

Chapter 6

Default, Deadlock and Remedies

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[6.1] Introduction

Whatever the true nature of a joint venture (discussed elsewhere in this work¹), a properly drafted joint venture agreement will provide what is to occur when one joint venture participant is in default or where there is a breakdown in the joint enterprise. If the obligations of the parties can be worked out according to an agreement, there is less disruption to the joint undertaking and, one hopes, a lesser risk of litigation or arbitration arising out of the default. Large resource-based joint ventures involve considerable long-term planning, very close supervision and the contribution of enormous resources, not to mention expertise and finance. The parties are generally, therefore, interested in maintaining the level of each other's original commitment and penalising a joint venture participant who defaults in some aspect of the undertaking.

The most obvious form of default is failure to make a financial contribution to the joint venture as and when required. This would account for most events of default. There is also the somewhat difficult situation of breakdown through deadlock or impasse to be considered. Such an occurrence may constitute default by one joint venturer.

However, there are a number of common defaults that might be appropriately summarised as:

1. failure to participate appropriately in the undertaking, for example, by failing to attend meetings or provide information;
2. misusing assets of the joint venture in a way inimical to the undertaking, for example, by disclosing confidential information privy to the joint venture partners; and
3. rendering one's own ability to secure the obligations of the venture more difficult by charging one's assets without consent or by assigning an interest in the joint venture improperly.

1 See Chapters 1 and 4.

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