

Exchange of Notes Constituting an Agreement between the Government of Australia and the Government of the Democratic Republic of East Timor concerning Arrangements for Exploration and Exploitation of Petroleum in an Area of the Timor Sea Between East Timor and Australia, done at Dili on 20 May 2002.

**AMENDED
NATIONAL INTEREST ANALYSIS**

Proposed binding treaty action

1. The Exchange of Notes with East Timor governing the Exploration and Exploitation of Petroleum resources (the Exchange of Notes) entered into force on 20 May 2002. The Exchange of Notes applies from 20 May 2002 until the entry into force of the Timor Sea Treaty.

Date of proposed binding treaty action

2. The Exchange of Notes entered into force upon exchange on 20 May 2002.

3. The Minister for Foreign Affairs wrote to the Chair of the Joint Standing Committee on Treaties on 19 May 2002 advising her of the terms of the treaty action and the urgent need for the treaty action to take place without the usual Parliamentary tabling requirements having been met beforehand.

Date of tabling of the proposed treaty action

4. 25 June 2002.

Summary of the purpose of the proposed treaty action and why it is in the national interest

5. The Timor Sea between northern Australia and East Timor contains proven petroleum resources in the seabed. The Exchange of Notes benefits Australia, East Timor and investors by providing the continuation of an international legal basis for current petroleum activities being undertaken in an area of the Timor Sea to continue. The Exchange of Notes provides that exploration and exploitation of petroleum in a specified area of the Timor Sea be governed by the arrangements in force on 19 May 2002, pending the entry into force of the Timor Sea Treaty. Without the Exchange of Notes there would be a legal vacuum pending the entry into force of the Timor Sea Treaty.

Reasons for Australia to take the proposed treaty action

6. Prior to 20 May 2002, management of the petroleum resources in a specified area of the Timor Sea was governed by a February 2000 Agreement between Australia and UNTAET.

- The 1989 Timor Gap Treaty between Australia and Indonesia over the Zone of Cooperation was signed on 11 December 1989 and entered into force on 9 February 1991.
- February 2000 an Agreement between Australia and the United Nations Transitional Administration in East Timor (UNTAET) (the February 2000 Exchange of Notes) was signed to operate until East Timor's independence.
- 5 July 2001 Australia and East Timor endorsed a less than treaty status document, the Timor Sea Arrangement. The parties, recognising that the February 2000 Agreement would terminate upon East Timor's independence, 20 May 2002, developed a framework for a Treaty to cover the joint development of resources in the Timor Sea.
- 20 May 2002 the Timor Sea Treaty was signed. It will enter into force when both parties have notified each other that their respective requirements are completed.
- 20 May 2002 the Exchange of Notes entered into force to provide for a legal basis for operation after the February 2000 Agreement terminated, and until the entry into force of the Timor Sea Treaty.
- 20 May 2002 a Memorandum of Understanding concerning an International Unitisation Agreement on the Greater Sunrise field was signed.

7. Recognising that the February 2000 Agreement between Australia and UNTAET would terminate upon East Timor's independence on 20 May 2002, Australia and UNTAET/East Timor commenced negotiations to develop a framework for the joint development of resources in the Timor Sea. The Timor Sea Arrangement was endorsed on 5 July 2001 and provided a framework for the development of the Timor Sea Treaty, to be signed on East Timor's independence. The Timor Sea Treaty did not, however, enter into force upon signature on 20 May 2002. The proposed treaty will enter into force after fulfilling Australian domestic treaty-making processes and notification from East Timor that their domestic processes are complete.

8. To avoid a legal vacuum allowing petroleum activities to continue as well as provide a basis for continuing investment, Australia and UNTAET/East Timor negotiated the Exchange of Notes to enter into force between Australia and East Timor from the time that the February 2000 Agreement terminated, that is 20 May 2002, until the entry into force of the Timor Sea Treaty.

9. The Exchange of Notes provides for the continuation of the exploration and exploitation arrangements in force on 19 May 2002, including the joint development regime, that previously governed activities in the relevant area of the Timor Sea. To date, the mechanism of the joint development regime has functioned well in creating a workable legal framework for petroleum exploration and exploitation under the joint control of Australia and UNTAET/East Timor and for the joint benefit of Australia and UNTAET/East Timor.

10. The relevant area of the Timor Sea incorporates the Bayu-Undan and Greater Sunrise developments that are estimated to collectively contain recoverable reserves of around 11 trillion cubic feet of gas and 700 million barrels of petroleum liquids. Bayu-Undan itself is estimated to contain around \$A15 billion worth of petroleum.

11. Phillips Petroleum is currently developing the oil phase of the Bayu-Undan field. A second phase of the Bayu-Undan project, to extract gas from the field and export it by pipeline to Darwin, is planned. Phillips also plans to establish a liquefied natural gas processing (LNG) facility near Darwin to utilise most of Bayu-Undan's 3.4 trillion cubic feet gas production. The resulting LNG will be exported.

12. The Greater Sunrise gas field, a field that straddles the area in question and an area within Australian jurisdiction is larger than Bayu-Undan, containing around 9.2 trillion cubic feet of natural gas and 335 million barrels of condensate. The joint venturers, Woodside, Shell, Phillips and Osaka Gas, are currently assessing options for development of Sunrise petroleum. For this project to proceed an international unitisation agreement is necessary between Australia and East Timor.

Obligations

13. Article 3 of the Exchange of Notes provides for the exploration and exploitation of petroleum between Australia and East Timor in the area to take place in accordance with the arrangements in place on 19 May 2002. Australia and East Timor will share equally the benefits of petroleum exploration and exploitation from the area (the co-ordinates of which are set out in Annex A to the Exchange of Notes) until entry into force of the Timor Sea Treaty.

14. Article 4 of the Exchange of Notes allows East Timor to collect certain types of taxation revenue (for example, value-added tax and some income taxes) on a 90:10 basis effective from 20 May 2002.

15. Article 4(c) of the Exchange of Notes states that, pending entry into force of the Timor Sea Treaty, the Parties have also agreed to place that portion of the revenue from the sale of First Tranche Petroleum that East Timor would have received had the Timor Sea Treaty entered into force, from the Elang-Kakatua deposit, in a US dollar denominated interest bearing escrow account held by the Joint Authority. The monies from that account (including interest) will be paid to East Timor on entry into force of the Timor Sea Treaty.

16. Article 4(d) of the Exchange of Notes states that, also pending entry into force of the Treaty, the income tax calculated and levied by Australia, by annual assessment upon net income directly derived from petroleum production by a company which is a contractor in a production sharing contract in the area, that East Timor would otherwise have collected had the Timor Sea Treaty been in force from the date of signature, will also be placed in a US dollar denominated interest bearing escrow account. The monies from that account (including interest) will be paid to East Timor on entry into force of the Treaty.

17. Article 7 of the Exchange of Notes states that nothing contained in the Exchange of Notes shall be interpreted as prejudicing or affecting either Australia's or East Timor's position or rights relating to a seabed delimitation or other seabed entitlements.

18. Article 9 of the Exchange of Notes provides that Australia and East Timor will submit the Timor Sea Treaty to their respective treaty approval processes expeditiously to facilitate domestic acceptance to allow entry into force of the Treaty.

Implementation

19. No new implementing legislation or amendment to legislation is required. However, the Timor Sea Treaty contains an entry into force provision that “from the date the Timor Sea Treaty enters into force it will be taken to have effect and all of its provisions will apply and be taken to have applied as from the date of signature” - 20 May 2002 (Article 25). To give effect to this provision a transitional arrangements provision in the Timor Sea (Joint Petroleum Development Area) Bill 2002 will be required. The primary role of this Bill is to implement the Timor Sea Treaty obligations.

Costs

20. Australia and the joint adventurers will incur minor administrative costs in implementing the transitional arrangements contained in the Exchange of Notes.

Consultation

21. The Exchange of Notes provides an international legal basis for petroleum activities to continue in the area until entry into force of the Timor Sea Treaty. The Commonwealth Government has consistently been urged by State and Territory Governments, as well as by interested companies to assist in ensuring a smooth continuation of activities in the area. Consultation on Timor Sea arrangements were held with State and Territory representatives, industry representatives, including Phillips Petroleum and Sunrise Joint Venture partners. Timor Sea negotiations were listed on the schedule of treaties circulated by the Commonwealth-States-Territories Standing Committee on Treaties.

Regulation Impact Statement

22. No Regulation Impact Statement is required.

Future treaty action: amendments, protocols, annexes or other legally binding instruments

23. The Exchange of Notes provides that the Governments of Australia and East Timor agree:

- that the Timor Sea Treaty is suitable for immediate submission to their respective treaty approval processes,
- to work expeditiously and in good faith to satisfy their respective requirements for the entry into force of the Timor Sea Treaty, and
- that the Timor Sea Treaty would have effect and its provisions apply and be taken to have applied from the date of signature.

Withdrawal or denunciation

24. The Exchange of Notes states that it will cease to be in force from the time of entry into force of the Timor Sea Treaty.

25. The treaty action does not contain express provisions dealing with withdrawal or denunciation. In these circumstances it is possible to withdraw from the treaty action at any time by consent of both the parties to the treaty action (by virtue of article 54 of the Vienna Convention on the Law of Treaties).

Contact details

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