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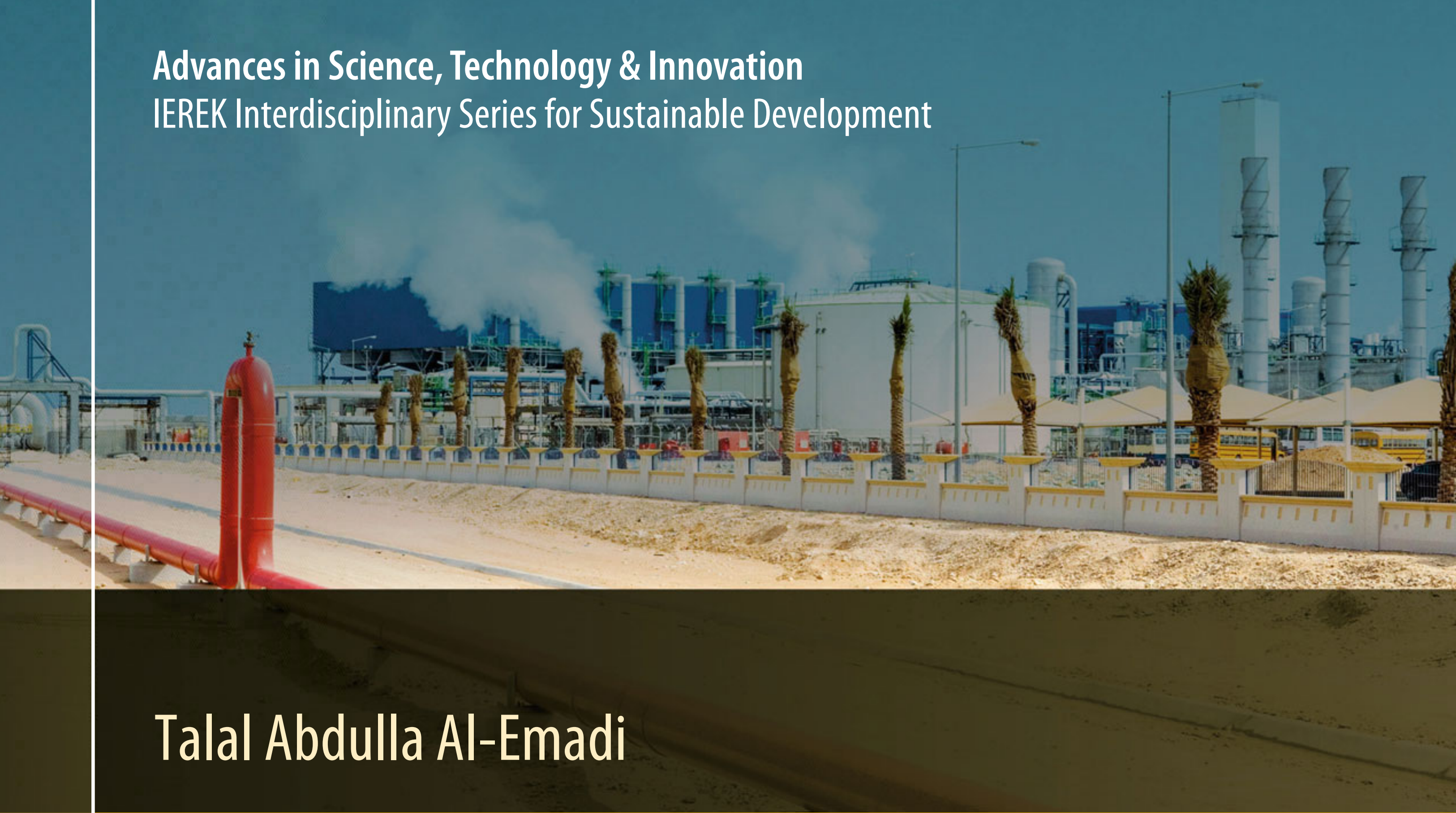

Talal Abdulla Al-Emadi

Joint Venture Agreements in the Qatari Gas Industry

A Theoretical and an Empirical Analysis

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“It’s less important to try to have the last word on a subject than the first word”

Abram Chayes (1922–2000)

(The late Felix Frankfurter Professor Emeritus at Harvard University Law School)

To my mother, Fatma, my wife, Reem, my daughter, Aya, the memory of my son, Essa, 2008–2013, my young son Ibrahim, my best friend Abdulla, my cousin Ibrahim, and the memory of my father, Abdulla, 1930–1975.

Foreword

The unincorporated joint venture has long been the preferred cooperative approach to upstream oil and gas projects. These agreements, in the form of what is commonly called a "joint operating agreement" (JOA), have become so widely utilised that we can safely say that they are part of the custom and practice of the upstream petroleum industry. They are less common when host governments are a party or the underlying party. Host governments tend to prefer concessions, production sharing contracts or service contracts, probably because they give governments the political advantage of being able to portray itself as the "supervisor" of the development of the nation's resources, rather than a co-operating party. Superimposed on these more common agreements may be joint venture arrangement in the form of a JOA between a national oil company and the other petroleum investors. But pure joint ventures are not common.

Dr. Al-Emadi has studied the unincorporated joint venture used in Qatar—a major producer of natural gas—gas that would be largely stranded if it were not for development of Liquefied Natural Gas (LNG) projects. The liquefaction part of LNG commerce is more "midstream" than upstream. In the petroleum industry midstream, a variety of cooperative venture agreements are used, including incorporated joint ventures, partnerships, limited partnerships, limited liability companies and unincorporated joint ventures. Qatar LNG projects operate under the unincorporated joint venture model.

Dr. Al-Emadi's book, which he originally prepared as a doctoral thesis at the University of Oxford, provides a comprehensive analysis of why Qatar follows the unincorporated joint venture model. The book should be of primary interest to academics who teach and write about petroleum business planning and strategy. But lawyers and negotiators who design and implement joint ventures will also find the book of interest, especially if they are representing investors in projects that will be conducted in an Islamic state, whether or not those projects involve petroleum development. A tenant of Islam is that cooperative business arrangements should be based upon risk and profit sharing, a common hallmark of unincorporated joint ventures.

As Dr. Al-Emadi indicates, Qatar's joint venture approach resulted from a deliberative decision-making and negotiation process between the government, represented by the national oil company, and petroleum investors. He considers and discusses a host of influences on this outcome, including ownership, location, culture, history, religion and technology transfer. His book is an important and insightful contribution to the literature of international business transactions.

Norman, USA

Owen L. Anderson
George Lynn Cross Research Professor
The University of Oklahoma College of Law

Dallas, USA

John S. Lowe
George W. Hutchison Professor of Energy Law
Southern Methodist University

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This book has been in the works for some time. It is a result of work done in three universities: Oxford, Harvard and Qatar universities. The idea of it hit me when I started reviewing Qatar's petroleum agreements at the Amiri Diwan, back in 1999. It became a Ph.D. proposal and then developed into a thesis, and after several years, I could transform it into a book. There are a number of people and institutions whose contributions to this book deserve acknowledgement.

In particular, I want to thank my wife, without her this work would not have seen the light. I thank my main doctoral thesis supervisor, Prof. Bettina Lange (Wolfson, Oxford and CSLS). I benefited from her continuous brilliance and support. I thank Prof. Ewan McKendrick (Lady Margaret Hall, Oxford), the Registrar of the University, for his support and mentorship.

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I conducted field studies and interviews in Doha, London and Boston, so I interviewed a number of officials without whom it would have been impossible to assemble the needed facts about Qatar's regime in the petroleum regulation, law and business, and economics arenas. Those were Robert Tuttle of Bloomberg Qatar; HE Abdulla Al-Atya, former Minister of Energy; Dr. Ibrahim Al-Ibrahim, former Vice Chairman of the former Rasgas (merged as Qatargas); Sultan Al-Abdulla of Al-Abdulla Law Offices; Salman Al-Ansari of Al-Ansari and Associates, Danni Kabani of Simmons and Simmons in Qatar; HE Yousif Kamal, former Minister of Finance, and many dignitaries at Qatar Petroleum, ExxonMobil, Shell and Squire Patton Boggs. I am very grateful to them for providing evidence to the interviews. I would like to thank them for their time to meet me, for their opened doors, prompted replies to emails and generosity in sending materials.

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I wish to thank the outstanding staff in the following libraries: Oxford's Bodleian, Oxford's Institute for Energy Studies, Harvard, University of London's SAS and SOAS, and Dundee.

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My dear friends Myrna El-Fakhry, Mayling Hung and Mehran Kamrava deserve most thanks for always being there.

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About the Author

Dr. Talal Abdulla Al-Emadi is the Oil and Gas Law Professor and the Founding Director of Qatar University (QU) Press. His broad academic interest is in International Economic Law. He focuses on how the law interacts with the important things in petroleum investment: not just profit, but trust and long-term relationships between Qatar and international oil and gas companies. He is a registered lawyer in the Qatari Bar. He was seconded from QU to the Amiri Diwan as a legal counsellor for the Minister of State for Council of Ministers Affairs. He holds a law doctorate from the University of Oxford and a law master's from Harvard University. He received his bachelor's in law from QU. He has served various national and international committees. He sits on Qatar National Committee for Climate Change and the Qatari National Committee for International Humanitarian Law. He is the President of International Law Association Qatari Branch and a member in the Georgetown Center for International and Regional Studies Program Committee, and he is the Founder of Oxford Alumni Branch in Qatar. He served HBKU Law School Establishment Committee in Qatar Foundation as a member. On an international level, he sits on Harvard University IGLP Academic Council, the Educational Advisory Board of the Association of International Petroleum Negotiators, and served the United States Department of Commerce International Legal Standards Advisory Group. He has published in leading law journals and led a QNRF's NPRP project which implemented TradeLab in Qatar. He has been consulted by international law firms, educational institutions and governments on subjects related to joint ventures, education reform, natural resources, environmental and investment laws.

Abbreviations

Notes on Abbreviations and Footnotes Format

This book follows Oxford Standard Citation of Legal Authorities (OSCOLA) spirit and thus makes use of further abbreviations that fit the dual motivations of shortening citations and being true to usages understood in the field. These include:

Organisations

GCC	The Co-operation Council for the Arab States of the Gulf
OAPEC	Organisation of Arab Petroleum Exporting Countries
OECD	The Organisation for Economic Co-operation and Development
OPEC	Organisation of Petroleum Exporting Countries

Journals (in Addition to Commonly-Understood Abbreviations)

JWIT	Journal of World Investment and Trade
OGEL	Oil, Gas and Energy Law Intelligence
TDM	Transnational Dispute Management
JWELB	World Energy Law and Business

Abbreviations Used in the Text (*As Acronyms Might Impede Readability, I Repeatedly Defined Them in My Examiners' Copies*)

Aramco	The Arabian American Oil Company
BOD	Board of Directors
ENI	Ente Nazionale Idrocarburi (the Italian National Oil Company)
IOC	International oil company
JOAs	Joint operating agreements
JVAs	Joint venture agreements
LLP	Limited liability partnership
NIOC	National Iranian Oil Company
NOC	National Oil Company
Pas	Participation agreements
PSAs	Production sharing agreements
PSCs	Pure service contracts
Qatargas	Qatar Liquefied Gas Company Ltd.
QP	Qatar Petroleum (the Qatari national oil company)
Rasgas	Ras Laffan Liquefied Natural Gas Company Ltd. (merged with Qatargas)
RSCs	Risk service contracts
SCs	Service contracts