

East Timor resumes CMTAS arbitration against Australia

Baker & McKenzie

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The *Timor-Leste v Australia* case in the International Court of Justice (ICJ) was officially discontinued on 11 June 2015. East Timor has stated it will resume its principal arbitration against Australia, challenging the validity of the billion dollar gas and oil *Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS)* which governs their respective interests in the Joint Development Area, including the Greater Sunrise fields.

The continuing development of the Greater Sunrise fields is dependent on the final outcome of the arbitration, unless East Timor and Australia reach a settlement agreement on the underlying legal, regulatory and fiscal regime.

Timor Sea Treaty and CMATS

In 2002, Australia and East Timor entered into the Timor Sea Treaty to govern the exploration and exploitation of gas and petroleum in the Timor Gap region for 30 years. It established the Joint Petroleum Development Area and provided for the sharing of petroleum production.

In 2006, Australia and East Timor agreed to extend the Timor Sea Treaty for a further 20 years in the CMATS. The CMTAS provides for the equal distribution of revenue derived from the exploration of oil and gas reserves in the region and puts on hold the rights of both countries to claim sovereign rights, discuss maritime boundaries or engage in legal processes around boundaries for the life of the treaty, i.e. for 50 years. CMATS came into force on 20 February 2007.

The Greater Sunrise fields, which are estimated to be worth US\$ 40 billion, are being developed by a joint venture of Woodside, ConocoPhillips, Osaka Gas and Royal Dutch Shell

East Timor commences arbitration against Australia

On 23 March 2013, East Timor commenced arbitration against Australia claiming that the CMTAS is invalid due to Australia's breach of its obligations of good faith in the negotiations. The arbitration is administered by the Permanent Court of Arbitration (PCA).

East Timor relies on the arbitration clause in the Timor Sea Treaty. It claims that Australia conducted spying activities during the negotiations of the CMTAS in breach of the Vienna Convention on the Law of Treaties and that the CMTAS should be set aside.

East Timor commences ICJ case against Australia

On 17 December 2013, East Timor applied to the ICJ for a declaration that Australia violated East Timor's property and sovereignty rights under international law when, on 3 December 2013, the Australian Security Intelligence Organisation (ASIO) seized documents and data from the offices of East Timor's Australian legal representative, Mr Bernard Collaery. Mr Collaery acts for East Timor in the CMTAS arbitration.

Australia claimed that it confiscated and until recently kept the documents and data due to Australia's national security

concerns. Australia's Attorney General Mr George Brandis gave undertakings to the ICJ and to the arbitration tribunal that the documents would not be read by any individual or agency not directly involved in national security measures, however this failed to appease East Timor.

In March 2014, the ICJ issued provisional measures ordering that the documents should be kept 'under seal'.

In September 2014, East Timor and Australia agreed to suspend the ICJ proceedings whilst they had settlement negotiations.

In March 2015, Australia informed the ICJ that it had agreed to return all the documents and data to East Timor. Those documents were returned in May 2015.

In June 2015, East Timor requested the ICJ to discontinue the proceedings before it.

East Timor has also indicated that it would continue with the CMATS arbitration proceedings against Australia. Those proceedings will now continue.

Lessons in international arbitration?

This is a reminder that the delineation of international maritime boundaries can be fluid even when there appear to be comprehensive treaties in place governing rights and obligations in relation to resources between neighbouring countries. This case demonstrates the increasing use of international arbitration as an effective dispute resolution mechanism for complex cross-border disputes where the maintenance of robust geopolitical relationships is critical for the future benefit of all stakeholders, including private commercial companies, and their international reputations

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