

Annex 25:
**Exchange of letters between the Commission and the Parties on the
interpretation of treaty provisions relating to the fiscal regime for
Greater Sunrise**



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16 December 2017

RE: PCA CASE N° 2016-10: CONCILIATION PROCEEDINGS BETWEEN THE GOVERNMENT OF THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE AND THE GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA PURSUANT TO ARTICLE 298 AND ANNEX V OF THE UN CONVENTION ON THE LAW OF THE SEA

Dear Mesdames, dear Sirs,

Following the Parties' exchanges this week regarding the fiscal scheme for Greater Sunrise, the Commission does not believe that there is any dispute between the Parties as to the interpretation of the draft Treaty's provisions in this respect. Nevertheless, the Commission considers that it would be useful to confirm the Parties' shared understanding in order to avoid any possible future misunderstandings in the course of implementing transitional arrangements going forward.

As the Parties are well aware, Article 7 of the Treaty establishes a Greater Sunrise Special Regime under which the Parties jointly exercise their rights as coastal States pursuant to Article 77 of the Convention and do not individually exercise such rights until the Greater Sunrise Special Regime ceases to be in force. Title to the resource is not apportioned. The Treaty only apportions the upstream revenue derived directly from the upstream exploitation of Petroleum produced in the Greater Sunrise Fields, which comprises first tranche petroleum, profit petroleum and taxation. This is without prejudice to any arrangements agreed to by the Parties under PSCs for the Greater Sunrise area.

In light of this, it is necessary to define how this affects the "fiscal regime as agreed between the Parties and the Greater Sunrise Contractor" under Article 3(2) of Annex B of the draft Treaty. In the Commission's view, the "fiscal regime as agreed between the Parties and the Greater Sunrise Contractor" addressed in Article 3(2) of Annex B of the draft treaty means a fiscal regime that will:

1. provide “conditions equivalent” to those under the TST (pursuant to Article 22) and “terms equivalent” to those under the IUA (pursuant to Article 27(3)) to the Greater Sunrise Contractor, and
2. ensure that the upstream revenue can be divided between the Parties in the ratios agreed in Article 2(2) of Annex B.

Further, the Commission understands that the Parties are agreed that “conditions/terms equivalent” does not guarantee the Greater Sunrise Contractor terms and conditions that are identical to those in place under the TST/IUA. In the context of Article 3 of Annex B, it does not guarantee identical fiscal terms as those that applied to Petroleum Activities entered into under the TST/IUA. The overall effect of providing conditions/terms equivalent is to ensure that Petroleum Activities entered into under the terms of the TST/IUA continue under conditions which ensure the Greater Sunrise Contractor is in no worse commercial position than under those agreements.

The Commission trusts that the preceding accords with the Parties’ own understanding. For the sake of certainty and good order, the Commission would however ask that each Party confirm the above in writing at their earliest convenience.

Yours sincerely,



Garth Schofield
Senior Legal Counsel

cc: *Conciliation Commission:*

Ambassador Peter Taksøe-Jensen (by e-mail: pettak@um.dk)

Judge Abdul Koroma (by e-mail: koroma.a.g@gmail.com)

Judge Rudiger Wolfrum (by e-mail: wolfrum@mpil.de)

Dr. Rosalie Balkin (by e-mail: rosaliebalkin1@gmail.com)

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Sir Daniel Bethlehem KCMG QC (by e-mail: dbethlehem@20essexst.com)

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Subject: RE: PCA Case N° 2016-10: Conciliation Proceedings between the Government of the Democratic Republic of Timor-Leste and the Government of the Commonwealth of Australia Pursuant to Article 298 and Annex V of the UN Convention on the Law of the Sea
Date: 19 December 2017 01:25:14

Dear Martin and Garth,

I refer to your letter of 16 December 2017, indicating that the Commission considered that it would be useful to confirm the Parties' shared understanding as to the interpretation of the draft Treaty's provisions regarding the fiscal scheme for Greater Sunrise.

I am happy to confirm that what is set out in your letter accords with Timor-Leste's understanding.

Kind regards,

Elizabeth

Elizabeth Exposto

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Dili, Timor-Leste

From: Martin Doe [<mailto:m DOE@pca-cpa.org>]

Sent: Sunday, 17 December 2017 12:17 AM

To: 'agio.pereira@pcm.gov.tl' <agio.pereira@pcm.gov.tl>; 'agiopereira@gmail.com' <agiopereira@gmail.com>; Elizabeth Exposto <e.exposto@gfm.tl>; 'john.reid@ag.gov.au' <john.reid@ag.gov.au>; 'james.larsen@dfat.gov.au' <james.larsen@dfat.gov.au>

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Subject: PCA Case N° 2016-10: Conciliation Proceedings between the Government of the Democratic Republic of Timor-Leste and the Government of the Commonwealth of Australia Pursuant to Article 298 and Annex V of the UN Convention on the Law of the Sea

BY E-MAIL ONLY

Dear Mesdames, dear Sirs,

Please see the attached correspondence.

Yours sincerely,

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9 January 2018

Mr Garth Schofield
Senior Legal Counsel
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The Netherlands

Dear Mr Schofield

Conciliation Proceedings under Article 298 and Annex V of UNCLOS (PCA Case No. 2016 10) Democratic Republic of Timor-Leste and Commonwealth of Australia

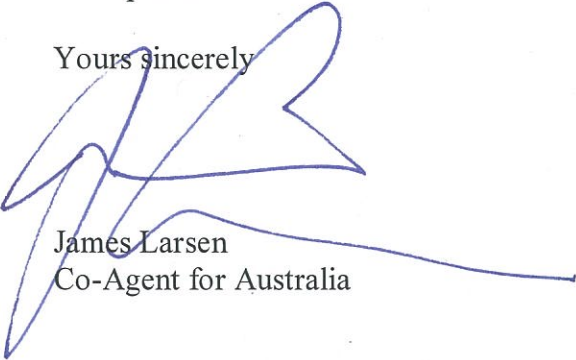
Thank you for your letter of 16 December 2017 regarding the interpretation of the draft Treaty's provisions on the Greater Sunrise Special Regime and its fiscal scheme.

I am pleased to confirm your letter accords with Australia's understanding of these provisions.

We note the Deputy Agent for Timor-Leste's confirmation, by email to the Permanent Court of Arbitration on 19 December 2017, that what is set out in the Commission's letter also accords with Timor-Leste's understanding.

We appreciate the opportunity to clarify the Parties' agreement as to the interpretation of these provisions.

Yours sincerely



James Larsen
Co-Agent for Australia