



Our Reference: #1578778

21 September 2004

Mr Jose Soares
Timor Sea Designated Authority
PO Box - 113 DILI
Dili, Timor-Leste

Dear Mr Soares,

RE: DRAFT PSC & PMC FOR THE JPDA

Woodside Energy welcomes the opportunity to comment on drafts of the Petroleum Mining Code (PMC) and Production Sharing Contract (PSC) for the JPDA released by the Timor Sea Designated Authority on 26 July 2004.

Woodside currently has three production sharing contracts in this area including the Jahal and Kuda Tasi oil fields (JPDA 03-01) and a portion of the Sunrise gas field (JPDA 03-19 and JPDA 03-20). In principle, Woodside remains also interested in further exploration opportunities within the JPDA and our comments are made with this in mind, given that Jahal Kuda Tasi is in a special category, and the new PSC and PMC do not apply to Sunrise.

The following comments are provided to you with the aim of helping the Timor Sea Designated Authority (DA) put in place an exploration and development regime which is competitive with other oil and gas provinces around the world and hence attractive for exploration and development investment.

Woodside is pursuing exploration opportunities in a number of countries worldwide. We select opportunities based on the risk vs reward balance by taking into account geological potential and State Take in particular, as well as costs, access to infrastructure, regulatory efficiency and sovereign risk. Apart from its extensive Australian interests, Woodside has exploration interests in six African countries (Canary Islands, Mauritania, Kenya, Libya, Algeria and Sierra Leone) and in the Gulf of Mexico under both royalty/tax regimes as well as PSCs. Woodside also has an interest in the Ohanet gas and liquids project in Algeria (a Risk Service Contract) and earlier this year, started development of the Chinguetti oil project in Mauritania (under a PSC).

When reviewing the draft PSC and PMC for the JPDA Woodside considered whether these codes would provide adequate fiscal incentive for oil and gas exploration given our assessment of prospectivity and our knowledge of operating costs in the JPDA. We also looked at which parts of these new codes require clarification and what changes would be needed to streamline PSC administration.

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In our opinion the JPDA has only modest remaining geologic potential for significant oil discoveries. The potential for gas is better but commercialisation opportunities are more limited, as the experience with Bayu Undan and Sunrise shows.

For oil fields, development costs in the shallow water part of the JPDA are probably moderate whilst those in the deep water part will be fairly high. The expected small field sizes and the lack of existing storage and transportation facilities combine to present a real hurdle to commercial development. For gas fields, the absence of gas infrastructure and the remoteness of gas markets means that only very large discoveries may be monetized in the foreseeable future.

Given our assessment of geological potential and operating costs, we feel that the fiscal terms being offered will not be attractive to the international oil and gas industry. The State Take - a closely monitored metric by the industry - has increased as compared to the old ZOCA terms. The proposed State Take now compares unfavourably with many other competing fiscal regimes around the globe. Other major fiscal issues are the ring-fence around each PSC for Timor-Leste tax which makes exploration very expensive, and compulsory ^{3rd} party access to infrastructure. The latter point is not an issue if ullage is available, but no joint venture would be happy to see their own production 'backed out' by a competitor who had no 'up front' capital exposure. This is because the project economics of such large, capital-intensive projects, demand cost recovery in as timely a manner as possible.

It must be remembered that authorities around the world adjust their petroleum fiscal systems to the geological potential of the acreage and to the dynamics of the industry in order to attract exploration and development capital. Examples are the introduction and subsequent abolition of Petroleum Rent Tax in the UK North Sea, various Royalty Suspension Volume initiatives in the US Gulf of Mexico, the abolition of ring-fence for PRRT in Australia and a multitude of deepwater exploration incentives in various fiscal regimes around the world. In a situation where the geologic potential of the JPDA has declined following 13 years of only moderately successful exploration, it seems odd that the fiscal terms should worsen.

In Woodside's opinion the Draft PSC and PMC also contain a number of clauses which would create a major disincentive to investment in the JPDA. These are documented in detail in Attachments 1 and 2 and broadly fall within the following categories:

1. High State Take: State Take is high and internationally un-competitive given the region's modest prospectivity, limited past exploration and development success, its remoteness from infrastructure and deep water. The PSC does not provide sufficient protection against possible future increases in fees levied by the DA or other taxes and duties levied by the Timor-Leste or the Australian Governments. Ring fencing of exploration costs within PSCs means that the effective after-tax cost of exploration is much higher than that under tax regimes in other countries.
2. Excessive DA Control: DA consent and approval would be required for virtually every activity thereby creating a very large administrative burden, delays and cost increases. Contractors need to have the freedom to run their business efficiently subject to a set of overriding principles (not detailed prescription).

3. Onerous Administrative Burden: The amount and detail of information that must be provided to the DA is onerous and atypical of PSC's in other countries.
4. Lack of Certainty for the Contractor: Contractors would face major regulatory uncertainty due to the inclusion of significant discretionary powers by the DA. There are too many avenues by which the DA could act to change the requirements on Contractors and the way in which the PSC operates.
5. Increased Risk for Contractors: A series of risks relating to *force majeure* and title to product, which typically are shared by both the host government and contractor in other fiscal systems, are transferred to the contractor. Onerous termination rights of the DA under the PSC leave the contractor significantly exposed.

It is possible that many of these issues and others listed in the attachment are the result of our lack of clarity about the intent of the drafting or of situations which weren't anticipated. Woodside would like to work with the Designated Authority to develop a regime which will achieve the Treaty objective of attracting greater petroleum investment to the JPDA whilst delivering increased economic benefits to Timor-Leste. To that end we would be pleased to meet with yourself and/or other members of the DA to discuss our concerns with the draft PSC and PMC and proposals for improving them.

Yours sincerely,



AGU KANTSLER
Director Exploration
Woodside Energy Ltd.

Attachment 1: Comments on Draft PSC

Article	Text/ Details	Comments	Recommendation
Definitions			
1.1	"Commercial Discovery"	Definition is unclear.	Change to: "A discovery which the contractor declares commercial pursuant to clause 4.10"
1.1	"Commercial Production"	Linkage to shipping complicates definition.	Change to: "start of regular production for the purpose of sale of the products to a buyer"
1.1	"Crude Oil", Crude Oil Field, "Associated Gas"	These definitions together result in gas reservoirs with a tiny oil/condensate rim to be classified as oil fields	Introduce a "Condensate" definition and a cut-off size for oil field gas caps
1.1	"Development"	The inclusion of production is inconsistent with the definition of production (which excludes development).	Delete the words: "and subsequent production"
1.1	"Exploration"	"... for the purpose of making a Discovery" presupposes successful outcome.	Replace with "for the purpose of exploring for hydrocarbons"
1.1	"Natural Gas"	Definition is unclear	Definition should explicitly include inerts
1.1	"Reservoir"	Definition is flawed with respect to compartmentalisation.	Use definition in the PMC
High Government Take			
2.2	Security. Contractor is to provide "Security" for its obligations under the PSC, which may include a letter of credit, bank guarantee or corporate guarantee.	This a new requirement which creates an additional cost for the contractor that is not cost recoverable. The requirement for the Security to cover the minimum work obligations for 5 years (3.1(f)) is out of line with international practice.	Delete requirement for security since Contractors are vetted as part of initial award.
6.2 (d)	Uplift on outstanding recoverable costs	The uplift on recoverable costs only applies for 7 years prior to development. This is an unreasonably short period for a gas development which will require an appropriate market to be secured before development proceeds.	Extend to full term of current and previous PSCs.
7	Sharing of Petroleum	Modelling of oil and gas projects over a range of sizes and water depths indicates that the State Take would be higher than under the old ZOCA terms and compares unfavourably with many other competing fiscal regions around the world. The ring fencing of each PSC for Timor-Leste tax adds to this disadvantage by making exploration very expensive on an after tax basis.	State Take could be reduced by reducing the initial 5% royalty, increasing the uplift rate for outstanding Recoverable Costs or reducing the DA share of profits (given its receipt of the 5% royalty) or a combination of these. Provide for a lower State Take from gas projects (than for oil projects) in view of the longer lead times and higher costs and risks.
9.1	Fees	The reference to PMC 23 is incorrect. Fees should be based on the costs of administration as in the	Refer to PMC 22.1(b) (xix) Insert a proviso that fees and other payments

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		old PSC Article 47 and be increased only as a result of increases in administration costs.	shall not exceed the costs of administration.
Annex C	Accounting Procedure Ineligible Costs (2.8)	<p>The list of Ineligible Costs (i.e. costs which do not qualify for cost-recovery) is considerably longer than the list in the interim PSC. Amongst other additions the list of Ineligible Costs now includes:</p> <ul style="list-style-type: none"> • interest on finance. Previously the consent of the DA could be sought (see old PSC 6.9(a)). • except with the consent of the DA, "any expenditure in respect of the hiring or leasing of structures, facilities, installations, equipment or other property, or of other works". • costs associated with local offices and local administration, including staff benefits, which are excessive. • except with the consent of the DA, but subject to Article 4.7, costs not included in a Budget for the relevant Year (recoverable costs should be based on actual expenditure (approved in accordance with the PSC) not on budget). • Costs stated elsewhere as not recoverable and costs incurred without the approval of the DA. 	<p>Remove (a) from list of Ineligible Costs in 2.8</p> <p>Remove(q) from list of Ineligible Costs in 2.8</p> <p>Remove (s) from list of Ineligible Costs in 2.8</p> <p>Remove (u) from list of Ineligible Costs in 2.8</p> <p>Remove 2.8 (v) since it merely duplicates provision elsewhere governing eligible costs and DA approvals.</p>
Omission 1	Missing tax stability clause	Tax Stability clauses are an important element of typical PSCs but have not been included	Include clause that confirms tax rate for life of PSC
Omission 2	Other levies, duties, fees, excise, VAT, WHT, training, welfare	These do not appear to be covered by the PSC which again negates one of the main benefits of a PSC.	Amend PSC to explicitly cover all taxes and charges.
Omission 3	Past Expenditures	The new PSC does not appear to recognise past expenditures, even expenditures incurred under the Interim PSCs.	Explicitly include past expenditures as recoverable.
Excessive DA Control			
1.6 (e) & (f)	Approval for change in Operator / competency of operator	<ul style="list-style-type: none"> • Approval should not be able to be unreasonably withheld. 1.6 (f) gives no guidance as to how the DA would assess whether an operator is no longer competent to be an Operator. 	<p>Insert a subclause that "the approval of the Operator or of a ^{reasonably} of Operator will not be unreasonably withheld".</p> <p>Delete 1.6 (f)</p>
3.5	Gas Retention Area	Commerciality within 5 years is too short given that the Contractor has to demonstrate activity during that period anyway and commerciality is dependant on market capture.	Extend the commerciality criteria to 15 years as applies in Australian Retention Leases.
5.1 (vii)	Prevent escape of any mixture of	Definition is too stringent to be practical. Would include	Replace with "Prevent escape of petroleum or

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	water or drilling fluid with Petroleum or any other matter	produced water with a few ppm of oil.	drilling fluids in amounts which are damaging to the environment"
5.1 (ix)	Obligation to keep each reservoir separate	It may be necessary to co-mingle production in order to achieve sufficient well production rate or optimise reservoir performance (gas re-injection using gas from a separate reservoir).	Make provision for exceptions by adding "except with the consent of the DA"
10 10.1	Provision of Goods and Services Notice	<p>Some of the requirements in Clause 10 are impractical and not consistent with international practice. They would place an enormous administrative burden on the contractor and would lead to project delays and increased project costs. In Clause 10.1 they are considered to be:</p> <ul style="list-style-type: none"> • requirement to advise all suppliers in Timor-Leste of all opportunities; • requirement to obtain approval of each award but without any requirement on the DA to make a decision within a specified time (previously a 30 day period applied) • requirement to provide the DA with full financial details of all contracts, irrespective of the amount of expenditure. 	<ul style="list-style-type: none"> • Apply a minimum threshold of \$US0.5m for advising all suppliers with advice to suppliers coordinated by the TSDA. • Specify 30 day period for DA approval of awards. Non response to be consent. • Delete 10.1(c) since details of all Recoverable Costs are provided to meet cost recovery requirements.
10.2	Contracts not Requiring DA's Approval	In 10.2(b) the level of non-approved contracts has been reduced from US\$10m to US\$5m (even though financial details need to be provided and budgets must be approved).	Raise the thresholds for contracts not requiring DA approval to \$US5m and \$US10m
10.3 (a)	Tender Invitations Requiring DA Approval	<p>In Clause 10.3 (a) there are two major concerns:</p> <p>The DA's consent would be required before tendering (the old PSC required approval only of the award of the tender, no approval was required prior to tendering). DA oversight of tendering processes could be more efficiently achieved by a dialogue and agreement on an Annual Contracting Plan.</p> <ul style="list-style-type: none"> • Regardless of value, all goods and services must be procured through arms length tenders except with the consent of the DA. Low value purchases should be excluded from this. 	<ul style="list-style-type: none"> • Delete clause 10.3 (a) • Amend 10.3 (b) to include a \$US5m tendering threshold.
10.5	Other Information to be Provided	Making the information requirements in Clause 10.5 mandatory would be administratively excessive for both the TSDA and contractors. For example all awards require approval by the DA under 10.1 (b). Requirements to provide copies of all contracts and a report on each award duplicate the information provided when seeking contract approval.	Delete (a), (b) and (c) and retain only 10.5 (d).

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		The requirement to provide a detailed report of selected contracts is also onerous but in any case could be requested by the DA under clause 10.5 (d) as it is currently worded.	
19.	Assignment	The new PSC has introduced more detailed and stringent restrictions on assignment. An assignment or dealing is of no force unless approved by the DA.	Include an entitlement to assign to affiliates (old PSC 5.3(b))e. Delete 19 b(ii).
19.2	Change in control	The new PSC has introduced a "change in control" provision whereby the DA may terminate the PSC in the event of an unauthorised change in control or such further change in control occurs as it specifies in a notice. The only exception is where the change in control is the direct result of an acquisition of shares listed on authorised stock exchange. A breach by one JV could lead to loss of title by everyone. These provisions are highly interventionist in corporate transactions and are unusual in a PSC.	Delete 19.2 or terminate PSC only in relation to defaulting corporate entity, and give the contractor companies not in default an opportunity to ratify and confirm compliance with the PSC.
AP 2.9 (c)	General and Administration cost subject to approval by DA	Requirement for general and administration costs to be determined by a "detailed study" and subject to approval by the DA adds to administrative costs and uncertainty. It is unnecessary given the DA's audit rights.	Remove clause 2.9 (c)
Onerous Administrative Burden			
1.1	"petroleum operations"	The definition is narrower than and inconsistent with the equivalent definition "Petroleum activities" in the Treaty (see TST Art 1(k)). The TST definition included activities "contemplated" by the PSC, the new PSC requires DA "authorisation". Operations must also be in the contract area" - the previous definition included all activities "undertaken to produce petroleum...under a contract". It is likely that some developments would require work to be carried out outside the contract area and this work should be covered by the PSC.	Adopt TST definition.
1.6 (d)	Operations to be conducted from an office located in Timor-Leste	Flexibility to conduct operations from most efficient location is important.	Change to: "the Operator shall operate an office in Timor-Leste".
4.7	Limit on budget overspend	<p>\$50,000 limit for individual line items is unnecessary.</p> <ul style="list-style-type: none"> 5% limit on total annual expenditure is too low (eg could be exceeded by one extra day of drilling). 	<p>Remove dollar cap for line items (but retain 10%).</p> <p>Change Work Programme limit to 10% and remove dollar limit.</p>
4.11	Development Plan	<ul style="list-style-type: none"> A 12 month period after the declaration of a Development 	Delete "and as the DA requires" in 4.11 (a)

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		<p>Area is an appropriate timeframe to prepare a Field Development Plan. However, the qualification of "and as the DA requires" in 4.11 (a) suggests that this period may be shortened which could adversely affect the quality of the Development Plan.</p> <ul style="list-style-type: none"> A typical Field Development Plan focuses on the efficient development and recovery of hydrocarbons. Copies of gas sales contracts and contracts downstream of the Field Export Point (4.11 (d) (xi)) are inappropriate. 	<ul style="list-style-type: none"> Delete 4.11 (d) (xi)
4.13	Approved Contracts	<p>The new PSC has introduced the notion of an "Approved Contract", i.e. approved by the DA. The Contractor is not entitled to sell natural gas from the Contract Area other than pursuant to an Approved Contract or as otherwise provided in the Development Plan. The Contractor may not use facilities downstream of the Field Export Point for transporting, processing, liquefying, storing, handling or delivering Petroleum other than under the terms of an Approved Contract.</p> <p>For a gas project with onshore processing, this would potentially extend the reach of the DA well outside the JPDA. The implication is that the DA would have the right to approve, for example, a contract for liquefaction of the gas in Australia. This creates a conflict of jurisdictions, is excessive and unacceptable.</p> <p>Moreover there is considerable overlap and excessive control imposed by a range of sections concerning approval of contracts and access to contract information - compare 4.13 with 4.11, and see PSC13.2(b), and PMC4.1, 4.4 and 4.7.</p>	<p>Delete 4.13</p> <p>Limit approvals and access to information to activities upstream of the Field Export Point, and make the variety of approvals/access provisions consistent and reasonable.</p>
5.3	Most stringent HSE/welfare obligation	<p>This is an evergreen obligation which gets tighter for all contractors in the JPDA (supersedes old HSE plans) every time any contractor in the JPDA, Timor-Leste or Australia or any of the affiliates of contractors in the JPDA makes an improvement.</p>	<p>Rethink HSE clause to effect high HSE standards in a practical manner that offers reduced uncertainty for contractors.</p>
7.5	1112 payment to DA for each month	<ul style="list-style-type: none"> This pays no regard to the actual lifting dates and may lead to significant payments before any sales have actually occurred and also ignores customary payment periods. It is not clear whether the DA is obliged to repay an overpayment. 	<ul style="list-style-type: none"> Bring payment to DA in line with receipt of sales proceeds <p>Clarify treatment of overpayments.</p>
13.1	Financial and Technical Data, Records and Reports	<p>These provisions give the DA title to all technical data and conclusions derived from it.</p>	<ul style="list-style-type: none"> The DA should not have title to processed information and conclusions

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	Ownership		
13.2	Records, Storage, Retrieval and Submission	<p>The Contractor's obligations with regard to the keeping of records and the provision of information to the DA and its access to all of the Contractors records are extremely onerous.</p> <ul style="list-style-type: none"> The requirement to have all data, information and records available in Timor Leste "at all reasonable times" is impractical and costly. The cost of having all data, information and records available in Timor Leste could be significant so should be explicitly listed as recoverable in Clause 3 of Annex C. 13.2 (b) currently suggests that an Electronic Receipting System is not to be used in Timor-Leste (ie paper based transactions only) which increase the administrative burden for the accounts payable team. The timeframe for delivery of data is also not specified. 	<p>An exclusion should apply to information which is self incriminatory or subject to legal privilege (see old PSC29/3).</p> <ul style="list-style-type: none"> Delete "all" <p>Include costs of complying with 13.2 as Recoverable in Clause 3 of Annex C</p> <p>Specify delivery within 14 days and that copies may be produced in electronic format. Electronic transaction to be recognised as valid and electronic records to be equally valid.</p>
13.4	Export of Data and Information	Impractical and an unreasonable administrative burden	Delete 13.4
13.5	Restrictions on Use of Data	This restricts the ability to use data for data trades or regional studies that would assist exploration and development in the JPDA	Delete 13.5 (b)
13.7	Trade Secrets	Impractical and an unreasonable administrative burden (see also PMC14.3 (b))	Delete 13.7 (b)
16.1	Audit to start 24 months after end of year	No mention about the period of the audit.	Audit once commenced should conclude within 12 months.
16.1/16.2	Independent Audit/ DA Audit	Potential for 2 DA audits in a given year- independent audit at contractors cost, DA audit at its cost.	Amend so DA can only exercise right of audit under one clause for any contract year.
16.5	Audit of affiliates	It is inappropriate for the DA to have the right to audit the books of a Contractor's affiliate or parent companies.	Provide for external auditors to audit affiliates books
AP1.3	Language and Units of Account	Costs and revenues in a currency other than \$US are to be translated at the exchange rate of the day incurred or received at a time and bank designated by the DA. This will require maintenance of an additional set of exchange rates within the Contractors accounting system.	Amend so that translation occurs on the exchange rate of the day as quoted by a major bank selected by the Contractor and approved by the DA.
AP 2.9 (d)	Inventory recoverable at time of use	A stock of inventory/spares is required for ongoing operations; this provision would de facto exclude the long-term amount of spares from being recoverable cost	Amend such that inventory is recoverable at time of purchase; terminal value gets adjusted at time of decommissioning

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AP 7.2	Cost Recovery Statement	Requires submission of a Provisional Cost Recovery Statement on last day of quarter and final version within 30 days. This is duplication as no financial information for the last month of the quarter is available by the last day of the quarter.	Delete requirement for a Provisional Cost Recovery Statement by the last day of the quarter.
Lack of Certainty			
1.1	Definitions of Initially Processed and Field Export Point.	The definition of Initially Processed makes sense for an oil development that is located within the JPDA, but it is unclear insofar as it applies to natural gas, or oil developments where the processing facility is located outside of the JPDA. It is unclear at what point natural gas would be "Initially Processed". Under the new PMC the Contractor does not acquire title to Petroleum until it has been Initially Processed (PMC4.2). However, the PSC suggests that title and risk passes at the Field Export Point (PSC7.4) with no cost recovery for costs incurred after the Field Export Point.	Clarify the definitions of Initially Processed and Field Export Point.
2.1 b(i)	Exclusivity	Exclusive right is inconsistent with restrictions on exclusivity defined in the PMC with respect to hydrocarbon type.	Remove restrictions on exclusivity in PMC 7.1(c)
2.1	No authorization to process petroleum beyond point where Initially Processed	May work for oil, but definitely complicates matters for gas (compression, transportation, separation, inhibition, pigging, ...)	Delete and cover matter under Field Development Plan approval
4.5	Non-performance of exploration work programme	<p>Art 4.5 entitles the DA to require liquidated damages to be paid for non-performed work. This is an onerous requirement as this expenditure is not actually loss suffered by the DA - they would never have "received" these funds or the benefit of them. (Note the old PMC provided for a fixed penalty related to the contract fees, not the work program and budget - PMC 45).</p> <ul style="list-style-type: none"> Termination is too harsh since non-performance may be due to factors beyond the Contractor's control 	<p>Make fulfilment of work program a condition for entering into next phase</p> <p>Delete ability for DA to terminate PSC if delay is due to factors outside Contractor's control.</p>
4.10	DA ability to vary Field definition.	After a discovery has been declared the DA should not have the right to remove sub-blocks or vary the depth of the Contract Area unless requested by the Contractor.	Delete the words: "whether of its own volition or"
5.1	Managing resources	There is a new requirement that resources be managed in a way which has "long-term benefits to Timor-Leste, Australia and the contractor". What effect this will have on the Contractor's "petroleum operations" is unclear.	Delete 5.1 (b) (iii)

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		This also links to the DA's exercise of its powers to "promote the economic development of Timor-Leste" (see PMC 1.4) which could have an adverse effect on petroleum operations.	Delete PMC 1.4 (a) (i)
5.4	Goods, Services, Training and Employment	Reference to Article 6 of the Code should be Article 5.4	Amend "Article 6" to "Article 5.4"
5.4 (b)	Preference for local employment	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.	Should be subject to availability of necessary skills, and subject to contractor's requirements for safe and efficient activities and to good oilfield practice.
7.2	Option of DA re sales	The DA on a calendar year basis may choose to sell its own petroleum. This would be impossible to manage for long term gas contracts, and difficult for any term oil contracts.	Amend 7.2 so that Contractor is responsible for marketing of all gas production. The option of the DA to elect to market its share of other petroleum could be retained provided that option can only be exercised once within a specified period following the declaration of a Development Area.
8.3	Valuation of Petroleum	<p>The new PSC does not appear to cater for the possibility of natural gas being sold at a point which is later than the Field Export Point. 8.1 and 8.3 (a) are conflicting. The price received needs to be adjusted to reflect the assessed value at the Field Export Point.</p> <p>For natural gas the "fair and reasonable market price" should be established by an objective and independent way, such as a netback or cost plus pricing methodology. The concern otherwise is that a price will be imposed by the DA, which could have significant value repercussions for a gas project.</p> <p>The combination of 4.11, 4.13 and 8.3 creates circularity and inter-meshing of approvals and determinations, leading to a high degree of uncertainty. A contractor cannot assess the economic viability of a development until the valuation is known. Valuation is not determined until the Development Plan is approved and Approved Contract in place. This obliges the Contractor to negotiate sales contracts and progress development of the field in the absence of an understanding or appreciation of the economics and therefore the viability of the development</p>	Objective criteria for valuation of Petroleum is required
15.	Third Party Access	The new PSC has introduced provisions requiring the Contractor to allow for third party access to structures and	There should be consultation with the contractor (and agreement not to be

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		facilities within the Contract Area. These are an elaboration of the old PMC 18/2 which applied to pipelines only. The Contractor is to use reasonable endeavours to negotiate a satisfactory agreement for third party access and in default of agreement the DA can set the terms of third party access in accordance with internationally accepted principles. This adds to risk and uncertainty. Third party access should be in accordance with good oilfield practice and subject to operational requirements and standards	unreasonably withheld) if the DA sets the third party access regime
Increased Risks for Contractors			
2.2	Drafting Error	Reference to Art 16 in 2.2 (a) (iv) is incorrect	Replace "Article 16" with "Article 17" in 2.2 (a) (iv)
2.3	Inconsistency in Effective Date Term	2.3(a) envisages the possibility of the effective date being later than the 7 th day after the date of the Agreement if the conditions are not met until a later date but 2.2(b) says that if the conditions are not met within 7 days the Agreement is terminated. To secure marketing arrangements of a natural gas project, the PSC term should be automatically extended to the end of the term of the natural gas sales contract (Old PSC 2.5)	The effective date should be when all of the conditions have been met. Add similar provision to old PSC 2.5, 2 nd sentence.
2.3 b(iv)	Automatic PSC termination if Treaty lapses	Puts title at risk through no fault of contractor. Too harsh	Include provision for equivalent terms to be maintained.
2.4	DA termination rights of whole PSC if any of the contractors is in financial distress	Puts title at risk through no fault of contractor who is not in financial distress. Too harsh	Termination rights should be limited to that contractor who is in financial distress or should allow other contractors to remedy breach by defaulter. PMC 21.2 attempts to do this but needs reworking (see PMC comments below).
3.1/3.2	Relinquishment	Relinquishment after 7 years is earlier than for old PSCs and reduces the attractiveness of taking up acreage in the JPDA.	Revert to old PSC terms of 3, 6 and 10 years.
3.3	Relinquishment of Development Area	Relinquishment due to force majeure breaks with principle of force majeure. Relinquishment should not apply where "good faith" efforts have been made to recover from force majeure. Relinquishment on the 25th anniversary of approval of the Development Plan, which in the case of gas projects could be many years before the end of production, is not sufficient. Standard industry contracts of 20 or 25 years could well extend beyond the 25 th anniversary of approval of the Development Plan.	Delete mandatory relinquishment due to force majeure in 3.3 (a) (i) and have a process of consultation/ agreement with contractor. Delete 3.3 (a) (ii)

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7.4	Risk in Petroleum Title transfer @field export point, but risk transfer @wellhead	The new PSC seeks to impose on the Contractor all risk associated with loss of petroleum after wellhead, such that any loss of petroleum after wellhead is deducted from Contractor's Recoverable Costs. This is onerous and unusual. It also appears to be inconsistent with the PMC which provides that the Contractor does not acquire title to Petroleum until it has been Initially Processed. Petroleum will not necessarily be Initially Processed at the Field Export Point. In addition the expression "lost" is open to interpretation and may be interpreted to include part of what is used or discharged in normal operations (eg fuel oil and gas).	Loss-of-product risk should be shared between parties simply via accepting a reduction in available petroleum resource Delete subclause (a) and modify subclause (d)
9.3	Late payment penalty	LIBOR + 5% is excessive	Reduce to LIBOR + 2%
18.5	Extension of time due to Force Majeure	A break with what is commonly the consequence of Force Majeure, i.e. the clock stops and obligations are excused to the extent prevented due to Force Majeure.	The PSC should be extended for the period of the Force Majeure.
Omission	Repatriation of Funds	PSC should include a provision that explicitly provides contractors with the right to expatriate funds without being subject to banking or exchange rate controls.	Include a clause that confirms contractors right to repatriate funds.

Attachment 2: Comments on Draft PMC

Art	Text/ Details	Comments	Recommendation
General			
	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"> • 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 • inconsistency of title clauses (PMC4.2, PSC7.4) • repetition/overlap of assignment/control, authorisations, data/release, auditing, termination (and other clauses) in PMC and PSC. 	Remove overlap/inconsistency/repetition, and move all operative clauses into PSC.
Increased			
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 Authorised 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.
Excessive			
4.1 (b) (ii)	Marketing Approval	For a gas project with onshore processing this could extend the DA's authority to well outside of the JPDA. 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 / competency of operator	See comments on PSC 1.6 (e) & (f)	See recommendations on PSC 1.6 (e) & (f)

Art	Text/ Details	Comments	Recommendation
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"> • Excessively wide definition of assignment with risk of termination of PSC. See comments on PSC 19. There should also be an express allowance of assignments to Affiliates. • 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. 	<ul style="list-style-type: none"> • Limit to assignments of totality of rights & liabilities under the Authorization Includes rights of assignment to affiliates. • Delete 4.7 (b) (ii)
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. Adds to risks and uncertainties for contractor.	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 Authorisation) 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/Authorisation.</p>	Restrict the powers, and provide for exercise in accordance with PSC/PMC/Authorisation. Legally privileged information should not be required to be disclosed.
Onerous Administrative Burden			

Art	Text/ Details	Comments	Recommendation
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.
Lack of Certainty			
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 PSC.	Resolve possible inconsistency between PMC 4.2 and PSC 7.4.
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	Wording to be amended to reflect a consultative process.

Art	Text/ Details	Comments	Recommendation
		and whether that would mean that commercial cover on a self insured risk is not required.	
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 Authorisation should be a public, transparent and auditable process.	Delete Clause 5.6
7.1, 7.2, t3 ₂ , 9.1, 10	Exclusivity conferred by PSC is severely restricted	Mandatory 3 rd party access; possible grant of Prospecting Authorizations and Access Authorizations over same area; mandatory unitisation with DA or 3 rd party	No Prospecting Authorization over PSC area; significant roll-back of Access Authorization scope; no 3 rd 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	<p>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:</p> <ul style="list-style-type: none"> • the terms of an existing PSC or other Authorisation; + the terms of an approved Development Plan; and • Good Oilfield Practices. 	<p>Insert a subclause within 22 that regulations and directions must be reasonable and consistent with</p> <ul style="list-style-type: none"> • the terms of an existing PSC or other Authorisation; • the terms of an approved Development Plan; and • Good Oilfield Practices
Omission	Old PMC Art 43 - Change of PMC	<p>The interim PMC provides in Article 43 that where the PMC is amended and where the amendments are inconsistent with an existing PSC, those amendments will only apply to the PSC if so agreed by the PSC holder.</p> <p>This provision does not appear in the new PMC.</p>	Insert a provision similar to Article 43 in the old PMC.