

Presented:

2015 International Upstream Energy

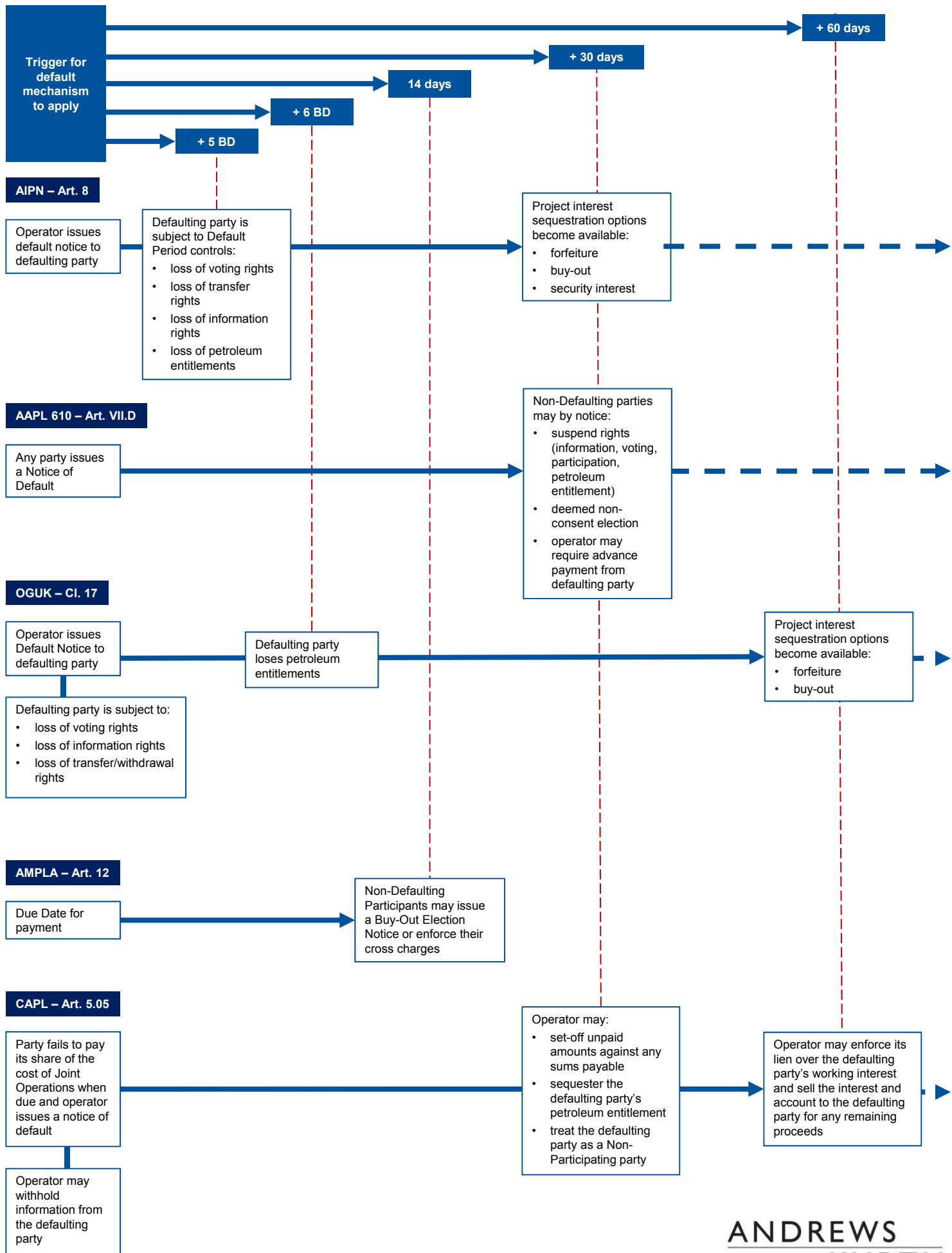
June 11, 2015
Houston, Texas

**An Uncomfortable Balancing Act: Managing JV
Relationships and JV Partner Default**

Joanna Kay

Peter Roberts

Default - Timescales



Collateralisation of the JOA

Peter Roberts

Managing Partner, London

This article examines the meaning of collateral support in the context of a JOA - where in the lifecycle of a typical JOA there might be a requirement for the provision of collateral support in respect of a party's obligations under the JOA and what form that collateral support might take.

Collateral support is a shorthand term used to describe the procurement by a party of some form of additional support for the satisfactory performance by that party of its obligations under a contract (which may be obligations of payment or of wider performance). That additional support is typically provided by a third party (which may or may not be related to the party required to procure the collateral support), although other forms of collateral support might be applied.

The application of collateral support (in whatever form it takes) in respect of a JOA is intended to allow the continued performance of the JOA by a party, despite the existence of financial difficulties which could inhibit the originally-intended manner of performance by that party.

1. The need for collateral support

At the heart of the JOA is the expectation that the parties will pay their participating interest based share of the costs of the joint operations (and of any exclusive operations to which they are separately party). Thus, that each party has money (or has ready access to money) will be a key consideration throughout the lifetime of the JOA.

The JOA will contain detailed mechanisms dealing with a party's payment default but concerns about the difficulty of recovering a debt from an already impecunious party, and concerns about the efficacy of the remedies suggested in the JOA for the loss of the defaulting party's interests, suggest that prevention would be very much preferable to cure.

That the JOA will recite various mechanisms for dealing with a party's payment failure should not be regarded as a substitute for doing the best that can be done to ensure the initial and ongoing creditworthiness of each party. Hence the interest of the parties in applying various collateral support provisions to the commitments of the parties under the JOA.

This hypothesis that collateral support is not needed because of the JOA's in-built payment default mechanisms is more tenable when the JOA and the concession are in their infancy, where optimism and the prospects for petroleum production and revenue returns are high, but as the JOA moves through its customary lifecycle, eventually towards governing the end of the useful life of the underlying assets, then an attitude which has a greater appreciation of the need for collateral support might be more appropriate. The obligations of the parties to make payments in respect of the JOA will vary over the lifetime of the underlying petroleum project, and from that analysis it will be apparent that the need for collateral support will be at its greatest at any time when the petroleum project is consuming cash, rather than when it is generating revenue.

None of the AAPL JOA, the AIPN JOA or the OGUK JOA prescribes a requirement for the provision of collateral support by the parties, although the OGUK JOA does require the parties to commit to an agreement which provides security for the eventual costs of decommissioning prior to the submission of a development plan in respect of a discovery.

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First appeared as part of the conference materials for the
2015 International Upstream Energy session

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