# No JOAking Around - Participants' Obligations to Meet Operator Expenditure

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## Introduction

Reported cases on the interpretation of a joint operating agreement ("JOA") in the oil and gas exploration sector are fairly rare. The majority of disputes involving JOAs are resolved between the parties, with the balance of disputes being fought behind the curtain of arbitration, out of public view. The result is that parties are not readily able to determine, by reference to published decisions, exactly how industry standard wording in JOAs is interpreted in a formal dispute resolution setting.

We therefore welcome a recent case in the English Court of Appeal, *Spirit Energy Resources Limited and others v Marathon Oil U.K. LLC* [2019] EWCA 11. It provides an insight into how disputes over certain fundamental rights and obligations of parties to a JOA are likely to be determined under English law.

## Background

The case involved participants in a joint venture to explore for oil and gas in the Brae fields located in the North Sea. The participants were parties to a JOA, which was described as being "*typical of operating agreements in the oil and gas exploration sector*".

As readers will be aware, most commonly under a JOA one company is appointed as operator and has responsibility for conducting all project operations. The operator acts on a cost neutral basis; the benefits and burdens of a project are borne by all the participants of the venture who fund the operator, in addition to supervising and directing its operations. That supervision and direction is exercised by an operating committee, made up of the participants. This committee approves operating programmes and sets budgets that the operator must adhere to. The costs incurred by the operator are allocated to the participants in accordance with the terms of the JOA.

In the present case, five parties entered into a JOA in January 1980. Marathon Oil U.K. LLC was named as operator ("the Operator"), alongside four other participants ("the Participants"). The Operator offered its project employees defined benefit occupational pensions as part of their remuneration packages. In the years following the 2008 global financial collapse, a substantial pension deficit arose. This led to calls on the Participants to fund the shortfall. Although the Participants initially agreed to make the necessary payments, they soon reversed course and decided to cease all such contributions.

The Operator argued that it was entitled under the JOA to require the Participants to pay their proportionate share of the pension deficit. The Participants argued that, properly construed, they were not liable under the JOA and the Operator was ultimately responsible for those costs. Their main contention was that under the JOA they were not required to pay for future liabilities which they could not have foreseen when the operating committee approved the budget that included

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authorising employment of the relevant staff.

The Operator brought a claim against the Participants in the English High Court. Mr Justice Robin Knowles ruled on the construction of the JOA finding in favour of the Operator. The Participants appealed to the Court of Appeal arguing that the judge's interpretation of the JOA was incorrect and should be overturned.

To read the full publication, please click on the PDF linked below.

No-JOAking-Around-Participants-Obligations-to-Meet-Operator-Expenditure.PDF

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