benefit of preemptive rights or rights of first negotiation regarding a proposed change in control. These model clauses are included as optional text under Article 12.3.D of the 2023 Model JOA.

Preemptive Rights

Under the preemptive rights option, once the final terms of a change in control transaction are negotiated:

- The Party subject to the transaction must notify the other Parties.
- Each other Party may elect to acquire the participating interest of the Party subject to the change in control.
- The Party subject to the change in control and the preempting Party must try to agree on the cash value of the participating interest.
- If no agreement is reached within 15 days, either Party may refer the issue to an independent expert for determination.

(2023 Model JOA, Art. 12.3.D, Optional Alternative 1.)

A Party that exercises its preemption rights is entitled to acquire the participating interest on the final terms and conditions of the change in control transaction negotiated with the proposed acquirer that are relevant to the acquisition of a participating interest for cash.

Right of First Negotiation

Under the right of first negotiation option, if affiliates of a Party want to enter into a transaction resulting in a

change in control of that Party, before the Party affiliates enter into the transaction, the affected Party must:

- Notify the other Parties of their intention.
- Invite them to submit offers for the participating interest of the affected Party.

(2023 Model JOA, Art. 12.3.D, Optional Alternative 2.)

If a Party presents an offer acceptable to the affected Party, the Parties must try to negotiate a mutually acceptable transfer agreement. If no Party's offer is acceptable to the affected Party or no offers are made, the proposed change in control transaction may proceed.

If the change in control transaction affecting a Party takes place or is negotiated between the proposed acquirer and an affiliate of the affected Party (which is typically the case), the affected Party may have little to no control or knowledge of the transaction and the Party or Parties seeking to preempt or exercise a right of first negotiation could also face difficulties enforcing their rights since they have no contractual relationship with the relevant affiliate.

Taking Security

The 2023 Model JOA recognizes that Parties may need to grant security over their participating interest to a third party (a lien holder) to secure financing. The JOA transfer restrictions do not impede the creation of these encumbrances if:

- The granting Party remains liable for all obligations relating to the encumbered interest, meaning that the lien holder may not take assignment of the granting Party's JOA obligations, which remain enforceable against the granting Party.
- The granting Party obtains any necessary government approvals.
- The encumbrance is expressly subordinated to the rights of the other Parties and without prejudice to the provisions of the JOA.
- When required, the lien holder enters into a subordination agreement in favor of the other Parties.

(2023 Model JOA, Art. 12.2.F.)

Under the 2023 Model JOA, a Party may also grant notice and cure rights (or similar rights) to the lien holder without needing prior consent from the other Parties. This gives secured lenders:

- The right to receive notice of any default by the granting Party.

- The option to step in to cure the granting Party's default, if needed, to preserve the value of the secured interest (for example, making up any cash call shortfall).

The granting Party, however, cannot give third-party secured lenders any right that prejudices the rights and remedies of the other Parties.

Withdrawal

The JOA is typically drafted to encourage joint action and discourage independent action. However, acknowledging that each Party may have a different view as to when all or a portion of the Contract area no longer provides value (for example when deciding whether or not to extend the Contract term), the 2023 Model JOA permits any non-defaulting Party to withdraw from either:

- The JOA and the entirety of the area defined under the Contract.
- Only the exploitation areas where no hydrocarbons have been discovered.

(2023 Model JOA, Arts. 13.1 and 13.2.)

Once a withdrawing Party has served notice of withdrawal on the other Parties, any other Party may also elect to withdraw within a specified period. After providing its notice of withdrawal, a withdrawing Party must take the necessary steps to:

- Assign its participating interest to the non-withdrawing Parties for no compensation and on a pro rata basis (unless the non-withdrawing Parties otherwise agree).
- Obtain any required Government approval for the withdrawal and assignment.

The withdrawing Party must bear all the costs of the withdrawal and assignment (2023 Model JOA, Art. 13.7).

A withdrawing Party:

- Maintains its rights to its hydrocarbons entitlement, joint property, and information until the effective date of its withdrawal (defined as the end of the calendar month after the month in which the notice of withdrawal is given) (2023 Model JOA, Art. 13.3).
- Loses its right to vote once it gives notice of its intended withdrawal, except in matters for which it is financially responsible (2023 Model JOA, Art. 13.3).
- Remains liable for its share of certain obligations after giving notice of its withdrawal, including:
 - costs of operations approved by the OpCom as part of an annual or multi-year WP&B or authorization for

expenditure in which the withdrawing Party agreed to participate before its withdrawal;

- any minimum work obligations for any current period or phase of the Contract;
- any expenditures related to any emergency (for example, fire, well blowout or loss of control, or sabotage) occurring before the effective date of that Party's withdrawal, regardless of when the expenditures are incurred;
- all other obligations and liabilities for acts or omissions under the JOA before the effective date of the Party's withdrawal for which it would have been liable if it had not withdrawn;
- in the case of a partially withdrawing Party, any costs and liabilities for exploitation areas and discoveries from which it has not withdrawn; and
- its share of the costs of plugging and abandoning wells or portions of wells in which it participated, whether or not an abandonment obligation under the Contract has accrued on the effective date of withdrawal.

(2023 Model JOA, Art. 13.4.A.)

- Must satisfy or release all encumbrances placed on its participating interest (2023 Model JOA, Art. 13.4.A.6).

To secure the obligations for which the withdrawing Party remains liable, it must deliver security satisfactory to the non-withdrawing Parties, in their discretion (2023 Model JOA, Art. 13.8). Failure to deliver or maintain this security puts the withdrawing Party in default.

If the issuing bank, surety, corporation, or government has sufficient net worth and meets a stated credit rating, the security can be:

- An irrevocable standby letter of credit or irrevocable commercial bank guarantee.
- An on-demand bond issued by a surety corporation.
- An irrevocable guarantee issued by a corporation or government.
- Any financial security required by the Contract or JOA.
- Any other financial security unanimously agreed by the Parties.

(2023 Model JOA, Art. 1.1.)

The withdrawing Party typically tries to negotiate the requirement to deliver security to minimize the trailing liabilities associated with the joint venture that it is exiting, particularly because, after its withdrawal, it will

not have access to joint venture information to verify future liabilities.

The non-withdrawing parties should ensure that the withdrawing Party does not evade liability for costly obligations arising from operations in which the withdrawing Party participated, particularly the costs of plugging and abandoning wells.

Failure to Secure Government Approval

If Government approval for the withdrawal and transfer is not obtained, the withdrawing Party has two options:

- To retract its withdrawal notice and remain a Party to the JOA and Contract, as if the withdrawal notice had never been sent.
- To elect to hold its participating interest in trust for the benefit of the non-withdrawing Parties, subject to the Contract and applicable law, and retain the right to be reimbursed by the non-withdrawing Parties for future costs and liabilities it would not have incurred if it had withdrawn. The drafter should carefully review this option because, in some jurisdictions, the creation of a trust:
 - is not recognized under the law; and
 - could be deemed a breach of applicable law or the Contract if it entitles a Party to the benefits of the Contract before securing Government approval.

(2023 Model JOA, Art. 13.7.)

Withdrawal or Abandonment by All Parties

If all Parties give notice of withdrawal, they will abandon the Contract area and terminate the Contract and the JOA. However, the withdrawing Parties remain bound by the JOA for certain obligations, as under a deemed withdrawal on the default of all the Parties (see Deemed Withdrawal Following Default).

Withdrawal Resulting from Another Party Being a Sanctioned Person

The 2023 Model JOA has optional text to help a Party withdraw if it believes that another Party has become a sanctioned person or controlled by a sanctioned person (2023 Model JOA, Art. 13.2.C). Sanctioned person is defined as a person with whom a Party or its direct or indirect parent is prohibited or restricted from engaging in transactions or from conducting business under economic

sanctions laws (2023 Model JOA, Art. 1.1). Under this optional provision, the withdrawing Party:

- Is not required to assign any participating interest to the Party believed to be sanctioned or controlled by a sanctioned person.
- May assign its interest to:
 - the other Parties only; or
 - if the other Parties are not interested, a third party reasonably determined by the transferor after consultation with the non-withdrawing Parties.

A drafter seeking to adopt this optional provision should consider whether the text needs tailoring based on the sanctions analysis specific to the joint venture. As drafted, the optional text allows the withdrawing Party to withdraw based only on its belief that another Party has become a sanctioned person or controlled by one, but this determination is not subject to an objective criteria. The drafter may want to modify this provision to make it more balanced.

Compliance with Laws

The 2023 Model JOA has many provisions addressing compliance with laws. It places several compliance obligations on the operator, including regarding the engagement of third-party contractors. Some of these provisions represent changes and refinements to the compliance provisions in AIEN's 2012 model form JOA, including:

- Anti-Bribery and anti-corruption (see Anti-Bribery and Anti-Corruption).
- Economic sanctions (see Economic Sanctions).
- Human rights (see Human Rights).

Anti-Bribery and Anti-Corruption

Under the 2023 Model JOA:

- The definition of Anti-Bribery Laws and Obligations includes optional references to the US Foreign Corrupt Practices Act of 1977 (FCPA) and the United Kingdom Bribery Act of 2010 statutes, which are widely accepted by many in the international petroleum industry (2023 Model JOA, Art. 1.1). For more information on:
 - anti-corruption regimes in the US and the UK, see [Practice Note, Anti-corruption regimes in the UK and US: a comparison of the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act 1977](#);

- the UK Bribery Act 2010, see [Bribery Act 2010 toolkit](#); and

- the US FCPA, see [Foreign Corrupt Practices Act Compliance Checklist](#).

- The operator must establish and implement anti-bribery and anti-corruption policies and procedures for the joint venture (2023 Model JOA, Art. 4.2.B.16).
 - In its due diligence of independent contractors, the operator must review the proposed contractors' compliance with Anti-Bribery Laws and Obligations (2023 Model JOA, Art. 4.2.B.19).
 - No Party is required to perform any JOA obligation to the extent that doing so violates Anti-Bribery Laws and Obligations (2023 Model JOA, Art. 20.2.E).
 - Non-operators have the right to remove the operator if, regarding the operations or activities under the JOA, the operator or its affiliates, directors, officers, employees, or personnel have:
 - admitted allegations of Anti-Bribery Laws and Obligations violations;
 - been finally adjudicated with Anti-Bribery Laws and Obligations violations; or
 - been finally determined in arbitration to have materially breached the anti-bribery and anti-corruption warranties or covenants of the JOA (2023 Model JOA, Art. 20.1.A).
- (2023 Model JOA, Art. 4.10.B.)

Economic Sanctions

The 2023 Model JOA introduced entirely new provisions regarding compliance with economic sanctions laws, including:

- The definition of Economic Sanctions Laws, which gives the drafter the option of referring to widely recognized economic sanctions laws of the United Nations, the US, the European Union, and the United Kingdom, in addition to the standard text that defines sanctions laws with reference to the laws of the governmental authority in the Parties' and their direct or indirect parents' place of organization or principal place of business (2023 Model JOA, Art. 1.1).
- A requirement for the operator to establish and implement policies and procedures to facilitate compliance with economic sanctions laws in the conduct of joint operations (2023 Model JOA, Art. 4.2.B.17), and an optional provision requiring the operator to institute an equivalent requirement on

any contractors it engages (2023 Model JOA, Art. 4.2.B.20(f)).

- A provision stating that no Party is required to perform any JOA obligation to the extent it violates, or causes a Party to violate, economic sanctions laws (2023 Model JOA, Art. 20.2.E).
- An optional provision giving non-operators the right to remove an operator that has admitted allegations or that has been finally adjudicated or determined in arbitration to have violated economic sanctions laws (either itself or its affiliate or their directors, officers, employees, or personnel) (2023 Model JOA, Arts. 4.10.B.2 to 4.10.B.4).

For a compliance roadmap from the US perspective, including an overview of economic sanctions, see [Practice Note, Sanctions and Export Controls Risk \(US\): Compliance Roadmap](#).

Human Rights

Human rights did not expressly feature in the prior AIEN model form JOAs. The drafting committee for the 2023 Model JOA regarded human rights a key area and addressed it by:

- Including a Human Rights definition linked to the [UN Universal Declaration of Human Rights of 1948](#) and the [International Labour Organization \(ILO\) Declaration on Fundamental Principles and Rights at Work](#), together with the principles set out in Part II of the [UN Guiding Principles on Business and Human Rights](#) applicable to businesses (2023 Model JOA, Art. 1.1).
- Requiring all Parties to respect human rights principles while performing their obligations and exercising their rights under the JOA (2023 Model JOA, Art. 20.3).
- Requiring the operator to consider compliance with the requirement to respect human rights when conducting due diligence on prospective independent contractors (2023 Model JOA, Art. 4.2.B.19).

Relationship of the Parties and Tax

Relationship of the Parties

The 2023 Model JOA states that each Party's obligations under the JOA are individual and not joint and several (Art. 14.1). This provision:

- Reinforces one of the key aims of the JOA, which is to allocate rights and obligations among the Parties to the Contract based on their participating interests.

• Clarifies that:

- the Parties to the JOA do not owe fiduciary duties to one another;
- the JOA does not create a partnership under which the partners cooperate in a business for the purpose of making a profit, have unlimited liability, or owe fiduciary duties to one another; and
- the JOA does not create an association, which in the United Kingdom is a legal form typically used by non-profit organizations, or (except where specifically provided for) a trust arrangement, where property is held by a Party for the benefit of the other Parties.

Tax

Each Party to the JOA is responsible for filing and paying its own taxes arising from the sale of their entitlement to hydrocarbons produced from the Contract in accordance with applicable laws (2023 Model JOA, Art. 14.2).

Force Majeure

The force majeure provision is intended to protect Parties from events outside of their control that render them unable to perform their JOA obligations.

Under the 2023 Model JOA:

- If force majeure arises, the obligations of the affected Party are suspended while it is prevented from performing its obligations because of the force majeure.
- The affected Party must use reasonable diligence to remove or overcome the force majeure in an economic manner.
- A Party that withholds payment to comply with economic sanctions law is not deprived of the relief that would otherwise have been available to it under the force majeure provisions.
- A change of laws does not constitute force majeure for a Party owned or controlled by a government, unless that change affects all Parties equally.

(2023 Model JOA, Art. 16.)

Governing Law and Dispute Resolution

Applicable Law

Although the operator must act in accordance with and abide by the law of the host Government, the Parties are

usually free to specify what law governs the construction and interpretation (including the resolution of any dispute) of the JOA among themselves (2023 Model JOA, Art. 18.1).

One objective in choosing the governing law is to provide predictability. The Parties should select laws that are well defined and tested in cases involving commercial joint ventures. For this reason, English law is frequently the choice of law for international JOAs, although this is not specified in the 2023 Model JOA.

Dispute Resolution

Parties to a JOA commonly agree to submit disputes among the Parties arising out of or relating to the JOA to arbitration rather than litigation. Arbitration rules attempt to make dispute resolution more efficient, and the Parties to the dispute also benefit from a confidential process. For further discussion of advantages and disadvantages of arbitration, particularly in comparison to litigation, see [Practice Note, Why arbitrate?](#).

The 2023 Model JOA provides for arbitration and an option for Parties to pursue senior executive negotiations or mediation before arbitration, but the drafter may amend the model text to provide for litigation (2023 Model JOA, Art. 18.2).

The drafter should also consider whether to include one or more of the other dispute resolution choices:

- Senior Executive Negotiations (2023 Model JOA, Arts. 18.2.B). In practice, formalizing a stage of negotiation between senior executives may be unnecessary, as the Parties often engage in extensive informal negotiation before pursuing arbitration. This option may only delay the start of arbitration.

- Mediation (2023 Model JOA, Arts. 18.2.C). Mediation can be useful if the Parties agree to mediate at a stage in the negotiations when they feel that a mediator may help resolve their differences. However, mediation sometimes merely extends the timeline of a dispute. For a discussion of mediation in cross-border disputes generally, see [Practice Note, Mediation: Overview \(Cross-Border\)](#) and [Cross-Border Mediations](#) checklist.

Waiver of Sovereign Immunity

The 2023 Model JOA includes a waiver of sovereign immunity in its standard text (2023 Model JOA, Art. 18.4). Drafters should be aware of situations where the Government or an agency of the Government (such as a national oil company) is or becomes a Party to the JOA, because those entities could invoke sovereign immunity as a defense. It is therefore prudent to include this language in any JOA.

For a discussion of sovereign immunity under the US Foreign Sovereign Immunities Act and its exceptions and waiver, see [Practice Notes, The Commercial Activity Exception to Sovereign Immunity Under the Foreign Sovereign Immunities Act](#) and [The Waiver and Arbitration Exceptions to Sovereign Immunity Under the Foreign Sovereign Immunities Act](#).

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