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East Timor commences proceedings in respect of Greater Sunrise revenue sharing treaty with Australia

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Key Points:

East Timor has initiated arbitration proceedings in respect of the Treaty on Certain Maritime Arrangements in the Timor Sea with Australia which, among other things, governs the distribution of revenue derived from the Greater Sunrise field.

On 23 April 2013, East Timor (now officially referred to as Timor-Leste) commenced arbitration proceedings against Australia in respect of the Treaty on Certain Maritime Arrangements in the Timor Sea (**CMATS**), which deals with the rights to petroleum and gas deposits in the Timor Gap. East Timor disputes the validity of the CMATS on the basis of allegations that Australia did not conduct the 2004 CMATS negotiations in good faith, because it engaged in espionage.

Australia denies the allegations of espionage and accordingly asserts that the CMATS remains valid in full force and effect.

Purpose of the CMATS

The CMATS became effective on 23 February 2007 and, subject to earlier termination, expires in 2057. In conjunction with the International Unitisation Agreement for Greater Sunrise (**SunriseIUA**), it establishes a framework for the joint exploitation of the Greater Sunrise field by East Timor and Australia.

Joint exploitation was not possible under the Timor Sea Treaty (the principal treaty between Australia and East Timor in respect of petroleum production in the Joint Petroleum Development Area (**JPDA**), since only 20% of the Greater Sunrise field lies in the area covered by that treaty. The remaining 80% of the field is located to the east of the JPDA in waters regulated by Australia.

Of particular importance, the CMATS:

- establishes a tax sharing mechanism in respect of upstream revenues derived from the Greater Sunrise field (50/50 between Australia and East Timor); and
- places a moratorium on maritime boundary claims in respect of the area comprising the Greater Sunrise field (Australia and East Timor will not "assert, pursue or further by any means in relation to the other party" its claims to sovereign rights, jurisdiction and maritime boundaries for the period the CMATS remains in force.

Termination of CMATS

Under the terms of the CMATS, if a development plan for the Greater Sunrise field has not been jointly approved by February 2013, either party may terminate the treaty on giving three months' notice.

Since no development plan had been agreed as of such date, an observer may wonder why East Timor has initiated arbitration proceedings in favor of its right of termination. This is because the CMATS continues to apply, notwithstanding termination, if the Greater Sunrise field is produced at any time following such termination.

Possible outcome of arbitration proceedings

If the CMATS were to be held invalid, the position in respect of the Greater Sunrise field would revert to the position under the Timor Sea Treaty. Under the Timor Sea Treaty, Australia and East Timor agreed to distribute production from the Greater Sunrise field on the basis that 20% of the reserves are attributed to the JPDA (which in turn would entitle East Timor to a 90% share of those reserves under the Timor Sea Treaty) and 80% are attributed to Australia.

However, the invalidation of the CMATS would also extinguish the moratorium in respect of maritime boundary claims referred to above. This would entitle either country to initiate a dispute as to the jurisdiction over the Greater Sunrise field.

The decision to initiate the current arbitration proceedings may well be intended as a point of leverage to renegotiate the tax sharing mechanism under the CMATS. To this end, there is a view that the equal distribution of revenue agreed under the CMATS is unfair to the East Timorese. The arbitration appears to be a high-risk strategy for the East Timorese since, if unsuccessful, the decision will be final and binding on the parties. In that case, the revenue sharing mechanism and the moratorium on maritime boundary claims will more than likely be the regulatory backdrop against which the Greater Sunrise field is developed.

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