Default by a fellow Joint Venturer
Are you adequately protected?

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Abstract

Two aspects of default clauses are examined in this paper, both relating to the enforceability of default provisions under a Joint Venture Operating Agreement ("JOA").

Firstly, there are various options available to joint venturers drafting a JOA to mitigate the risk that a default clause may be held to be a penalty and, therefore, unenforceable or that the defaulting party may be entitled to claim relief against forfeiture of its interest.

Secondly, the default provisions in a JOA may create, under the Personal Property Securities Act 1999 ("PPSA"), a security interest in each party's interest in the JOA, in favour of the other parties. In order to ensure the default provisions are ultimately enforceable, it would be prudent for joint venturers to review their JOAs for any security interest arising from default clauses. Where necessary joint venturers should register financing statements in respect of those security interests and, if required, enter into appropriate priority arrangements with other holders of registered security interests.

Introduction

Joint Venture Operating Agreements invariably include default clauses to deal with a joint venturer defaulting on its obligations under the agreement. Joint venturers' primary concern is usually a default on contributions towards joint venture expenditure.

This paper looks at two enforceability aspects of the default clauses most commonly used to provide protection to non-defaulting joint venturers. In particular it considers:

- the options available to joint venturers to mitigate the risk that a default clause may be held to be a penalty and, therefore, unenforceable or that the defaulting party may be entitled to claim relief against forfeiture of its interest; and
- whether these default clauses create charges (now known as security interests) that should be registered under the PPSA.

Default by a Joint Venture party

The parties involved in any exploration project have an interest in ensuring that each party contributes its due share. Failure by one party to do so can put the project in jeopardy or place financial pressure on the remaining parties who may be required to make up the shortfall.

Normal remedies (such as damages, injunction and specific performance) are available in the appropriate situation to a joint venture party who suffers loss as the result of the actions of another party. However, they are often insufficient to compensate the non-defaulting parties who contribute the necessary funds to keep the project alive.

As a consequence, contractual remedies are built into a JOA that recognise the expense, timeframes and risk associated with exploration programmes.

Contractual default clauses in a JOA

There are six contractual devices commonly used to deal with the possibility of default by a joint venturer:

- forfeiture of the defaulting party's interest;
- abatement or dilution of the defaulting party's interest (also known as withering);
- rights of purchase by the other venturers of the defaulting party's interest;
- the loss or suspension of rights to take product;
- cross charges over each party's joint venture interest, given by each party in favour of the others. The cross charges grant rights exercisable by the non-defaulting parties; and
- liability for the defaulting party to pay interest and/or a premium on the shortfall.

More than one of these devices is generally present in any JOA. The default provisions apply where the party fails to meet a call or contribute to expenditure as required by the JOA. In addition a JOA generally provides that a party is in default if it fails to meet the requirements of the JOA regarding provision of security (usually required in connection with abandonment of operations).

Forfeiture

Under a typical forfeiture provision in a JOA, the defaulting party forfeits its interest in the joint venture, and the interests of the non-defaulting parties increase proportionately.

Dilution or withering

Dilution involves a reduction of the party's interest, typically either:

- based on an exponential formula by reference to the expenditure of one party as a percentage of the total expenditure of the joint venture; or
- less commonly, on a straight lines basis which stipulates a percentage decrease in interest for a fixed amount not contributed.

Right of purchase by the non-defaulting parties

This type of clause will generally provide for the establishment of a fair value of the defaulting party's interest and the right for the non-defaulting parties to buy out the defaulting party at that value less a discount.

Loss or suspension of rights to take product

Under this type of clause, a defaulting party loses its right to take product while it remains in default, and may ultimately lose its right to take product altogether.

Following a suspension of rights to take product, generally either:

- the non-defaulting parties are then able to satisfy any increased contributions resulting from the default out of the proceeds of sale of the defaulting party's share of product; or
- any purchaser of the defaulting party's share of product may be directed to make payment direct to the operator until the default is remedied.

Cross-charges

Sometimes, the joint venturers grant each other a charge over their respective interests as security for their obligations to contribute to joint venture expenditure. This is sometimes called a "lien", but is effectively a charge.

In the event of default, the non-defaulting parties become bound to contribute the shortfall but are secured by virtue of the cross charges. That enables a non-defaulting party to exercise rights as a secured creditor, such as appointing a receiver over the defaulting party's assets, and selling the joint venture interest.

Liability to pay interest and/or a premium on the shortfall

A defaulting party may be given the right to buy back in, or catch up on defaulted payments.

Generally the amount in default will attract interest payable at a margin above a benchmark (such as a bank bill rate). Alternatively, it may attract a fixed rate of interest.

In addition a premium may be payable by the defaulting party where it exercises a right to buy back into the joint venture following dilution or forfeiture of its interest.

Enforceability of clauses assigning the defaulting party's interest

It is well recognised that care must be taken when providing for potential forfeiture or dilution of the defaulting parties interest under the JOA. The parties may agree remedies which compensate for any damage caused to non-defaulting parties and return them to their original position. However, a clause which provides for complete forfeiture, or even dilution, of a defaulting party's interest will be unenforceable if it is interpreted by the courts to be a penalty and in certain situations a defaulting party may be able to claim relief from forfeiture of an interest under the equitable doctrine of relief.

Deemed withdrawal

A default clause resulting in forfeiture of a defaulting party's interest to the non-defaulting parties is, because of the enforceability issues identified above, commonly drafted as being a "deemed withdrawal" by the defaulting party. The provision is framed so that rather than the forfeiture operating as a result of the breach of a term of the JOA, it operates as a result of the decision by the defaulting joint venturer not to contribute, thereby constituting an election by the defaulting party that the consequences of the default mechanism should apply.

It is also usual that a default clause that includes a deemed withdrawal mechanism will include provision to the effect that:

- the parties acknowledge that the default provisions are necessary to ensure the permit is maintained in good standing and should not be construed as constituting a forfeiture or penalty; and
- that the assumption by the non-defaulting parties of the defaulting parties liabilities and obligations are good and valuable consideration for the exercise by the non-defaulting parties of their right to assume the defaulting parties interest in the JOA and the permit.

Right of purchase

A feature of JOAs in Australia and New Zealand is that to mitigate the risk of a default clause being held unenforceable, the clause will sometimes provide instead, a right of purchase to the non-defaulting parties whereby they may purchase the interest of the defaulting party at a value that recognises the contributions made by the non- defaulting

parties following the defaulting party failing to meet its payment obligations.

An example of the right of purchase on default can be seen in the Model Form International Operating Agreement (the "Model JOA") drafted by the Association of International Petroleum Negotiators ("AIPN"). Recognising that in Australia precedent exists supporting the view that a court might find a clause requiring forfeiture of a defaulting party's entire interest to be an unenforceable penalty the AIPN has, in its 2002 version of the Model JOA, included a "right of purchase" default clause as an alternative to the forfeiture clause included in previous drafts.

The "right of purchase" clause in the Model JOA has the following features:

- each party grants to the other parties an option to acquire all of its participating interest for an "Appraised Value" if it defaults and fails to remedy the default within 30 days;
- the right to acquire vests either with each non-defaulting party or with a majority of interest of the non-defaulting parties;
- the "Appraised Value" is established either by (1) the defaulting party accepting the value notified by the non-defaulting parties, or (2) by the defaulting party seeking expert determination of the value to be paid;
- if determined by an expert, the Appraised Value represents fair market value of the participating interest, less the total amount in default less costs associated with the determination and finally, less a discount being a percentage of the fair market value; and
- to further reduce the risk of the clause being interpreted as and unenforceable penalty, the buy-out consideration is payable in four equal instalments over an eighteen month period.

Dilution

A dilution or withering clause works on the same assumption as the right of purchase clause. That is that the defaulting party should retain some benefit for the contributions it has made to the joint operations before the default. The defaulting party retains a reduced interest, calculated by reference to its monetary contributions to joint operations, therefore, being less likely than an outright forfeiture clause to be interpreted as a penalty.

Hybrid of mechanisms

A further variation on the deemed withdrawal and right of purchase is for the two mechanisms to both be included in the JOA and for one or other to operate dependant on what stage of operations the joint venture is at when the default occurs. In this case the JOA will provide that:

- should default occur under an exploration or appraisal programme then the deemed withdrawal mechanism will apply; and
- should the default occur under a development or production work programme, the right of purchase mechanism will apply.

The basis of this approach is that in the case of an exploration joint venture which will be put in jeopardy by a default and cannot be financed except by the parties, the court is less likely to be sympathetic to the defaulting party in interpreting the deemed withdrawal clause. Conversely in the case of a development or production programme where its continuation may not be so financially threatened by a default, and a financial adjustment may be possible to account for the default, the court is likely to be more sympathetic to the defaulting party. [This approach is further justified by the fact that under a development or production programme the amount of any advance on which a defaulting party defaults is less likely to resemble the value of that party's participating interest in the joint venture.???]

A similar but distinguishable approach, taken in some JOAs, is for the assignment of the defaulting party's interest to take effect as a result of a deemed withdrawal but, if the default occurs during a development or production work programme, the defaulting party is entitled to some monetary consideration for its interest. This may be based on either:

- a proportion of the contributions made to joint operations by the defaulting party prior to the default; or
- the fair market value of the defaulting party's interest, less the default amount, and less a discount.

Suspension of rights while in default

Commonly, in addition to the devices mentioned above the defaulting party will also be subject to the suspension of most of its rights under the JOA as long as it remains in default.

The AIPN 2002 Model JOA provides an example of the extent to which a defaulting party's rights are restricted whilst in default. The defaulting party does not have the right to:

- call or attend Operating Committee or subcommittee meetings;
- vote on any matter before the Operating Committee or any subcommittee;
- access any data or information relating to any operations under the JOA;
- consent to or reject data trades, nor access any data received in such trades;
- transfer its participating interest (except to the non-defaulting parties in accordance with the default provisions);
- consent to or reject any transfer;
- receive its entitlement to petroleum;
- withdraw from the JOA; or

- take assignment of any portion of another party's participating interest if that party is in default or is withdrawing from the JOA.

The Personal Properties Securities Act 1999

The PPSA governs all security interests in personal property and creates one electronic register for these security interests. It replaces previous legislation providing for registration of charges, such as the Companies (Registration of Charges) Act 1993. The PPSA came into force in May 2002.

Most of the devices identified, earlier in this paper, as being used in default provisions provide for the non-defaulting parties to deal with the defaulting party's interest. For example:

- the defaulting party's interest in the joint venture is transferred to the other parties, or a third party;
- the other parties can sell the defaulting party's product and apply the proceeds towards amounts owed; or
- the other parties can make other decisions affecting the defaulting party's interest without reference to the defaulting party.

The devices also involve deemed assignment to the non-defaulting parties (or third parties) to a greater or lesser degree. This deemed assignment is usually backed up by the appointment of the other parties as the defaulting party's attorney to sign any necessary documentation.

In many cases, these default mechanisms may create a security interest over each party's interest in the joint venture, in favour of the other parties.

A security interest

The PPSA takes a "substance over form" approach to security interests. Section 17 of the PPSA defines the meaning of "security interest" as:

"(a) … an interest in personal property created or provided for by a transaction that in substance secures payment or performance of an obligation, without regard to –

i. the form of the transaction; and

ii. the identity of the person who has title to the collateral; ..."

A security interest will be created as long as there is an **interest** in **personal property**, created by a **transaction that in substance secures payment or performance of an obligation.**

A transaction that in substance secures payment or performance

This means that many transactions are now security interests, which previously would not have been considered to be charges. The definition of "security interest" captures many of the standard default mechanisms in JOAs. If one party is providing personal property to secure an obligation, a security interest exists.

For example, a forfeiture ('deemed withdrawal') default clause will provide that if a party fails to pay a call or advance in full, the non-defaulting parties can require that the defaulting party withdraw from the JOA. The defaulting party is then deemed to have transferred or forfeited its interest in the JV assets to the non-defaulting parties. The transfer usually includes the defaulting party's:

- interest in the permit;
- entitlement to petroleum;
- participating interest in joint property and joint operations of the JV; and
- all other rights, obligations or liabilities in connection with the JV.

The other types of default mechanisms mentioned above, have the potential to create an interest in property. The extent of the interests created will be determined by the wording and construction of the specific default clause.

Previously, default provisions in JOAs were generally not considered to require registration as charges under the old Companies Act provisions. This approach must change with the PPSA. It is now necessary to protect joint venture parties' interests, most commonly by registering a financing statement on the Personal Property Securities Register.

Personal property

"Personal property" is not comprehensively defined in the PPSA but is generally any property other than land, ships and fishing quota, and includes intangible property. Prior to extraction, minerals such as petroleum are an interest in land, and not governed by the PPSA. Once extracted, petroleum and other minerals are covered by the PPSA

An interest in a JV will normally include plant, machinery, and intangibles such as the permit and rights in the joint operations and joint property of the JV.

Is a Permit personal property?

Section 92 of the Crown Minerals Act 1991 states that a permit is neither real nor personal property. However, the holder of the permit may grant a charge over that permit as if it were personal property. The permit may only be transferred to the chargee to the extent that it could be transferred by the holder.

This suggests that the permit should be treated as personal property for the purposes of charging. If so, this would include registering any charge over the permit under the PPSA. The safest option is to register a financing statement in relation to the permit and interests arising from the permit.

The New Zealand courts may look at how other permits are treated, when deciding whether a permit under the Crown

Minerals Act should be treated as personal property. Various Canadian and American cases have considered whether permits, licences and quotas are personal property. A Canadian case looked at whether a milk quota was personal property in which a security interest could be taken under the Saskatchewan PPSA. The court held that even if the quota was not personal property, the additional rights of producing and marketing associated with the quota (in the JOA situation, the development rights) created rights of property.

Some of the leading New Zealand commentators on the PPSA take the view that an interest (i.e. a permit) that is transferable, even if subject to restrictions, and that has commercial value, is property for the purposes of the PPSA (Gedye et al, 2002).

Other personal property under a JOA

The permit is not the only property transferred under a forfeiture clause in a JOA. Many other rights and interests are independent of the permit. These will be personal property even if the permit is not. This is will include, for example:

- joint property such as the rig (if owned by the JV), particularly where the rig is moved from site to site;
- plant and equipment such as tools, vehicles and helicopters, and possibly pipelines;
- petroleum once it has been extracted;
- the right to carry out sole risk projects;
- the right to take part in decision making processes as to where, when and what to drill, abandonment, and the right to require the other joint venturers to contribute to costs of those operations;
- contractual rights with third parties, such as contracts to lease the rig, supply helicopters, supply works and services etc.

Where rigs are attached to the land, for example with an onshore site, general principles of land law apply, and they are likely to become part of the land. This may also be the case with offshore sites where a permanent rig is attached to the seabed.

Priorities between holders of security interests

The PPSA sets out a regime for determining priority between parties who have a security interest in the same collateral. As a general rule, the first person to register a financing statement in relation to collateral has priority over that collateral. Financing statements include a brief description of the collateral charged, so it will be possible to identify whether anyone else has a charge over a joint venture interest or joint venture property.

Each joint venture party should register a financing statement in relation to the other joint venturers' interests. If it does not, it will lose priority to any other creditor who has taken a charge over the joint venture interest. For example, a financier that has taken an all assets debenture (now known as a General Security Agreement) and registered a financing statement will have priority over an unregistered security interest created by the JOA.

In simple terms, it is a case of "first in, first served". The first person to register a financing statement under the PPSA in respect of collateral, has priority over all others.

If a joint venture party does not register a financing statement, it will still be able to enforce the security interest against the defaulting party. However, generally speaking, it will not be able to enforce it against another creditor with a charge over the joint venture interest, if that creditor has registered a financing statement. If two or more security interest have been granted, but no one has registered a financing statement, priority is given to the first to attach.

Even where the non-defaulting parties have registered a financing statement, the "first in, first served" rule may grant priority to another secured party. One situation would be where a JV party has already granted a security interest over its JV interest (for example, by granting a General Security Agreement in favour of its financier), and the secured party has registered a financing statement before the other JV parties register their financing statement. Priority could also be lost if a JV party contributes equipment to the JV, but that equipment is subject to a retention of title provision in favour of the original vendor, and the vendor has registered a financing statement. In each of these situations, it will be necessary to enter into priority arrangements with the other secured parties.

Previously, it was often assumed that the default mechanisms took priority over a financier with a charge over any joint venture interests. This is not the case under the PPSA. It is now necessary that:

- the joint venture parties' financing statement is registered prior to the financier's financing statement. This would not be possible, if for example, a joint venture party had granted a General Security Agreement before signing the JOA; or
- the joint venture parties and existing financiers enter into priority arrangements, recording that the JV default provisions take priority over the financiers;
- if is not sufficient to include a provision in the JOA itself that any security interest granted to a third party ranks behind the joint venturers' interest. The PPSA provides that a party can grant a security interest in its property, despite a prohibition on doing so contained in the security agreement. The secured party is, however, still entitled to treat the creation of a security interest as a default.

The joint venture parties should have equal priority between themselves as against a defaulting party. This can be achieved in several ways:

- a single financing statement can be registered against each joint venture party, showing all the other joint venturers as the secured party;
- the joint venture parties can enter into a deed of priority;
- for new JOAs, the JOA itself can state that all non-defaulting parties have equal priority as against the defaulting party.

Implications for banking covenants

The categorisation of the default mechanisms as security interests will impact on JV parties' financing arrangements. For example, loan agreements commonly include a negative pledge, prohibiting the grant of security interests over the borrower's assets. Joint venture parties should check their obligations under financing arrangements, and obtain the financier's consent where applicable.

The impact will depend on the wording of the loan agreements. Some loan agreements with petroleum exploration and production companies permit charges securing a default of obligations to an operator or a JV participant.

As noted above, JV parties should also ensure that the default provisions have priority over the financiers. It is likely that lenders will require some protection of their position, such as rights of non-disturbance and subrogation. The priority arrangements could, for example, be tripartite agreements recording that the non-defaulting parties must give the lender notice of the default, a stand down period to allow the lender to evaluate its position, and a chance to remedy before the non-defaulting parties take action. The lender may also want the right to refuse to remedy the default, and either sell the defaulting party's interest or wind up the JV and sell the JV assets.

Registering a financing statement on the Personal Property Securities Register

A security interest is protected by registering a financing statement on the Personal Properties Securities Register ("PPSR"). This is an electronic register and the registration process is reasonably straight forward and a minimal expense.

A financing statement sets out brief details of the party granting the charge, the secured party and the collateral being charged. It is not necessary to file a copy of the JOA.

A financing statement is valid for 5 years, after which it is automatically released unless extended prior to expiry. The registrar does not notify a secured party that the financing statement is about to expire, and there is no grace period. Joint venture parties will need to diarise extending their registrations in good time before expiry.

Possession of the collateral

This paper focuses on registering financing statements as the most common way for joint venture parties to perfect their security interests.

Under the PPSA, another way to perfect a security interest is for the secured party to take possession of the collateral:

- This must happen before a default occurs. Given the JV property is likely to be used for the JV operations, this is not a practical option for JV parties.
- Where a security interest is granted over an investment security, a person can take possession if the records maintained by the issuer record the interest of that person. Depending on the wording of a JOA, the parties' interest in the JV may be an investment security[1]. If so, it may not be necessary to register financing statements, if the JV records show that the parties each have a security interest over each party's JV interest. However, if the JOA provides that each party directly owns a share of the JV property and operations, and also provides for direct, individual rights to product, the JV interest is unlikely to be an investment security.

Jurisdictional issues

Petroleum joint ventures are frequently made up of parties and property spanning more than one jurisdiction. Jurisdictional issues can therefore arise as to whether New Zealand law and the PPSA applies to security interests.

The PPSA sets out an extensive (though not complete) series of rules as to when the PPSA will apply to issues such as:

- whether a security interest has been created;
- whether it has been properly registered; and
- the priorities between competing parties.

Jurisdictional issues can arise in three broad categories.

a. For minerals (including extracted petroleum and gas), the question of which country's laws apply can depend on where the minehead or wellhead is located. If the wellhead is located in New Zealand, and the security interest is created before the minerals are extracted, the PPSA will apply to security interests in those minerals. This would normally be the case for New Zealand JOAs. Offshore wellheads within New Zealand jurisdictional waters are subject to this rule. The PPSA also applies if the default mechanism includes the right to accounts receivable resulting from the sale of minerals;

[1] An investment security is defined as "a writing… that is recognised in the place in which it is issued or dealt with as evidencing a… right to participate, or other interest in property or an enterprise… and that in the ordinary course of business is transferred… by compliance with restrictions on transfer or withdrawal…" (PPSA s 16(1)). Depending on the wording, a JOA could grant a right to participate in the joint venture and the joint venture property, and would usually include restrictions of transfer and withdrawal.

b. For certain kinds of collateral, the location of the party granting the security interest determines which country's laws will apply. A company is located in its country of incorporation. So where a JV party is a New Zealand company, the PPSA will apply to security interests over:
   - equipment that is of a kind normally used in more than one jurisdiction. This may, for example, include an oil rig. It is not necessary for the equipment to actually be used in more than one jurisdiction;
   - a joint venture interest; and
   - other intangible property.

The rationale for grouping these kinds of collateral together is that they either do not have a physical location (such as intangible property) or their physical location is likely to change.

a. For goods (defined as tangible property, including plant and machinery, and extracted petroleum and minerals) and certain other kinds of collateral, the PPSA will apply if:
   - at the time the security interest attaches to the collateral, the collateral is located in New Zealand; or
   - at the time the security interest attaches, the collateral is situated outside New Zealand but the secured party knows that it is intended to move the collateral to New Zealand; or
   - the security agreement provides that New Zealand law is the law governing the transaction (assuming none of the previous jurisdictional rules apply).

These rules can change if the party granting the security interest changes its country of incorporation. They also change if the JV interest is transferred to a non-New Zealand company or a non-body corporate, or if collateral is brought into or moved out of New Zealand. If any of these happen, it will be necessary to reconsider jurisdictional issues.

Where one of the joint venture parties is located outside New Zealand and the other(s) is located in New Zealand, there is the potential for the laws of more than one jurisdiction to apply.

For example, if a JV party is an Australian company (even if it is operating through its New Zealand branch) and the others are New Zealand companies:

- the PPSA is likely to govern all security interests granted in the petroleum;
- the PPSA is likely to govern the security interest granted by the New Zealand company over its intangible property (e.g. contractual rights) , and may also apply to the New Zealand company's rights in the rig; and
- Australian law is likely to govern the security interest granted by the Australian company over its intangible property (e.g. contractual rights) , and may also apply to the Australian company's rights in the rig. The result may, in the end, be that if the property is located in New Zealand, then New Zealand law applies, and that it is necessary to register the security interest in a number of jurisdictions.

It is very likely, however, that there will be joint venture property in a New Zealand based petroleum joint venture that will be subject to the PPSA.

Any review of default clauses under a JOA should include a consideration of jurisdictional issues.

What should a Joint Venture party do?

Each joint venture party should:

- review its JOAs, as it is likely they will contain a default clause that creates a security interest;
- register a financing statement against each of its co-parties, in relation to each co-parties' joint venture interest. The financing statement should be in favour of all the other parties. It may be appropriate for the operator to organise registrations;
- review its financing documents, to see whether it is restricted from granting a security interest in favour of other joint venture parties;
- carry out a search of the Personal Property Securities Register, to see what financing statements have been registered against itself and the other joint venture parties. If a joint venture party is incorporated in another jurisdiction, searches will be necessary in that jurisdiction also;
- if necessary, enter into priority arrangements with any other registered secured party, to ensure the default provisions take precedence over other creditors' interests. Financiers are likely to require that any priority arrangements protect their position, for example by giving the financier an opportunity to remedy the default and setting out its rights if it does not wish to remedy;
- if necessary, enter priority arrangements with other joint venture parties; and
- consider jurisdictional issues.

Conclusions

Enforceability of default provisions

In order to mitigate the risk of a court finding for the defaulting party, concerning a default clause which assigns the defaulting party's interest to the non-defaulting parties, any clause providing for forfeiture of a defaulting party's interest under the JOA may be drafted as a "deemed withdrawal" by the defaulting party. Alternatives that provide more certainty in this respect are a default clause providing for dilution of the defaulting party's interest or a "right of purchase" to the non-defaulting parties of the defaulting party's interest. A further option for mitigating the enforceability risks of default clauses is to use a hybrid

of the deemed withdrawal and right of purchase mechanisms so that either one will operate depending on whether the default occurs under during an exploration or appraisal programme or during a development or production programme.

The PPSA

The default provisions in a JOA may create, under the PPSA, a security interest in each party's interest in the JOA, in favour of the other parties. It would be prudent for joint venturers to review their JOAs for any security interest arising from default clauses.

The security interests in JOA property will need to be perfected, most commonly by registering on the PPSR. Whilst it is inconclusive whether a petroleum permit itself is personal property, it would be prudent for joint venture parties register a financing statement in respect of the permit as well as the other personal property in a JOA. If a financing statement is not registered, the non-defaulting parties will rank behind any other creditors who have a charge over the defaulting party's interest in the joint venture, and who have registered their own financing statements. It may be necessary to enter into priority arrangements with any other registered secured party, to ensure the default provisions take precedence over other creditors' interests.

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