

## Attachment 2: Comments on Draft PMC

Art	Text/ Details	Comments	Recommendation
<b>General</b>			
	Overlap and repetition between PMC and PSCs.	<p>All clauses which overlap between the PMC and PSC should be in only one instrument, by default this should be the PSC. Note for example:</p> <ul style="list-style-type: none"> <li>• overlap between variety of contract approval/information provisions eg. PMC 4.1, 4.4 and 4.7, and PSC 4.11 and 4.13, 13</li> <li>• inconsistency of title clauses (PMC4.2, PSC7.4)</li> <li>• repetition/overlap of assignment/control, authorisations, data/release, auditing, termination (and other clauses) in PMC and PSC.</li> </ul>	Remove overlap/inconsistency/repetition, and move all operative clauses into PSC.
<b>Increased Risks/Liability</b>			
4.8(a)	<p>Indemnity.</p> <p>The Contractor is to indemnify the DA and Joint Commission from all claims by third parties in respect of Authorized Activities.</p>	This provision is broad in nature and increases the obligations on the Contractor. Under this new provision, the DA does not equitably share in all operational risk however the DA retains its share of rewards.	The clause needs to be narrowed to ensure the DA is not indemnified for claims caused by the DA, or to be in line with the Interim Direction cl 733 indemnity – ie it extends only to an indemnity in respect of claims in relation to the Contractor's person/property, but no further.
6.2	Only "Petroleum Operations" are permissible.	Possible loss of title for everyone if one JV partner in breach	Limit DA's termination right to offending party – rework PMC 21.2.
6.2(b)/(c)	PSC company limitation.	Provision is broader than TST3(c ) and introduces termination rights (too harsh for potentially minor breaches).	Redraft so as to be consistent with TST.
<b>DA Control</b>			
4.1 (b) (ii)	Marketing Approval.	This could extend the DA's authority to well outside of the JPDA depending upon the development scenario. See comments on PSC 4.13.	Delete 4.1 (b) (ii).
4.4	DA's consent required for any agreement wrt rights under PSC or future production from PSC.	Excessively wide definition. This should not apply to any contracts downstream of the Field Export Point.	Limit to JOA approval only, and remove ability for DA to impose "conditions" on approval.
4.5 (b) & (c)	Approval for change in Operator /	See comments on PSC 1.6 (e) & (f).	See recommendations on PSC 1.6 (e) & (f).

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	competency of Operator.		
4.6	Change in control of an Authorized Person requires DA consent, else DA may terminate Authorization.	Unusual and unacceptable provision. Possible loss of title for everyone if one JV partner in breach. See comments on PSC 19.2	Delete change in control provision.
4.7	DA's consent required for any type of assignment including a transfer with regard to "petroleum".	<ul style="list-style-type: none"> <li>• Excessively wide definition of assignment with risk of termination of PSC. See comments on PSC 19.</li> <li>• There should also be an express allowance of assignments to Affiliates.</li> <li>• Clause 4.7 (b) (ii) is exceptionally broad and potentially includes gas sales contracts and all arrangements concerning the distribution of proceeds of sales downstream.</li> </ul>	<ul style="list-style-type: none"> <li>• Limit to assignments of totality of rights &amp; liabilities under the Authorization.</li> <li>• Includes rights of assignment to affiliates.</li> <li>• Delete 4.7 (b) (ii).</li> </ul>
10	Unitisation.	The DA can require a unitisation agreement to which it is a party, for an area not subject to a PSC. Furthermore, the indemnity regime is unknown in the case of the DA taking up the vacant acreage i.e. is the Contractor still expected to indemnify the DA as per clause 4.8? Also consider possible future implications if any existing prospects in an existing Discovery Area extend beyond the boundaries.	Provide Contractor with first right of refusal over adjacent vacant acreage to be unitised with the Contract Area.
11.1	Powers.	It is unclear with whom the DA is contemplating making agreements with and for what purpose.	DA powers to make agreements with other persons should be restricted to "as requested and agreed to by the Contractor".
14.5	Public announcements.	Further control and potentially in conflict with stock exchange reporting obligations. Stock Exchange rules should prevail.	Replace "or as required by" with "subject to".
15.2	Inspectors may order cessation of operations and removal of persons if he considers unsafe.	Appeal to DA does not suspend the inspector's orders and if upheld are not subject to any further appeal.	Appeal should suspend order and whole matter should be subject to possible arbitration under the PSC.
17.1	Power of Designated Authority.	<p>The DA can give directions to specified persons to provide information, attend before it to answer questions or to make available documents or records. Such directions can be given to any Authorised Person (the holder of an Authorization) in the JPDA, Australia or Timor-Leste.</p> <p>The right to issue such directions is much too broad and is not restricted to ensuring compliance with the requirements of the PMC/Authorization.</p>	Restrict the powers, and provide for exercise in accordance with PSC/PMC/Authorisation. Legally privileged information should not be required to be disclosed.

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<b>Administrative Burden</b>			
13.1 ii	Ownership of Data.	All processed data, conclusions and opinions are owned by the DA.	Delete application of section to these areas – should only apply to raw data.
13.2	Records.	Contractor is obliged to make data, information, and records including financial, commercial and legal records available in a manner and in such place as required by the DA. Require clarity on the remit of this provision (the type of financial, commercial and legal information which falls under this obligation) and format in which it is to be provided.	See proposals for PSC 13.2.
14.1	Use of Data.	Same issue as in PSC 13.5 (b).	Delete 14.1 (b).
14.2	2-year and 5-year confidentiality for data and conclusions respectively.	Impractical separation between data and conclusions.	5 years for raw data, delete conclusion/opinion provision.
14.3	Trade Secrets.	Impractical and unreasonable administrative burden (see also PSC 13.7).	Delete 14.3 (b).
16.2	Unlimited audit rights.	Duplication of audit rights with PSC.	Only 1 audit right should be allowed, and this should be provided for in PSC.
<b>Lack of Certainty</b>			
1.4	Exercise by the DA of its functions.	The requirement that the DA exercise its powers and functions in such a manner as to best promote the economic development of Timor-Leste is open ended and could have a range of major implications. This clause injects a high degree of uncertainty and risk into project development.	Delete 1.4 (a) (i) since 1.4 (a) (ii) provides a more appropriate and clearly defined objective but add reference to "in accordance with safe and efficient activities and good oilfield practice".
4.2	Title to Petroleum.	Under the new PMC, a person does not acquire title to Petroleum until it has been "Initially Processed". This could prove problematic in developments where processing takes place outside the PSC or the JPDA.  As noted above in relation to PSC Definitions of Initially Processed and Field Export Point, the meaning of "Initially Processed" in the context of Natural Gas is not clear.  Arguably, an important provision of this nature should not be in the PMC. If it appears anywhere it should appear in the	Resolve possible inconsistency between PMC 4.2 and PSC 7.4.

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		PSC.	
4.8(b)	Insurance.	To allow the DA to dictate insurance requirements for Authorised Activities would effectively dispense with the Contractor's risk assessment and mitigation processes. Require clarification on whether self-insurance is acceptable and whether that would mean that commercial cover on a self insured risk is not required.	Wording to be amended to reflect a consultative process.
5.4 (a)	Employment and use of goods and services from Timor Leste.	As well as meeting occupational health and safety requirements, all employees (including nationals and permanent residents of Timor-Leste) must have the skills necessary to operate the facilities safely and efficiently according to good oil field practice. See comments on PSC 5.4.	Further provisors required such as necessary technical, commercial and managerial skills.
5.6	PSC award.	The granting of Authorization should be a public, transparent and auditable process.	Delete Clause 5.6.
7.1, 7.2, 8.2, 9.1, 10	Exclusivity conferred by PSC is severely restricted.	Mandatory 3 <sup>rd</sup> party access; possible grant of Prospecting Authorizations and Access Authorizations over same area; mandatory unitisation with DA or 3 <sup>rd</sup> party.	No Prospecting Authorization over PSC area; significant roll-back of Access Authorization scope; no 3 <sup>rd</sup> party access at this early stage of basin exploration; every unitisation should be subject to possible arbitration under PSC.
12.2 (e)	Decommissioning requirements.	Total removal may not always be required.	Insert "to the satisfaction of the DA" to allow decommissioning on a case by case basis.
21.2	Partial Termination.	This clause is referred to in the above comments on PSC 2.4 and PMC 6.2.	Amend so that the DA can only terminate the defaulting contractor not the entire PSC provided other contractors are continuing to meet their obligations.
22	Regulations and Directions.	There is no recognition that the power to make regulations or issue directions must be exercised reasonably. In particular, it should not be exercised in a manner which is inconsistent with: <ul style="list-style-type: none"> <li>• the terms of an existing PSC or other Authorization;</li> <li>• the terms of an approved Development Plan; and</li> <li>• Good Oilfield Practices.</li> </ul>	Insert a subclause within 22 that regulations and directions must be reasonable and consistent with <ul style="list-style-type: none"> <li>• the terms of an existing PSC or other Authorization;</li> <li>• the terms of an approved Development Plan; and</li> <li>• Good Oilfield Practices.</li> </ul>
Omission 1	Old PMC Art 43 – Change of PMC.	The interim PMC provides in Article 43 that where the PMC is amended and where the amendments are inconsistent with	Insert a provision similar to Article 43 in the old PMC.

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		an existing PSC, those amendments will only apply to the PSC if so agreed by the PSC holder. This provision does not appear in the new PMC.	