

TREATY BETWEEN
THE GOVERNMENT OF AUSTRALIA
AND
THE GOVERNMENT OF THE DEMOCRATIC REPUBLIC OF
TIMOR-LESTE
ON
CERTAIN MARITIME ARRANGEMENTS IN THE TIMOR SEA

THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE (hereinafter each referred to as “Party” or both as “Parties”)

CONSCIOUS of their geographic proximity, friendship and developing economic relationship;

NOTING that the Parties have not yet delimited their maritime boundaries;

TAKING INTO ACCOUNT the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982 and, in particular, Articles 74 and 83 which provide that the delimitation of the exclusive economic zone and continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law in order to achieve an equitable solution;

FURTHER TAKING INTO ACCOUNT, in the absence of delimitation, the obligation for States to make every effort in a spirit of understanding and cooperation to enter into provisional arrangements of a practical nature which are without prejudice to the final determination;

RECOGNISING the benefits that will flow to both Australia and Timor-Leste by providing a long-term basis for petroleum activities in the area of seabed between Australia and Timor-Leste;

EMPHASISING the importance of developing and managing the living and non-living resources of the Timor Sea in an economically and environmentally sustainable manner, and the importance of promoting investment and long-term development in Australia and Timor-Leste;

CONVINCED that the long-term development of the resources, in accordance with this Treaty, the Timor Sea Treaty and the Sunrise IUA will provide a firm foundation for continuing and strengthening the friendly relations between Australia and Timor-Leste;

FULLY COMMITTED to maintaining, renewing and further strengthening the mutual respect, friendship and cooperation between Australia and Timor-Leste;

MINDFUL of the interests which Australia and Timor-Leste share as immediate neighbours and in a spirit of cooperation, friendship and goodwill; and

CONVINCED that this Treaty will contribute to the strengthening of relations between the two countries;

AGREE as follows:

Article 1 Definitions

For the purposes of this Treaty:

1. 'AUD' means the Australian Dollar;
2. 'JPDA' means the Joint Petroleum Development Area established by Article 3 of the Timor Sea Treaty;
3. 'LIBOR' means the British Bankers' Association fixing of the one (1) month London Interbank Offer Rate for USD;
4. 'period of this Treaty' means the period of the duration of this Treaty referred to in Article 12;
5. 'petroleum' means:
 - (a) any naturally occurring hydrocarbon, whether in a gaseous, liquid or solid state;
 - (b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or
 - (c) any naturally occurring mixture of one or more hydrocarbons, whether in a gaseous, liquid or solid state, as well as other substances produced in association with such hydrocarbons;including any petroleum as defined by sub-paragraphs (a), (b) or (c) of this paragraph that has been returned to a natural reservoir;
6. 'petroleum activities' means all activities undertaken to produce petroleum;
7. 'quarter' means the three months ending March, June, September and December;
8. 'Sunrise IUA' means the Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste relating to the Unitisation of the Sunrise and Troubadour Fields, done at Dili on 6 March 2003;
9. 'the 1982 Convention' means the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982;
10. 'Timor Sea Treaty' means the Timor Sea Treaty between the Government of East Timor and the Government of Australia, done at Dili on 20 May 2002;
11. 'Unit Area' means the area described in Annex I of the Sunrise IUA;

12. ‘Upstream’ means the petroleum activities and facilities prior to the ‘valuation point’ as defined in the Sunrise IUA;

13. ‘USD’ means the United States Dollar; and

14. Unless the context otherwise requires, terms which are not defined in this Treaty, but that are defined in the Timor Sea Treaty or the Sunrise IUA, shall have the same meaning in this Treaty as in the Timor Sea Treaty or the Sunrise IUA .

Article 2 Without Prejudice

1. Nothing contained in this Treaty shall be interpreted as:

- (a) prejudicing or affecting Timor-Leste’s or Australia’s legal position on, or legal rights relating to, the delimitation of their respective maritime boundaries;
- (b) a renunciation of any right or claim relating to the whole or any part of the Timor Sea; or
- (c) recognition or affirmation of any right or claim of the other Party to the whole or any part of the Timor Sea.

2. No act or activities taking place as a result of, and no law entering into force by virtue of, this Treaty or the operation thereof, may be relied upon as a basis for asserting, supporting, denying or furthering the legal position of either Party with respect to maritime boundary claims, jurisdiction or rights concerning the whole or any part of the Timor Sea.

Article 3 Duration of the Timor Sea Treaty

The text of Article 22 of the Timor Sea Treaty relating to the duration of that Treaty is replaced by the following:

“This Treaty shall be in force for the duration of the Treaty between the Government of Australia and the Government of the Democratic Republic of Timor-Leste on Certain Maritime Arrangements in the Timor Sea. This Treaty may be renewed by agreement between Australia and East Timor. Petroleum activities of limited liability corporations or other limited liability entities entered into under the terms of the Treaty shall continue even if the Treaty is no longer in force under conditions equivalent to those in place under the Treaty.”

Article 4

Moratorium

1. Neither Australia nor Timor-Leste shall assert, pursue or further by any means in relation to the other Party its claims to sovereign rights and jurisdiction and maritime boundaries for the period of this Treaty.
2. Paragraph 1 of this Article does not prevent a Party from continuing activities (including the regulation and authorisation of existing and new activities) in areas in which its domestic legislation on 19 May 2002 authorised the granting of permission for conducting activities in relation to petroleum or other resources of the seabed and subsoil.
3. Notwithstanding paragraph 2 of this Article, the JPDA will continue to be governed by the terms of the Timor Sea Treaty and associated instruments.
4. Notwithstanding any other bilateral or multilateral agreement binding on the Parties, or any declaration made by either Party pursuant to any such agreement, neither Party shall commence or pursue any proceedings against the other Party before any court, tribunal or other dispute settlement mechanism that would raise or result in, either directly or indirectly, issues or findings of relevance to maritime boundaries or delimitation in the Timor Sea.
5. Any court, tribunal or other dispute settlement body hearing proceedings involving the Parties shall not consider, make comment on, nor make findings that would raise or result in, either directly or indirectly, issues or findings of relevance to maritime boundaries or delimitation in the Timor Sea. Any such comment or finding shall be of no effect, and shall not be relied upon, or cited, by the Parties at any time.
6. Neither Party shall raise or pursue in any international organisation matters that are, directly or indirectly, relevant to maritime boundaries or delimitation in the Timor Sea.
7. The Parties shall not be under an obligation to negotiate permanent maritime boundaries for the period of this Treaty.

Article 5

Division of Revenues from the Unit Area

1. The Parties shall share equally revenue derived directly from the production of that petroleum lying within the Unit Area in so far as the revenue relates to the upstream exploitation of that petroleum.
2. The value of petroleum upstream shall be determined on the basis of arm's length principles.

3. The Australian revenue component means taxation revenue collected from:
- (a) the petroleum resource rent tax;
 - (b) company tax (including capital gains tax); and
 - (c) first tranche petroleum and profit petroleum pursuant to the Timor Sea Treaty;
- or subsequent taxes of a similar nature.
4. The Australian revenue component shall be determined as follows:
- (a) Revenue relating to the petroleum resource rent tax is the actual revenue collected each quarter adjusted:
 - (i) to include expenditures related to the petroleum activities undertaken within the Unit Area transferred out of this project and to exclude expenditures not related to the petroleum activities undertaken within the Unit Area transferred into this project; and
 - (ii) in the anticipated last 5 years of the project's life, to include estimated closing down costs (subject to reconciliation against actual closing down costs once the project has closed down).
 - (b) Revenue relating to company tax is the actual revenue collected each quarter adjusted to determine the company tax position of the entity's upstream operations relating to the petroleum activities undertaken within the Unit Area.
 - (c) The adjustment referred to in sub-paragraph (b) of this paragraph is based on:
 - (i) allocating direct revenues and direct deductible non-interest expenses between the upstream operations in the Unit Area and other operations of the entity;
 - (ii) allocating indirect revenues and indirect deductible non-interest expenses between the upstream operations in the Unit Area and the other operations of the entity in the same proportions as direct revenues and direct deductible expenses respectively; and
 - (iii) allocating deductible interest expenses between the upstream operations in the Unit Area and the other operations of the entity in the same proportion as the final allocation of deductible non-interest expenses.
 - (d) Revenue relating to first tranche petroleum and profit petroleum is the actual revenue collected each quarter.

5. The Timor-Leste revenue component means taxation revenue collected from first tranche petroleum, profit petroleum and all profit-based income taxes calculated and levied by annual assessment pursuant to the Timor Sea Treaty, or subsequent taxes of a similar nature, but excludes Value Added Tax or income tax withheld monthly or similar taxes, or subsequent taxes of a similar nature.

6. The Timor-Leste revenue component shall be determined based on actual revenue collected each quarter.

7. Each Party shall notify the other Party of the revenue amount (in domestic currency terms) relating to the quarter on the first working day in both Australia and Timor-Leste on or after 90 days following the end of that quarter.

8. Australia's revenue amount in USD terms shall be:

- (a) determined on the first business day in both Sydney and Dili on or after 20 days following the notification referred to in paragraph 7 of this Article; and
- (b) based on the simple average of the USD/AUD exchange rate published by the Reserve Bank of Australia at 4.00 pm (Australian Eastern Standard Time) on that day, the two preceding days, and the two subsequent days.

9. Australia shall make a payment in USD to Timor-Leste equivalent to half the aggregate of the Australian revenue component (in USD terms) and the Timor-Leste revenue component, less the Timor-Leste revenue component (in USD terms), on the first business day in both Sydney and Dili on or after 30 days following notification referred to in paragraph 7 of this Article.

10. In the event that Timor-Leste's revenue component exceeds Australia's revenue component in USD terms in a particular quarter, Timor-Leste shall not make a payment to Australia, and subsequent quarterly payments by Australia to Timor-Leste shall be adjusted to take account of the earlier payment not made by Timor-Leste.

11. Australia and Timor-Leste shall inform each other expeditiously of changes in their respective taxation policies and laws that may impact on the revenue derived directly from the production of petroleum in the Unit Area. Where one Party notifies the other that it considers that a change in the taxation laws of the other Party is likely to have a serious impact on the revenue to be received by the first Party:

- (a) the Parties shall, as a matter of urgency, consult with a view to resolving the matter; and
- (b) where the Parties are unable to resolve the matter pursuant to subparagraph (a) of this paragraph within a reasonable period, the matter shall be referred immediately to the Maritime Commission established in Article 9.

12. The Parties agree that during the period of this Treaty, the totality of financial payments from one Party to another concerning or relating to the exploration and exploitation of maritime areas between Australia and Timor-Leste are defined by the treaties and agreements referred to in paragraph 1 of Article 7 and such agreed associated documentation relating to those treaties and agreements that exists at the time of the entry into force of this Treaty, and neither Party shall seek additional payments.

13. The Parties shall establish procedures for the implementation of paragraphs 1 to 10 of this Article.

Article 6 Assessor

1. Either Party may request the appointment of an assessor to review adjustments used to calculate any one or more of the revenues referred to in paragraphs 3 and 5 of Article 5.

2. The Parties shall, within 30 days of a request being made to appoint an assessor, seek to reach agreement on the appointment of such an assessor. If, within this period, no agreement has been reached, the procedures for appointment specified in Annex I shall be followed.

3. The assessor shall act in accordance with the terms of Annex I.

4. The assessor's conclusions shall be implemented by the Parties unless the Parties agree otherwise.

5. Where adjustments are made to previous payments as the result of a review by an assessor, interest will be added, calculated as follows:

$D/360 \times \text{LIBOR} \times A$

where:

A is the amount of the adjustment;

D is the difference in the number of days between the payment date referred to in paragraph 9 of Article 5 and the payment of A; and

LIBOR is determined on the payment date referred to in paragraph 9 of Article 5.

Article 7
Petroleum resources

1. The applicable obligations and rights as between Australia and Timor-Leste governing the exploration and exploitation of petroleum resources during the period of this Treaty are those contained in:

- (a) this Treaty;
- (b) the Timor Sea Treaty;
- (c) the Sunrise IUA; and
- (d) any future agreement between Australia and Timor-Leste as referred to in Article 9 of the Timor Sea Treaty.

2. Except as otherwise provided for in this Treaty, nothing contained in this Treaty, and no actions taken pursuant to it, shall be interpreted as amending or revoking any terms of the Timor Sea Treaty or the Sunrise IUA.

Article 8
Water column jurisdiction

1. For the period of this Treaty:

- (a) Australia will continue to exercise jurisdiction in relation to the water column, and sovereign rights over the resources of the water column, south of the line described in Annex II;
- (b) Timor-Leste will continue to exercise jurisdiction in relation to the water column, and sovereign rights over the resources of the water column, north of the line described in Annex II; and
- (c) the jurisdiction referred to in sub-paragraph (b) of this paragraph shall be exercised in a manner that does not unduly inhibit petroleum activities within the JPDA.

2. Where the same stock or stocks of associated species straddle the line described in Annex II, Timor-Leste and Australia shall seek, either directly or through appropriate subregional or regional fisheries management organisations, to agree upon the measures necessary to co-ordinate and ensure the conservation and development of such stocks.

3. Timor-Leste and Australia shall make every effort to pursue cooperation in relation to highly migratory fish stocks, as defined in Annex 1 to the 1982 Convention, either

directly or through appropriate subregional or regional fisheries management organisations, to ensure effective conservation and management of such stocks.

Article 9 **Timor-Leste/Australia Maritime Commission**

1. There is hereby established a Timor-Leste/Australia Maritime Commission (“Commission”), which shall constitute a focal point for bilateral consultations with regard to maritime matters of interest to the Parties.
2. The Commission shall comprise one Minister each appointed by the Parties, or such other representative of the Governments of Australia and Timor-Leste as appointed respectively by the Parties.
3. The Commission shall:
 - (a) review the status of maritime boundary arrangements;
 - (b) consult on maritime security, including the security of petroleum facilities and infrastructures;
 - (c) consult on issues relating to the marine environment and its protection;
 - (d) consult on the management of natural resources (renewable and non-renewable), and promote sustainable management strategies; and
 - (e) consult on other maritime matters as appropriate as agreed by the Parties.
4. The Commission shall meet at least annually.
5. The proceedings in the Commission shall be without prejudice to the contents of this Treaty, and of any legislation, acts and activities thereunder.

Article 10 **Re-apportionment of unit petroleum under the Sunrise IUA**

Notwithstanding Article 8 of the Sunrise IUA, the Parties agree that there shall be no re-determination of the apportionment ratio referred to in that article during the period of this Treaty.

Article 11
Dispute Settlement

Any disputes about the interpretation or application of this Treaty shall be settled by consultation or negotiation.

Article 12
Period of this Treaty

1. Subject to paragraphs 2, 3 and 4 of this Article, this Treaty shall remain in force until the date 50 years after its entry into force, or until the date five years after the exploitation of the Unit Area ceases, whichever occurs earlier.

2. If:

- (a) a development plan for the Unit Area has not been approved in accordance with paragraph 1 of Article 12 of the Sunrise IUA within six years after the date of entry into force of this Treaty; or
- (b) production of petroleum from the Unit Area has not commenced within ten years after the date of entry into force of this Treaty;

either Party may notify the other Party in writing that it wishes to terminate this Treaty, in which case the Treaty shall cease to be in force three calendar months after such notice is given.

3. Should petroleum production take place in the Unit Area subsequent to the termination of this Treaty pursuant to paragraph 2 of this Article, all the terms of this Treaty shall come back into force and operate from the date of commencement of production.

4. The following provisions of this Treaty shall survive termination of this Treaty, and the Parties shall continue to be bound by them after termination:

- (a) Article 2;
- (b) the second sentence of paragraph 5 of Article 4;
- (c) paragraph 3 of this Article; and
- (d) this paragraph.

5. The period of this Treaty referred to in paragraph 1 of this Article may be extended by agreement in writing between the Parties.

Article 13
Entry into Force

This Treaty shall enter into force on the day on which the Government of Australia and the Government of the Democratic Republic of Timor-Leste have notified each other, in writing, that their respective requirements for the entry into force of this Treaty have been complied with.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Treaty.

DONE at Sydney, on this twelfth day of January, Two thousand and six.

**For the Government of
Australia**

**For the Government of the Democratic
Republic of Timor-Leste**

Hon. Alexander Downer
Minister for Foreign Affairs

José Ramos-Horta
Senior Minister and
Minister for Foreign Affairs and
Cooperation

Annex I

Assessment Procedure

1. If no agreement is reached on the appointment of an assessor within the period specified in Article 6, either Party may request the Secretary-General of the International Centre for the Settlement of Investment Disputes to appoint the assessor.
2. The assessor shall have qualifications relevant to the matter to be assessed.
3. The assessor's conclusions shall:
 - (a) be provided to the Parties within a period of three months from the date of appointment;
 - (b) be in writing and accompanied by reasons;
 - (c) be confidential to the Parties; and
 - (d) not be disclosed by a Party to any third party or publicly without the written authorisation of the other Party.
4. The assessor shall establish his or her procedures, although:
 - (a) the assessor shall only meet with a Party jointly with the other Party; and
 - (b) all communications between a Party and the assessor outside meetings shall be conducted in writing and shall be copied to the other Party.
5. Subject to national laws and policies, the Parties shall provide all relevant information to enable the assessor to carry out his or her assessment.
6. The fees and costs of the assessor shall be shared equally between the Parties.
7. Each Party shall bear its own costs of the assessment procedure.
8. The Parties shall require the assessor and any staff engaged by the assessor to provide a formal undertaking to safeguard the confidentiality of the assessment, including any information supplied to the assessor or any staff engaged by the assessor.

Annex II

Line Referred to in Article 8

Where for the purposes of this Treaty it is necessary to determine the position on the surface of the Earth of a point, line or area, that position shall be determined by reference to the World Geodetic System 84 (WGS 84), a spheroid which has its centre at the centre of the Earth and a major (equatorial) radius of 6378137 metres and a flattening of 100/29825.7223563.

The line referred to in Article 8 of this Treaty is a line:

- (a) commencing at the point of Latitude 11° 20' 02.9" South, Longitude 126° 31' 58.4" East;
- (b) running thence north-easterly along the geodesic to the point of Latitude 11° 19' 40.9" South, Longitude 126° 47' 08.4" East;
- (c) thence north-easterly along the geodesic to the point of Latitude 11° 17' 30.9" South, Longitude 126° 57' 11.4" East;
- (d) thence north-easterly along the geodesic to the point of Latitude 11° 17' 24.9" South, Longitude 126° 58' 17.4" East;
- (e) thence north-easterly along the geodesic to the point of Latitude 11° 14' 18.9" South, Longitude 127° 31' 37.4" East;
- (f) thence north-easterly along the geodesic to the point of Latitude 10° 55' 20.8" South, Longitude 127° 47' 08.4" East;
- (g) thence north-easterly along the geodesic to the point of Latitude 10° 53' 36.8" South, Longitude 127° 48' 49.4" East;
- (h) thence north-easterly along the geodesic to the point of Latitude 10° 43' 37.8" South, Longitude 127° 59' 20.4" East;
- (i) thence north-easterly along the geodesic to the point of Latitude 10° 29' 11.8" South, Longitude 128° 12' 28.4" East, where it terminates.