

# JOINT VENTURE DISPUTES IN THE ENERGY AND NATURAL RESOURCE SECTORS

BY A. TIMOTHY MARTIN, JOHN GILBERT & PETER ROBERTS

*Reviewed by David Haigh KC\**

Once in a generation or so, a fundamental work appears that becomes a standard reference source for a particular area of legal study or practice. This text is undoubtedly a candidate for that status.<sup>1</sup>

The authors bring a wealth of experience from their diverse backgrounds to bear on their book. A. Timothy Martin, a past president of the Association of International Energy Negotiators (AIEN, formerly, the Association of International Petroleum Negotiators), has had an extensive career in international oil and gas legal management in a wide variety of international jurisdictions, and continues to act as an expert witness and arbitrator. Peter Roberts, a solicitor admitted to practice in England and Wales and Hong Kong, has more than thirty years' experience as a leading international oil and gas practitioner. Finally, John Gilbert, co-chair of Bracewell LLP's international arbitration practice, offers his great knowledge as a leading counsel in energy disputes related to oil and gas exploration and production.

This work will prove helpful both to the novice who seeks to understand the sometimes-surprisingly-complex subject of joint ventures, and to the seasoned expert. Over 400 cases from various jurisdictions are reviewed, and wide-ranging issues are covered in the book's section on Disputed Issues in Joint

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<sup>1</sup> A. Timothy Martin, John Gilbert & Peter Roberts, *Joint Venture Disputes in the Energy and Natural Resource Sectors* (New York: Oxford UP 2023).

Ventures. The preponderance of legal authority is reflected in US jurisprudence, along with UK, Canadian, and Australian judgments. However, other jurisdictions receive their due in diverse references to experiences in Norway, New Zealand, Brazil, and Nigeria. In addition, the authors have included innumerable references to arbitration awards rendered under the whole range of arbitral institutions and settings. Notwithstanding these national and other disparate sources and the strong presence of the common law, the text tends to demonstrate the confluence of these sources and the significant standardization of these forms of business organization, thereby contributing to the literature on transnational legal concepts and the development of *lex petrolea*.

Best practices and industry standards are often described, and short historical references for their provenance are concisely included. Such context provides helpful guidance and supports the general derivation of applicable principles.

Topics covered include the scope of the joint venture, size of shares in the joint venture, approval of JV operations, JV operations conducted by fewer than all the parties in the JV, allocation of costs, accounting procedures, defaults, scope of the operator's duties and authority, limitation of liability and indemnities, removal of the operator, transfer rights, and termination of the JV. In each instance, the authors have provided a deep dive into leading cases that have considered these issues. The summaries of these cases are helpful guides to both good practices and the occasional outlier. All these sections are very practical and will ensure that this book will find a place on most law firm shelves, especially in the law departments of oil and gas and other extractive companies. It will also prove to be a convenient source for decision makers in hearing rooms and board rooms alike.

Treatment of these various topics is highlighted with helpful introductions and conclusions bookending the individual sections. Where applicable, cross-references are given routinely to decided cases or to findings in both commercial arbitration

and investor-state settings. Likewise, where no relevant precedent has been discovered, the authors reaffirm that there is indeed a lack of authority—a reassurance to researchers who might otherwise search in vain.

The book features a separate section on managing joint venture disputes, which reveals a mature and balanced review of the sort of practical considerations a seasoned litigator or arbitration counsel would advise clients to bear in mind. This is accomplished in a smooth narrative style without cumbersome lists. Common sense suggestions flow along with useful cross-references, for example, to the AIEN guidance on dispute resolution and other equally well-known models.<sup>2</sup> The reader is reminded of available options such as expert determination, mediation, arbitration, or court actions, along with some of the considerations leading to choosing one or another of them. Examples of recent cases illustrating some of the complexities of JV disputes are developed, including relatively recent instances of claims for *force majeure* arising from the COVID-19 pandemic, and the potential ineffectiveness of some dispute resolution mechanisms to resolve the gaps that may arise between granting instruments and joint venture operating agreements.

The hardcover presentation of this work will hopefully be succeeded over time with subsequent editions, in order to keep current with developments in this field. The joint venture business organization has proven to be durable in all parts of the world and will doubtlessly continue to be so. This book will serve to support and inform professionals who wish a practical and reliable guide to the basic principles and precedents governing such organizations. Whether drafting JV agreements or analyzing issues arising from a JV dispute, practitioners will find this text to be a convenient, practical, and thorough guide and source.

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<sup>2</sup> Association of International Energy Negotiators, "AIPN Model Dispute Resolution Agreement and Guidance Notes" (2017), online: <[www.aien.org](http://www.aien.org)>.