

## **MEMORANDUM OF UNDERSTANDING**

**The signatories below confirm that the ‘Timor Sea Arrangement’ forming Attachment ‘A’ to this understanding is suitable for adoption as an agreement between East Timor and Australia upon East Timor’s independence, embodying arrangements for the exploration and exploitation of the Joint Petroleum Development Area pending a final delimitation of the seabed between East Timor and Australia**

**Signed at Dili**

**July 2001**

**Mari Alkatiri  
Cabinet Member for Economic Affairs  
East Timor Transitional Administration**

**Alexander Downer  
Minister for Foreign Affairs  
Australia**

**Peter Galbraith  
Cabinet Member for Political Affairs  
and Timor Sea  
East Timor Transitional Administration**

**Nick Minchin  
Minister for Industry, Science and  
Resources  
Australia**

## **TIMOR SEA ARRANGEMENT**

**CONSCIOUS** of the importance of promoting East Timor's economic development;

**AWARE** of the need to maintain security of investment for existing and planned petroleum activities in an area of seabed between East Timor and Australia;

**RECOGNISING** the benefits that will flow to both East Timor and Australia by providing a continuing basis for petroleum activities in an area of seabed between East Timor and Australia to proceed as planned;

**EMPHASISING** the importance of developing petroleum resources in a way that minimizes damage to the natural environment, that is economically sustainable, promotes further investment and contributes to the long-term development of East Timor and Australia;

**CONVINCED** that the development of the resources in accordance with this Arrangement will provide a firm foundation for continuing and strengthening the friendly relations between East Timor and Australia;

**TAKING INTO ACCOUNT** the United Nations Convention on the Law of the Sea, which provides in Article 83 that the delimitation of the 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;

**TAKING FURTHER INTO ACCOUNT**, in the absence of delimitation, the further obligation for states to make every effort, in a spirit of understanding and cooperation, to enter into provisional arrangements of a practical nature which do not prejudice a final determination of the seabed delimitation;

**NOTING** the desirability of East Timor and Australia entering into a Treaty providing for the continued development of the petroleum resources in an area of seabed between East Timor and Australia.

## Article 1: Definitions

For the purposes of this Arrangement:

(a) “Arrangement” means this Arrangement, including Annexes A-F and any Annexes subsequently agreed between East Timor and Australia.

(b) “criminal law” means any law in force in East Timor and Australia, whether substantive or procedural, that makes provision for or in relation to offences or for or in relation to the investigation or prosecution of offences or the punishment of offenders, including the carrying out of a penalty imposed by a court. For this purpose, “investigation” includes entry to an installation or structure in the JPDA, the exercise of powers of search and questioning and the apprehension of a suspected offender.

(c) “Designated Authority” means the Designated Authority established in Article 6 of this Arrangement.

(d) “fiscal scheme” means a royalty, a Production Sharing Contract, or other scheme for determining East Timor’s and Australia’s share of petroleum or revenue from petroleum activities and does not include taxes referred to in Article 5 (b) of this Arrangement.

(e) “initially processed” means processing of petroleum to a point where it is ready for off-take from the production facility and may include such processes as the removal of water, volatiles and other impurities.

(f) “Joint Commission” means the East Timor-Australia Joint Commission established in Article 6 of this Arrangement.

(g) “JPDA” means the Joint Petroleum Development Area referred to in Article 3 of this Arrangement.

(h) “Ministerial Council” means the East Timor-Australia Ministerial Council established in Article 6 of this Arrangement.

(i) “petroleum” means:

- i. any naturally occurring hydrocarbon, whether in a gaseous, liquid, or solid state;

- ii. any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or
- iii. 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;

and includes any petroleum as defined by sub-paragraphs (i), (ii) or (iii) that has been returned to a natural reservoir.

(j) “petroleum activities” means all activities undertaken to produce petroleum, authorized or contemplated under a contract, permit or license, and includes exploration, development, initial processing, production, transportation and marketing, as well as the planning and preparation for such activities.

(k) “Petroleum Mining Code” means the Code referred to in Article 7 of this Arrangement.

(l) “petroleum project” means petroleum activities taking place in a specified area within the JPDA.

(m) “petroleum produced” means initially processed petroleum extracted from a reservoir through petroleum activities.

(n) “Production Sharing Contract” means a contract between the Designated Authority and a limited liability corporation or entity with limited liability under which production from a specified area of the JPDA is shared between the parties to the contract.

(o) “reservoir” means an accumulation of petroleum in a geological unit limited by rock, water or other substances without pressure communication through liquid or gas to another accumulation of petroleum.

(p) “taxation code” means the code referred to in Article 13 (b) of this Arrangement and the interim taxation code referred to in Article 13 (c) of this Arrangement.

## Article 2: Without Prejudice

(a) This Arrangement gives effect to international law as reflected in the United Nations Convention on the Law of the Sea (UNCLOS) which under Article 83 requires states with opposite or adjacent coasts to make every effort to enter into provisional arrangements of a practical nature pending agreement on the final delimitation of the continental shelf between them in a manner consistent with international law. This Arrangement is intended to adhere to such obligation.

(b) Nothing contained in this Arrangement and no acts taking place while this Arrangement is in force shall be interpreted as prejudicing or affecting East Timor's or Australia's position on or rights relating to a seabed delimitation or their respective seabed entitlements.

## Article 3: Joint Petroleum Development Area

(a) The Joint Petroleum Development Area (JPDA) is established. It is the area in the Timor Sea contained within the lines described in Annex A.

(b) East Timor and Australia shall jointly control, manage and facilitate the exploration, development and exploitation of the petroleum resources of the JPDA for the benefit of the peoples of East Timor and Australia.

(c) Petroleum activities conducted in the JPDA shall be carried out pursuant to a contract between the Designated Authority and a limited liability corporation or entity with limited liability or a licence or permit issued to such a corporation or entity with limited liability.

(d) East Timor and Australia shall make it an offence for any person to conduct petroleum activities in the JPDA otherwise than in accordance with this Arrangement.

## Article 4: Sharing of Petroleum Production

(a) East Timor and Australia shall have title to all petroleum produced in the JPDA. Of the petroleum produced in the JPDA, 90% shall belong to East Timor and 10% shall belong to Australia.

(b) To the extent that fees referred to in Article 6(b)(vi) and other income are inadequate to cover the expenditure of the Designated Authority in relation to this Arrangement, that expenditure will be borne in the same proportion as set out in paragraph (a).

## Article 5: Fiscal Arrangements and Taxes

Fiscal arrangements and taxes shall be dealt with in the following manner:

- (a) Unless a fiscal scheme is otherwise provided for in this Arrangement:
- i. East Timor and Australia shall make every possible effort to agree on a joint fiscal scheme for each petroleum project in the JPDA.
  - ii. If East Timor and Australia fail to reach agreement on a joint fiscal scheme referred to in sub-paragraph (i), they will jointly appoint an independent expert to recommend an appropriate joint fiscal scheme to apply to the petroleum project concerned.
  - iii. If either East Timor or Australia does not agree to the joint fiscal scheme recommended by the independent expert, East Timor and Australia may each separately impose its own fiscal scheme on their proportion of the production of the project as calculated in accordance with the formula contained in Article 4 of this Arrangement.
  - iv. If East Timor and Australia agree on a joint fiscal scheme pursuant to this Article, neither East Timor nor Australia may during the life of the project vary that scheme except by mutual agreement between East Timor and Australia.
- (b) Consistent with the formula contained in Article 4 of this Arrangement East Timor and Australia may, in accordance with its own law and a taxation code if any, impose taxes on its share of the revenue from petroleum activities in the JPDA and relating to activities referred to in Article 13 of this Arrangement.

## Article 6: Regulatory Bodies

- (a) A three-tiered joint administrative structure consisting of a Designated Authority, a Joint Commission and a Ministerial Council is established.
- (b) Designated Authority:
- i. For the first three years after this Arrangement comes 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 of time 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 authority.
  - iii. For the period specified in sub-paragraph (i), the Designated Authority has juridical personality and such legal capacities under the law of both East Timor and Australia as are necessary for the exercise of its powers and the performance of its functions. In particular, the Designated Authority shall have the capacity to contract, to acquire and dispose of movable and immovable property and to institute and be party to legal proceedings.
  - iv. The Designated Authority will be responsible to the Joint Commission and will carry out the day-to-day regulation and management of petroleum activities.
  - v. A non-exclusive listing of more detailed powers and functions of the Designated Authority is set out in Annex C. The Annexes to this Arrangement may identify other additional detailed powers and functions of the Designated Authority. The Designated Authority also has such other powers and functions as may be conferred upon it by the Joint Commission.
  - vi. The Designated Authority shall be financed from fees collected under the Petroleum Mining Code.

vii. For the period specified in sub-paragraph (i) the Designated Authority shall be exempt from the following existing taxes:

- (1) in East Timor, the income tax imposed under the law of East Timor;
- (2) in Australia, the income tax imposed under the federal law of Australia;

as well as any identical or substantially similar taxes which are imposed after the date of signature of this Arrangement in addition to, or in place of, the existing taxes.

viii. For the period specified in sub-paragraph (i), personnel of the Designated Authority:

- (1) shall be exempt from taxation of salaries, allowances and other emoluments paid to them by the Designated Authority in connection with their service with the Designated Authority other than taxation under the law of East Timor or Australia in which they are deemed to be resident for taxation purposes; and
- (2) shall, at the time of first taking up the post with the Designated Authority located in either East Timor or Australia in which they are not resident, be exempt from customs duties and other such charges (except payments for services) in respect of imports of furniture and other household and personal effects in their ownership or possession or already ordered by them and intended for their personal use or for their establishment; such goods shall be imported within six months of an officer's first entry but in exceptional circumstances an extension of time shall be granted by the Government of East Timor or the Government of Australia; goods which have been acquired or imported by officers and to which exemptions under this sub-paragraph apply shall not be given away, sold, lent or hired out, or otherwise disposed of except under conditions agreed in advance with the Government of East Timor or the Government of

Australia depending on in which country the officer is located.

(c) Joint Commission:

- i. The Joint Commission shall consist of commissioners appointed by East Timor and Australia. There shall be one more commissioner appointed by East Timor than by Australia. The Joint Commission shall establish policies and regulations relating to petroleum activities in the JPDA and shall oversee the work of the Designated Authority.
- ii. A non-exclusive listing of more detailed powers and functions of the Joint Commission is set out in Annex D. The Annexes to this arrangement may identify other additional detailed powers and functions of the Joint Commission.
- iii. Except as provided for in Article 8(c), the Commissioners of either East Timor or Australia may at any time refer a matter to the Ministerial Council for resolution.
- iv. The Joint Commission shall meet annually or as may be required. Its meetings shall be chaired by a member nominated by East Timor and Australia on an alternate basis.

(d) Ministerial Council:

- i. The Ministerial Council shall consist of an equal number of Ministers from East Timor and Australia. It shall consider any matter relating to the operation of this Arrangement that is referred to it by either East Timor or Australia. It will also consider any matter referred to in sub-paragraph (c) (iii).
- ii. In the event the Ministerial Council is unable to resolve a matter, either East Timor or Australia may invoke the dispute resolution procedures set out in Annex B.
- iii. The Ministerial Council shall meet at the request of either East Timor or Australia or at the request of the Joint Commission.

- iv. Unless otherwise agreed between East Timor and Australia, meetings of the Ministerial Council where at least one member representing East Timor and one member representing Australia is physically present shall be held alternatively in East Timor and Australia. Its meetings shall be chaired by a representative of East Timor or Australia on an alternative basis.
  - v. The Ministerial Council may, if it so chooses, permit members to participate in a particular meeting, or all meetings, by telephone, closed-circuit television or any other means of electronic communication, and a member who so participates is to be regarded as being present at the meeting. A meeting may be held solely by means of electronic communication.
- (e) Commissioners of the Joint Commission and personnel of the Designated Authority must have no financial interest in any activity relating to exploration for and exploitation of petroleum resources in the JPDA.

#### Article 7: Petroleum Mining Code

- (a) East Timor and Australia shall negotiate an agreed Petroleum Mining Code which shall govern the exploration, development and exploitation of petroleum within the JPDA, as well as the export of petroleum from the JPDA.
- (b) In the event East Timor and Australia are unable to conclude a Petroleum Mining Code by the effective date of this Arrangement, the Joint Commission shall in its inaugural meeting adopt an interim code to remain in effect until a Petroleum Mining Code is adopted in accordance with paragraph (a).

#### Article 8: Pipelines

- (a) The construction and operation of a pipeline within the JPDA for the purposes of exporting petroleum from the JPDA shall be subject to the approval of the Joint Commission. East Timor and Australia shall consult

on the terms and conditions of pipelines exporting petroleum from the JPDA to the point of landing.

(b) A pipeline landing in East Timor shall be under the jurisdiction of East Timor. A pipeline landing in Australia shall be under the jurisdiction of Australia.

(c) In the event a pipeline is constructed from the JPDA to the territory of either East Timor or Australia, the country where the pipeline lands may not object to or impede decisions of the Joint Commission regarding a pipeline to the other country. Notwithstanding Article 6(c)(iii), the Ministerial Council may not review or change any such decisions.

(d) Article 8(c) shall not apply where the effect of constructing a pipeline from the JPDA to the other country would cause the supply of gas to be withheld from a limited liability corporation or limited liability entity which has obtained consent under this Arrangement to obtain gas from a project in the JPDA for contracts to supply gas for a specified period of time.

(e) Neither East Timor nor Australia may object to, nor in any way impede, a proposal to use floating gas to liquids processing and off-take in the JPDA on a commercial basis where such proposal will produce higher revenues to East Timor and Australia from royalties and taxes earned from activities conducted within the JPDA than would be earned if gas were transported by pipeline.

(f) Article 8(e) shall not apply where the effect of floating gas to liquids processing and off-take in the JPDA would cause the supply of gas to be withheld from a limited liability corporation or limited liability entity which has obtained consent under this Arrangement to obtain gas from the JPDA for contracts to supply gas for a specified period of time.

(g) Petroleum from the JPDA and from fields which straddle the boundaries of the JPDA will at all times have priority of carriage along any pipeline carrying petroleum from and within the JPDA.

(h) There shall be open access to pipelines for petroleum from the JPDA. The open access arrangements shall be in accordance with good international regulatory practice. If East Timor has jurisdiction over the pipeline, it will consult with Australia over access to the pipeline. If Australia has

jurisdiction over the pipeline, it will consult with East Timor over access to the pipeline.

#### Article 9: Unitisation

- (a) Any reservoir of petroleum that extends across the boundary of the JPDA shall be treated as a single entity for management and development purposes.
- (b) East Timor and Australia shall work expeditiously and in good faith to reach agreement on the manner in which the deposit will be most effectively exploited and on the equitable sharing of the benefits arising from such exploitation.

#### Article 10: Marine Environment

- (a) East Timor and Australia shall co-operate to protect the marine environment of the JPDA so as to prevent and minimise pollution and other environmental harm from petroleum activities. Special efforts shall be made to protect marine animals including marine mammals, seabirds, fish and coral. East Timor and Australia shall consult as to the best means to protect the marine environment of the JPDA from the harmful consequences of petroleum activities.
- (b) Where pollution of the marine environment occurring in the JPDA spreads beyond the JPDA, East Timor and Australia shall cooperate in taking action to prevent, mitigate and eliminate such pollution.
- (c) The Designated Authority shall issue regulations to protect the marine environment in the JPDA. It shall establish a contingency plan for combating pollution from petroleum activities in the JPDA.
- (d) Limited liability corporations or limited liability entities shall be liable for damage or expenses incurred as a result of pollution of the marine environment arising out of petroleum activities within the JPDA in accordance with:

- i. their contract, licence or permit or other form of authority issued pursuant to this Arrangement; and
- ii. the law of the jurisdiction (East Timor or Australia) in which the claim is brought.

#### Article 11: Employment

(a) East Timor and Australia shall:

- i. take appropriate measures with due regard to occupational health and safety requirements to ensure that preference is given in employment in the JPDA to nationals or permanent residents of East Timor; and
- ii. facilitate, as a matter of priority, training and employment opportunities for East Timorese nationals and permanent residents.

(b) Australia will expedite and facilitate processing of applications for visas through Australia's Mission in Dili by East Timorese nationals and permanent residents employed by limited liability corporations or limited liability entities in Australia associated with petroleum activities in the JPDA.

#### Article 12: Health and Safety for Workers

The Designated Authority shall develop, and limited liability corporations or limited liability entities shall apply, occupational health and safety standards and procedures for persons employed on structures in the JPDA that are no less effective than those standards and procedures that would apply to persons employed on similar structures in East Timor and Australia. The Designated Authority may adopt, consistent with this Article, standards and procedures taking into account an existing system established under the law of either East Timor or Australia.

### **Article 13: Application of taxation law**

- (a) For the purposes of taxation law related directly or indirectly to:
  - i. the exploration for or the exploitation of petroleum in the JPDA; or
  - ii. acts, matters, circumstances and things touching, concerning arising out of or connected with such exploration and exploitation

the JPDA shall be deemed to be, and treated by, East Timor and Australia, as part of that country.

(b) East Timor and Australia shall negotiate an agreed code to provide relief from double taxation relating to petroleum activities.

(c) In the event East Timor and Australia are unable to conclude a double taxation code by the date of entry into force of this Arrangement, the Ministerial Council shall in its inaugural meeting establish an interim taxation code to remain in effect until a taxation code referred to in paragraph (b) enters into force.

(d) A taxation code under paragraphs (b) or (c) may contain its own dispute resolution mechanism. Article 23 of this Arrangement shall not apply to disputes covered by that mechanism.

### **Article 14: Criminal jurisdiction**

(a) A national or permanent resident of East Timor or Australia shall be subject to the criminal law of that country in respect of acts or omissions occurring in the JPDA connected with or arising out of exploration for and exploitation of petroleum resources, provided that a permanent resident of East Timor or Australia who is a national of the other country shall be subject to the criminal law of the latter country.

(b) Subject to paragraph (d), a national of a third state, not being a permanent resident of either East Timor or Australia, shall be subject to the

criminal law of both East Timor and Australia in respect of acts or omissions occurring in the JPDA connected with or arising out of petroleum activities. Such a person shall not be subject to criminal proceedings under the law of either East Timor or Australia if he or she has already been tried and discharged or acquitted by a competent tribunal or already undergone punishment for the same act or omission under the law of the other country or where the competent authorities of one country, in accordance with its law, have decided in the public interest to refrain from prosecuting the person for that act or omission.

(c) In cases referred to in paragraph (b), East Timor and Australia shall, as and when necessary, consult each other to determine which criminal law is to be applied, taking into account the nationality of the victim and the interests of the country most affected by the alleged offence.

(d) The criminal law of the flag state shall apply in relation to acts or omissions on board vessels including seismic or drill vessels in, or aircraft in flight over, the JPDA.

(e) East Timor and Australia shall provide assistance to and cooperate with each other, including through agreements or arrangements as appropriate, for the purposes of enforcement of criminal law under this Article, including the obtaining of evidence and information.

(f) Both East Timor and Australia recognise the interest of the other country where a victim of an alleged offence is a national of that other country and shall keep that other country informed, to the extent permitted by its law, of action being taken with regard to the alleged offence.

(g) East Timor and Australia may make arrangements permitting officials of one country to assist in the enforcement of the criminal law of the other country. Where such assistance involves the detention of a person who under paragraph (a) is subject to the jurisdiction of the other country that detention may only continue until it is practicable to hand the person over to the relevant officials of that other country.

## Article 15: Customs, Quarantine and Migration

- (a) East Timor and Australia may, subject to paragraphs (c), (e), (f) and (g), apply customs, migration and quarantine laws to persons, equipment and goods entering its territory from, or leaving its territory for, the JPDA. East Timor and Australia may adopt arrangements to facilitate such entry and departure.
- (b) Limited liability corporations or other limited liability entities shall ensure, unless otherwise authorized by East Timor or Australia, that persons, equipment and goods do not enter structures in the JPDA without first entering East Timor or Australia, and that their employees and the employees of their subcontractors are authorized by the Designated Authority to enter the JPDA.
- (c) Either country may request consultations with the other country in relation to the entry of particular persons, equipment and goods to structures in the JPDA aimed at controlling the movement of such persons, equipment or goods.
- (d) Nothing in this Article prejudices the right of either East Timor or Australia to apply customs, migration and quarantine controls to persons, equipment and goods entering the JPDA without the authority of either country. East Timor and Australia may adopt arrangements to coordinate the exercise of such rights.
- (e) Goods and equipment entering the JPDA for purposes related to petroleum activities shall not be subject to customs duties.
- (f) Goods and equipment leaving or in transit through either East Timor or Australia for the purpose of entering the JPDA for purposes related to petroleum activities shall not be subject to customs duties.
- (g) Goods and equipment leaving the JPDA for the purpose of being permanently transferred to a part of either East Timor or Australia may be subject to customs duties of that country.

## Article 16: Hydrographic and seismic surveys

- (a) East Timor and Australia shall have the right to carry out hydrographic surveys to facilitate petroleum activities in the JPDA. East Timor and Australia shall cooperate on:
- i. the conduct of such surveys, including the provision of necessary on-shore facilities; and
  - ii. exchanging hydrographic information relevant to petroleum activities in the JPDA.
- (b) For the purposes of this Arrangement, East Timor and Australia shall cooperate in facilitating the conduct of seismic surveys in the JPDA, including in the provision of necessary on-shore facilities.

## Article 17: Petroleum industry vessel – safety, operating standards and crewing

Except as otherwise provided in this Arrangement, vessels of the nationality of East Timor or Australia engaged in petroleum activities in the JPDA shall be subject to the law of their nationality in relation to safety and operating standards and crewing regulations. Vessels with the nationality of other countries will apply the law of East Timor or Australia depending on whose ports they operate, in relation to safety and operating standards, and crewing regulations. Such vessels that enter the JPDA and do not operate out of either East Timor or Australia under the law of both East Timor or Australia shall be subject to the relevant international safety and operating standards.

## Article 18: Surveillance

- (a) For the purposes of this Arrangement, East Timor and Australia shall have the right to carry out surveillance activities in the JPDA.
- (b) East Timor and Australia shall cooperate on and coordinate any surveillance activities carried out in accordance with paragraph (a).
- (c) East Timor and Australia shall exchange information derived from any surveillance activities carried out in accordance with paragraph (a).

## Article 19: Security measures

- (a) East Timor and Australia shall exchange information on likely threats to, or security incidents relating to, exploration for and exploitation of petroleum resources in the JPDA.
- (b) East Timor and Australia shall make arrangements for responding to security incidents in the JPDA.

## Article 20: Search and rescue

East Timor and Australia shall, at the request of the Designated Authority and consistent with this Arrangement, cooperate on and assist with search and rescue operations in the JPDA taking into account generally accepted international rules, regulations and procedures established through competent international organisations.

## Article 21: Air traffic services

East Timor and Australia shall, at the request of the Designated Authority and consistent with this Arrangement, cooperate on the provision of air traffic services in the JPDA taking into account generally accepted international rules, regulations and procedures established through competent international organisations.

## Article 22: Duration of the Arrangement

This Arrangement will be in force until there is a permanent seabed delimitation between East Timor and Australia or for thirty years from the date of its entry into force whichever is sooner. This Arrangement may be renewed by agreement between East Timor and Australia. Petroleum activities of limited liability corporations or other limited liability entities entered into under the terms of the Arrangement will continue even if the Arrangement is no longer in force under conditions equivalent to those in place under the Arrangement.

### Article 23: Settlement of Disputes

- (a) Any dispute concerning the interpretation or application of this Arrangement shall, as far as possible, be settled by consultation or negotiation.
- (b) Any dispute which is not settled in the manner set out in paragraph (a) and any unresolved matter relating to the operation of this Arrangement under Article 6(d)(ii) shall, at the request of either East Timor or Australia, be submitted to an arbitral tribunal in accordance with the procedure set out in Annex B.

### Article 24: Amendment

This Arrangement may be amended at any time by written agreement between East Timor and Australia.

## Article 25: Entry into Force

This Arrangement shall enter into force thirty (30) days after the date on which East Timor and Australia have notified each other in writing that their respective requirements for entry into force of this Arrangement have been complied with.

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

**DONE** at Dili, on this \_\_\_ day of \_\_\_ in two originals in the English language.

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For the Government of East Timor

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For the Government of Australia

## **Annex A under Article 3 of this Arrangement**

### **Designation and Description of the JPDA**

#### NOTE

Where for the purposes of the Arrangement it is necessary to determine the position on the surface of the Earth of a point, line or area, that position will be determined by reference to the Australian Geodetic Datum, that is to say, by reference to a spheroid having its centre at the centre of the Earth and a major (equatorial) radius of 6 378 160 metres and a flattening of 1/298.25 and by reference to the position of the Johnston Geodetic Station in the Northern Territory of Australia. That station shall be taken to be situated at Latitude 25°56'54.5515" South and at Longitude 133°12'30.0771" East and to have a ground level of 571.2 metres above the spheroid referred to above.

#### THE AREA

The area bounded by the line-

- (a) commencing at the point of Latitude 9deg. 22' 53" South, Longitude 127deg. 48' 42" East;
- (b) running thence south-westerly along the geodesic to the point of Latitude 10deg. 06' 40" South, Longitude 126deg. 00' 25" East;
- (c) thence south-westerly along the geodesic to the point of Latitude 10deg. 28' 00" South, Longitude 126deg. 00' 00" East;
- (d) thence south-easterly along the geodesic to the point of Latitude 11deg. 20' 08" South, Longitude 126deg. 31' 54" East;
- (e) thence north-easterly along the geodesic to the point of Latitude 11deg. 19' 46" South, Longitude 126deg. 47' 04" East;
- (f) thence north-easterly along the geodesic to the point of Latitude 11deg. 17' 36" South, Longitude 126deg. 57' 07" East;
- (g) thence north-easterly along the geodesic to the point of Latitude 11deg. 17' 30" South, Longitude 126deg. 58' 13" East;
- (h) thence north-easterly along the geodesic to the point of Latitude 11deg. 14' 24" South, Longitude 127deg. 31' 33" East;
- (i) thence north-easterly along the geodesic to the point of Latitude 10deg. 55' 26" South, Longitude 127deg. 47' 04" East;

- (j) thence north-easterly along the geodesic to the point of Latitude 10deg. 53' 42" South, Longitude 127deg. 48' 45" East;
- (k) thence north-easterly along the geodesic to the point of Latitude 10deg. 43' 43" South, Longitude 127deg. 59' 16" East;
- (l) thence north-easterly along the geodesic to the point of Latitude 10deg. 29' 17" South, Longitude 128deg. 12' 24" East;
- (m) thence north-westerly along the geodesic to the point of Latitude 9deg. 29' 57" South, Longitude 127deg. 58' 47" East;
- (n) thence north-westerly along the geodesic to the point of Latitude 9deg. 28' 00" South, Longitude 127deg. 56' 00" East; and
- (o) thence north-westerly along the geodesic to the point of commencement.

## **Annex B under Article 23 of this Arrangement**

### **Dispute Resolution Procedure**

(a) An arbitral tribunal to which a dispute is submitted pursuant to Article 23 (b), shall consist of three persons appointed as follows:

- i. East Timor and Australia shall each appoint one arbitrator;
- ii. the arbitrators appointed by East Timor and Australia shall, within sixty (60) days of the appointment of the second of them, by agreement, select a third arbitrator who shall be a citizen, or permanent resident of a third country which has diplomatic relations with both East Timor and Australia;
- iii. East Timor and Australia shall, within sixty (60) days of the selection of the third arbitrator, approve the selection of that arbitrator who shall act as Chairman of the Tribunal.

(b) Arbitration proceedings shall be instituted upon notice being given through the diplomatic channel by the country instituting such proceedings to the other country. Such notice shall contain a statement setting forth in summary form the grounds of the claim, the nature of the relief sought, and the name of the arbitrator appointed by the country instituting such proceedings. Within sixty (60) days after the giving of such notice the respondent country shall notify the country instituting proceedings of the name of the arbitrator appointed by the respondent country.

(c) If, within the time limits provided for in sub-paragraphs (a) (ii) and (iii) and paragraph (b) of this Annex, the required appointment has not been made or the required approval has not been given, East Timor or Australia may request the President of the International Court of Justice to make the necessary appointment. If the President is a citizen or permanent resident of East Timor or Australia or is otherwise unable to act, the Vice-President shall be invited to make the appointment. If the Vice-President is a citizen, or permanent resident of East Timor or Australia or is otherwise unable to act, the Member of the International Court of Justice next in seniority who is not a citizen or permanent resident of East Timor or Australia shall be invited to make the appointment.

- (d) In case any arbitrator appointed as provided for in this Annex shall resign or become unable to act, a successor arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator.
- (e) The Arbitral Tribunal shall convene at such time and place as shall be fixed by the Chairman of the Tribunal. Thereafter, the Arbitral Tribunal shall determine where and when it shall sit.
- (f) The Arbitral Tribunal shall decide all questions relating to its competence and shall, subject to any agreement between East Timor and Australia, determine its own procedure.
- (g) Before the Arbitral Tribunal makes a decision, it may at any stage of the proceedings propose to East Timor and Australia that the dispute be settled amicably. The Arbitral Tribunal shall reach its award by majority vote taking into account the provisions of this Arrangement and relevant international law.
- (h) East Timor and Australia shall each bear the costs of its appointed arbitrator and its own costs in preparing and presenting cases. The cost of the Chairman of the Tribunal and the expenses associated with the conduct of the arbitration shall be borne in equal parts by East Timor and Australia.
- (i) The Arbitral Tribunal shall afford to East Timor and Australia a fair hearing. It may render an award on the default of either East Timor or Australia. In any case, the Arbitral Tribunal shall render its award within 6 months from the date it is convened by the Chairman of the Tribunal. Any award shall be rendered in writing and shall state its legal basis. A signed counterpart of the award shall be transmitted to East Timor and Australia.
- (j) An award shall be final and binding on East Timor and Australia.

## **Annex C under Article 6(b)(v) of this Arrangement**

### **Powers and Functions of the Designated Authority**

The powers and functions of the Designated Authority include:

- (a) day-to-day management and regulation of petroleum activities in accordance with this Arrangement and any instruments made or entered into under this Arrangement, including directions given by the Joint Commission;
- (b) preparation of annual estimates of income and expenditure of the Designated Authority for submission to the Joint Commission. Any expenditure shall only be made in accordance with estimates approved by the Joint Commission or otherwise in accordance with regulations and procedures approved by the Joint Commission;
- (c) preparation of annual reports for submission to the Joint Commission;
- (d) requesting assistance from the appropriate Australian and East Timor authorities consistent with this Arrangement
  - (i) for search and rescue operations in the JPDA;
  - (ii) in the event of a terrorist threat to the vessels and structures engaged in petroleum operations in the JPDA ; and
  - (iii) for air traffic services in the JPDA;
- (e) requesting assistance with pollution prevention measures, equipment and procedures from appropriate Australian and East Timor authorities or other bodies or persons;
- (f) establishment of safety zones and restricted zones, consistent with international law, to ensure the safety of navigation and petroleum operations;
- (g) controlling movements into, within and out of the JPDA of vessels, aircraft, structures and other equipment employed in exploration for and exploitation of petroleum resources in a manner consistent with international law; and, subject to Article 15, authorising the entry of employees of contractors and their subcontractors and other persons into the JPDA;

(h) issuing regulations and giving directions under this Arrangement on all matters related to the supervision and control of petroleum activities including on health, safety, environmental protection and assessments and work practices, pursuant to the Petroleum Mining Code; and

(i) such other powers and functions as may be identified in other Annexes to this Arrangement or as may be conferred on it by the Joint Commission.

## **Annex D under Article 6(c)(ii) of this Arrangement**

### **Powers and Functions of the Joint Commission**

1. The powers and functions of the Joint Commission shall include:
  - (a) giving directions to the Designated Authority on the discharge of its powers and functions;
  - (b) conferring additional powers and functions on the Designated Authority;
  - (c) adopting an interim Petroleum Mining Code pursuant to Article 7(b) of the Arrangement, if necessary;
  - (d) approving financial estimates of income and expenditure of the Designated Authority;
  - (e) approving rules, regulations and procedures for the effective functioning of the Designated Authority;
  - (f) designating the Designated Authority for the period referred to in Article 6(b)(i);
  - (g) at the request of a member of the Joint Commission inspecting and auditing the Designated Authority's books and accounts or arranging for such an audit and inspection;
  - (h) approving the result of inspections and audits of contractors' books and accounts conducted by the Joint Commission;
  - (i) considering and adopting the annual report of the Designated Authority;
  - (j) of its own volition or on recommendation by the Designated Authority, in a manner not inconsistent with the objectives of this Arrangement amending the Petroleum Mining Code to facilitate petroleum activities in the JPDA;

2. The Joint Commission will exercise its powers and functions for the benefit of the peoples of East Timor and Australia having regard to good oilfield, processing, transport and environmental practice.

## **Annex E under Article 9(b) of this Arrangement**

### **Unitisation of Greater Sunrise**

- (a) East Timor and Australia agree to unitise the Sunrise and Troubadour deposits (collectively known as 'Greater Sunrise') on the basis that 20% of Greater Sunrise lies within the JPDA. Production from Greater Sunrise shall be distributed on the basis that 20% is attributed to the JPDA and 80% is attributed to Australia.
- (b) Either East Timor or Australia may request a review of the production sharing formula. Following such a review, the production sharing formula may be altered by agreement between East Timor and Australia.
- (c) The unitisation agreement referred to in paragraph (a) shall be without prejudice to a permanent delimitation of the seabed between East Timor and Australia
- (d) In the event of a permanent delimitation of the seabed East Timor and Australia will reconsider the terms of the unitisation agreement referred to in paragraph (a). Any new agreement will preserve the terms of any production sharing contract, licence or permit which is based on the agreement in paragraph (a).

## **Annex F under Article 5(a) of this Arrangement**

### **Fiscal Scheme for Certain Petroleum Deposits**

Contracts shall be offered to those corporations holding, immediately before entry into force of the Arrangement, contracts numbered 91-12, 91-13, 95-19, and 96-20 in the same terms as those contracts, modified to take into account the administrative structure under this Arrangement.