
Timor-Leste Position Paper - The Future of the TSDA

Purpose

This paper has been prepared by the Timor-Leste Government to facilitate discussions in relation to the future status of the Timor Sea Designated Authority (TSDA) as per the Timor Sea Treaty.

Background

By Third Party Note on 31 March 2006, the Governments of Timor-Leste and Australia extended the period designating the TSDA until 2 April 2007 in accordance with Article 6(b)(i) below.

A small study group, nominated by the Minister of Natural Resources, Minerals & Energy Policy was placed with the task to achieve the objectives of the schedule and the restructure of the petroleum sector.

Objective of the Timor-Leste Government

The intention of the Timor-Leste Government is to leave the TST whole although keeping in mind that the TSDA will evolve from being an international organisation to an entity of the Timor-Leste national administration.

Article 6(b) of the Timor Sea Treaty (TST) provides:

Designated Authority:

- i. *For the first three years after this Treaty enters into force, or for a different period of time if agreed to jointly by East Timor and Australia, the Joint Commission shall designate the Designated Authority.*
- ii. *After the period specified in sub-paragraph (i), the Designated Authority shall be the East Timor Government Ministry responsible for petroleum activities or, if so decided by the Ministry, an East Timor statutory authority¹.*

Despite the importance of this change in nature of the Designated Authority, the TST is silent on the due adaptation of the Joint Commission powers over the TSDA.

Due consideration was given to the admissibility of the exercise of some of the Joint Commission's powers over the TSDA under Timor-Leste law and our Constitution.

¹ Note that certain provisions in the TST expire with the end of the TSDA. That is, Article 6(b)(iii); (vii); and (viii).

We have been advised that the TST is not unconstitutional to the extent that it does not breach principles of national independence, autonomy of our country's administration and sovereignty.

TSDA as an Instituto Público

As a result of the study of the oil and gas sector in Timor-Leste, a decision has been made to establish a new institutional model that satisfies both the National Development Plan, and all perceived and anticipated constraints of the petroleum sector in the country. In particular, the need to implement a national regulatory system, to meet the requirements and the development not only of Timor-Leste's resources (exclusive and shared) but also, the development of qualified human resources. Further, the study also considered the institutional changes required under the TST.

The new institutional model establishes a National Petroleum Regulatory Authority (NPRA) which will be responsible for administering and day-to day management of both the Joint Petroleum Development Area (JPDA) and the Timor-Leste exclusive area. Under Timor-Leste administrative law, this NPRA is known as an instituto público (the Portuguese equivalent to a statutory corporation/authority).

Generally, institutos públicos have the following characteristics:

- public corporation of an institutional kind
- juridical personality
- administrative and financial autonomy (although can have use of the States budget)
- created by Decree-law
- comprised of an Administrative Council and a single auditor
- the respective President(s)/Chairperson(s) is simultaneously controlled by the instituto público and the State (idea of Corporate governance)
- generally part of the public law (and as such a government body)
- employment and personnel are not strictly subject to the public office regime
- property does not belong exclusively to the State

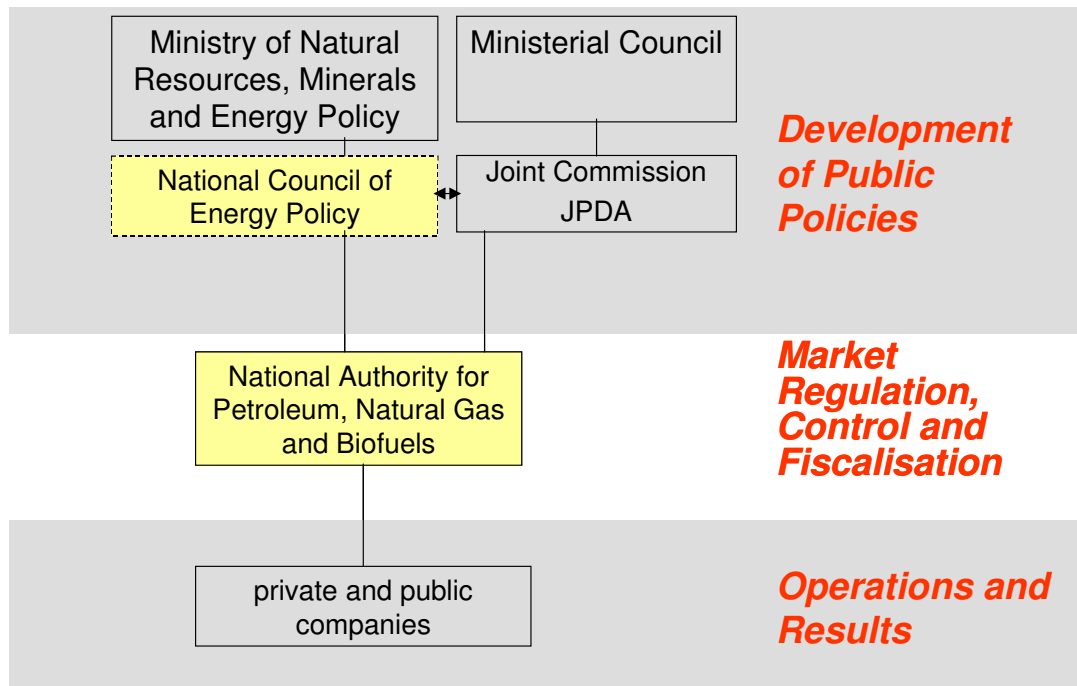
The NPRA is an administrative type instituto público (known as serviços personalizados) as opposed to one set up for social or cultural purposes or for the purpose of carrying out administration of a foundation/society.

The New Institutional Model

The new institutional model creates an independent fully integrated regulatory agency, responsible for onshore, offshore, upstream and downstream activities and implementation of oil & gas policies across the petroleum sector,

This model ensures that policy development, including long term energy planning for the country is at a Ministerial level (the National Council for Energy Policy) while the

NPRA implements policies and oversees all relevant economic agents in the market, as well as being responsible for securing government-take from PSCs, licences and other authorisations.



The National Council for Energy

This Consultative Council will consist of a number of members from the Timor-Leste Government and from civil society. It will have an important role developing and ensuring sustainability of energy resources in Timor-Leste. It will also oversee the NPRA in much the same way the Joint Commission has with respect to the JPDA.

The NPRA

The National Regulatory Authority for Petroleum, Natural Gas and Bio-fuels is designed for and expected to take over all duties and responsibilities of the TSDA without discontinuity. It will also embrace all regulatory activities currently held by the Ministry of Natural Resources, Minerals & Energy Policy for onshore and offshore exclusive areas.

(a) New Organisation Structure

The NPRA is comprised of an Administrative Council and a single auditor.

The Administrative Council

The Administrative Council consists of a President, and two other members, all appointed for a renewable four (4) year term, by the Minister for Natural Resources,

Minerals and Energy Policy.

These Council members are also the Directors of the NPRA with the President being the Chief Executive Director who employs the number of staff it considers necessary to assist in the performance of its functions and the exercise of its powers.

Council members cannot have any financial interests or holdings in undertakings in the regulated sector while they are in office and for the period of one year after they cease to be members. Further, Council members cannot provide any direct or indirect service to any undertakings in the regulated sector for the period of one year after the end of their terms of office.

The Council is responsible for the administration of services of the NPRA as well as the management and financial administration of the NPRA, ensuring alignment of operations with the specified delegation and the priorities of the Minister.

Single Auditor

The Single Auditor is responsible for ensuring financial and legal compliance of the NPRA.

The Administrative Council will facilitate the Single Auditor to perform its functions, which generally include examination of all services and financial records of NPRA together with the internal control systems; preparation and submission of individual financial and compliance reports; and monitoring the financial and patrimonial management of the NPRA. The Single Auditor has rights to access all information and any clarifications s/he seeks from the NPRA.

The appointment of the Single Auditor is made jointly by the Minister of Natural Resources, Minerals and Energy Policy and the Minister of Planning and Finance for a renewable three (3) year term.

(b) Regulatory Activities

The NPRA's principal duties are of a regulatory, administrative and supervisory nature and cover both the Timor-Leste exclusive area and the JPDA. Its powers and functions extend to control of all agents involved in the downstream business as well as regulating and authorising commercialisation of any activity concerning petroleum, natural gas, their products and bio-fuels.

Some of its principal functions include:

- Those listed under Annex C of the TST;
- Implementing the national policy on energy in so far as it relates to petroleum, natural gas, their products and bio-fuels;
- Awarding PSCs, Licenses and other authorisations (however, in relation to JPDA, Joint Commission approval required before award) ;
- Controlling the execution of geological, geochemical and geophysical services

- applied to oil/gas prospecting;
- Issuing notices for acreage release and supervising the performance thereof in the Timor-Leste exclusive area and JPDA;
 - Authorising downstream activities in accordance with applicable laws and regulations within the Timor-Leste exclusive area;
 - Establishing the criteria for the calculation of tariffs for transport of oil or natural gas by pipeline;
 - Imposing fines and sanctions according to the applicable laws and regulations and administration of these fines;
 - Regulating and controlling all information and technical data concerning the activities to be regulated;
 - Regulating, authorising and supervising any activity related to the national fuel supply, including fuel stock and bio-diesel;
 - Quality control of petroleum, natural gas, their products and bio-fuels;
 - Collecting and disseminating information regarding the national petroleum and natural gas reserves of the Timor-Leste exclusive areas and the JPDA.

Joint Commission Powers and Functions

The powers and functions of the Joint Commission as per Article 6(c) and Annex D of the TST will continue once the TSDA forms part of the NPRA.

As foreseen in the model, in so far as anything relates to the JPDA, the NPRA will continue to submit JPDA budgets and other documents presently requiring approval from the Joint Commission under the TST and PMC.

The only function currently being exercised by the Joint Commission that is not compatible with Timor-Leste law and will not remain after the creation of the NPRA, is its tacit ability to approve the name of the Chief Executive Officer, which privilege will reside with the Timor-Leste Government. Since this function is not specifically stated in the Timor Sea Treaty, but has rather, evolved with practice, we believe this should not be an obstacle.

Income

The revenues to the NPRA will include:

- (a) The sums in respect of the tariffs payable for the provision of services, within the ambit of its powers and duties;
- (b) The sums with regard to any applications for Authorisations, certificates, approvals, Licences granted in the exercise of the NPRA's powers;
- (c) The proceeds of fines imposed for breaches of the laws, regulations and technical requirements applicable to the regulated sector;
- (d) Budgetary allocations by the Timor-Leste Government;
- (e) Any other income arising from its activity, or which belongs to it by law, internal regulation or contract. For example, contract service fees.

Budget Management

As mentioned above, the NPRA will continue to submit JPDA related budgets to the Joint Commission, for its approval. The National Council for Energy Policy (or the Consultative Council) will consider the NPRA consolidated budget only after Joint Commission approval of the JPDA budget.

Segregation of expenses, costs and budgets under the new model will be accomplished by application of allocation and time writing accounting procedures. The use of this improved accounting system will allow allocation of expenses and revenues by project or Contract Area contributing to good governance and finance transparency of the NPRA operations thereby giving additional comfort to the Joint Commissioners.

The NPRA will continue to distribute Petroleum proceeds from the JPDA as prescribed under the TST.

Property

NPRA's property shall comprise all the assets and all technical data of the TSDA together with any other transfer of property by the Public Administration agencies, particularly the Ministry of Natural Resources, Minerals and Energy Policy.

Preservation of certain Petroleum rights

NPRA will be the new contracting party in all PSCs (that is, JPDA and Timor Leste exclusive areas). Any PSCs, Licenses or authorisations entered into by the NPRA, will not invalidate the acts done by or affect third party rights acquired pursuant to PSCs made with the TSDA and the Ministry of Natural Resources, Minerals and Energy Policy, in accordance with the laws in force at the time.

Status and Timeline

Our Government is committed to work towards meeting all necessary legislative requirements for creation and implementation of the NPRA by 1 April 2007.

Currently, the legislative package necessary to implement the new institutional model is under multilateral consultations and shall be submitted to the Council of Ministers for approval during the first quarter of current year.

In order to achieve this tight deadline, we will need to discuss any outstanding issues before or at the next Joint Commission meeting. We also need to understand if there are any legislative requirements that need to be fulfilled by Australia in order to implement these requirements under the Treaty.

Dili, 7 February 2007