

## รายการอ้างอิง

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พรมแดนกับประเทศเพื่อนบ้าน, กรุงเทพมหานคร: จุฬาลงกรณ์มหาวิทยาลัย, 2532.

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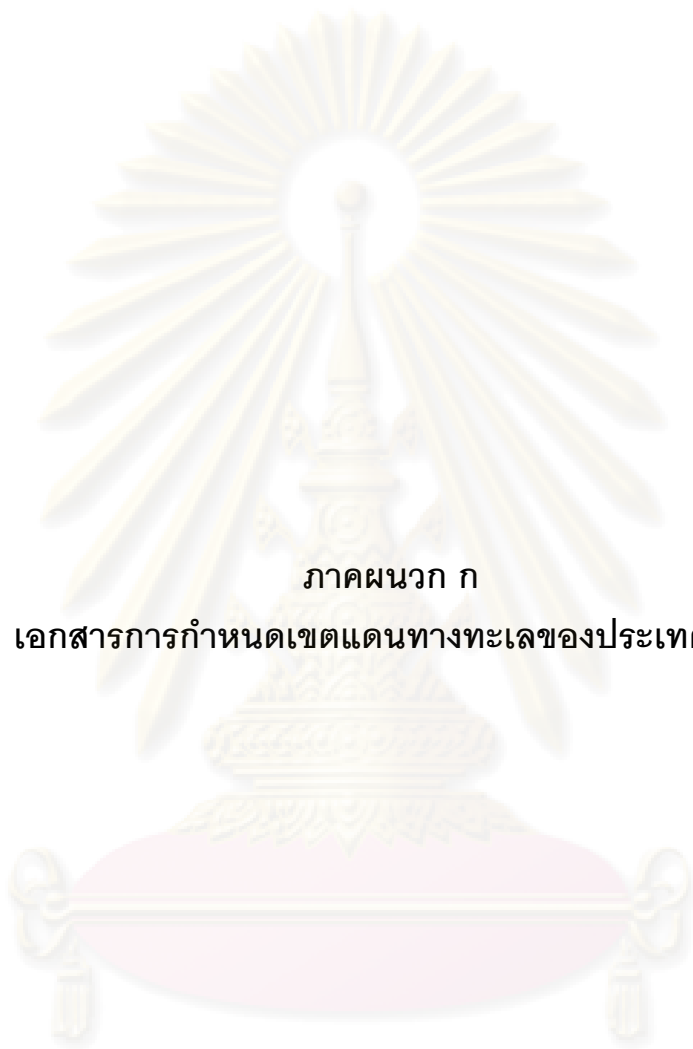
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ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย



ภาคผนวก

ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย



ภาคผนวก ก

เอกสารกำหนดเขตแดนทางทะเลของประเทศไทย

ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

๗๐๓

เล่ม ๘๒ ตอนที่ ๘๒ ราชกิจจานุเบกษา ๑๘ ตุลาคม ๒๕๖๘



## ประกาศ

กำหนดความกว้างของทะเลอาณาเขตของประเทศไทย

มีพระบรมราชโองการให้ประกาศให้ทราบทั่วกันว่า

โดยที่ประเทศไทยได้ยึดถือตลอดมาว่า อำนาจอธิปไตย  
 ของประเทศไทยขยายตัวออกไปจากอาณาเขตพื้นดินและน่าน  
 น้ำภายใน จนถึงแนวทะเลประชิดชายฝั่ง ซึ่งเรียกว่าทะเล  
 อาณาเขต รวมตลอดถึงห้วงอากาศเหนือทะเลอาณาเขต พื้น  
 ท้องทะเลและแผ่นดินใต้พื้นท้องทะเลของทะเลอาณาเขต

โดยที่เห็นเป็นการสมควรกำหนดความกว้างของทะเลอาณา  
 เขตชายฝั่ง

เล่ม ๘๓ ตอนที่ ๘๒ ราชกิจจานุเบกษา ๑๘ ตุลาคม ๒๕๐๘

ฉะนั้น จึงกำหนดความกว้างของทะเลอาณาเขตของ  
ประเทศไทยเป็นระยะสิบสองไมล์ทะเล โดยวัดจากเส้นฐานที่ใช้  
สำหรับวัดความกว้างของทะเลอาณาเขต

ประกาศ ณ วันที่ ๖ ตุลาคม พุทธศักราช ๒๕๐๘  
เป็นปีที่ ๒๑ ในรัชกาลปัจจุบัน

ผู้รับสนองพระบรมราชโองการ

จอมพล ถนอม กิตติขจร

นายกรัฐมนตรี

ศูนย์วิทยทรัพยากร

จุฬาลงกรณ์มหาวิทยาลัย



เล่ม ๘๗ ตอนที่ ๕๒

ฉบับพิเศษ หน้า ๔

ราชกิจจานุเบกษา

๑๒ มิถุนายน ๒๕๑๓

ประกาศสำนักนายกรัฐมนตรี  
เรื่อง เส้นฐานตรงและน่านน้ำภายในของประเทศไทย

คณะรัฐมนตรีเห็นสมควรประกาศขึ้นอันสถานภาพเส้นฐานตรงและน่านน้ำภายในของประเทศไทย  
ให้ทราบทั่วกัน ดังต่อไปนี้  
(๑) บริเวณที่ ๑

ลำดับที่ REFERENCE No	ชื่อภูมิศาสตร์ GEOGRAPHICAL NAME	ค่าพิกัดภูมิศาสตร์ GEOGRAPHICAL COORDINATE	
		ละติจูด เหนือ LAT. N.	ลองจิจูด ตะวันออก LONG. E.
๑.	แหลมลิง LAEM LING	๑๒°-๑๒'.๓	๑๐๒°-๑๖'.๗
๒.	เกาะช้างน้อย KO CHANG NOI	๑๒°-๐๘'.๖	๑๐๒°-๑๔'.๘
๓.	หินราบ HIN RAP	๑๒°-๐๓'.๑	๑๐๒°-๑๔'.๕
๔.	หินลูกบาท HIN LUK BAT	๑๑°-๔๖'.๗	๑๐๒°-๑๗'.๒
๕.	เกาะรัง KO-RANG	๑๑°-๔๖'.๖	๑๐๒°-๒๐'.๒
๖.	หินบางบัว HIN BANG BAO	๑๑°-๓๕'.๔	๑๐๒°-๑๒'.๐
๗.	เกาะกูด KO KUT	๑๑°-๓๓'.๖	๑๐๒°-๑๕'.๗
๘.	หลักเขตแดนไทย-เขมร THAI-CAMBODIA BOUNDARY POST	-	-

ฉบับพิเศษ หน้า ๕  
 เล่ม ๘๗ ตอนที่ ๕๒  
 ราชกิจจานุเบกษา  
 ๑๒ มิถุนายน ๒๕๓๓

## (๒) บริเวณที่ ๒

ลำดับที่ REFERENCE No	ชื่อภูมิศาสตร์ GEOGRAPHICAL NAME	ค่าพิกัดภูมิศาสตร์ GEOGRAPHICAL COORDINATE	
		ละติจูด LAT. N.	ลองจิจูด LONG. E.
๑.	แหลมใหญ่ LAEM YAI	๑๐°-๕๓'.๗	๙๙°-๓๑'.๔
๒.	เกาะรันไค่ KO RAN KHAI	๑๐°-๕๗'.๔	๙๙°-๓๒'.๖
๓.	เกาะรันเป็ด KO RAN PET	๑๐°-๕๖'.๕	๙๙°-๓๒'.๒
๔.	เกาะไค่ KO KHAI	๑๐°-๕๑'.๕	๙๙°-๒๕'.๕
๕.	เกาะจรวงษ์ KO CHORAKHE	๑๐°-๓๓'.๖	๙๙°-๒๓'.๒
๖.	หินลาดก้าม HIN LAK NGAM	๑๐°-๓๐'.๐	๙๙°-๒๕'.๖
๗.	เกาะเต่า KO TAO	๑๐°-๐๗'.๕	๙๙°-๕๐'.๗
๘.	หินใบ HIN BAI	๐๙°-๕๖'.๖	๙๙°-๕๙'.๗
๙.	เกาะกงธารเสด็จ KO KONG THANSADET	๐๙°-๕๕'.๕	๑๐๐°-๐๕'.๗
๑๐.	เกาะพังนัม KO PHANGAN	๐๙°-๕๕'.๐	๑๐๐°-๐๕'.๒
๑๑.	เกาะกงออก KO KONG OK	๐๙°-๓๖'.๑	๑๐๐°-๐๕'.๕
๑๒.	เกาะมัดคัง KO MAT LANG	๐๙°-๓๒'.๐	๑๐๐°-๐๕'.๓
๑๓.	เกาะสมุย KO SAMUI	๐๙°-๒๗'.๓	๑๐๐°-๐๕'.๗
๑๔.	หินอังกวัง HIN ANG WANG	๐๙°-๒๓'.๕	๑๐๐°-๐๑'.๕
๑๕.	เกาะรวบ KO RAP	๐๙°-๑๗'.๘	๙๙°-๕๗'.๕
๑๖.	แหลมหน้าถ้ำ LAEM NA THAM	๐๙°-๑๒'.๕	๙๙°-๕๓'.๒

ฉบับพิเศษ หน้า ๖  
 เดือน ๘๗ ตอนที่ ๕๒  
 วารสารงานโบราณคดี  
 ๑๒ มิถุนายน ๒๕๑๓

## (๓) บริเวณที่ ๓

ลำดับที่ REFERENCE No	ชื่อภูมิศาสตร์ GEOGRAPHICAL NAME	ค่าพิกัดภูมิศาสตร์ GEOGRAPHICAL COORDINATE	
		ละติจูด LAT. N.	ลองจิจูด LONG. E.
๑.	เกาะภูเก็ต KO PHUKET	๐๗°-๔๖'.๕	๙๘°-๑๗'.๕
๒.	เกาะแก้วน้อย KO KAE NOI	๐๗°-๔๓'.๘	๙๘°-๑๘'.๐
๓.	เกาะฮี KO HI	๐๗°-๔๔'.๐	๙๘°-๒๑'.๗
๔.	เกาะไม้ท่อน KO MAI THON	๐๗°-๔๔'.๘	๙๘°-๒๔'.๗
๕.	เกาะไก่อ KO KAI	๐๗°-๔๔'.๖	๙๘°-๓๗'.๑
๖.	เกาะบิฑนออก KO BIDA NOK	๐๗°-๓๘'.๒	๙๘°-๔๖'.๒
๗.	เกาะหมา KO MA	๐๗°-๓๖'.๖	๙๘°-๕๒'.๑
๘.	เกาะลันตาใหญ่ KO LANTA YAI	๐๗°-๒๗'.๘	๙๘°-๐๖'.๐
๙.	เกาะโพง KO NGAI	๐๗°-๒๓'.๘	๙๘°-๑๒'.๑
๑๐.	เกาะกระดาน KO KRADAN	๐๗°-๑๗'.๗	๙๘°-๑๕'.๘
๑๑.	เกาะกวาง KO KHWANG	๐๗°-๑๓'.๓	๙๘°-๒๑'.๗
๑๒.	เกาะเบ็ง KO BENG	๐๗°-๐๔'.๓	๙๘°-๒๘'.๗
๑๓.	หินแบวะ HIN BAEWA	๐๗°-๐๓'.๗	๙๘°-๒๔'.๐
๑๔.	เกาะตุลื้อใหญ่ KO TULUI YAI	๐๗°-๐๐'.๘	๙๘°-๒๖'.๘
๑๕.	เกาะตาไบ KO TA BAI	๐๖°-๕๘'.๘	๙๘°-๒๘'.๗
๑๖.	เกาะอาย่า KO AYAM	๐๖°-๔๗'.๖	๙๘°-๓๐'.๑

ฉบับพิเศษ หน้า ๗  
 เดิม ๘๒ ตอนที่ ๕๒  
 วารสารงานแบกมา  
 ๑๒ มิถุนายน ๒๕๑๓

ลำดับที่ REFERENCE No	ชื่อภูมิศาสตร์ GEOGRAPHICAL - NAME	ค่าพิกัดภูมิศาสตร์ GEOGRAPHICAL COORDINATE	
		ละติจูด เหนือ LAT. N.	ลองจิจูด ตะวันออก LONG. E.
๑๗.	หินออสบอน HIN OSBON	๐๖°-๓๘'.๘	๙๙°-๓๒'.๕
๑๘.	เกาะตะรุเตา KO TARUTAO	๐๖°-๓๐'.๒	๙๙°-๓๙'.๑
๑๙.	หินใบ HIN BAI	๐๖°-๓๐'.๐	๙๙°-๔๒'.๑
๒๐.	เกาะโคยใหญ่ KO KOI YAI	๐๖°-๓๓'.๘	๙๙°-๕๐'.๗
๒๑.	เกาะลิมา KO LIMA	๐๖°-๓๒'.๒	๙๙°-๕๗'.๔
๒๒.	เกาะกุนิง KO KHUNING	๐๖°-๒๖'.๗	๑๐๐°-๐๘'.๗
๒๓.	เกาะปรีศมานา KO PRASMANA	๐๖°-๒๕'.๔	๑๐๐°-๐๕'.๒
๒๔.	พรมแดนไทย-มาเลเซีย THAI-MALAYSIA BOUNDARY	-	-

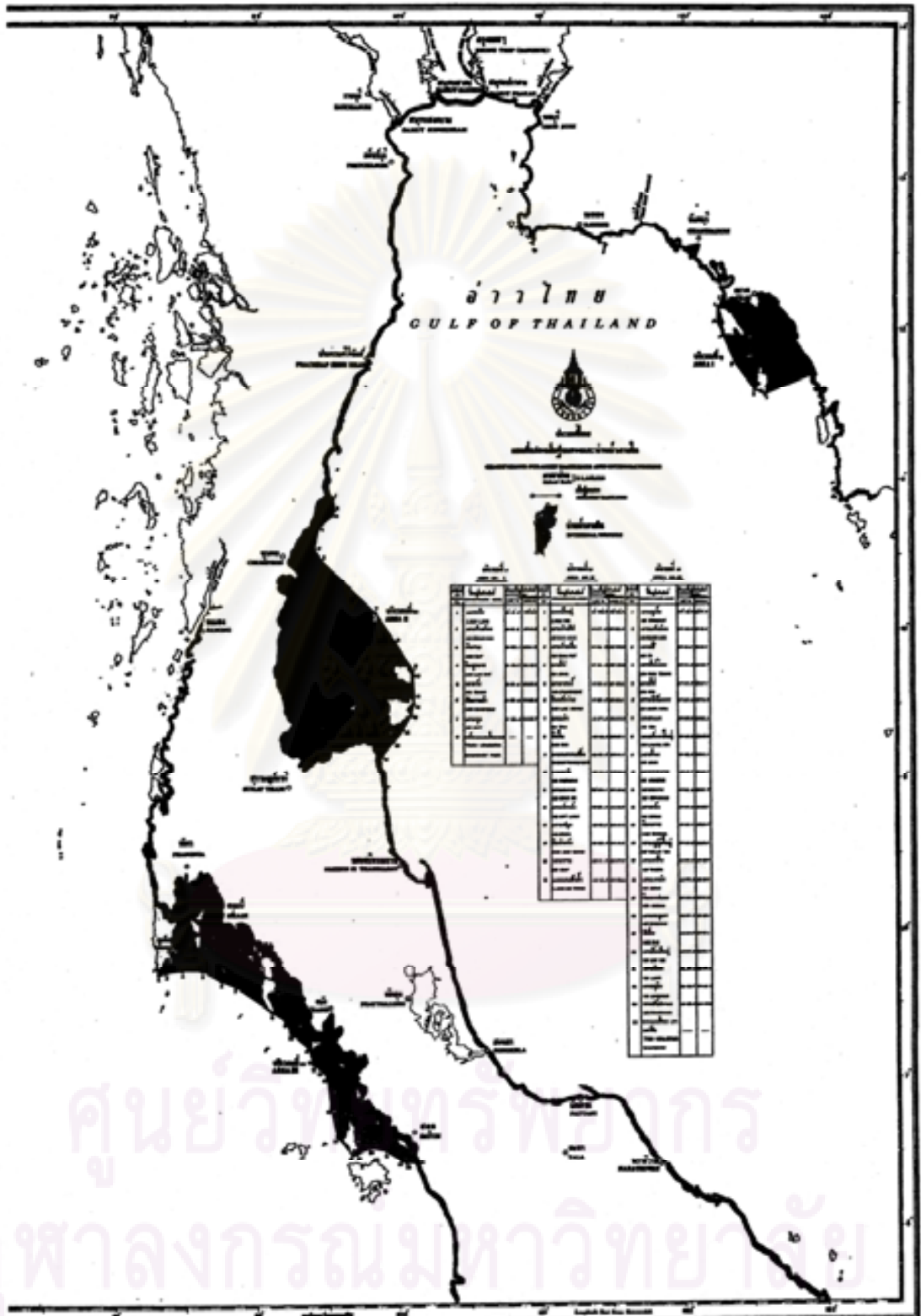
และนำแผนที่มาในหลักฐานตรงดังกล่าวข้างต้นเป็นแผนที่ของประเทศไทย หังปรากฏ  
 รายละเอียดในแผนที่ที่ท้ายประกาศนี้  
 ประเทศไทยได้อธิบายเงื่อนไขตลอดมาว่ากาลนานแล้ว

ประกาศ ณ วันที่ ๑๑ มิถุนายน ๒๕๑๓

จอมพล ถ. พิบูลสงคราม

นายกรัฐมนตรี

ศูนย์วิทยทรัพยากร  
 จุฬาลงกรณ์มหาวิทยาลัย



**ประกาศสำนักนายกรัฐมนตรี**  
เรื่อง เส้นฐานตรงและน่านน้ำภายในของประเทศไทยบริเวณที่สี่

ตามที่ได้มีประกาศสำนักนายกรัฐมนตรี เรื่อง เส้นฐานตรงและน่านน้ำภายในของประเทศไทย ลงวันที่ ๑๑ มิถุนายน ๒๕๑๓ ซึ่งประกาศในราชกิจจานุเบกษา ฉบับพิเศษ เล่ม ๘๗ ตอนที่ ๕๒ ลงวันที่ ๑๒ มิถุนายน ๒๕๑๓ กำหนดให้มีเส้นฐานและน่านน้ำภายใน ๓ บริเวณ นั้น

เพื่อให้สอดคล้องกับกฎหมายระหว่างประเทศอันเป็นที่ยอมรับนับถือกัน คณะรัฐมนตรีเห็นสมควรประกาศเส้นฐานตรงของประเทศไทยอีกบริเวณหนึ่ง เป็นบริเวณที่ ๔ ให้ทราบทั่วกันดังนี้

บริเวณที่ ๔

ลำดับที่ REFERENCE No.	ชื่อภูมิศาสตร์ GEOGRAPHICAL NAME	ค่าพิกัดภูมิศาสตร์ GEOGRAPHICAL COORDINATES	
		ละติจูดเหนือ LAT. N.	ลองจิจูดตะวันออก LONG. E.
๑.	เกาะกงออก (KO KONG OK)	๕°-๓๖'-๐๖"	๑๐๐°-๐๕'-๔๘"
๒.	เกาะกระ (KO KRA)	๕°-๒๓'-๔๕"	๑๐๐°-๔๕'-๑๓"
๓.	เกาะโลซิน (KO LOSIN)	๗°-๑๕'-๕๔"	๑๐๑°-๕๕'-๕๔"
๔.	พรมแดนไทย-มาเลเซีย (THAI-MALAYSIAN BOUNDARY)	๖°-๑๕'-๓๐"	๑๐๒°-๐๕'-๓๖"

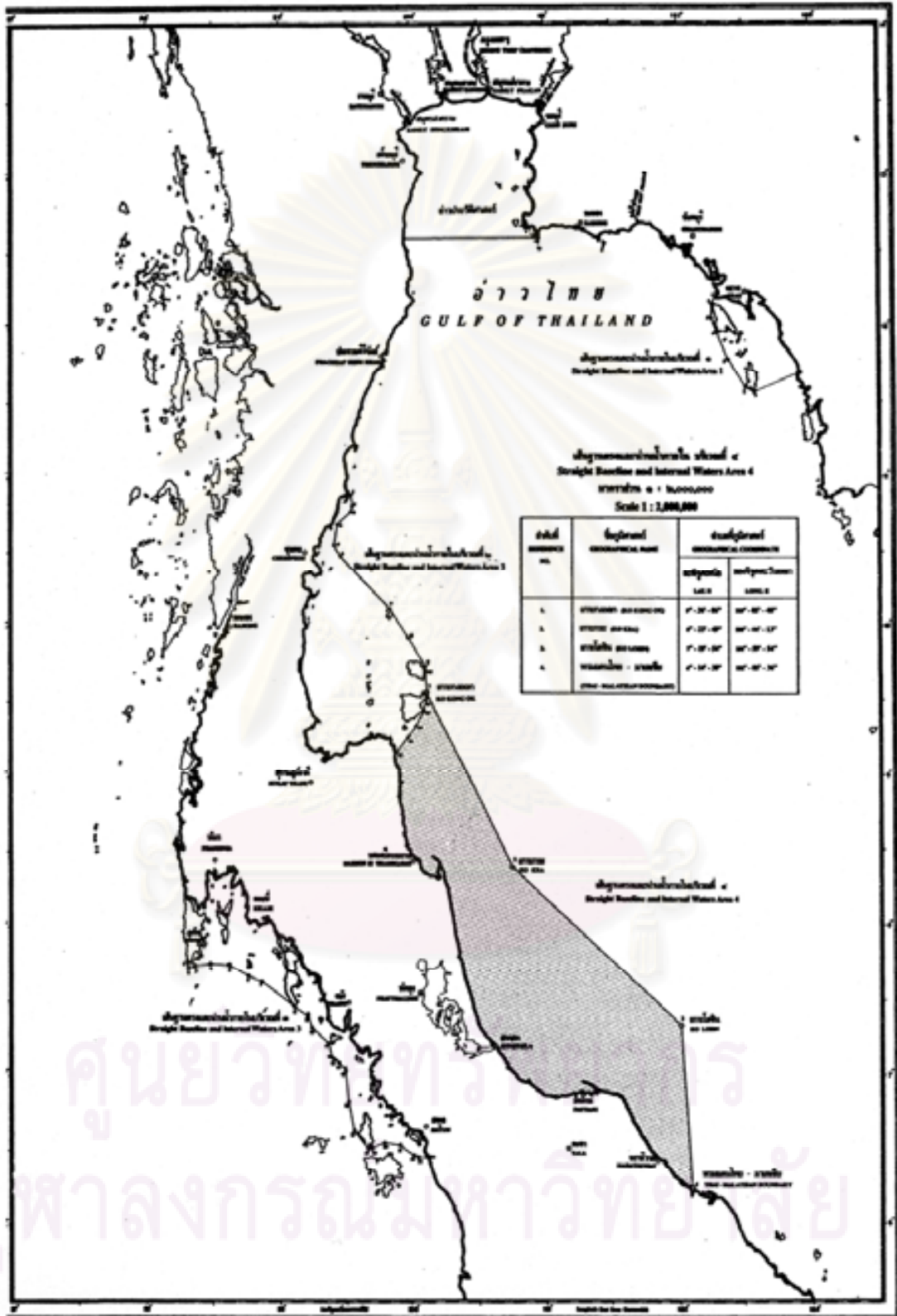
และน่านน้ำภายในเส้นฐานตรงดังกล่าวข้างต้นเป็นน่านน้ำภายในของประเทศไทย ดังปรากฏรายละเอียดในแผนที่ท้ายประกาศนี้

ประกาศ ณ วันที่ ๑๗ สิงหาคม พ.ศ. ๒๕๓๕

อานันท์ ปันยารชุน

นายกรัฐมนตรี

จุฬาลงกรณ์มหาวิทยาลัย



ศูนย์วิจัยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

ฉบับพิเศษ หน้า ๑  
 เล่ม ๕๐ ตอนที่ ๖๐ ราชกิจจานุเบกษา ๑ มิถุนายน ๒๕๑๖



## ประกาศ

กำหนดเขตไหล่ทวีปของประเทศไทยด้านอ่าวไทย

มีพระบรมราชโองการให้ประกาศให้ทราบทั่วกันว่า  
 เพื่อความมุ่งประสงค์ในการใช้สิทธิอธิปไตยของประเทศไทย  
 ในการสำรวจและการแสวงประโยชน์จากทรัพยากรธรรมชาติ  
 ในอ่าวไทย จึงกำหนดให้เขตไหล่ทวีปตามแผนที่และพิภพ  
 ภูมิศาสตร์ของแต่ละจุดที่ประกอบเป็นเขตไหล่ทวีปของไทยซึ่ง  
 แนบท้ายประกาศนี้เป็นเขตไหล่ทวีปของประเทศไทยด้าน  
 อ่าวไทย

ในการกำหนดเขตไหล่ทวีปนี้ ได้ยึดถือมูลฐานแห่งสิทธิ  
 ตามหลักกฎหมายระหว่างประเทศอันเป็นที่ยอมรับนับถือกัน



## ฉบับพิเศษ หน้า ๒

เล่ม ๘๐ ตอนที่ ๖๐ ราชกิจจานุเบกษา ๑ มิถุนายน ๒๕๑๖

ทั่วไป และตามอนุสัญญาว่าด้วยไหล่ทวีป ซึ่งกระทำ ณ กรุง  
เจนีวา ลงวันที่ ๒๘ เมษายน ค.ศ. ๑๙๕๘ และประเทศไทย  
ได้ให้สัตยาบันไว้แล้ว เมื่อวันที่ ๒ กรกฎาคม พ.ศ. ๒๕๑๑

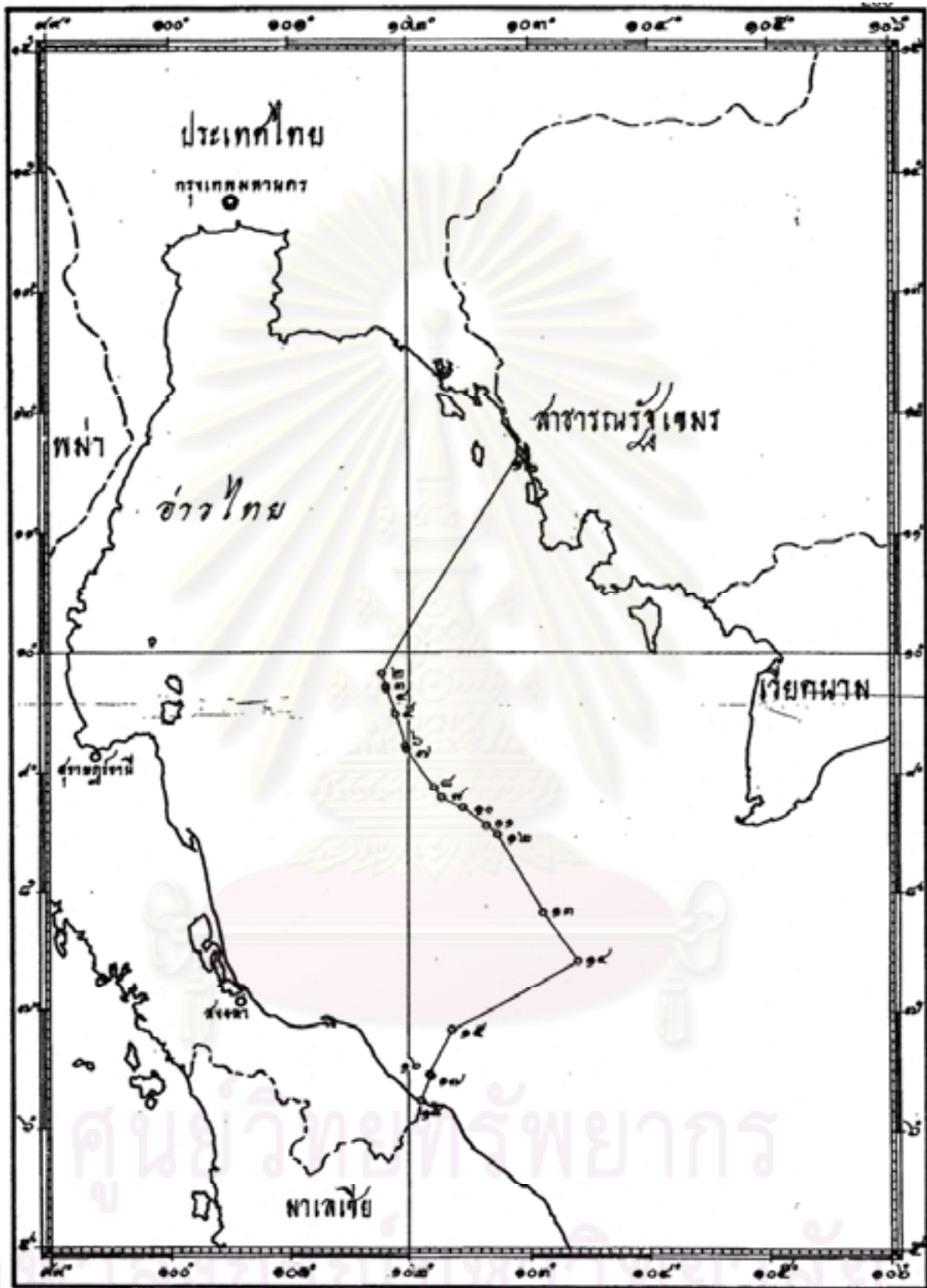
แผนที่และจุดต่อเนื่องที่กำหนดพิกักภูมิศาสตร์ตามประกาศ  
นี้มีเพื่อแสดงแนวทั่วไปของเส้นกำหนดไหล่ทวีป สำหรับสิทธิ  
อธิปไตยในส่วนที่เป็นทะเลอาณาเขตซึ่งต่อเนื่องกับทะเลอาณา  
เขตของประเทศใกล้เคียงอันจะถือเป็นจุดเริ่มของเส้นแบ่งเขต  
ไหล่ทวีปนั้นจะเป็นไปตามที่จะได้ตกลงกัน โดยยึดถือมูลฐาน  
แห่งบทบัญญัติของอนุสัญญาว่าด้วยทะเล อาณาเขตและเขต  
ต่อเนื่อง ซึ่งกระทำ ณ กรุงเจนีวา ลงวันที่ ๒๘ เมษายน  
ค.ศ. ๑๙๕๘

ประกาศ ณ วันที่ ๑๘ พฤษภาคม พุทธศักราช ๒๕๑๖  
เป็นปีที่ ๒๘ ในรัชกาลปัจจุบัน

ผู้รับสนองพระบรมราชโองการ

จอมพล ถนอม กิตติขจร  
นายกรัฐมนตรี

จุฬาลงกรณ์มหาวิทยาลัย



แผนที่แนวเขตใต้ทวีปของประเทศไทย กับชาวกูย  
มาตราส่วน ๑ : ๑,๕๐๐,๐๐๐

พิกัดภูมิศาสตร์ของจุดโยงยึดแนวเขตไหล่ทวีปของประเทศไทยด้านอ่าวไทย

จุดหมายเลข	ละติจูดเหนือ	ลองจิจูดตะวันออก
๑	๑๑°๓๖'.๐	๑๐๒°๕๕'.๐
๒	๐๕°๔๗'.๕	๑๐๑°๔๖'.๕
๓	๐๕°๔๓'.๐	๑๐๑°๔๗'.๕
๔	๐๕°๔๒'.๐	๑๐๑°๔๖'.๐
๕	๐๕°๒๗'.๕	๑๐๑°๕๓'.๕
๖	๐๕°๑๓'.๐	๑๐๑°๕๗'.๕
๗	๐๕°๑๑'.๐	๑๐๑°๕๖'.๐
๘	๐๕°๕๒'.๐	๑๐๒°๑๓'.๐
๙	๐๕°๕๓'.๐	๑๐๒°๑๖'.๕
๑๐	๐๕°๕๒'.๐	๑๐๒°๒๖'.๕
๑๑	๐๕°๓๓'.๐	๑๐๒°๓๗'.๐
๑๒	๐๕°๒๖'.๐	๑๐๒°๔๓'.๐
๑๓	๐๗°๔๖'.๕	๑๐๓°๐๕'.๕
๑๔	๐๗°๒๕'.๐	๑๐๓°๒๔'.๘
๑๕	๐๖°๕๐'.๐	๑๐๒°๒๑'.๒
๑๖	๐๖°๒๗'.๘	๑๐๒°๐๖'.๖
๑๗	๐๖°๒๗'.๕	๑๐๒°๑๐'.๐
(๑๘)	๐๖°๑๔'.๕	๑๐๒°๐๕'.๖

เล่ม ๘๘ ตอนที่ ๓๐ ราชกิจจานุเบกษา ๒๕ กุมภาพันธ์ ๒๕๒๔



## ประกาศ

เขตเศรษฐกิจจำเพาะของราชอาณาจักรไทย

มีพระบรมราชโองการให้ประกาศให้ทราบทั่วกันว่า  
เพื่อความมุ่งประสงค์ในการใช้สิทธิอธิปไตยของราชอาณาจักรไทย  
ในการแสวงประโยชน์ และอนุรักษ์ทรัพยากรธรรมชาติทั้งทางบกและ  
ไม่มีชีวิตในทะเล

จึงเห็นสมควรประกาศเขตเศรษฐกิจจำเพาะของราชอาณาจักรไทย  
ดังต่อไปนี้

๑. เขตเศรษฐกิจจำเพาะของราชอาณาจักรไทย ได้แก่บริเวณ  
ที่อยู่ถัดออกไปจากทะเลอาณาเขตของราชอาณาจักรไทย มีความกว้าง  
๒๐๐ ไมล์ทะเล วัดจากเส้นฐานที่ใช้วัดความกว้างของทะเลอาณาเขต
๒. ในเขตเศรษฐกิจจำเพาะนี้ ราชอาณาจักรไทยนี้
  - (ก) สิทธิอธิปไตยในอันที่จะสำรวจและแสวงประโยชน์  
อนุรักษ์และจัดการเกี่ยวกับทรัพยากรธรรมชาติทั้งหลายทั้งทางบกและ  
ไม่มีชีวิต บนพื้นดินท้องทะเลและใต้พื้นดินท้องทะเล และในห้วงน้ำ

เล่ม ๘๘ ตอนที่ ๓๐ ราชกิจจานุเบกษา ๒๕ กุมภาพันธ์ ๒๕๒๕

เหนือขึ้นไป สิทธิอธิปไตยในส่วนที่เกี่ยวกับกิจกรรมอื่น ๆ เพื่อการสำรวจ  
และแสวงประโยชน์ทางเศรษฐกิจในเขตดังกล่าว อาทิ การผลิตพลังงาน  
จากน้ำ กระแสน้ำ และกระแสนลม

(ข) เขตอำนาจเกี่ยวกับ

(๑) การสร้างและการใช้เกาะเทียม สิ่งติดตั้งและ  
โครงสร้างต่าง ๆ

(๒) การสำรวจเกี่ยวกับวิทยาศาสตร์ทางทะเล

(๓) การรักษาสภาวะแวดล้อมทางทะเล

(ค) สิทธิอื่นใดซึ่งมีตามกฎหมายระหว่างประเทศ

๓. ในเขตเศรษฐกิจจำเพาะนี้ เสรีภาพในการเดินเรือและการบิน  
ผ่าน และในการวางสายเคเบิลและท่อใต้น้ำ ให้เป็นไปตามกฎหมาย  
ระหว่างประเทศ

๔. ในกรณีที่เขตเศรษฐกิจจำเพาะของราชอาณาจักรไทยอยู่  
ประชิดหรือตรงข้ามกับเขตเศรษฐกิจจำเพาะของรัฐชายฝั่งอื่น รัฐบาลแห่ง  
ราชอาณาจักรไทยพร้อมที่จะเจรจากับรัฐชายฝั่งที่เกี่ยวข้องเพื่อกำหนดเขต  
เศรษฐกิจจำเพาะระหว่างกันต่อไป

ประกาศ ณ วันที่ ๒๓ กุมภาพันธ์ พุทธศักราช ๒๕๒๕  
เป็นปีที่สามสิบหกในรัชกาลปัจจุบัน  
ผู้รับสนองพระบรมราชโองการ

พลเอก ป. ศิริสุตานนท์  
นายกรัฐมนตรี

เล่ม ๑๐๕ ตอนที่ ๒๗ ราชกิจจานุเบกษา ๑๘ กุมภาพันธ์ ๒๕๓๑

## ประกาศ

เขตเศรษฐกิจจำเพาะของราชอาณาจักรไทยด้านอ่าวไทย  
ส่วนที่ประชิดกับเขตเศรษฐกิจจำเพาะของประเทศมาเลเซีย

มีพระบรมราชโองการให้ประกาศให้ทราบทั่วกันว่า

โดยที่ได้มีประกาศลงวันที่ ๒๗ กุมภาพันธ์ พุทธศักราช ๒๕๒๔  
เรื่อง เขตเศรษฐกิจจำเพาะของราชอาณาจักรไทย กำหนดว่า เขตเศรษฐกิจ  
จำเพาะของราชอาณาจักรไทย ได้แก่บริเวณที่อยู่ถัดออกไปจากทะเลอาณา  
เขตของราชอาณาจักรไทยมีความกว้าง ๒๐๐ ไมล์ทะเล วัดจากเส้นฐาน  
ที่ใช้วัดความกว้างของทะเลอาณาเขต นั้น

บัดนี้ เป็นการสมควรที่จะประกาศเพิ่มเติม โดยถือตามหลัก  
กฎหมายระหว่างประเทศอันเป็นที่ยอมรับนับถือกันทั่วไปว่าขอบเขตรอบ  
นอกของเขตเศรษฐกิจจำเพาะของราชอาณาจักรไทยด้านอ่าวไทย ส่วนที่  
ประชิดกับเขตเศรษฐกิจจำเพาะของประเทศมาเลเซีย ได้แก่เส้นเชื่อมกัน  
ตามจุดพิกัดภูมิศาสตร์ของแต่ละจุด ดังต่อไปนี้

จุดหมายเลข	ละติจูดเหนือ	ลองจิจูดตะวันออก
๑	๖° ๑๔' .๕	๑๐๒° ๐๕' .๖
๒	๖° ๒๗' .๕	๑๐๒° ๑๐' .๐
๓	๖° ๒๗' .๘	๑๐๒° ๐๕' .๖
๔	๖° ๕๐' .๐	๑๐๒° ๒๑' .๒







เล่ม ๑๑๕ ตอนที่ ๑๒๐ ราชกิจจานุเบกษา ๒๖ กรกฎาคม ๒๕๓๑

## ประกาศ

เขตเศรษฐกิจจำเพาะของราชอาณาจักรไทยด้านทะเลอันดามัน

มีพระบรมราชโองการให้ประกาศให้ทราบทั่วกันว่า

โดยที่ได้มีประกาศลงวันที่ ๒๓ กุมภาพันธ์ พุทธศักราช ๒๕๒๔ เรื่อง เขตเศรษฐกิจจำเพาะของราชอาณาจักรไทย กำหนดว่า เขตเศรษฐกิจจำเพาะของราชอาณาจักรไทย ได้แก่บริเวณที่อยู่ถัดออกไปจากทะเลอาณาเขตของราชอาณาจักรไทย มีความกว้าง ๒๐๐ ไมล์ทะเล วัดจากเส้นฐานที่ใช้วัดความกว้างของทะเลอาณาเขต นั้น

บัดนี้ เป็นการสมควรที่จะประกาศเพิ่มเติม โดยถือตามหลักกฎหมายระหว่างประเทศอันเป็นที่ยอมรับนับถือกันทั่วไป ว่าขอบเขตรอบนอกของเขตเศรษฐกิจจำเพาะของราชอาณาจักรไทยด้านทะเลอันดามัน ได้แก่ เส้นเชื่อมกันตามจุดพิกัดภูมิศาสตร์ของแต่ละจุด ดังต่อไปนี้

จุดหมายเลข	ละติจูดเหนือ	ลองจิจูดตะวันออก
๑.	๖° ๒๘' ๓๐"	๙๙° ๓๙' ๑๒"
๒.	๖° ๓๐' ๑๒"	๙๙° ๓๓' ๒๔"
๓.	๖° ๒๘' ๕๔"	๙๙° ๓๐' ๔๒"
๔.	๖° ๑๘' ๒๔"	๙๙° ๒๗' ๓๐"
๕.	๖° ๑๖' ๑๘"	๙๙° ๑๙' ๑๘"

เล่ม ๑๐๕ ตอนที่ ๑๒๐ ราชกิจจานุเบกษา ๒๖ กรกฎาคม ๒๕๓๑

๖.	๖'๑๙'๐๐"	๕๕'๐๖'๔๒"
๗.	๕'๕๗'๐๐"	๕๙'๐๑'๓๐"
๘.	๖'๒๑'๔๙"	๕๗'๕๕'๐๐"
๙.	๗'๐๕'๔๙"	๕๖'๓๖'๓๐"
๑๐.	๗'๔๖'๐๖"	๕๕'๓๓'๐๖"
๑๑.	๗'๔๗'๐๐"	๕๕'๓๑'๔๙"
๑๒.	๗'๔๙'๐๐"	๕๕'๓๒'๔๙"
๑๓.	๗'๕๗'๓๐"	๕๕'๔๑'๔๙"
๑๔.	๘'๐๕'๕๕"	๕๕'๓๕'๑๖"
๑๕.	๘'๑๓'๔๗"	๕๕'๓๕'๑๑"
๑๖.	๘'๕๕'๑๑"	๕๕'๓๗'๔๒"
๑๗.	๘'๕๙'๐๔"	๕๕'๓๗'๔๐"
๑๘.	๙'๑๗'๑๙"	๕๕'๓๖'๓๑"
๑๙.	๙'๓๙'๐๐"	๕๕'๓๕'๒๕"
๒๐.	๙'๕๕'๓๐"	๕๖'๒๓'๓๕"
๒๑.	๙'๕๐'๓๕"	๕๗'๒๖'๓๖"
๒๒.	๙'๓๗'๒๔"	๕๗'๓๗'๓๖"
๒๓.	๙'๓๖'๐๒"	๕๗'๔๓'๒๕"
๒๔.	๙'๓๕'๓๕"	๕๗'๔๕'๒๕"

เล่ม ๑๐๕ ตอนที่ ๑๒๐ ราชกิจจานุเบกษา ๒๖ กรกฎาคม ๒๕๓๑

๒๕.	๕°๓๔'๕๔"	๕๗°๕๑'๑๒"
๒๖.	๕°๓๔'๒๕"	๕๗°๕๒'๑๐"
๒๗.	๕°๓๒'๑๕"	๕๗°๕๖'๒๐"

๕๕ ตามแผนที่ท้ายประกาศนี้

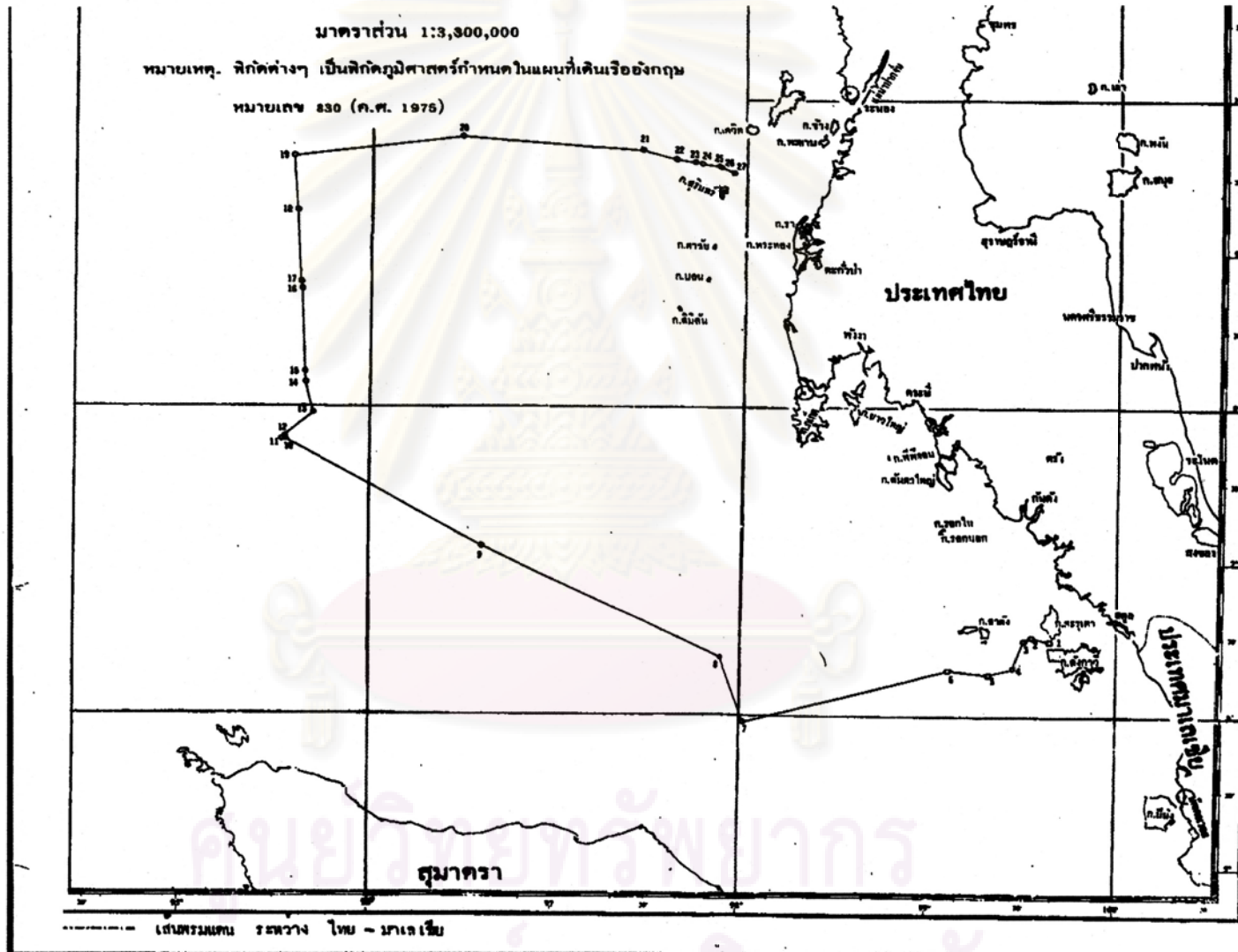
ประกาศ ณ วันที่ ๑๘ กรกฎาคม พ.ศ. ๒๕๓๑  
เป็นปีที่ ๔๓ ในรัชกาลปัจจุบัน

ผู้รับสนองพระบรมราชโองการ

พลเอก ป. ศิริสุวานนท์

นายกรัฐมนตรี

ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย



## ประกาศชาวเรือ

หมายเลข 366/2517

ชาวไทย, ห้างสะพานออก

เกาะกูด - คัดค้านกระโจมไฟ

- รายละเอียด- ได้เขียนเครื่องหมายกระโจมไฟ ลักษณะไฟ *Fl.*  
*10 sec. 1-10 m. 19 M.* ตั้งในตำบลกูด แลต.  $11^{\circ}34'02''$  น.,  
 ลอง.  $102^{\circ}35'28''$  อ. โครงสร้างเป็นเหล็กโรงแรง  
 ภาตสีขาวสูง 30 เมตร และสูงจากระดับน้ำปานกลาง  
 140 เมตร มีไฟระย้าขาวด้วยทุก 10 วินาที (สว่าง  
 1.5 วินาที, มืด 8.5 วินาที) เห็นได้ไกล 19 ไมล์  
 อยู่ในแผนที่- ไทย (แก้ครั้งสุดท้าย) หมายเลข 2(279/2517

ประกาศโดยกรมอุทกศาสตร์

กรุงเทพฯ ๗ 19 ธันวาคม 2517

ศูนย์วิทยุทรัพยากร  
 จุฬาลงกรณ์มหาวิทยาลัย

**Notice to Mariners**  
**No. 366/2517**  
**GULF OF THAILAND, EAST COAST**

**Ke Kut—Light Beacon established.**

**Details :** The symbol of light beacon, **FL 10 sec. 140 m. 19 M.** is to be inserted in the position **Lat. 11° 34' 02" N., Long. 102° 35' 28" E.** The structure is white iron framework, 30 metres high and 140 metres high from mean sea level, exhibiting a flashing white light every 10 seconds (flash 1.5 sec., eclipse 8.5 sec.) visibility 19 miles.

**(Chart affected : Thai Chart (Last correction) No. 2 (279/3517).**

**Issued by the Hydrographic Department,**

**Bangkok, 19th December 1974.**

ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย



ภาคผนวก ข

เอกสารกำหนดเขตแดนทางทะเลของประเทศกัมพูชา

ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

Page 1

**Statement Issued by the Spokesman of the Ministry of Foreign Affairs  
of 15 January 1978**

The Ministry of Foreign Affairs of Democratic Kampuchea would like to reaffirm the stand of Democratic Kampuchea concerning the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of Democratic Kampuchea, the stand that the Government of Democratic Kampuchea has successively stated precisely.

1. Democratic Kampuchea exercises its full and entire sovereignty over its territorial sea, the breadth of which is established on 12 nautical miles, measured from the baselines. Democratic Kampuchea also exercises this sovereignty over the airspace over its territorial sea as well as over the bed and subsoil of its territorial sea.
2. Democratic Kampuchea entirely exercises its rights of control over the contiguous zone which extend on 12 nautical miles from the external limit of its territorial sea.
3. Democratic Kampuchea has exclusive sovereign rights for the purpose of exploring and exploiting, conserving and managing all the natural resources of the superjacent waters, the bed and the subsoil of its exclusive economic zone situated beyond its territorial sea and extending up to 200 nautical miles from the baselines.

Democratic Kampuchea exercises its exclusive sovereign rights over its continental shelf, comprising the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory. Democratic Kampuchea exercises these sovereign rights over its continental shelf for the purpose of exploring and exploiting, conserving and managing all the natural resources of the sea-bed and subsoil.

4. All the islands of Democratic Kampuchea have their territorial seas, their contiguous zones, their exclusive economic zones and their continental shelves.
5. The Government of Democratic Kampuchea takes appropriate steps to safeguard entirely the sovereignty, rights and interests of Democratic Kampuchea in its territorial sea, its contiguous zone, its exclusive economic zone and its continental shelf.
6. The Government of Democratic Kampuchea will settle with parties concerned by the above maritime zones according to each specific situation.

Phnom Penh, 15 January 1978.



**Decree of the Council of State of 13 July 1982**

The chairman of the Council of State, considering that the People's Republic of Kampuchea has full sovereignty and inviolable rights over its territorial waters and its continental shelf; Considering that the People's Republic of Kampuchea must watch its sovereignty, security and national defence toward the sea and ensure the best exploitation of natural resources in its territorial waters and continental shelf in order to serve the national defence and reconstruction efforts and the improvement of the people's living standards; Considering the Constitution of the People's Republic of Kampuchea; And the Council of Ministers having been informed; Has decreed the following:

**Article 1**

The full and entire sovereignty of the People's Republic of Kampuchea extends beyond its territorial and internal waters to a maritime zone adjacent to its coasts and its internal waters, designated by the name of the territorial waters of the People's Republic of Kampuchea.

This sovereignty also extends to the airspace above the territorial waters of the People's Republic of Kampuchea as well as to the seabed and subsoil of these waters.

**Article 2**

The width of the territorial waters of the People's Republic of Kampuchea is 12 nautical miles (1 nautical mile equalling 1,852 metres) measured from straight baselines, linking the points of the coast and the furthest points of Kampuchea's furthest islands; these baselines are traced along the low-water mark.

These straight baselines are concretely defined in annex I of this Decree.

The internal waters of the People's Republic of Kampuchea are the waters located between the baseline of the territorial waters and the coasts of Kampuchea.

**Article 3**

The outer limit of the territorial waters of the People's Republic of Kampuchea is a line each point of which is at a distance equal to the width of the territorial waters from the closest point of the baseline.

In the maritime zone between Kach Kut Island and the terminus of the land border between Kampuchea and Thailand, the limit of the territorial water of the People's Republic of Kampuchea follows the dividing line of the maritime waters determined by the historic border stipulated in the Franco-Siamese treaty of 23 March 1907.

**Article 4**

The contiguous zone of the People's Republic of Kampuchea is a maritime zone located beyond and adjacent to its territorial waters, with a width of 12 nautical miles measured from the outer limit of the territorial waters of the People's Republic of Kampuchea.

In its contiguous zone, the People's Republic of Kampuchea exercises necessary control in order to oversee its security and to prevent and check violations of its customs, fiscal, health and emigration and immigration laws.

#### Article 5

The exclusive economic zone of the PRK (People's Republic of Kampuchea) is a maritime zone located beyond its territorial waters and adjacent to the latter. This zone extends to 200 nautical miles measured from the baseline used to measure the width of the territorial waters of the PRK.

The PRK has sovereign rights over the exploration and exploitation and the preservation and management of all organic or inorganic natural resources of the seabed, of its subsoil and of the waters above it and over other activities leading to the exploration and exploitation of its exclusive economic zone.

In its exclusive economic zone, the PRK has exclusive jurisdiction regarding the setting up and use of installations, devices and artificial islands and marine research; and has jurisdiction over the preservation of the marine environment and the control of pollution.

Without prior authorization or agreement by the PRK, foreign ships are forbidden to fish or exploit any natural resources in any form, or to undertake scientific research in the exclusive economic zone of the PRK. When they have obtained prior authorization or agreement, they must conform with the laws and regulations of the PRK concerning fishing, the exploitation of other natural resources and scientific research, and with other regulations relating to them decreed by the PRK, and must strictly carry out all obligations provided in the licenses of the contracts.

#### Article 6

The continental shelf of the People's Republic of Kampuchea comprises the seabed and the subsoil of the submarine areas that extend beyond the territorial waters throughout the natural prolongation of its land territory to a distance of 200 nautical miles from the baseline used to measure the width of the territorial waters of the People's Republic of Kampuchea.

The People's Republic of Kampuchea exercises sovereign rights over its continental shelf for the purposes of exploration, exploitation, preservation and management of its natural resources comprising mineral resources and other inorganic resources belonging to sedentary species living on the continental shelf.

The People's Republic of Kampuchea has the exclusive right to regulate the setting up and use of installations, devices and artificial islands or drilling on its continental shelf for the purpose of exploration, exploitation or any other purpose.

All activities carried out by foreigners on the continental shelf of Kampuchea, for whatever end, must be the object of an authorization or an agreement by the Government of the People's Republic of Kampuchea and conform with the laws and regulations of the People's Republic of Kampuchea.

#### Article 7

The People's Republic of Kampuchea will settle, by means of negotiations with interested States, all problems concerning the maritime zones and continental shelf in a fair and logical manner on the basis of the mutual respect for sovereignty, independence and territorial integrity.

#### Article 8

The People's Republic of Kampuchea will negotiate and agree with the Socialist Republic of Viet Nam on the maritime border in the historic waters zone of the two countries fixed in the agreement on the historic waters of the two countries signed on 7 July 1982 in line with the spirit and letter of the Treaty of Peace, Friendship and

Cooperation between the two States signed on 18 February 1979.

**Article 9**

All provisions contrary to this decree are purely and simply abrogated.

**Article 10**

The minister of national defense, the minister of interior and the ministers concerned are charged, each in his proper field, with the implementation of this decree.

**Annex 1**

**Baseline retained for the limitation of the territorial waters  
of the People's Republic of Kampuchea**

The baseline retained for the limitation of the territorial waters of the People's Republic of Kampuchea is made up of segments of a line passing successively through the following points, the co-ordinates of which are expressed in degrees, minutes and tenths of a minute, the longitude being counted from the meridian of Greenwich.

Number	Geographical Place	Latitude (North)	Longitude (East)
1	Border point on low-water mark between Thailand and the People's Republic of Kampuchea according to Treaty of 23 March 1907	11° 38.8'	102° 54.3'
2	Kack Kusrovie	11° 06.8'	102° 47.3'
3	Kack Voar	10° 14.0'	102° 52.5'
4	Poulo Wai	09° 55.5'	102° 53.2'
5	Point O out at sea on the south-west limit of the historic waters Agreement of 7 July 1982 of the People's Republic of Kampuchea		According to the

K R E T

## LE PRESIDENT DE LA REPUBLIQUE KHMERE

Vu la Constitution de la République Khmère;

Vu l'Ordonnance N°-1/71-CE du 18 Octobre 1971 régissant les questions devant du domaine de la Loi;

Vu l'Ordonnance N°-17/72-CE du 12 Mars 1972 définissant le titre du Chef l'Etat de la République Khmère;

Vu l'Ordonnance N°-2/72-PRK du 12 Mars 1972 conférant les pouvoirs du Chef du Gouvernement au Président de la République Khmère ;

Vu le Kret N°-187/72-PRK du 21 Mars 1972 modifié par les textes subséquents portant nomination du Cabinet Ministériel;

Le Conseil des Ministres entendu;

## O R D O N N E :

ARTICLE PREMIER.— En application des clauses de la Convention de Genève du 29 Avril 1958 sur le Plateau Continental à laquelle la République Khmère adhère et du Traité Franco-Siamois du 23 Mars 1907 et le Procès-Verbal de délimitation de la frontière du 8 Février 1908, la limite extérieure du Plateau Continental de la République Khmère est fixée comme l'indique la carte N°-1972 de la Marine Française à l'échelle 1/1.096.000. annexée au présent Kret avec les coordonnées de ses points repères suivantes:

La délimitation latérale Nord entre les zones du Plateau Continental relatif de la souveraineté respective de la République Khmère et de la Thaïlande est constituée par une ligne droite joignant le point frontière "A" sur la côte au plus haut sommet de l'île de Koh Kut "S" et se prolongeant jusqu'au point P, ces points A et P sont définis ci-après:

	LONGITUDES EST GREENWICH	LATITUDES NORD
<b>POINT A</b> Ce point étant le point frontière sur la côte (Traité de Bangkok du 23 Mars 1907).	102°54'81	11°38'88
<b>POINT P</b> Point équidistant de la base cambodgienne A- îlot Kusrovie et de la ligne de base thaïlandaise opposée . . . . .	101°20'00	11°32'00

**ARTICLE 2.**— La délimitation de la ligne médiane (direction Nord-sud) est constituée par une ligne brisée partant du point P et passant successivement sur les points P<sub>ck1</sub> - P<sub>ck2</sub> - P<sub>ck3</sub> - P<sub>ck4</sub> - P<sub>ck5</sub> - P<sub>ck6</sub> - P<sub>ck7</sub> - P<sub>ck8</sub> - P<sub>ck9</sub> - P<sub>ck10</sub> - P<sub>ck11</sub> - P<sub>ck12</sub> - P<sub>ck13</sub> et B point frontière avec le Sud-Vietnam ci-après définis et reportés sur la carte jointe en annexe :

	LONGITUDES EST GREENWICH	LATITUDES NORD
P <sub>ck1</sub> . . . . . Point équidistant d'une part de l'îlot cambodgien de Kusrovie et d'autre part des points thaïlandais suivants : îlot Koh Charn et point 8 Area 2 ( Hin Bai ) . . . . .	101°13'00	10°59'00
P <sub>ck2</sub> . . . . .	101°29'00	10°16'50
P <sub>ck3</sub> . . . . .	101°36'00	9°05'00
P <sub>ck4</sub> . . . . .	101°57'50	8°31'00
P <sub>ck5</sub> . . . . .	102°59'50	7°42'00
P <sub>ck6</sub> . . . . .	103°21'00	7°34'00
P <sub>ck7</sub> . . . . .	104°08'00	9°01'00
P <sub>ck8</sub> . . . . .	104°01'00	9°18'00
P <sub>ck9</sub> . . . . .	104°08'50	9°38'50
P <sub>ck10</sub> . . . . .	104°16'50	9°56'00
P <sub>ck11</sub> . . . . .	104°15'00	10°01'00
P <sub>ck12</sub> . . . . .	104°10'50	10°05'00
P <sub>ck13</sub> . . . . .	104°09'00	10°12'00
B point frontière avec Sud-Vietnam . . . . .	104°26'63	10°25'23

**ARTICLE 3.**— La carte marine n° 1972 de la Marine française - Édition 1949 à l'échelle 1/1.096.000 est jointe au présent Kret.

Toute référence au Kret implique en même temps une référence à la carte n° 1972.

**ARTICLE 4.**— Toutes dispositions contraires au présent Kret sont purement et simplement abrogées.

**ARTICLE 5.**— Le Ministre des Affaires Etrangères et le Ministre de l'Industrie, des Ressources minières et des Pêches maritimes sont chargés, chacun en ce qui le concerne, de l'exécution du présent Kret./.

*Fait à Phnom-Penh, le 1er Juillet 1972*

Signé : **LON NOL**

Présenté à la signature du  
PRESIDENT DE LA REPUBLIQUE KHMERE

par  
LE MINISTRE DE L'INDUSTRIE, DES RESSOURCES  
MINIERES ET DES PECHEES-MARITIMES,

Signé : **CHHANN SOKHUM**

POUR AMPLIATION,  
LE SECRETAIRE GENERAL  
DU GOUVERNEMENT,

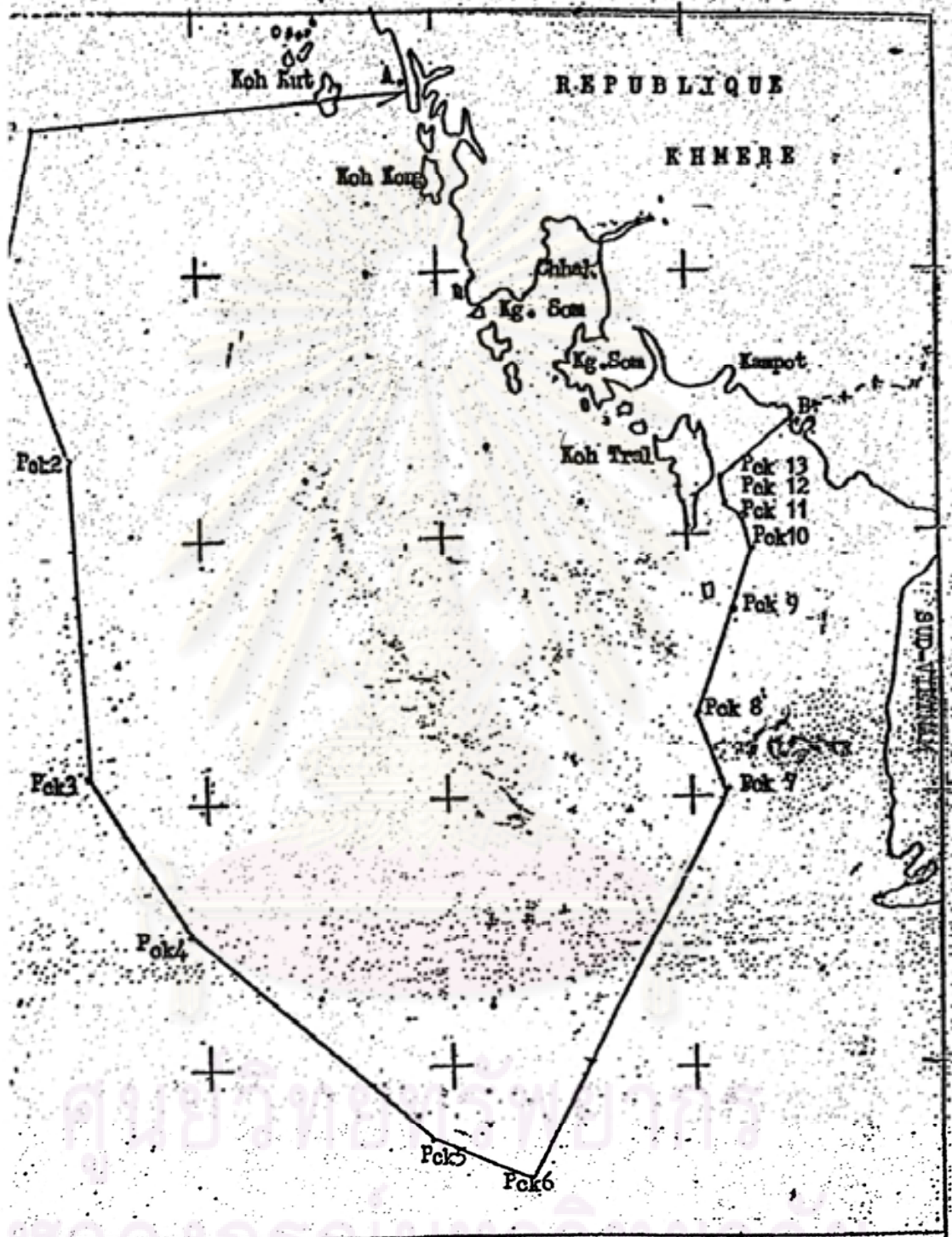
Signé : **OUK SOUN**

**DESTINATAIRES :**

- Dircabinet du Président de la République Khmère
- Préconseil (SGG) - JOC.
- IGARK - IAPA.
- Tous Municipalités - Khets et Anouckhets.
- Tous Ministères - Trésor.
- Cab-DG-IG-Toutes Directions et Inspections des P&M et tous bureaux relevant du Minindustrie.
- Ex. Assemblée Constituante.
- Archives et Bibliothèque Nle.

POUR COPIE CONFORME  
P. LE MINISTRE DE L'INDUSTRIE,  
DES RESSOURCES MINIERES  
ET DES PECHEES MARITIMES,  
LE DIRECTEUR DU SERVICE NATIONAL  
DES MINES, DE LA GEOLOGIE ET DU  
PETROLE,

**SEAN PENGSE**



ศูนย์ข่าวต่างประเทศ  
จุฬาลงกรณ์มหาวิทยาลัย



ภาคผนวก ค

หนังสือสัญญาระหว่างประเทศไทย-ประเทศฝรั่งเศส และ บันทึกความเข้าใจ  
ระหว่างรัฐบาลแห่งราชอาณาจักรไทย กับ รัฐบาลแห่งราชอาณาจักรกัมพูชาว่า  
ด้วยพื้นที่ที่ไทยและกัมพูชาอ้างสิทธิในไหล่ทวีปทับซ้อนกัน

ศูนย์วิทยุทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย



# หนังสือสัญญา ระหว่าง กรุงสยาม กับ กรุงฝรั่งเศส ลงวันที่ ๒๓ มีนาคม ร.ศ. ๑๒๕ (ค.ศ. ๑๘๐๓)\*

ด้วยเมื่อวันที่ ๒๑ มิถุนายน รัตนโกสินทรศก ๑๒๒ ทบม่อมเจ้าจุฑาศรีกษัตริย์ทรงพระกรุณาโปรดเกล้าฯ และผู้มีอำนาจเต็มของมิชชันนารีของ เสนอขอการค้าต่างประเทศฝ่ายฝรั่งเศสได้แยกเปลี่ยนฉบับไว้ซึ่งหนังสือสัญญาต่อกันแล้ว มีข้อความอันหนังสือสัญญานี้แจ้งต่อไปนี้

สมเด็จพระเจ้าแผ่นดินสยาม กับประมุขาธิบดีของทวีปอเมริกาฝรั่งเศส อาศัยเหตุการอันมีขึ้นเมื่อทำการปักปันเขตแดนเพื่อจะได้สำเร็จความอันหนังสือสัญญาลงวันที่ ๑๑ กุมภาพันธ์ รัตนโกสินทรศก ๑๒๒ ศพุทธศักราช ๑๘๐๔ นั้น มีความประสงค์ที่จะเปลี่ยนเขตแดนสยาม ซึ่งติดต่อกับเขตแดนฝรั่งเศส ใต้เส้นรุ้งแปดครั้งที่สุดโดยทางลำน้ำลำน้ำอันแยกเข็มนาฬิกาตามเส้นตอต่อกับประการหนึ่ง อีกประการหนึ่งมีความประสงค์ที่จะปิดการที่เกี่ยวเนื่องกัน ในระหว่างสองประเทศในคราวที่ขึ้น โดยแก้ไขจัดไว้วิธีอำนาจเป็นแบบเดียว และให้กันเป็นป้องกันฝรั่งเศสซึ่งอยู่ในกรุงสยามมีกรรมสิทธิ์มากขึ้นอีกด้วย จึงได้ตกลงกันทำหนังสือสัญญาใหม่ฉบับนี้แล้ว ได้ส่งตั้งผู้มีอำนาจเต็มสำหรับทำการทำหนังสือสัญญานี้ทั้งสองฝ่าย คือ

ฝ่ายสมเด็จพระเจ้าแผ่นดินสยามนั้น พระเจ้าอินทราชา กรมหลวงเทพะวงษ์ไปกรมการมหาดเล็กกรมการราชวัง และพรหมวงษ์ที่พิเศษ ยี่ของคอนเนลล์ ฯลฯ เสนอขอการค้าต่างประเทศ ฝ่ายหนึ่ง

ฝ่ายประมุขาธิบดีของทวีปอเมริกาฝรั่งเศสนั้น มิชชันนารี วิลเลียม เอ็ดเวิร์ด วิกเตอร์ เอ็ดเวิร์ด วิกเตอร์ เอ็ดเวิร์ด (๑๑๑ ปังจ) อัครราชทูตวิเศษและผู้มีอำนาจเต็มของทวีปอเมริกาฝรั่งเศส ตราออกที่พิเศษ ยี่ของ คอนเนลล์ กับ ของสหภาพทวีปอเมริกาฝ่ายหนึ่ง

ข้างได้รับหนังสือมอบอำนาจด้วยทั้งสองฝ่าย ที่ได้สละสวนกันแห่งถูกต้องตามแบบอย่างแล้ว จึงได้พร้อมกันตกลงทำสัญญา มีข้อความดังกล่าวต่อไปนี้

### ข้อ ๑

รัฐบาลสยามยอมยกดินแดนเมืองพระตะบอง เมืองเสียมราฐกับเมืองศรีโสภณให้แก่กรุงฝรั่งเศสตามกำหนดเขตแดน ดังว่าไว้ในข้อ ๑ ของสัญญาว่าด้วยปักปันเขตแดนซึ่งจัดทำด้วยสัญญานี้

### ข้อ ๒

รัฐบาลฝรั่งเศสยอมยกดินแดนเมืองสามพัน และเมืองพราดกับทั้งเกาะหลายซึ่งอยู่ภายใต้พระบรมฉัตรของไปงนเมืองเกาะกูตนั้นให้แก่กรุงสยาม ตามกำหนดเขตแดนดังว่าไว้ในข้อ ๒ ของสัญญาว่าด้วยปักปันเขตแดนดังกล่าวมาแล้ว

### ข้อ ๓

การที่จะส่งมอบดินแดนเหล่านี้ซึ่งกันและกันนั้น จะได้จัดให้สำเร็จภายในยี่สิบวัน ตั้งแต่วันที่ได้แยกเปลี่ยนวิธีไว้โดยสัญญานี้

\* กองบรรณสาร สหิม ๒.๒๔ ทบม่อมเจ้าจุฑาศรีกษัตริย์ (การเจรจาทำสนธิสัญญาเขตแดนไทยฝรั่งเศสศักราช ๒๔๔๔ (๑๘๐๓))

ข้อ ๔

กรรมการรวมกันกองหนึ่ง มีนายทหารนอกพนักงานฝ่ายไทยแอฟริกัน ซึ่งสองประเทศที่ทำสัญญาที่จะได้เลือกตั้งวันภายในสี่เดือน นับแต่วันที่ได้แยกเปลี่ยนวิถีสัญญาแล้ว และไปปักเขตแดนทั้งปวงที่ตกลงกันใหม่ กรรมการนี้จะต้องมีอุปนิสัยดีที่จะทำการได้ทันที และให้ทำการตามความที่กำหนดที่กล่าวไว้ในสัญญาว่าด้วยปักปันแดนที่ติดกับหนังสือสัญญา

ข้อ ๕

บรรดาคนขาวทวีปเอเชีย ซึ่งอยู่ในบังคับหรือเมืองกันของฝรั่งเศสซึ่งจะได้จับปฏิวัติสามความข้อ ๑๑ ในหนังสือสัญญาดังกล่าวนี้ ๑๑ กุมภาพันธ์ รัตนโกสินทรศก ๑๒๒๒ จตุลศักราช ๑๙๐๕ นั้น ถ้าเป็นคนที่จะมาอยู่ในที่ว่าการกงสุลฝรั่งเศสในกรุงสยามภายหลังวันที่ลงหนังสือสัญญาดังกล่าวนี้แล้ว จะต้องอยู่ในอำนาจศาลฝ่ายสยามตามธรรมเนียมของบ้านเมือง

อำนาจศาลของฝรั่งเศสฝ่ายสยาม ซึ่งได้ไว้ในข้อ ๑๒ ของหนังสือสัญญาดังกล่าวนี้ ๑๑ กุมภาพันธ์ รัตนโกสินทรศก ๑๒๒๒ จตุลศักราช ๑๙๐๕ นั้น จะต้องถือว่าสามสัญญาว่าด้วยอำนาจศาลที่ติดกับหนังสือสัญญาดังกล่าวนี้ ได้ขยายใช้ทั่วไปทั้งกรุงสยามสำหรับทวีปเอเชีย ซึ่งอยู่ในบังคับหรืออยู่ในเมืองกันของฝรั่งเศสที่ไว้ในข้อ ๑๐ และข้อ ๑๑ ของหนังสือสัญญาดังกล่าวนี้แล้ว แต่คนคนใดที่ได้จับปฏิวัติอยู่ในที่ว่าการกงสุลฝรั่งเศสในปัจจุบันนี้

วิธีอำนาจศาลอย่างนี้จะเลิกไปใช้ต่อไป หรือจะเปลี่ยนอำนาจศาลของฝรั่งเศสไปเป็นอำนาจศาลฝ่ายสยามตามธรรมเนียมของบ้านเมือง เมื่อได้ประกาศใช้กฎหมายรวมลักษณะต่างๆ คือกฎหมายรวมลักษณะอาญา หรือโทษ กฎหมายลักษณะแพ่งและการค้าขาย กฎหมายลักษณะวิธีพิจารณาความคดี และกฎหมายลักษณะจัดตั้งศาล

ข้อ ๖

คนขาวเอเชียซึ่งอยู่ในบังคับเมืองกันของฝรั่งเศส จะได้มีการมติดำเนินเหมือนคนในพื้นเมืองตลอดทั่วกรุงสยาม คือกรรมสิทธิ์ในที่ดิน กรรมสิทธิ์ในอาคารที่จะอยู่หรือจะที่ย้ายไปแห่งใด ๆ ได้ ไม่มีข้อกำหนดห้ามด้วยกฎหมายหรือข้อบังคับการปกครองใดๆ แลแล้ว หรือการกีดกันให้ราชการตามธรรมเนียม และจะไม่ได้ออกเว้นจากภาวะชาติเป็นทหาร และจะไม่ต้องเสียภาษี หรือค่าธรรมเนียมการเป็นทหารพิเศษอื่นอีก

ข้อ ๗

ข้อความทั้งปวง ในหนังสือสัญญาใหญ่โดยที่ป่าวังที่มีอยู่แห่งนั้น ในระหว่างกรุงสยามกับฝรั่งเศส ซึ่งไม่ได้แก้ไขไว้ในหนังสือนี้ ต้องคงอยู่ตามเดิม

ข้อ ๘

ถ้ามีข้อเบี่ยงกันขึ้นในการแปลความหมายของหนังสือสัญญานี้ที่ได้ทำไว้ทั้งภาษาไทยและภาษาฝรั่งเศสแล้ว จะต้องใช้ภาษาฝรั่งเศสเป็นหลัก

หนังสือสัญญานี้ จะต้องไว้ใ้ภายใต้ในกำหนดสี่เดือน นับตั้งแต่วันที่ลงหนังสือสัญญานี้แล้ว ถ้ากระทำได้ หนังสือสัญญานี้ ผู้มีอำนาจเต็มทั้งสองฝ่ายได้ลงชื่อและประทับตราไว้เป็นสำคัญทำอย่างละ ๒ ฉบับ ณ กรุงเทพมหานคร ณ วันที่ ๒๓ มีนาคม รัตนโกสินทรศก ๑๒๔๔ จตุลศักราช ๑๙๐๗

(ลงนามประทับตรา) พระวงศ์โอรสการ  
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จุฬาลงกรณ์มหาวิทยาลัย

## หนังสือสัญญา

ระหว่าง

**สมเด็จพระเจ้าแผ่นดินสยามกับประเทศแห่งรีพับลิกฝรั่งเศส**

อาไซรอยเหตุการณ์อันมีขึ้นเมื่อทำการปักปันเขตแดนเพื่อจะให้สำเร็จตามความในหนังสือสัญญาลงวันที่ ๑๓ กุมภาพันธ์ รัตนโกสินทรศก ๑๒๒ กุศศักราช ๑๙๐๔ นั้น มีความประสงค์ที่จะแบ่งปันเขตแดนสยามซึ่งติดต่อกับเขตแดนฝรั่งเศสให้แล้วเสร็จเป็นครั้งที่สอง โดยทางต่างฝ่ายต่างผ่อนผันแลกเปลี่ยนเขตแดนต่อกันประการหนึ่ง อีกประการหนึ่งมีความประสงค์ที่จะให้การที่เกี่ยวข้องกันในระหว่างสองประเทศนี้สวากคืบขึ้น โดยแก้ไขข้อขัดแย้งวิธีอำนาจศาลเป็นแบบเคี้ยว แต่ให้คนในท้องถิ่นฝรั่งเศสซึ่งอยู่ในกรุงสยามมีกรรมสิทธิ์มากขึ้นอีกด้วย จึงได้ตกลงกันทำหนังสือสัญญาใหม่ฉบับหนึ่งแล้ว ได้ตั้งแก่งผู้มีอำนาจเต็มสำหรับการทำสัญญานี้ทั้งสองฝ่ายคือ

ฝ่ายสมเด็จพระเจ้าแผ่นดินสยามนั้น พระเจ้าน้องยาเธอ กรมหลวงเทเวศรวงษ์ วัชรการุณราชจักรี บรมราชวงษ แลตราครองออฟฟิศเสียดียงคองแอง ฯลฯ เสนาบดีว่าการต่างประเทศฝ่ายหนึ่ง

ฝ่ายประเทศแห่งรีพับลิกฝรั่งเศสนั้น มองซิเออร์วิกตอร์ เอมีลมาวี โยเซฟ กอลแลง (เคอปลังซี) อรรควาทูทวิเศษ และผู้มีอำนาจเต็มของรีพับลิกฝรั่งเศสตราออฟฟิศเสียดียงคองแองกับสองสตรุกของบับติกอีกฝ่ายหนึ่ง

ต่างได้รับหนังสือมอบอำนาจต่อกันทั้ง ๒ ฝ่ายที่ได้สอบสวนกันเห็นถูกต้องตามแบบอย่างแล้ว จึงได้พร้อมกันตกลงทำสัญญา มีข้อความดังจะกล่าวต่อไปนี้

### ข้อ ๑

รัฐบาลสยามยอมยกดินแดนเมืองพระตะบอง เมืองเสียมราฐกับเมืองศรีโสภณให้แก่กรุงฝรั่งเศสตามกำหนดเขตแดนซึ่งว่าไว้ในข้อ ๑ ของสัญญาว่าด้วยปักปันเขตแดนซึ่งติดต่อกัน

\* จากพิมพ์กองบรรณสาร กระทรวงการต่างประเทศ

## ข้อ ๒

รัฐบาลฝรั่งเศสขอมอบกินแดนเมืองค่านซ้ายแลเมืองทราชกับทั้งเกาะทั้งหลายซึ่งอยู่  
ภายใต้พระมืองลงไปจนถึงเกาะกุกนั้นให้แก่กรุงสยามตามกำหนดเขตแดนตั้งว่าไว้ในข้อ ๒  
ของสัญญาว่าด้วยบ่อนั้นเขตแดนดังกล่าวมาแล้ว

## ข้อ ๓

การที่จะส่งมอบกินแดนเหล่านั้นซึ่งกันแลกันนั้นจะได้จัดให้สำเร็จภายในสี่สิบวันตั้งแต่  
วันที่ได้แลกเปลี่ยนรติไฟสัญญาแล้ว

## ข้อ ๔

กรรมการร่วมกันกองหนึ่ง มีนายทหารแลพนักงานฝ่ายไทยแลฝรั่งเศสซึ่งสองประเทศ  
ที่ทำสัญญานี้จะได้เลือกตั้งขึ้นภายในสี่เดือนตั้งแต่วันที่ได้แลกเปลี่ยนรติไฟสัญญาแล้วแล  
ให้ไปปักเขตแดนทั้งปวงที่ตกลงกันใหม่นี้ กรรมการนี้จะตั้งมือบ่อนั้นในฤกษ์ที่จะทำการได้  
ทันที แลให้ทำการตามความที่กำหนดที่กล่าวไว้ในสัญญาว่าด้วยบ่อนั้นกินแดนที่ติดท้ายหนังสือ  
สัญญา

## ข้อ ๕

บรรดาคนชาวทวีปเอเชียซึ่งอยู่ในบังคับภายในบึงกันของฝรั่งเศส ผู้ซึ่งจะได้จกบาญชี  
ตามความข้อ ๑๑ ในหนังสือสัญญาวันที่ ๑๓ กุมภาพันธ์ รัตนโกสินทร ศก ๑๒๒ ฤกษ์ศักราช  
๑๕๐๔ นั้น ถ้าเป็นคนที่ได้จกบาญชีในที่ว่าการกงสุลฝรั่งเศสในกรุงสยามภายหลังวันที่ตั้งชื่อ  
หนังสือสัญญาฉบับนี้แล้วจะต้องอยู่ในอำนาจศาลฝ่ายสยามตามธรรมเนียมของบ้านเมือง

อำนาจศาลคดีต่างประเทศฝ่ายสยามซึ่งได้ว่าไว้ในข้อ ๑๒ ของหนังสือสัญญาลงวันที่  
๑๓ กุมภาพันธ์ รัตนโกสินทร ศก ๑๒๒ ฤกษ์ศักราช ๑๕๐๔ นั้น จะต้องผ่อนใช้ตามสัญญา  
ว่าด้วยอำนาจศาลที่ติดท้ายหนังสือสัญญาให้ขยายใช้ทั่วไปทั้งกรุงสยามสำหรับคนชาวเอเชีย  
ซึ่งอยู่ในบังคับภายในบึงกันของฝรั่งเศสที่ว่าไว้ในข้อ ๑๐ แลข้อ ๑๑ ของหนังสือสัญญาเก่า  
ที่กล่าวมาแล้วแลเป็นคนที่ได้จกบาญชีอยู่ในที่ว่าการกงสุลฝรั่งเศสในปัจจุบันนี้

วิธีอำนาจศาลอย่างนี้จะเลิกไม่ใช้ต่อไป คือจะเปลี่ยนอำนาจศาลคดีต่างประเทศ  
ไปเป็นอำนาจศาลฝ่ายสยามตามธรรมเนียมของบ้านเมือง เมื่อได้ประกาศใช้กฎหมายรวม

จุฬาลงกรณ์มหาวิทยาลัย

ลักษณะต่าง ๆ คือกฎหมายลักษณะอาญาฤโทษ กฎหมายลักษณะแพ่ง แลการค้าขายกฎหมาย  
ลักษณะวิธีพิจารณาความคดี แลกฎหมายลักษณะจักษุศาสตร์

ข้อ ๖

คนชาวเอเชียซึ่งอยู่ในบังคับแลบ้องกัน ของฝรั่งเศส จะ ได้มีกรรมสิทธิ์เหมือนคนใน  
พื้นเมืองตลอดทั่วกรุงสยาม คือกรรมสิทธิ์ในการถือที่ดิน กรรมสิทธิ์ในการที่จะอยู่ๆจะเที่ยว  
ไปแห่งใด ๆ ใดไม่มีข้อกำหนดห้ามด้วย

คนเหล่านี้จะต้องเสียภาษีอากรแลส่งอุกการเกณฑ์ใช้ราชการตามธรรมเนียม

แต่จะได้ยกเว้นจากการเกณฑ์เป็นทหารแลจะ ไม่ต้องเสียภาษีอุกค่าแรงแทนเกณฑ์  
เป็นการพิเศษขึ้นอีก

ข้อ ๗

ข้อความทั้งปวงในหนังสือสัญญาใหญ่น้อยทั้งปวงที่มีอยู่แต่ก่อนในระหว่างกรุงสยาม  
กับกรุงฝรั่งเศส ซึ่งไม่ได้แก้ไขไว้ในหนังสือนี้ต้องคงอยู่เต็มตามเดิม

ข้อ ๘

ถ้ามีข้อแย้งกันขึ้นในการแปลความหมายของหนังสือสัญญานี้ที่ได้ทำไว้ทั้งภาษาไทย  
แลภาษาฝรั่งเศสนั้นจะต้องใช้ภาษาฝรั่งเศสเป็นหลัก

ข้อ ๙

หนังสือสัญญานี้จะต้องรทไฟภายในกำหนดสี่เดือนนับตั้งแต่วันที่ได้ลงชื่อฤก่อน  
กำหนดนั้น ถ้าจะทำได้หนังสือสัญญานี้ผู้มีอำนาจเต็มทั้ง ๒ ฝ่ายได้ลงชื่อแลประทับตราไว้เป็น  
สำคัญกระทำอย่างละสองฉบับ ณ กรุงเทพมหานคร วันที่๒๓มีนาคม รัตนโกสินทร ศก ๑๒๕  
กฤษศัทศักราช ๑๙๐๗

(ประทับตราแลเซ็น) เพาะวงษ์วโรประการ

(ประทับตราแลเซ็น) วี คอลอง (เคลปลังซี)

ศูนย์วิทยุทรัพย์สิน  
จุฬาลงกรณ์มหาวิทยาลัย

## สัญญาว่าด้วยฉบับนครแคณคิกท้ายหนังสือ

สัญญาฉบับที่ ๒๑ มีนาคม รัตนโกสินทรศก ๑๒๕\*

เพื่อเป็นประโยชน์ที่จะให้กรรมการซึ่งกล่าวไว้ในข้อ ๔ ของหนังสือสัญญาฉบับนี้ จัดการกับนครแคณคิกให้สะดวกและเพื่อที่จะไม่ให้เกิดมีข้อขัดข้องขึ้นได้ ในการกับนครแคณคิกนั้นรัฐบาลของสมเด็จพระเจ้าแผ่นดินสยามกับรัฐบาลของรัฐบาลฝรั่งเศส จึงได้ยินยอมตกลงกันตามความที่กล่าวต่อไปนี้

### ข้อ ๑

นครแคณคิกในระหว่างกรุงสยามกับอินโดจีนของฝรั่งเศสนั้น ตั้งแต่ชายทะเลที่ตรงข้ามจากยอดเขาสูงที่สุดของเกาะภูเก็ตเป็นหลักแล้ว ตั้งแต่บัดนั้นต่อไปทางคว้นออกเฉียงเหนือถึงสันเขาพนมกระวานแลเป็นที่เข้าใจกันชัดเจนกันว่า แม้จะมีเหตุการณ์อย่างใด ๆ ก็ดี ฝ่ายไหนเขาเหล่านี้ซึ่งทิศคว้นออกรวมทั้งที่ลุ่มน้ำคลองเกาะปอดด้วยนั้นต้องคงเป็นดินแดนฝ่ายอินโดจีนของฝรั่งเศสแล้ว นครแคณคิกจะไปตามสันเขาพนมกระวานทางทิศเหนือจนถึงเขาพนมทอมซึ่งเป็นเขาใหญ่บนน้ำทั้งหลายระหว่างลำน้ำที่ไหลตกอ่าวสยามฝ่ายหนึ่ง กับลำน้ำที่ไหลตกทะเลสาบอีกฝ่ายหนึ่ง ตั้งแต่เขาพนมทอมนี้ นครแคณคิกจะไปตามทิศพายัพก่อนแล้วจึงไปตามทิศเหนือตามนครแคณคิกซึ่งอยู่ในปัจจุบันนี้ระหว่างเมืองพระตะบองฝ่ายหนึ่ง กับเมืองจันทบุรีแลเมืองตราขอีกฝ่ายหนึ่ง แล้วต่อไปจนถึงที่นครแคณคิกข้ามลำน้ำใสตั้งแต่บัดนั้นต่อไปตามลำน้ำนั้นจนถึงปากที่ต่อกับลำน้ำศรีโสภณแลตามลำน้ำศรีโสภณต่อไปจนถึงที่แห่งหนึ่งในลำน้ำนั้น ประมาณสิบกิโลเมตรฤๅสองร้อยห้าสิบเส้นใต้เมืองฮาวญู ตั้งแต่ที่นั้นตั้งเส้นตรงไปจนถึงเขาแดงแรกตรงระหว่างกลางทางช่องเขาทั้ง ๒ ที่เรียกว่าช่องตะโกกับช่องสเมค แต่ได้เป็นที่เข้าใจกันว่าเส้นนครแคณคิกที่กล่าวมาที่สุดนี้ จะต้องกับกันให้มีทางเดินตรงในระหว่างเมืองฮาวญูกับช่องตะโกคงไว้ในนครกรุงสยามตั้งแต่ที่เขาแดงแรกที่กล่าวมาข้างต้นนั้น นครแคณคิกจะไปตามเข้าน้ำที่ตกทะเลสาบแลแม่น้ำโขงฝ่ายหนึ่ง กับที่ตกน้ำนั้นอีกฝ่ายหนึ่งแล้วต่อไปจนตกลำ

\* จากพิมพ์กองบรรณสาร กระทรวงการต่างประเทศ

แม่น้ำโขงได้ปากมุนตรงปากห้วยคอนตามเส้นเขตรแดนที่กรรมการปักปันแดนครั้งก่อนได้ตกลงกันแล้ว เมื่อวันที่ ๑๔ มกราคม วันโกสินทรศก ๑๒๕ ศกุตศักราช ๑๕๐๗

ได้เขียนเส้นพรหมแดนประเมินไว้อย่างหนึ่งในแผนที่ตามความที่กล่าวในข้อนี้คือ  
เนื่องไว้ในสัญญาที่ด้วย

### ข้อ ๒

เขตรแดนเมืองหลวงพระบางนั้นตั้งแต่ทิศใต้ในแม่น้ำโขงที่ปากน้ำเหือง แล้วต่อไปตามกลางลำน้ำเหืองนี้จนถึงที่แรกเกิดน้ำที่เรียกชื่อว่า ภูเขาเมือง ก่อนเขตรแดนไปตามเขาบันน้ำตกแม่น้ำโขงฝ่ายหนึ่ง กับตกแม่น้ำเจ้าพระยาอีกฝ่ายหนึ่ง จนถึงที่ในลำแม่น้ำโขงที่เรียกว่าแก่งผาโคตามเส้นพรหมแดนที่กรรมการปักปันเขตรแดนได้ตกลงกันไว้แต่วันที่ ๑๖ มกราคม วันโกสินทรศก ๑๒๕ ศกุตศักราช ๑๕๐๖

### ข้อ ๓

กรรมการปักปันเขตรแดนที่กล่าวไว้ในข้อ ๔ ของหนังสือสัญญาลงวันนั้นจะต้องทำการปักปันหมายเขตรลงไว้ในพื้นที่ตามเขตรแดนที่ไว้ไว้ในข้อ ๑ นี้ ถ้าในเวลาที่กำลังไปทำการปักปันเขตรแดนกันอยู่นั้น รัฐบาลฝรั่งเศสจะมีประสงค์ที่จะเปลี่ยนแปลงเส้นพรหมแดนใหม่ เพื่อจะให้เป็นไปตามลักษณะภูมิประเทศแทนเส้นพรหมแดนที่ได้ตกลงยินยอมกันไว้แล้ว การที่จะแก้ไขเปลี่ยนแปลงกันนั้นถึงโดยว่าจะเกิดเหตุการณ์อย่างไร ๆ ก็ดี จะต้องทำไม่ให้เป็นที่ล่วงล้ำเสียประโยชน์ของรัฐบาลสยามด้วย

สัญญานี้ผู้มีอำนาจเต็มทั้ง ๒ ฝ่ายได้ลงชื่อแลประทับตราไว้เป็นสำคัญอย่างละสองฉบับ ณ กรุงเทพมหานคร วันที่ ๒๓ มีนาคม วันโกสินทรศก ๑๒๕ ศกุตศักราช ๑๕๐๗

(ประทับตราแลเซ็น) เพาะวงษ์วโรประการ

(ประทับตราแลเซ็น) วี ลอลอง (เคลปลังซี)

ศูนย์วิทยที่วิจัยการ  
จุฬาลงกรณ์มหาวิทยาลัย

Memorandum of Understanding  
between  
the Royal Thai Government  
and  
the Royal Government of Cambodia  
regarding  
the Area of their Overlapping Maritime Claims  
to the Continental Shelf

The Royal Thai Government and the Royal Government of Cambodia (hereinafter referred to as the Parties):

DESIRING to strengthen further the existing bonds of traditional friendship between the two countries;

RECOGNIZING that as a result of claims made by the two countries to territorial sea, continental shelf and exclusive economic zone in the Gulf of Thailand, there exists an area of overlapping claims (*the Overlapping Claims Area*);

CONSIDERING that it is in the best interests of the two countries to agree upon an early mutually acceptable basis for exploitation of the hydrocarbon resources of the Overlapping Claims Area as soon as possible; and

TAKING NOTE of the understanding reached between their respective senior officials as reflected in the Agreed Minutes of the Informal Consultations done at Cha Am on 5 October 2000 and at Siem Reap on 21 April 2001:

HAVE AGREED AS FOLLOWS:

1. The Parties consider that it is desirable to enter into provisional arrangements of a practical nature in respect of the Overlapping Claims Area.
2. It is the intent of the Parties, through accelerated negotiation, to simultaneously:
  - (a) conclude an agreement for the joint development of the hydrocarbon resources located within the area shown in the Attachment as the Joint Development Area (*the Joint Development Treaty*); and
  - (b) agree upon a mutually acceptable delimitation of the territorial sea, continental shelf and exclusive economic zone in the area shown in the Attachment as the Area to be Delimited.

*Tham*

*JS*



It is firmly the intent of the Parties to treat the provisions of paragraphs (a) and (b) above as an indivisible package.

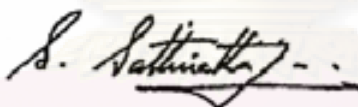
3. For the purpose of Article 2, there shall be established a Joint Technical Committee, comprising officials of Thailand and Cambodia to be separately nominated. The Joint Technical Committee shall be responsible for drawing up:
- (a) the agreed terms of the Joint Development Treaty, including a mutually acceptable basis for sharing the costs and benefits of the exploitation of hydrocarbon resources located in the Joint Development Area; and
  - (b) an agreed delimitation of the territorial sea, continental shelf and exclusive economic zone between their respective current claims in the Area to be Delimited in accordance with applicable principles of international law.
4. The Joint Technical Committee shall meet regularly with a view to concluding its work in relation to these matters expeditiously. The Joint Technical Committee may establish such sub-committees as it considers appropriate.
5. Subject to entry into force of the delimitation of the Parties' respective maritime claims in the Area to be Delimited, this Memorandum of Understanding and all actions taken pursuant to this Memorandum of Understanding are without prejudice to the maritime claims of either party.

IN WITNESS WHEREOF, the undersigned being duly authorized by their respective Governments, have signed the Present Memorandum of Understanding.

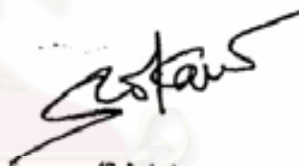
DONE in duplicate in Phnom Penh, on 18 June 2001, in English language.

FOR THE ROYAL THAI  
GOVERNMENT

FOR THE ROYAL GOVERNMENT  
OF CAMBODIA



(Surakiat Sathirathai)  
Minister of Foreign Affairs of  
the Kingdom of Thailand



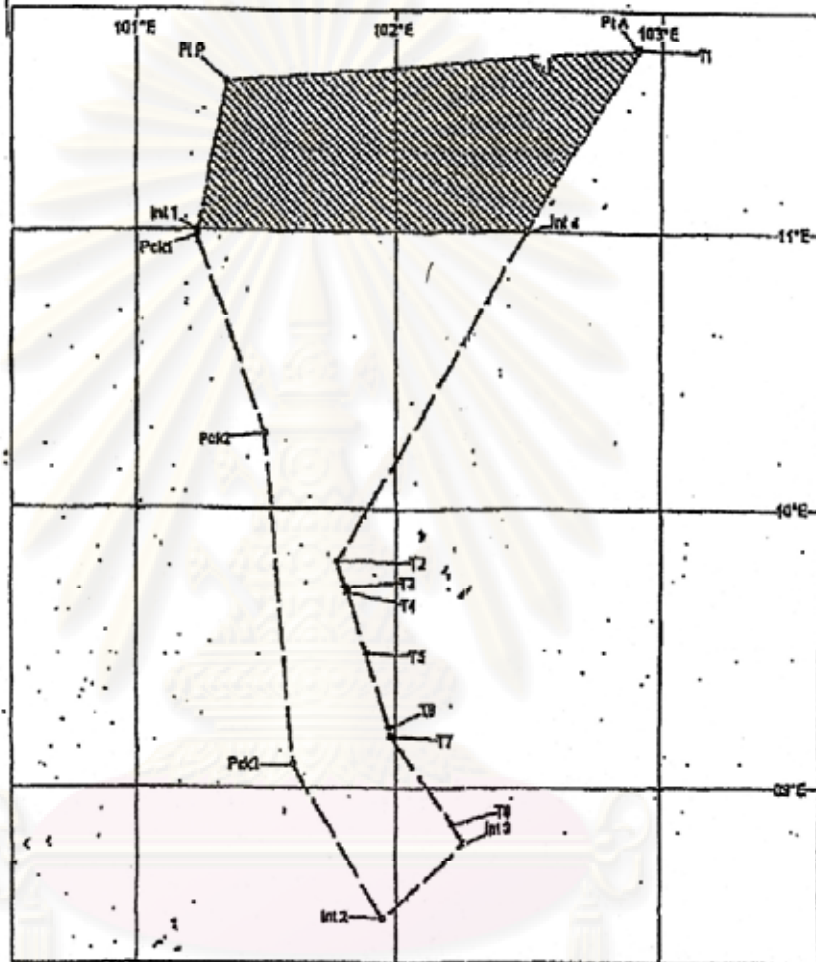
(Sok An)  
Senior Minister  
Chairman of the Cambodian National  
Petroleum Authority

Tham

So

Attachment

### AREAS OF OVERLAPPING MARITIME CLAIMS



#### LEGEND & NOTES



Joint Development Area



Area to be Delimited

1. P1 & T1 - location of land border with coastline at low water to be verified.
2. Int 1 & Int 4 - location of respective meridians of longitude to be verified.
3. Int 2 & Int 3 - location of these points to be verified.

*Thaw*

บันทึกความเข้าใจ  
ระหว่าง  
รัฐบาลแห่งราชอาณาจักรไทย  
กับ  
รัฐบาลแห่งราชอาณาจักรกัมพูชา  
ว่าด้วยพื้นที่ที่ไทยและกัมพูชาอ้างสิทธิในไหล่ทวีปทับซ้อนกัน

รัฐบาลแห่งราชอาณาจักรไทยและรัฐบาลแห่งราชอาณาจักรกัมพูชา (ต่อไปนี้จะเรียกว่า ภาควิชาสัญญา)

ปรารถนาที่จะกระชับความผูกพันแห่งมิตรภาพซึ่งมีมาช้านานระหว่างประเทศทั้งสองให้แน่นแฟ้นยิ่งขึ้น

ตระหนักว่าจากผลของการอ้างสิทธิของประเทศทั้งสองในฝั่งทะเลอาณาเขต ไหล่ทวีป และเขตเศรษฐกิจจำเพาะในอ่าวไทย ทำให้เกิดพื้นที่อ้างสิทธิทับซ้อน (พื้นที่อ้างสิทธิทับซ้อน)

พิจารณาว่าเป็นประโยชน์สูงสุดของประเทศทั้งสองที่จะตกลงกันบนพื้นฐานที่ยอมรับได้ร่วมกันโดยเจ้าสำหรับการแสวงประโยชน์ทรัพยากรปิโตรเลียมในพื้นที่อ้างสิทธิทับซ้อนโดยเร็วที่สุดที่จะเป็นไปได้ และ

จับทรงความเข้าใจซึ่งบรรลุร่วมกันระหว่างเจ้าหน้าที่ระดับอาวุโสของประเทศทั้งสองดังปรากฏในบันทึกการประชุมหารืออย่างไม่เป็นทางการที่ระงับเมื่อวันที่ 5 ตุลาคม ค.ศ. 2000 และที่เสียมราฐ เมื่อวันที่ 21 เมษายน ค.ศ. 2001

ได้ตกลงกันดังต่อไปนี้

1. ภาควิชาสัญญาพิจารณาว่าเป็นที่พึงปรารถนาที่จะทำข้อตกลงชั่วคราวซึ่งมีลักษณะที่สามารถปฏิบัติได้ในเรื่องพื้นที่อ้างสิทธิทับซ้อน
2. เป็นเจตนารมณ์ของภาควิชาสัญญา โดยการแบ่งจัดการเจรจา ที่จะดำเนินการดังต่อไปนี้ไปพร้อมกัน
  - (ก) จัดทำความตกลงสำหรับการพัฒนาส่วนทรัพยากรปิโตรเลียมซึ่งอยู่ในพื้นที่ที่ตกลงร่วมดังปรากฏตามเอกสารแนบท้าย (สนธิสัญญาการพัฒนาส่วน) และ
  - (ข) ตกลงแบ่งเขตซึ่งสามารถยอมรับได้ร่วมกันสำหรับทะเลอาณาเขต ไหล่ทวีป และเขตเศรษฐกิจจำเพาะในพื้นที่ที่ต้องแบ่งเขต ดังปรากฏตามเอกสารแนบท้าย

เป็นเจตนารมณ์ที่แน่นอนของภาคีผู้ทำสัญญาที่จะถือปฏิบัติพันธสัญญาข้อ (ก) และ (ข) ข้างต้นในลักษณะที่ไม่อาจแบ่งแยกได้

3. เพื่อวัตถุประสงค์ตามข้อ 2 จะมีการจัดตั้งคณะกรรมการร่วมด้านเทคนิค ประกอบด้วยเจ้าหน้าที่ของประเทศไทยและประเทศกัมพูชาซึ่งได้รับการเสนอชื่อจากแต่ละประเทศแยกต่างหากจากกัน คณะกรรมการร่วมด้านเทคนิคมีหน้าที่รับผิดชอบ สำหรับการกำหนด
  - (ก) เงื่อนไขที่ตกลงร่วมกันของสนธิสัญญาการพัฒนาความร่วมมือ รวมถึงพื้นฐานซึ่งยอมรับร่วมกันในการแบ่งปันค่าใช้จ่ายและผลประโยชน์ของการแสวงประโยชน์จากทรัพยากรปิโตรเลียมในพื้นที่ที่พัฒนา และ
  - (ข) การแบ่งเขต ทะเลอาณาเขต ไหล่ทวีป และเขตเศรษฐกิจจำเพาะระหว่างเขตที่แต่ละฝ่ายอ้างสิทธิอยู่ในพื้นที่ที่ต้องแบ่งเขตตามหลักกฎหมายระหว่างประเทศซึ่งใช้บังคับ
4. คณะกรรมการร่วมด้านเทคนิคจะประชุมกันโดยสม่ำเสมอเพื่อให้การดำเนินการในเรื่องนี้เสร็จสิ้นโดยเร็ว คณะกรรมการร่วมด้านเทคนิคอาจจัดตั้งคณะกรรมการตามที่เห็นว่าเหมาะสม
5. ภายใต้เงื่อนไขการมีผลใช้บังคับของการแบ่งเขตสำหรับการอ้างสิทธิทางทะเลของภาคีผู้ทำสัญญาในพื้นที่ที่ต้องมีการแบ่งเขต มันতিকความเข้าใจและการดำเนินการทั้งหลายตามบันทึกความเข้าใจนี้จะไม่เป็นผลกระทบต่อการอ้างสิทธิทางทะเลของแต่ละภาคีผู้ทำสัญญา

เพื่อเป็นพยานแก่การนี้ ผู้ลงนามข้างท้ายนี้ได้รับมอบอำนาจจากรัฐบาลของแต่ละฝ่ายให้ลงนามบันทึกความเข้าใจฉบับนี้

ทำเป็นสองฉบับ ณ กรุงพนมเปญ เมื่อวันที่ 18 มิถุนายน ค.ศ.2001 เป็นภาษาอังกฤษ

สำหรับรัฐบาลแห่งราชอาณาจักรไทย

สำหรับรัฐบาลแห่งราชอาณาจักรกัมพูชา

(สุรเกียรติ์ เสงี่ยมไทย)

(ชก อิน)

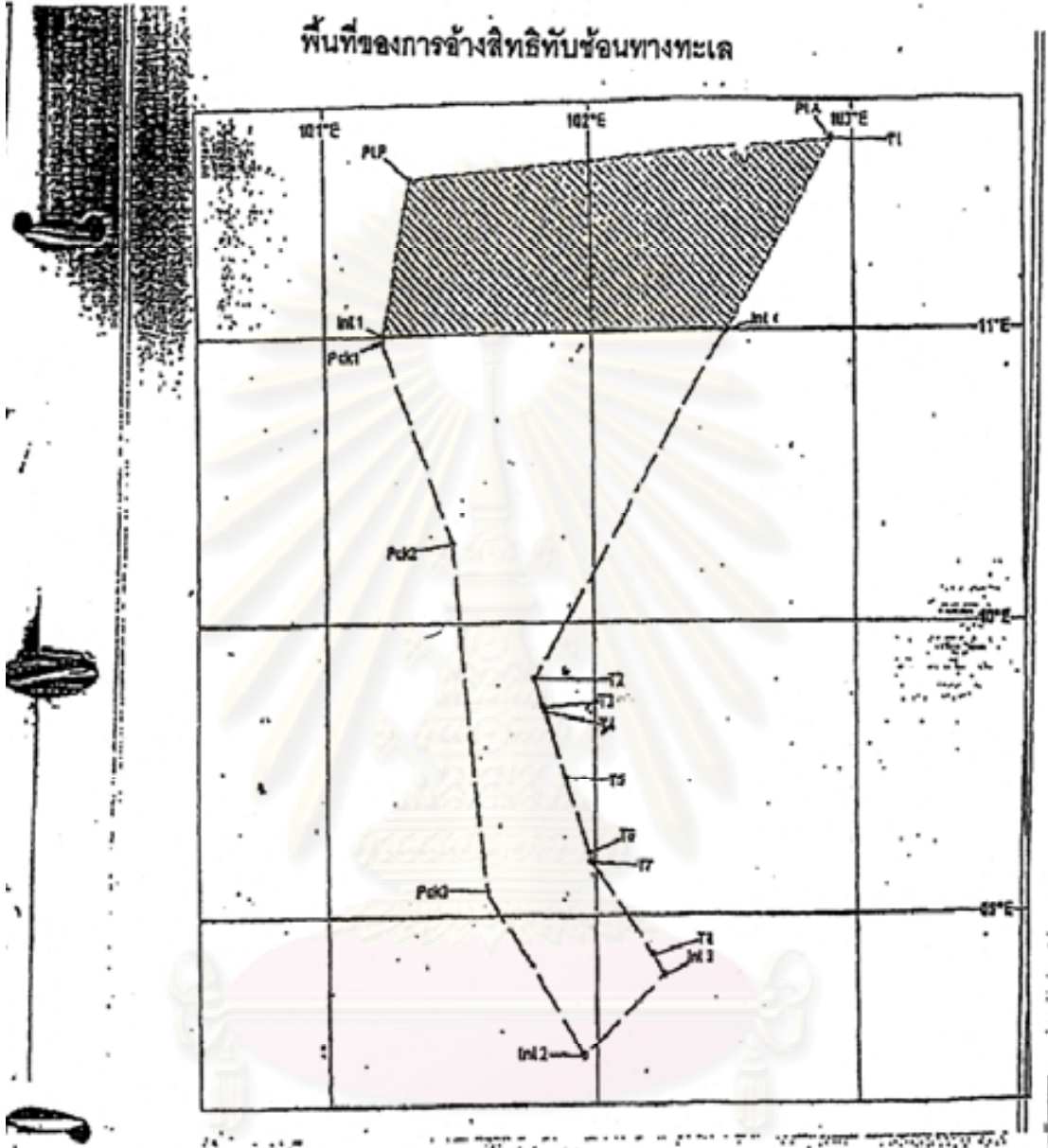
รัฐมนตรีว่าการกระทรวงการต่างประเทศแห่งราชอาณาจักรไทย

รัฐมนตรีอาวุโส

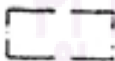
ประธานการปิโตรเลียมแห่งชาติกัมพูชา

ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

พื้นที่ของการอ้างสิทธิทับซ้อนทางทะเล



เครื่องหมาย



พื้นที่ทับซ้อนร่วม



พื้นที่ที่ต้องแบ่งเขต

1. P1A & T1 ที่ตั้งตรงเขตแดนทางบกกับแนวชายฝั่ง ณ จุดน้ำตื้น จึงจะต้องมีการรับรองความถูกต้องต่อไป
2. Int 1 & Int 4 ที่ตั้งร่องเส้นของฉีจุดซึ่งต้องการรับรองความถูกต้องต่อไป
3. Int 2 & Int 3 ที่ตั้งตรงจุดเหล่านี้จึงต้องการรับรองความถูกต้องต่อไป



ภาคผนวก ง

ความตกลงเกี่ยวกับการพัฒนาพื้นที่ทับซ้อนในเอเชียตะวันออกเฉียงกลางและเอเชีย  
ตะวันออกเฉียงใต้

ศูนย์วิจัยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

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**JAPAN  
and  
REPUBLIC OF KOREA**

**Agreement concerning joint development of the southern part of the continental shelf adjacent to the two countries (with map, appendix, agreed minutes and exchanges of notes). Signed at Seoul on 30 January 1974**

*Authentic text: English.*

*Registered by Japan on 20 May 1981.*

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**JAPON  
et  
RÉPUBLIQUE DE CORÉE**

**Accord relatif à la mise en valeur commune de la partie méridionale du plateau continental adjacent aux deux pays (avec carte, appendice, procès-verbal approuvé et échanges de notes). Signé à Séoul le 30 janvier 1974**

*Texte authentique : anglais.*

*Enregistré par le Japon le 20 mai 1981.*

**AGREEMENT<sup>1</sup> BETWEEN JAPAN AND THE REPUBLIC OF  
KOREA CONCERNING JOINT DEVELOPMENT OF THE  
SOUTHERN PART OF THE CONTINENTAL SHELF ADJA-  
CENT TO THE TWO COUNTRIES**

Japan and the Republic of Korea,

Desiring to promote the friendly relations existing between the two countries,

Considering their mutual interest in carrying out jointly exploration and exploitation of petroleum resources in the southern part of the continental shelf adjacent to the two countries,

Resolving to reach a final practical solution to the question of the development of such resources,

Have agreed as follows:

*Article I.* For the purposes of this Agreement:

(1) The term "natural resources" means petroleum (including natural gas) resources and other underground minerals which are produced in association with such resources;

(2) The term "concessionaire" means a person authorized by either Party under the laws and regulations of that Party to explore and/or exploit natural resources in the Joint Development Zone;

(3) The term "concessionaires of both Parties" means a concessionaire of one Party and a concessionaire of the other Party respectively authorized with respect to the same subzone of the Joint Development Zone;

(4) The term "operating agreement" means a contract concluded between concessionaires of both Parties for the purpose of exploring and exploiting natural resources in the Joint Development Zone;

(5) The term "operator" means a concessionaire designated and acting as such under the operating agreement with respect to a subzone of the Joint Development Zone.

*Article II.* 1. The Joint Development Zone shall be the area of the continental shelf bounded by straight lines connecting the following points in the sequence given below:

Point 1	32°57.0' N	127°41.1' E
Point 2	32°53.4' N	127°36.3' E
Point 3	32°46.2' N	127°27.8' E
Point 4	32°33.6' N	127°13.1' E
Point 5	32°10.5' N	126°51.5' E
Point 6	30°46.2' N	125°55.5' E
Point 7	30°33.3' N	126°00.8' E
Point 8	30°18.2' N	126°05.5' E
Point 9	28°36.0' N	127°38.0' E

<sup>1</sup> Came into force on 22 June 1978 by the exchange of the instruments of ratification, which took place at Tokyo, in accordance with article XXXI (1).



Point 10	29°19.0' N	128°00.0' E
Point 11	29°43.0' N	128°38.0' E
Point 12	30°19.0' N	129°09.0' E
Point 13	30°54.0' N	129°04.0' E
Point 14	31°13.0' N	128°50.0' E
Point 15	31°47.0' N	128°50.0' E
Point 16	31°47.0' N	128°14.0' E
Point 17	32°12.0' N	127°50.0' E
Point 18	32°27.0' N	127°56.0' E
Point 19	32°27.0' N	128°18.0' E
Point 20	32°57.0' N	128°18.0' E
Point 1	32°57.0' N	127°41.1' E

2. The straight lines bounding the Joint Development Zone are shown on the map annexed to this Agreement.

**Article III.** 1. The Joint Development Zone may be divided into subzones, each of which shall be explored and exploited by concessionaires of both Parties.

2. Each subzone shall be numbered and defined by reference to geographical coordinates in the appendix to this Agreement. The appendix may be amended by mutual consent of the Parties without modification of this Agreement.

**Article IV.** 1. Each Party shall authorize one or more concessionaires with respect to each subzone within three months after the date of entry into force of this Agreement. When one Party authorizes more than one concessionaire with respect to one subzone, all such concessionaires shall have an undivided interest and shall be represented, for the purposes of this Agreement, by one concessionaire. In case of any change in concessionaire or in subzone, the Party concerned shall authorize one or more new concessionaires as soon as possible.

2. Each Party shall notify the other Party of its concessionaire or concessionaires without delay.

**Article V.** 1. Concessionaires of both Parties shall enter into an operating agreement to carry out jointly exploration and exploitation of natural resources in the Joint Development Zone. Such operating agreement shall provide, *inter alia*, for the following:

- (a) Details relating to the sharing of natural resources and expenses in accordance with article IX;
- (b) Designation of operator;
- (c) Treatment of sole risk operations;
- (d) Adjustment of fisheries interests;
- (e) Settlement of disputes.

2. The operating agreement and modifications thereof shall enter into force upon approval by the Parties. Approval of the Parties shall be deemed to have been given unless either Party explicitly disapproves the operating agreement or modifications thereof within two months after such operating agreement or modifications thereof have been submitted to the Parties for approval.

3. The Parties shall endeavour to ensure that the operating agreement enter into force within six months after concessionaires of both Parties have been authorized under paragraph 1 of article IV.

*Article VI.* 1. The operator shall be designated by agreement between concessionaires of both Parties. If concessionaires of both Parties fail to reach agreement between themselves as to the designation of the operator within three months after such concessionaires have been authorized, the Parties shall hold consultations concerning the designation of the operator. If the operator is not designated within two months after such consultations have started, concessionaires of both Parties shall determine the operator by lot-drawing.

2. The operator shall have exclusive control of all operations under the operating agreement and employ all personnel required for such operations, pay and discharge all expenses incurred in connection with such operations, and obtain all assets, including equipment, materials and supplies, necessary for carrying out such operations.

*Article VII.* A concessionaire of one Party may acquire, construct, maintain, use and dispose of, in the territory of the other Party, buildings, platforms, tanks, pipelines, terminals and other facilities necessary for exploration or exploitation of natural resources in the Joint Development Zone in accordance with the laws and regulations of that other Party.

*Article VIII.* A concessionaire of one Party shall not interfere with the discharging by a concessionaire of the other Party of its obligations under the laws and regulations of that other Party, insofar as such obligations are consistent with the provisions of this Agreement.

*Article IX.* 1. Concessionaires of both Parties shall be respectively entitled to an equal share of natural resources extracted in the Joint Development Zone.

2. Expenses reasonably attributable to exploration and exploitation of such natural resources shall be shared in equal proportions between concessionaires of both Parties.

*Article X.* 1. The right of concessionaires under this Agreement shall be exploration right and exploitation right.

2. The duration of exploration right shall be eight years from the date of entry into force of the operating agreement, subject to the provisions of paragraph 4 (3) of this article.

3. The duration of exploitation right shall be thirty years from the date of the establishment of such right. Concessionaires of both Parties may apply to the respective Parties for an extension of an additional period of five years. Such application may be made as many times as necessary. The Parties shall, upon receipt of such application, consult with each other to decide whether to approve such application.

4. (1) When commercial discovery of natural resources is made during the period of exploration right, concessionaires of both Parties may apply to the respective Parties for the establishment of exploitation right. When the Parties receive such application, they shall promptly hold consultations and shall without delay approve such application.

(2) When the Parties recognize that commercial discovery is made, each Party may request its concessionaire concerned to present an application for the

establishment of exploitation right. Such concessionaire shall present such application within three months after receiving the request.

(3) If exploitation right is established during the period of exploration right, the period of exploration right shall expire on the date of the establishment of exploitation right.

5. In case of any change in concessionaire of one Party, the period of exploration right or exploitation right of a new concessionaire shall expire on the date of expiration of the period of exploration right or exploitation right of the original concessionaire.

6. Exploration right or exploitation right of a concessionaire may be transferred in its entirety subject to the approval of the Party that has authorized it and to the consent of the other concessionaire authorized with respect to the same subzone, provided that the rights and obligations of that concessionaire under this Agreement and the operating agreement are transferred in whole.

*Article XI.* 1. Concessionaires of both Parties shall be required to drill a certain number of wells during the period of exploration right in accordance with a separate arrangement to be made between the Parties. However, the minimum number of wells to be drilled in each subzone shall not exceed two respectively for the first three-year period, the following three-year period and the remaining two-year period, from the date of entry into force of the operating agreement. The Parties shall, when agreeing upon the minimum number of wells to be drilled in each subzone, take into account the depths of the superjacent waters and the size of each subzone.

2. If concessionaires of both Parties have drilled wells in excess of the requirements during any of the periods referred to in paragraph 1 of this article, such excess wells shall be regarded as having been drilled in the succeeding period or periods.

*Article XII.* Concessionaires of both Parties shall start operations within six months from the date of the establishment of exploration right or exploitation right and shall not suspend operations for more than six consecutive months.

*Article XIII.* 1. Subject to the provisions of paragraph 2 of this article, concessionaires of both Parties shall release twenty-five per cent of the original subzone concerned within three years, fifty per cent of such subzone within six years, and seventy-five per cent of such subzone within eight years, from the date of entry into force of the operating agreement.

2. The size, shape and location of the area to be released and the time of release shall be determined by agreement between concessionaires of both Parties. However, no single area smaller than seventy-five square kilometres shall be released except under paragraph 3 of this article.

3. (1) If concessionaires of both Parties are unable to agree on the area to be released under paragraph 1 of this article, concessionaires of both Parties shall release, on the date of the expiration of the release period concerned, the area mutually proposed for release and fifty per cent of the areas respectively proposed for release in such a way that the total area to be released will be a single area whenever possible.

(2) If there is no area mutually proposed for release, concessionaires of both Parties shall release fifty per cent of the areas respectively proposed for release.

4. Concessionaires of both Parties may release voluntarily any area subject to the provisions of paragraph 2 of this article.

5. Notwithstanding the provisions of paragraph 2 of this article, a concessionaire may unilaterally release the total subzone concerned after two years have elapsed from the date of entry into force of the operating agreement.

*Article XIV.* 1. Either Party may, by pertinent procedures laid down in its laws and regulations concerning the protection of concessionaires, cancel exploration right or exploitation right of its concessionaire after consultations with the other Party if such concessionaire fails to discharge any of its obligations under this Agreement or the operating agreement.

2. When either Party intends to cancel in accordance with its laws and regulations exploration right or exploitation right of its concessionaire, that Party shall notify the other Party of its intention at least fifteen days prior to such cancellation, except under paragraph 1 of this article.

3. The cancellation of exploration right or exploitation right by one Party shall be notified to the other Party without delay.

*Article XV.* 1. When a concessionaire of one Party has unilaterally released a subzone under paragraph 5 of article XIII, when exploration right or exploitation right of a concessionaire of one Party has been cancelled under article XIV or when a concessionaire of one Party has ceased to exist (any such concessionaire hereinafter referred to as "the former concessionaire"), the remaining concessionaire in the subzone concerned may, until such time as the Party that has authorized the former concessionaire authorizes a new concessionaire, carry out exploration or exploitation of natural resources under the terms of the sole risk operation clauses and under other relevant provisions of the operating agreement to which such remaining concessionaire and the former concessionaire were parties, subject to the approval of the Party that has authorized the former concessionaire.

2. For the purposes of paragraph 1 of this article, the remaining concessionaire shall be regarded as a concessionaire of the Party that has authorized the former concessionaire in respect of rights and obligations of a concessionaire, while retaining its own concessionaireship. The provisions of the above sentence shall not apply to taxation upon the remaining concessionaire with respect to its income derived from exploration or exploitation of natural resources under paragraph 1 of this article.

3. When a new concessionaire is authorized by one Party, the new concessionaire and the remaining concessionaire shall be bound by the operating agreement to which the remaining concessionaire and the former concessionaire were parties until such time as a new operating agreement enters into force. The remaining concessionaire who has started exploration or exploitation of natural resources under paragraph 1 of this article may continue such exploration or exploitation under the terms of the sole risk operation clauses of the operating agreement to which such remaining concessionaire and the former concessionaire were parties until such time as the new operating agreement referred to above enters into force.

*Article XVI.* In the application of the laws and regulations of each Party to natural resources extracted in the Joint Development Zone, the share of such natural resources to which concessionaires of one Party are entitled under

article IX shall be regarded as natural resources extracted in the continental shelf over which that Party has sovereign rights.

*Article XVII.* 1. Neither Party (including local authorities) shall impose taxes or other charges upon concessionaires of the other Party with respect to:

- (a) Exploration or exploitation activities in the Joint Development Zone;
- (b) Income derived from such activities;
- (c) The possession of fixed assets in the Joint Development Zone necessary for carrying out such activities; or
- (d) The subzones with respect to which such concessionaires are authorized.

2. Each Party (including local authorities) may impose taxes and other charges upon its concessionaires with respect to:

- (a) Exploration or exploitation activities in the Joint Development Zone;
- (b) The possession of fixed assets in the Joint Development Zone necessary for carrying out such activities; and
- (c) The subzones with respect to which such concessionaires are authorized.

*Article XVIII.* In the application of the laws and regulations of each Party on customs duties, imports and exports:

- (1) The introduction of equipment, materials and other goods necessary for exploration or exploitation of natural resources in the Joint Development Zone (hereinafter referred to as "equipment") into the Joint Development Zone, the subsequent use of equipment therein or the shipment of equipment therefrom shall not be regarded as imports or exports;
- (2) The shipment of equipment from areas under the jurisdiction of one Party to the Joint Development Zone shall not be regarded as imports or exports by that Party;
- (3) The users of equipment in the Joint Development Zone which has been introduced into the Joint Development Zone from areas under the jurisdiction of either Party may be required to submit reports to that Party on the use of such equipment;
- (4) Notwithstanding the provisions of (1) of this article, the shipment of the equipment referred to in (3) of this article from the Joint Development Zone to areas other than those under the jurisdiction of that Party shall be regarded as exports by that Party.

*Article XIX.* Except where otherwise provided in this Agreement, the laws and regulations of one Party shall apply with respect to matters relating to exploration or exploitation of natural resources in the subzones with respect to which that Party has authorized concessionaires designated and acting as operators.

*Article XX.* The Parties shall agree on measures to be taken to prevent collisions at sea and to prevent and remove pollution of the sea resulting from activities relating to exploration or exploitation of natural resources in the Joint Development Zone.

*Article XXI.* 1. When damage resulting from exploration or exploitation of natural resources in the Joint Development Zone has been sustained by nationals

of either Party or other persons who are resident in the territory of either Party, actions for compensation for such damage may be brought by such nationals or persons in the court of one Party (a) in the territory of which such damage has occurred, (b) in the territory of which such nationals or persons are resident, or (c) which has authorized the concessionaire designated and acting as the operator in the subzone where the incident causing such damage has occurred.

2. The court of one Party in which actions for compensation for such damage have been brought under paragraph 1 of this article shall apply the laws and regulations of that Party.

3. (1) When damage referred to in paragraph 1 of this article has been caused by digging operations of seabed and subsoil, or discharging of mine water or used water:

- (a) Concessionaires of both Parties who have exploration right or exploitation right with respect to the subzone concerned at the time of occurrence of such damage,
- (b) In case no concessionaire has exploration right or exploitation right with respect to the subzone concerned at the time of occurrence of such damage, the concessionaires who had exploration right or exploitation right most recently with respect to the subzone concerned or
- (c) In case only one concessionaire has exploration right or exploitation right with respect to the subzone concerned at the time of occurrence of such damage, such concessionaire and the former concessionaire as defined in paragraph 1 of article XV,

shall be jointly and severally liable for the compensation for such damage in accordance with the laws and regulations applicable under paragraph 2 of this article.

(2) For the purposes of (1) of this paragraph, when exploration right or exploitation right has been transferred after the occurrence of the damage referred to in (1) of this paragraph, the concessionaire who has transferred exploration right or exploitation right and the concessionaire who has obtained exploration right or exploitation right by such transfer shall be jointly and severally liable for the compensation.

*Article XXII.* 1. Each Party shall, when assigning a frequency or frequencies to a radio station on a fixed installation for exploration or exploitation of natural resources in the Joint Development Zone, inform as soon as possible prior to such assignment the other Party of such frequency or frequencies, class of emission, antenna power, location of the station and other particulars deemed necessary. Each Party shall likewise inform the other Party of any subsequent changes in the above particulars.

2. The Parties shall hold consultations at the request of either Party for necessary coordination concerning the above particulars.

*Article XXIII.* 1. If any single geological structure or field of natural resources extends across any of the lines specified in paragraph 1 of article II and the part of such structure or field which is situated on one side of such lines is exploitable, wholly or in part, from the other side of such lines, concessionaires and other persons authorized by either Party to exploit such structure or field (hereinafter referred to as "concessionaires and other persons") shall, through

consultations, seek to reach agreement as to the most effective method of exploiting such structure or field.

2. (1) If concessionaires and other persons fail to reach agreement as to the method referred to in paragraph 1 of this article within six months after such consultations have started, the Parties shall, through consultations, endeavour to make a joint proposal concerning such method to concessionaires and other persons within a reasonable period of time.

(2) When agreement concerning such method is reached among all or some of concessionaires and other persons, the agreement (including modifications thereof) shall enter into force upon approval by the Parties. Such agreement shall provide for details relating to the sharing, in accordance with paragraph 3 of this article, of natural resources and expenses.

3. In cases of exploitation under the agreement referred to in paragraph 2 (2) of this article, natural resources extracted from such structure or field and expenses reasonably attributable to exploitation of such natural resources shall be shared among concessionaires and other persons in proportion to the quantities of producible reserves in the respective parts of such structure or field which are situated in the area with respect to which they have been authorized by either Party.

4. The provisions of the foregoing paragraphs of this article shall apply *mutatis mutandis* with respect to exploitation of a single geological structure or field of natural resources extending across lines bounding the subzones of the Joint Development Zone.

5. (1) For the purposes of article XVI, the share of natural resources extracted in the Joint Development Zone to which persons (other than concessionaires) authorized by one Party are entitled under paragraph 3 of this article and the agreement referred to in paragraph 2 (2) of this article shall be regarded as the share of natural resources to which concessionaires of that Party are entitled.

(2) For the purposes of article XVII, persons (other than concessionaires) authorized by one Party who are parties to the agreement referred to in paragraph 2 (2) of this article shall be regarded as concessionaires of that Party.

(3) Neither Party (including local authorities) shall impose taxes or other charges upon concessionaires of the other Party with respect to:

- (a) Exploitation activities carried out outside the Joint Development Zone in accordance with the agreement referred to in paragraph 2 (2) of this article;
- (b) Income derived from such activities; or
- (c) The possession of fixed assets necessary for carrying out such activities.

*Article XXIV.* 1. The Parties shall establish and maintain the Japan-Republic of Korea Joint Commission (hereinafter referred to as "the Commission") as a means for consultations on matters concerning the implementation of this Agreement.

2. The Commission shall be composed of two national sections, each consisting of two members appointed by the respective Parties.

3. All resolutions, recommendations and other decisions of the Commission shall be made only by agreement between the national sections.

4. The Commission may adopt and amend, when necessary, rules of procedure for its meetings.

5. The Commission shall meet at least once each year and whenever requested by either national section.

6. At its first meeting, the Commission shall select its Chairman and Vice-Chairman from different national sections. The Chairman and the Vice-Chairman shall hold office for a period of one year. Selection of the Chairman and the Vice-Chairman from the national sections shall be made in such a manner as will provide in turn each Party with representation in these offices.

7. A permanent secretariat may be established under the Commission to carry out the clerical work of the Commission.

8. The official languages of the Commission shall be Japanese, Korean and English. Proposals and data may be submitted in any official language.

9. In case the Commission decides that joint expenses are necessary, such expenses shall be paid by the Commission through contributions made by the Parties as recommended by the Commission and approved by the Parties.

*Article XXV.* 1. The Commission shall perform the following functions:

- (a) To review the operation of this Agreement and, when necessary, deliberate on and recommend to the Parties measures to be taken to improve the operation of this Agreement;
- (b) To receive technical and financial reports of concessionaires, which shall be submitted annually by the Parties;
- (c) To recommend to the Parties measures to be taken to settle disputes incapable of solution by concessionaires;
- (d) To observe operations of operators and installations and other facilities for exploration or exploitation of natural resources in the Joint Development Zone;
- (e) To study problems, including those relating to the application of laws and regulations of the Parties, unexpected at the time of entry into force of this Agreement, and, when necessary, recommend to the Parties appropriate measures to solve such problems;
- (f) To receive notices concerning the laws and regulations promulgated by the Parties relating to exploration or exploitation of natural resources in the Joint Development Zone, which shall be submitted by the Parties;
- (g) To discuss any other matter relating to the implementation of this Agreement.

2. The Parties shall respect to the extent possible recommendations made by the Commission under paragraph 1 of this article.

*Article XXVI.* 1. Any dispute between the Parties concerning the interpretation and implementation of this Agreement shall be settled, first of all, through diplomatic channels.

2. Any dispute which fails to be settled under paragraph 1 of this article shall be referred for decision to an arbitration board composed of three arbitrators, with each Party appointing one arbitrator within a period of thirty days from the date of receipt by either Party from the other Party of a note requesting arbitration of the dispute, and the third arbitrator to be agreed upon by the two arbitrators so chosen within a further period of thirty days or the third arbitrator to be appointed by the government of a third country agreed upon within such further period by the two arbitrators, provided that the third arbitrator shall not be a national of either Party.



3. If the third arbitrator or the third country is not agreed upon between the arbitrators appointed by each Party within a period referred to in paragraph 2 of this article, the Parties shall request the President of the International Court of Justice to appoint the third arbitrator who shall not be a national of either Party.

4. At the request of either Party, the arbitration board may in urgent cases issue a provisional order, which shall be respected by the Parties, before an award is made.

5. The Parties shall abide by any award made by the arbitration board under this article.

*Article XXVII.* Exploration and exploitation of natural resources in the Joint Development Zone shall be carried out in such a manner that other legitimate activities in the Joint Development Zone and its superjacent waters such as navigation and fisheries will not be unduly affected.

*Article XXVIII.* Nothing in this Agreement shall be regarded as determining the question of sovereign rights over all or any portion of the Joint Development Zone or as prejudicing the positions of the respective Parties with respect to the delimitation of the continental shelf.

*Article XXIX.* Upon the request of either Party, the Parties shall hold consultations regarding the implementation of this Agreement.

*Article XXX.* The Parties shall take all necessary internal measures to implement this Agreement.

*Article XXXI.* 1. This Agreement shall be ratified. The instruments of ratification shall be exchanged at Tokyo as soon as possible. This Agreement shall enter into force as from the date on which such instruments of ratification are exchanged.

2. This Agreement shall remain in force for a period of fifty years and shall continue in force thereafter until terminated in accordance with paragraph 3 of this article.

3. Either Party may, by giving three years' written notice to the other Party, terminate this Agreement at the end of the initial fifty-year period or at any time thereafter.

4. Notwithstanding the provisions of paragraph 2 of this article, when either Party recognizes that natural resources are no longer economically exploitable in the Joint Development Zone, the Parties shall consult with each other whether to revise or terminate this Agreement. If no agreement is reached as to the revision or termination of this Agreement, this Agreement shall remain in force during the period as provided for in paragraph 2 of this article.

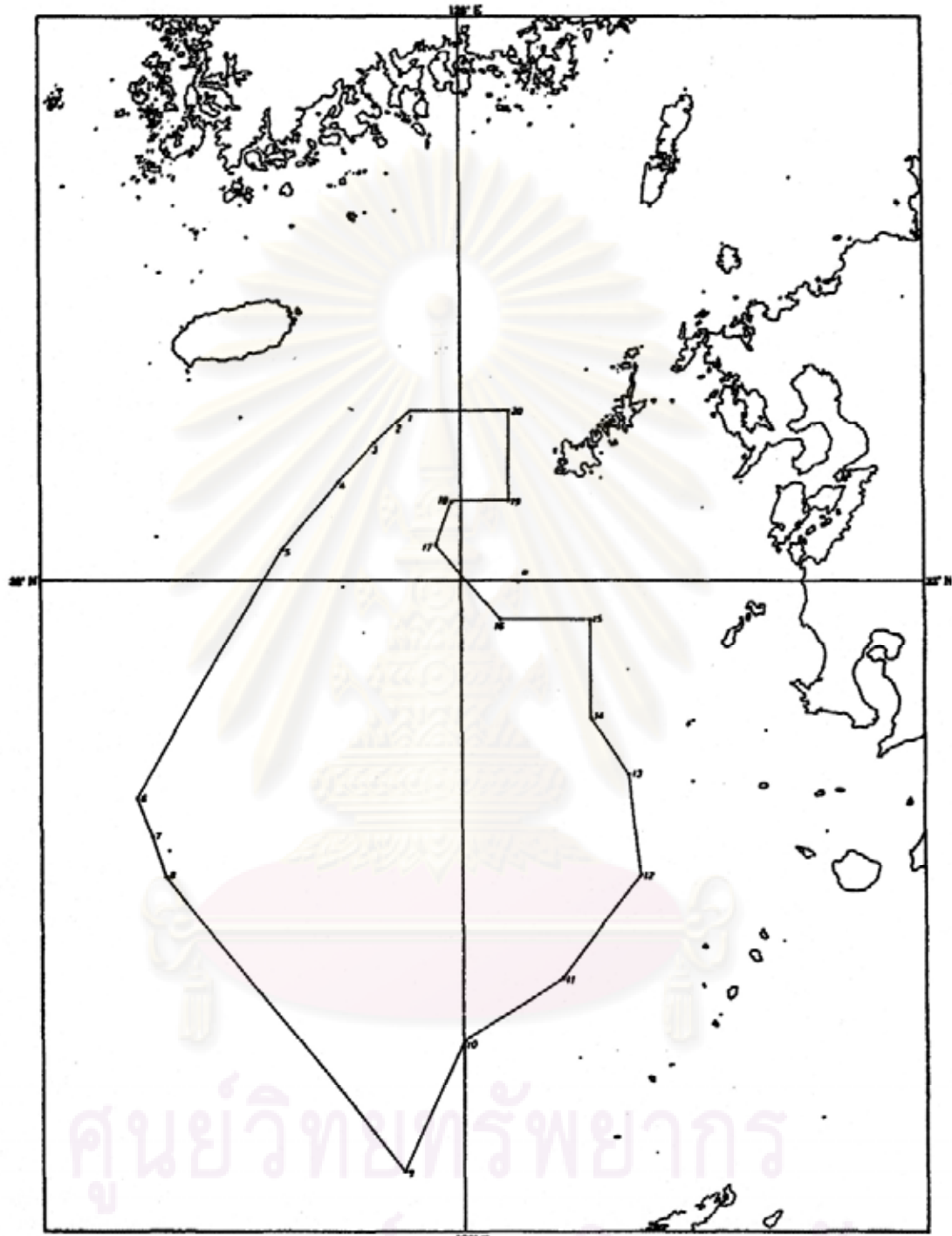
IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE in duplicate at Seoul in the English language, this thirtieth day of January of the year one thousand nine hundred and seventy-four.

For Japan:  
TORAO USHIROKU

For the Republic of Korea:  
DONG-JO KIM

จุฬาลงกรณ์มหาวิทยาลัย



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130° E

Treaty No. I-19778 (Vol. 1226)

ศูนย์วิทยุโทรพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

*Appendix*

The Subzones shall be those areas of the Joint Development Zone bounded respectively by straight lines connecting the following points in the sequence given below:

**Subzone I**

Point 1	32°57.0' N	127°43.0' E
Point 2	32°39.5' N	127°32.6' E
Point 3	32°39.6' N	127°39.2' E
Point 4	32°38.6' N	127°39.2' E
Point 5	32°39.1' N	128°18.0' E
Point 6	32°57.0' N	128°18.0' E
Point 1	32°57.0' N	127°43.0' E

**Subzone II**

Point 1	32°57.0' N	127°41.1' E
Point 2	32°53.4' N	127°36.3' E
Point 3	32°48.1' N	127°30.0' E
Point 4	32°39.5' N	127°30.0' E
Point 5	32°39.5' N	127°32.6' E
Point 6	32°57.0' N	127°43.0' E
Point 1	32°57.0' N	127°41.1' E

**Subzone III**

Point 1	32°48.1' N	127°30.0' E
Point 2	32°46.2' N	127°27.8' E
Point 3	32°40.2' N	127°20.8' E
Point 4	32°40.3' N	127°25.7' E
Point 5	32°39.4' N	127°25.7' E
Point 6	32°39.5' N	127°30.0' E
Point 1	32°48.1' N	127°30.0' E

**Subzone IV**

Point 1	32°39.5' N	127°30.0' E
Point 2	32°35.0' N	127°30.0' E
Point 3	32°39.5' N	127°32.6' E
Point 1	32°39.5' N	127°30.0' E

**Subzone V**

Point 1	32°40.2' N	127°20.8' E
Point 2	32°33.6' N	127°13.1' E
Point 3	32°10.5' N	126°51.5' E
Point 4	30°53.1' N	126°00.0' E
Point 5	30°35.2' N	126°00.0' E
Point 6	30°33.3' N	126°00.8' E
Point 7	30°31.0' N	126°01.5' E
Point 8	30°31.0' N	126°43.0' E
Point 9	31°56.0' N	127°07.0' E
Point 10	32°35.0' N	127°30.0' E
Point 11	32°39.5' N	127°30.0' E
Point 12	32°39.4' N	127°25.7' E
Point 13	32°40.3' N	127°25.7' E
Point 1	32°40.2' N	127°20.8' E

**Subzone VI**

Point 1	30°53.1' N	126°00.0' E
Point 2	30°46.2' N	125°55.5' E
Point 3	30°35.2' N	126°00.0' E
Point 1	30°53.1' N	126°00.0' E

**Subzone VII**

Point 1	32°39.5' N	127°32.6' E
Point 2	32°35.0' N	127°30.0' E
Point 3	31°56.0' N	127°07.0' E
Point 4	30°31.0' N	126°43.0' E
Point 5	30°31.0' N	126°01.5' E
Point 6	30°18.2' N	126°05.5' E
Point 7	29°38.6' N	126°41.8' E
Point 8	29°39.7' N	127°45.4' E
Point 9	31°47.0' N	128°32.6' E
Point 10	31°47.0' N	128°14.0' E
Point 11	32°12.0' N	127°50.0' E
Point 12	32°27.0' N	127°56.0' E
Point 13	32°27.0' N	128°18.0' E
Point 14	32°39.1' N	128°18.0' E
Point 15	32°38.6' N	127°39.2' E
Point 16	32°39.6' N	127°39.2' E
Point 1	32°39.5' N	127°32.6' E

**Subzone VIII**

Point 1	31°47.0' N	128°32.6' E
Point 2	29°39.7' N	127°45.4' E
Point 3	29°38.6' N	126°41.8' E
Point 4	28°56.6' N	127°19.6' E
Point 5	29°08.9' N	127°32.6' E
Point 6	29°09.0' N	127°40.1' E
Point 7	29°21.4' N	127°58.3' E
Point 8	29°47.2' N	127°57.9' E
Point 9	30°16.8' N	128°16.2' E
Point 10	30°16.9' N	128°32.0' E
Point 11	30°57.4' N	129°01.5' E
Point 12	31°13.0' N	128°50.0' E
Point 13	31°47.0' N	128°50.0' E
Point 1	31°47.0' N	128°32.6' E

**Subzone IX**

Point 1	30°57.4' N	129°01.5' E
Point 2	30°16.9' N	128°32.0' E
Point 3	30°16.8' N	128°16.2' E
Point 4	29°47.2' N	127°57.9' E
Point 5	29°21.4' N	127°58.3' E
Point 6	29°09.0' N	127°40.1' E
Point 7	29°08.9' N	127°32.6' E
Point 8	28°56.6' N	127°19.6' E
Point 9	28°36.0' N	127°38.0' E
Point 10	29°19.0' N	128°00.0' E
Point 11	29°43.0' N	128°38.0' E
Point 12	30°19.0' N	129°09.0' E
Point 13	30°54.0' N	129°04.0' E
Point 1	30°57.4' N	129°01.5' E

**AGREED MINUTES TO THE AGREEMENT BETWEEN JAPAN AND THE REPUBLIC OF KOREA CONCERNING JOINT DEVELOPMENT OF THE SOUTHERN PART OF THE CONTINENTAL SHELF ADJACENT TO THE TWO COUNTRIES**

The representatives of the Government of Japan and the Government of the Republic of Korea wish to record the following understanding which has been reached during the negotiations for the Agreement between Japan and the Republic of Korea concerning joint development of the southern part of the continental shelf adjacent to the two countries signed today (hereinafter referred to as "the Agreement"):

1. "The laws and regulations" referred to in the Agreement shall be construed, unless the context otherwise requires, to include concession agreements between the Government of the Republic of Korea and its concessionaires.

2. The geographical coordinates as specified in paragraph 1 of article II and the appendix to the Agreement are based on Japan Maritime Safety Agency Chart No. 210 of December 1955, New Edition.

3. (1) Regardless of whether the sole risk party is the operator, sole risk operations referred to in paragraph 1 of article V shall be carried out by the operator of the subzone concerned.

(2) Natural resources extracted through sole risk operations shall be equally shared between the concessionaires concerned in accordance with article IX.

(3) The non-sole risk party shall pay in money to the sole risk party the reasonable price for the portion of natural resources equal to the half of the sole risk bonus, less expenses incurred in connection with the sale of such portion and tax or other charges paid in connection with such portion.

4. As regards "adjustment of fisheries interests" referred to in paragraph 1 of article V, the Government of each Party shall give administrative guidance to its concessionaires so that they will, before operations for exploration or exploitation of natural resources begin in the subzones with respect to which they have been authorized, endeavour to adjust fisheries interests of nationals concerned of that Party.

5. As regards paragraph 2 of article V, the two Governments shall notify each other of the date on which the operating agreement was submitted to them and the date on which they intend to approve or disapprove the operating agreement.

6. As regards article VI, the two Governments shall endeavour to ensure that the designation of operators be made in such a way as to be equitable to the greatest possible extent.

7. "Expenses reasonably attributable to exploration and exploitation" referred to in paragraph 2 of article IX shall include expenses incurred for the purposes of survey in the Joint Development Zone prior to the date of entry into force of the Agreement.

8. The provisions of paragraph 2 of article IX shall not apply to expenses incurred by sole risk operations.

9. As regards paragraph 3 of article X, application for an extension of the period of exploitation right shall be made at least six months prior to the expiration of each of such periods.

10. As regards paragraph 4 of article X, the two Governments shall, after consultations, grant exploitation right respectively to concessionaires of both Parties on the same date.

11. As regards paragraph 5 of article X, the new concessionaire may apply for an extension of the period of exploitation right under paragraph 3 of article X.

12. For the purposes of article XII, sole risk operations shall be regarded as having been carried out by concessionaires of both Parties.

13. When concessionaires of both Parties are unable to comply with the provisions of article XII for unavoidable reasons, they shall submit for approval a statement setting forth reasons for, and the period of, such delay or suspension to the respective Governments authorizing them. The two Governments shall consult with each other before giving such approval.

14. The approval of the Party referred to in paragraph 1 of article XV shall not be withheld without justifiable reasons.

15. As regards paragraph 2 of article XV, when the remaining concessionaire of one Party who was not the operator under the operating agreement to which such concessionaire and the former concessionaire were parties carries out exploration or exploitation of natural resources under paragraph 1 of article XV, such concessionaire shall be regarded as the concessionaire of the other Party designated and acting as the operator, while retaining its own concessionaireship.

16. As regards paragraph 2 of article XV, taxes on income shall not include royalty.

17. Taxes and other charges to be imposed under paragraph 2 of article XVII include

(1) For Japan:

- (a) Mineral product tax,
- (b) Fixed assets tax and
- (c) Mine lot tax;

(2) For the Republic of Korea:

- (a) Royalty,
- (b) Property tax and
- (c) Rental.

18. (1) "Damage caused by digging operations of seabed and subsoil" referred to in paragraph 3 of article XXI include damage caused by blow-out of oil or natural gas.

(2) "Mine water" referred to in paragraph 3 of article XXI means water flowing out in the course of drilling wells for exploration or exploitation of natural resources, and oil and other substances flowing out together with such water.

19. The provisions of paragraph 3 (1) (a) of article XXI shall apply when a concessionaire of one Party carries out exploration or exploitation of natural resources under paragraph 1 of article XV. In such a case, the provisions of paragraph 3 (1) (c) of article XXI shall not apply.

20. As regards paragraph 2 (1) of article XXIII, each Government shall take, within its powers, necessary measures so that its concessionaires and other persons will not exploit independently the structure or field referred to in paragraph 1 of article XXIII during the six-month period referred to in paragraph 2 (1) of article XXIII or during the period in which the two Governments hold consultations for the purpose of making a joint proposal.

21. A concessionaire shall not enter into the agreement referred to in paragraph 2 (2) of article XXIII unless the other concessionaire authorized with respect to the same subzone also enters into such agreement.

Seoul, January 30, 1974.

For the Government  
of Japan:

TORAO USHIROKU

For the Government  
of the Republic of Korea:

DONG-JO KIM

## EXCHANGES OF NOTES

## I a

Seoul, January 30, 1974

Excellency,

I have the honour to refer to article XI of the Agreement between the Republic of Korea and Japan concerning joint development of the southern part of the continental shelf adjacent to the two countries signed today (hereinafter referred to as "the Agreement") and to confirm, on behalf of the Government of the Republic of Korea, the following arrangements concerning drilling obligations of concessionaires to be performed during the period of exploration right.

1. (1) Concessionaires of both Parties authorized with respect to each subzone as specified in the appendix to the Agreement shall drill one well during the first three-year period, the following three-year period and the remaining two-year period respectively.

(2) For the purposes of (1), sole risk operations shall be regarded as having been performed by concessionaires of both Parties.

(3) Subzones I and IX shall be deemed to constitute a single subzone for the purposes of (1).

(4) Notwithstanding the provisions of (1), concessionaires authorized with respect to Subzone VIII shall be exempted from the obligations under (1) during the first three-year period and concessionaires authorized with respect to Subzones II, III, IV and VI shall be exempted from the obligations under (1).

2. The present arrangements shall become applicable as from the date of entry into force of the Agreement.

I have further the honour to propose that the present Note and Your Excellency's Note in reply thereto confirming the foregoing arrangements on behalf of the Government of Japan shall be regarded as constituting an agreement between the two Governments.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

DONG-JO KIM  
Minister of Foreign Affairs

His Excellency Torao Ushiroku  
Ambassador Extraordinary and Plenipotentiary  
of Japan to the Republic of Korea

## II a

Seoul, January 30, 1974

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note of today's date which reads as follows:

[See note I a]

Vol. 1225, I-19778

I have further the honour to confirm, on behalf of the Government of Japan, the arrangements embodied in Your Excellency's Note and to agree that Your Excellency's Note and this Note shall be regarded as constituting an agreement between the two Governments.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

TORAO USHIROKU  
Ambassador Extraordinary and Plenipotentiary  
of Japan to the Republic of Korea

His Excellency Mr. Dong-Jo Kim  
Minister of Foreign Affairs  
of the Republic of Korea

I b

Seoul, January 30, 1974

Excellency,

I have the honour to refer to article XX of the Agreement between the Republic of Korea and Japan concerning joint development of the southern part of the continental shelf adjacent to the two countries signed today (hereinafter referred to as "the Agreement") and to confirm, on behalf of the Government of the Republic of Korea, the following arrangements concerning the prevention of collisions at sea.

1. The Government of either Party shall take the following measures in the sub-zones of the Joint Development Zone with respect to which that Party has authorized concessionaires designated and acting as operators:

(1) (a) When the exploration under the Agreement is carried out in such subzones by surface vessels, that Government shall promptly inform the other Government and mariners of the areas covered by, and the durations of, such exploration activities.

(b) When a fixed installation hazardous to navigation (hereinafter referred to as "fixed installation") is erected, that Government shall promptly inform the other Government and mariners of the exact location of the fixed installation and other particulars necessary for the safety of navigation, such as markings to be fixed to such installation while being erected. That Government shall take similar measures when a fixed installation is dismantled or removed.

(2) When a fixed installation has been erected which rises above the water, that Government shall ensure that:

- (a) The fixed installation is marked at night by one or more white lights so constructed that at least one light is visible from any direction. Such lights shall be placed not less than 15 metres above Mean High Water and shall flash Morse letter U ( . - ) every 15 seconds or less. The intensity of such lights shall be not less than 6,000 candelas;
- (b) The horizontal and vertical extremities of the fixed installation are marked at night by red lights having intensity of not less than 300 candelas;
- (c) The fixed installation is equipped with one or more sound signals so constructed and fixed as to be audible from any direction. The sound signals shall have a rated range of not less than 2 nautical miles and shall emit blasts corresponding to Morse



letter U ( . - ) every 30 seconds. The signals shall be operated when the meteorological visibility is less than 2 nautical miles;

- (d) A radar reflector is so fixed as to enable vessels approaching the fixed installation from any direction to clearly detect the presence of the fixed installation on their radar from a distance of not less than 10 nautical miles;
- (e) The fixed installation is equipped with appropriate markings to prevent collisions with aircraft.

(3) When an underwater fixed installation such as submerged well or pipe-line has been erected, that Government shall ensure that it is adequately marked.

(4) (a) When a number of fixed installations are situated in close proximity to one another and when safety of navigation can be secured without each of fixed installations being individually equipped with signals referred to in (2) (a), (b), (c) and (d), such fixed installations may be regarded as constituting a single fixed installation for the purposes of (2) (a), (b), (c) and (d).

(b) When a fixed installation itself possesses radar reflectory capability which meets the requirements of (2) (d), the fixing of a radar reflector may be omitted.

2. The present arrangements shall become applicable as from the date of entry into force of the Agreement.

3. The present arrangements may be terminated by either Government by giving one year's written notice to the other Government.

4. The two Governments shall meet before the present arrangements are terminated in accordance with 3 to decide on future arrangements.

I have further the honour to propose that the present Note and Your Excellency's Note in reply thereto confirming the foregoing arrangements on behalf of the Government of Japan shall be regarded as constituting an agreement between the two Governments.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

DONG-JO KIM  
Minister of Foreign Affairs

His Excellency Torao Ushiroku  
Ambassador Extraordinary and Plenipotentiary  
of Japan to the Republic of Korea

II b

Seoul, January 30, 1974

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note of today's date which reads as follows:

[See note I b]

I have further the honour to confirm, on behalf of the Government of Japan, the arrangements embodied in Your Excellency's Note and to agree that Your Excellency's Note and this Note shall be regarded as constituting an agreement between the two Governments.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

TORAO USHIROKU  
Ambassador Extraordinary and Plenipotentiary  
of Japan to the Republic of Korea

His Excellency Mr. Dong-Jo Kim  
Minister of Foreign Affairs  
of the Republic of Korea

I c

Seoul, January 30, 1974

Excellency,

I have the honour to refer to article XX of the Agreement between Japan and the Republic of Korea concerning joint development of the southern part of the continental shelf adjacent to the two countries signed today (hereinafter referred to as "the Agreement") and to confirm, on behalf of the Government of Japan, the following arrangements concerning the prevention and removal of pollution of the sea resulting from activities relating to exploration or exploitation of natural resources in the Joint Development Zone.

I

The Government of either Party shall ensure that the following measures are taken with respect to (a) a well or a marine facility relating to exploration or exploitation of natural resources in the subzones of the Joint Development Zone with respect to which that Party has authorized concessionaires designated and acting as operators, or (b) a vessel under the flag of that Party engaged in activities relating to exploration or exploitation of natural resources in the Joint Development Zone (hereinafter referred to as "ship"):

1. Blow-out preventor, etc.

(1) (a) A well which is being drilled shall be equipped with blow-out preventor in case blow-out of oil or natural gas is likely to occur.

(b) The provisions of (a) shall not apply when oil testing or repair works are performed and automatic oil- or gas-collecting devices for blow-out have been installed.

(2) The blow-out preventor referred to in (1) shall meet the following requirements:

(a) The blow-out preventor installed at the entrance of a well shall be of an open-and-close type, and of a remote control type which can be promptly operated, with an independent power source;

(b) The operating gear or warning devices for emergency use of such blow-out preventor shall be located close to the person who operates the draw-works;

(c) Flow-bean or other devices shall be installed to control the quantity of oil or natural gas flowing from the outlet of such blow-out preventor;

(d) Devices capable of prevention of blow-out of oil or natural gas from inside drilling pipes, tubing pipes or casing pipes shall be installed.

(3) (a) When drilling of a well or oil testing is performed, muddy water or its materials for emergency use and such materials as are necessary for making heavy

muddy water or for controlling the quality of muddy water shall be stocked at the drilling site.

(b) The provisions of (a) shall not apply when automatic oil- or gas-collecting devices for blow-out have been installed.

(4) The blow-out preventor, automatic oil- or gas-collecting devices for blow-out and other devices installed at the entrance of a well shall be such that they can withstand at least the pressures prescribed in the Schedule attached to this Note.

(5) In the course of drilling operations, the following requirements shall be met:

- (a) When a well has been drilled to an appropriate depth, the insertion of casing pipes and cementing shall be performed promptly;
- (b) When cementing has been performed, its effectiveness shall be confirmed by applying pressure or by other means;
- (c) Devices capable of immediate detection of any unusual increases or decreases in the quantity of muddy water in the tank for circulating muddy water shall be installed.

(6) Pressure proof tests of the blow-out preventor shall be conducted at least once a month by applying appropriate pressures.

(7) The blow-out preventor shall be closed when drilling operations are suspended because of difficulties arising from meteorological conditions in maintaining the position of a drilling facility or because of the occurrence, or the danger, of an accident.

## 2. Discharge of oil

(1) (a) Crude oil, fuel oil, heavy diesel oil, lubricating oil or a mixture containing such oils (hereinafter referred to as "oil") shall not be discharged from a ship or a marine facility.

(b) The provisions of (a) shall not apply to:

- (i) The discharge of oil from a ship other than a tanker or the discharge of bilge from a tanker, when the following conditions are all satisfied:
  - i) The ship or tanker is proceeding en route;
  - ii) The instantaneous rate of discharge of oil content does not exceed 60 litres per nautical mile;
  - iii) The oil content of the discharge is less than 100/1,000,000 of the discharge;
- (ii) The discharge of oil from a tanker, when the following conditions are all satisfied:
  - i) The tanker is proceeding en route;
  - ii) The instantaneous rate of discharge of oil content does not exceed 60 litres per nautical mile;
  - iii) The total quantity of oil discharged on a ballast voyage does not exceed 1/15,000 of the total cargo-carrying capacity;
  - iv) The tanker is more than 50 nautical miles from the nearest land;
- (iii) The discharge of water ballast from a cargo tank which has been so cleaned that any effluent therefrom would produce no visible traces of oil on the surface of the water, if it were discharged from a stationary tanker into clean calm water on a clear day.

(2) The provisions of (1) shall not apply to:

- (a) The discharge of oil for the purpose of securing the safety of a ship or a marine facility, preventing damage to a ship or a marine facility or cargo of a ship or saving life at sea;
- (b) The escape of oil resulting from damage to a ship or a marine facility or unavoidable leakage, if all reasonable precautions have been taken after the occurrence of the damage or discovery of the leakage for the purpose of preventing or minimizing the escape;

- (c) The discharge of oil from a marine facility if the oil content of such discharge is less than 10/1,000,000 of the discharge;
- (d) The discharge of oil from tankers of under 150 tons gross tonnage and other ships of under 500 tons gross tonnage.

### 3. Discharge of waste

- (1) Waste shall not be discharged from a ship or a marine facility.
- (2) The provisions of (1) shall not apply to:
  - (a) The discharge of refuse, excretion, sewage or similar waste resulting from daily life of the personnel aboard a ship or a marine facility;
  - (b) The discharge of cuttings or dirty water in a manner in which pollution of the sea is not likely to occur;
  - (c) The discharge of waste other than cuttings or dirty water from a ship in a manner in which pollution of the sea is not likely to occur, and at a location where such discharge is not likely to hinder the maintenance of the sea-environment;
  - (d) The discharge of waste for the purpose of securing the safety of a ship or a marine facility, preventing damage to a ship or a marine facility or cargo of a ship or saving life at sea;
  - (e) The discharge of waste resulting from damage to a ship or a marine facility or unavoidable discharge, if all reasonable precautions have been taken after the occurrence of the damage or discovery of the discharge for the purpose of preventing or minimizing the discharge.

### 4. Prevention and removal of pollution

When large quantities of oil have been discharged from a ship or a marine facility, measures shall be taken promptly to prevent the spread of such pollution, to prevent the continued discharge of oil and to remove the discharged oil.

### 5. Abandonment of a well

When a well is abandoned, measures such as sealing of the well shall be taken to prevent leakage of mine water or other substances from such well.

## II

1. One Government shall promptly provide the other Government with all available information when any of the following occurs:

- (a) Discharge of large quantities of oil from a ship or a marine facility;
- (b) Collisions between a marine facility and a ship or other objects;
- (c) Evacuation of personnel from a marine facility due to dangerous meteorological conditions or other emergencies.

2. When information concerning 1 (a) is provided, the Government concerned shall also inform the other Government of the measures taken in accordance with I.4.

## III

1. Under special circumstances, each Government may authorize exceptions to the provisions of I. 1 (2) (a), (b), (c) or (d).

2. With respect to a well exceeding 1,500 metres in depth, each Government may authorize exceptions to the provisions of I. 1 (4).

## IV

Either Government may take necessary measures to prevent and remove pollution of the sea when measures are not taken in accordance with I. 4 or when that Government considers that such measures are not sufficient to prevent or remove pollution of the sea.

## V

The two Governments shall cooperate closely for the effective implementation of the present arrangements.

## VI

1. The present arrangements shall become applicable six months after the date of entry into force of the Agreement or on an earlier date as may be mutually agreed upon between the two Governments.

2. The present arrangements may be terminated by either Government by giving one year's written notice to the other Government.

3. The two Governments shall meet before the present arrangements are terminated in accordance with 2 to decide on future arrangements.

I have further the honour to propose that the present Note and Your Excellency's Note in reply thereto confirming the foregoing arrangements on behalf of the Government of the Republic of Korea shall be regarded as constituting an agreement between the two Governments.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

TORAO USHIROKU  
Ambassador Extraordinary and Plenipotentiary  
of Japan to the Republic of Korea

His Excellency Mr. Dong-Jo Kim  
Minister of Foreign Affairs  
of the Republic of Korea

## SCHEDULE

<i>Nature of oil or natural gas stratum to be drilled</i>	<i>Pressure</i>	
	<i>Blow-out preventor</i>	<i>Devices other than blow-out preventor</i>
Oil stratum or isolated natural gas stratum with known pressure	1.5 times the pressure at the bottom of an airtight well	Twice the pressure at the entrance of an airtight well
Oil stratum or isolated natural gas stratum with unknown pressure	Kilogram weight per square centimetre equivalent to the figure computed by multiplying by 1.5 the number of metres of the depth of the stratum divided by 10	Twice the pressure at the entrance of an airtight well
Stratum of natural gas dissolved in water	Kilogram weight per square centimetre equivalent to the figure computed by multiplying by 0.5 the number of metres of the depth of the stratum divided by 10	Twice the pressure at the entrance of an airtight well

II c

Seoul, January 30, 1974

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note of today's date which reads as follows:

[See note I c]

I have further the honour to confirm, on behalf of the Government of the Republic of Korea, the arrangements embodied in Your Excellency's Note and to agree that Your Excellency's Note and this Note shall be regarded as constituting an agreement between the two Governments.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

DONG-JO KIM  
Minister of Foreign Affairs

His Excellency Torao Ushiroku  
Ambassador Extraordinary and Plenipotentiary  
of Japan to the Republic of Korea

ศูนย์วิทยุทรัพยากร

จุฬาลงกรณ์มหาวิทยาลัย

**\*475 TREATY BETWEEN AUSTRALIA AND THE REPUBLIC OF INDONESIA ON THE ZONE OF  
COOPERATION IN AN AREA BETWEEN THE INDONESIAN PROVINCE OF EAST TIMOR AND  
NORTHERN AUSTRALIA**

**AUSTRALIA and THE REPUBLIC OF INDONESIA**

TAKING INTO ACCOUNT the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982 and, in particular, Article 83 which requires States with opposite coasts, in a spirit of understanding and cooperation, to make every effort to enter into provisional arrangements of a practical nature which do not jeopardize or hamper the reaching of final agreement on the delimitation of the continental shelf;

DESIRING to enable the exploration for and exploitation of the petroleum resources of the continental shelf of the area between the Indonesian Province of East Timor and northern Australia yet to be the subject of permanent continental shelf delimitation between the Contracting States;

CONSCIOUS of the need to encourage and promote development of the petroleum resources of the area;

DESIRING that exploration for and exploitation of these resources proceed without delay;

AFFIRMING existing agreements on the delimitation of the continental shelf between their two countries;

DETERMINED to cooperate further for the mutual benefit of their peoples in the development of the resources of the area of the continental shelf yet to be the subject of permanent continental shelf delimitation between their two countries;

FULLY COMMITTED to maintaining, renewing and further strengthening the mutual respect, friendship and cooperation between their two countries through existing agreements and arrangements, as well as their policies of promoting constructive neighbourly cooperation;

MINDFUL of the interests which their countries share as immediate neighbours, and in a spirit of cooperation, friendship and goodwill;

CONVINCED that this Treaty will contribute to the strengthening of the relations between their two countries; and

BELIEVING that the establishment of joint arrangements to permit the exploration for and exploitation of petroleum resources in the area will further augment the range of contact and cooperation between the Governments of the two countries and benefit the development of contacts between their peoples;

HAVE AGREED as follows:

\*476 PART I  
ZONE OF COOPERATION

Article 1

Definitions

1. For the purposes of this Treaty,

(a) "contract" or "production sharing contract" means a contract between the Joint Authority and corporations, concluded on the basis of the Model Production Sharing Contract, entered into under Article 8 of this Treaty and in accordance with Part III of the Petroleum Mining Code;

(b) "contract area" means the area constituted by the blocks specified in the contract that have not been relinquished or surrendered;

(c) "contractor" means a corporation or corporations which enter into a contract with the Joint Authority and which is registered as a contractor under Article 38 of the Petroleum Mining Code;

(d) "Contractors' Income Tax" means tax imposed by the Indonesian Laws No. 7 of 1983 on Income Tax and No. 6 of 1983 on General Tax Provisions and Procedures as amended from time to time;

(e) "criminal law" means any law in force in the Contracting States, whether substantive or procedural, that makes provision for or in relation to offences or for or in relation to the investigation or prosecution of offenses or the punishment of offenders, including the carrying out of a penalty imposed by a court. For this purpose "investigation" includes entry to a structure in Area A, the exercise of powers of search and questioning and the apprehension of a suspected offender;

(f) "good oilfield practice" means all those things that are generally accepted as good and safe in the carrying on of petroleum operations;

(g) "Model Production Sharing Contract" means the model contract as appears in Annex C, on the basis of which production sharing contracts for Area A should be concluded, as may be modified from time to time by the Ministerial Council in accordance with paragraph 1(c) of Article 6 of this Treaty;

(h) "petroleum" means

(a) any naturally occurring hydrocarbon, whether in a gaseous, liquid or solid state;

(b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or

(c) any petroleum as defined by sub-paragraph (a) or (b) of this paragraph that has been returned to a reservoir in the contract area;



(i) "Petroleum Mining Code" means the "Petroleum Mining Code for Area A of the Zone of Cooperation" to govern operational activities relating to exploration for and exploitation of the petroleum resources in Area A of the Zone of Cooperation contained in Annex B, as amended from time to time by the Ministerial Council in accordance with paragraph 1(b) of Article 6 of this Treaty;

(j) "petroleum operations" means activities undertaken to produce petroleum and includes exploration, development, field processing, production and pipeline operations, and marketing authorized or contemplated under a production sharing contract;

(k) "Resource Rent Tax" means tax imposed by the Petroleum Resource Rent Tax Act 1987 of Australia as amended from time to time;

\*477 (l) "structure" means an installation or structure used to carry out petroleum operations;

(m) "Taxation Code" means the "Taxation Code for the Avoidance of Double Taxation in Respect of Activities Connected with Area A of the Zone of Cooperation", contained in Annex D;

(n) "taxation law" means the federal law of Australia or the law of the Republic of Indonesia, from time to time in force, in respect of taxes to which this Treaty applies but shall not include a tax agreement between the Contracting States and a tax agreement of either Contracting State with a third country;

(o) "Treaty" means this Treaty including Annexes A, B, C and D;

(p) "Zone of Cooperation" refers to the area so designated and described in Annex A and illustrated in the maps forming part of that Annex, which consists of the whole of the area embraced by Areas A, B and C designated in that Annex.

2. For the purposes of Article 10 of this Treaty and the Taxation Code, resident of a Contracting State means:

(a) in the case of Australia, a person who is liable to tax in Australia by reason of being a resident of Australia under the tax law of Australia; and

(b) in the case of the Republic of Indonesia, a person who is liable to tax in the Republic of Indonesia by reason of being a resident of the Republic of Indonesia under the tax law of the Republic of Indonesia,

but does not include any person who is liable to tax in that Contracting State in respect only of income from sources in that Contracting State.

3. Where by reason of the provisions of paragraph 2 of this Article, an individual is a resident of both Contracting States, then the status of the person shall be determined as follows:

(a) the person shall be deemed to be a resident solely of the Contracting State in which a permanent home is available to the person;

(b) if a permanent home is available to the person in both Contracting States, or in neither of them, the person shall be deemed to be a resident solely of the Contracting State in which the person has an habitual abode;

(c) if the person has an habitual abode in both Contracting States, or if the person does not have an habitual abode in either of them, the person shall be deemed to be a resident solely of the Contracting State with which the person's personal and economic relations are the closer.

4. Where by reason of the provisions of paragraph 2 of this Article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident solely of the Contracting State in which its place of effective management is situated.

## Article 2

### The Zone

1. A Zone of Cooperation is hereby designated in an area between the Indonesian Province of East Timor and northern Australia, which comprises Areas A, B and C.

2. Within the Zone of Cooperation activities in relation to the exploration for and exploitation of petroleum resources shall be conducted on the following basis:

\*478 (a) In Area A, there shall be joint control by the Contracting States of the exploration for and exploitation of petroleum resources, aimed at achieving optimum commercial utilization thereof and equal sharing between the two Contracting States of the benefits of the exploitation of petroleum resources, as provided for in this Treaty;

(b) In Area B, Australia shall make certain notifications and share with the Republic of Indonesia Resource Rent Tax collections arising from petroleum production on the basis of Article 4 of this Treaty; and

(c) In Area C, the Republic of Indonesia shall make certain notifications and share with Australia Contractors' Income Tax collections arising from petroleum production on the basis of Article 4 of this Treaty.

3. Nothing contained in this Treaty and no acts or activities taking place while this Treaty is in force shall be interpreted as prejudicing the position of either Contracting State on a permanent continental shelf delimitation in the Zone of Cooperation nor shall anything contained in it be considered as affecting the respective sovereign rights claimed by each Contracting State in the Zone of Cooperation.

4. Notwithstanding the conclusion of this Treaty, the Contracting States shall continue their efforts to reach agreement on a permanent continental shelf delimitation in the Zone of Cooperation.

## PART II

### EXPLORATION AND EXPLOITATION IN THE ZONE OF COOPERATION

#### Article 3

##### Area A

1. In relation to the exploration for and exploitation of petroleum resources in Area A, the rights and responsibilities of the two Contracting States shall be exercised by the Ministerial Council and the Joint Authority in accordance with this Treaty. Petroleum operations in Area A shall be carried out through production sharing contracts.

2. The Joint Authority shall enter into each production sharing contract with limited liability corporations specifically established for the sole purpose of the contract. This provision shall also apply to the successors or assignees of such corporations.

#### Article 4

##### Area B and Area C

1. In relation to the exploration for and exploitation of petroleum resources in Area B Australia shall:

(a) notify the Republic of Indonesia of the grant, renewal, surrender, expiry and cancellation of titles made by Australia being exploration permits, retention leases and production licences; and

\*479 (b) pay to the Republic of Indonesia ten (10) per cent of gross Resource Rent Tax collected by Australia from corporations producing petroleum from Area B equivalent to sixteen (16) per cent of net Resource Rent Tax collected, calculated on the basis that general company tax is payable at the maximum rate.

2. In relation to exploration for and exploitation of petroleum resources in Area C the Republic of Indonesia shall:

(a) notify Australia of the grant, renewal, surrender, expiry and cancellation of petroleum exploration and production agreements made by the Republic of Indonesia; and

(b) pay to Australia ten (10) per cent of Contractors' Income Tax collected by the Republic of Indonesia from corporations producing petroleum from Area C.

3. In the event that Australia changes the basis upon which the Resource Rent Tax or general company tax is calculated or that the Republic of Indonesia changes the basis upon which Contractors' Income Tax is calculated, the Contracting States shall review the percentages set out in paragraphs 1(b) and 2(b) of this Article and agree on new percentages, ensuring that the relative shares paid by each Contracting State to the other in respect of revenue collected from corporations producing petroleum in Area B and Area C remain the same.

4. In the event of any change occurring in the relevant taxation regimes of either Contracting State, the Contracting States shall review the formulation set out in paragraphs 1(b) and 2(b) of this Article and agree on a new formulation, ensuring that the relative shares paid by each Contracting State to the other in respect of revenue collected from corporations producing petroleum in Area B and Area C remain the same.

5. With regard to Area B and Area C, the Contracting States shall enter into necessary administrative arrangements to give effect to the sharing arrangements in the two Areas as provided in paragraph 1(b) and paragraph 2(b) of this Article at the time that production from either Area commences. In particular, the arrangements shall provide for the manner in which such a share shall be paid from one Contracting State to the other Contracting State. A Contracting State when making a payment to the other Contracting State shall provide information on the basis on which the relevant payment was calculated.

6. The Contracting States shall take necessary measures to ensure the timely and optimum utilization of the petroleum resources in Area B and Area C.

### PART III

#### THE MINISTERIAL COUNCIL

##### Article 5

##### The Ministerial Council

1. A Ministerial Council for the Zone of Cooperation is hereby established.

\*480 2. The Ministerial Council shall consist of those Ministers who may from time to time be designated for that purpose by the Contracting States provided that, at any one time, there shall be an equal number of Ministers designated by each Contracting State.

3. The Ministerial Council shall meet annually or as often as may be required.

4. The Ministerial Council shall normally meet alternately in Australia or in the Republic of Indonesia. Its meetings shall be chaired alternately by a Minister nominated by each Contracting State.

5. Decisions of the Ministerial Council shall be arrived at by consensus. The Ministerial Council may establish procedures for taking decisions out of session.

#### Article 6

##### Functions of the Ministerial Council

1. The Ministerial Council shall have overall responsibility for all matters relating to the exploration for and exploitation of the petroleum resources in Area A of the Zone of Cooperation and such other functions relating to the exploration for and exploitation of petroleum resources as the Contracting States may entrust to it. The functions of the Ministerial Council shall include:

- (a) giving directions to the Joint Authority on the discharge of its functions;
- (b) of its own volition or on recommendation by the Joint Authority, in a manner not inconsistent with the objectives of this Treaty, amending the Petroleum Mining Code to facilitate petroleum operations in Area A;
- (c) of its own volition or on recommendation by the Joint Authority, in a manner not inconsistent with the objectives of this Treaty, modifying the Model Production Sharing Contract to facilitate petroleum operations in Area A;
- (d) approving production sharing contracts which the Joint Authority may propose to enter into with corporations;
- (e) approving the termination of production sharing contracts entered into between the Joint Authority and corporations;
- (f) approving the variation of the following provisions of a production sharing contract, with the agreement of the contractor:
  - (i) the Joint Authority's or the contractor's production share;
  - (ii) the operating cost recovery provisions;
  - (iii) the term of the contract; and
  - (iv) the contract area relinquishment provisions;
- (g) approving the variation of the annual contract service fee;
- (h) giving approval to the Joint Authority to market any or all petroleum production in circumstances determined by the Ministerial Council;

(i) approving the transfer of rights and responsibilities by contractors to other corporations that will then become contractors;

(j) approving the distribution to Australia and the Republic of Indonesia of revenues derived from production sharing contracts in Area A;

(k) through consultation, settling disputes in the Joint Authority;

(l) approving financial estimates of income and expenditure of the Joint Authority;

(m) approving rules, regulations and procedures for the effective functioning of the Joint Authority including staff regulations;

\*481 (n) reviewing the operation of this Treaty and making recommendations to the Contracting States that the Council may consider necessary for the amendment of this Treaty;

(o) appointment of the Executive Directors of the Joint Authority;

(p) at the request of a member of the Ministerial Council inspecting and auditing the Joint Authority's books and accounts;

(q) approving the result of inspections and audits of contractors' books and accounts conducted by the Joint Authority;

(r) considering and adopting the annual report of the Joint Authority; and

(s) reviewing the distribution among the Republic of Indonesia, Australia and third countries, of expenditure on petroleum operations related to Area A.

2. The Ministerial Council in exercising its functions shall ensure the achievement of the optimum commercial utilization of the petroleum resources of Area A consistent with good oilfield and sound environmental practice.

3. The Ministerial Council shall authorize the Joint Authority to take all necessary steps to enable the commencement of exploration for and exploitation of the petroleum resources of Area A as soon as possible after the entry into force of this Treaty.

#### PART IV

#### THE JOINT AUTHORITY

##### Article 7

##### The Joint Authority

1. A Joint Authority is hereby established.

2. The Joint Authority shall have juridical personality and such legal capacities under the law of both Contracting States as are necessary for the exercise of its powers and the performance of its functions. In particular, the Joint Authority shall have the capacity to contract, to acquire and dispose of movable and immovable property and to institute and be party to legal proceedings.

3. The Joint Authority shall be responsible to the Ministerial Council.

4. Decisions of the Executive Directors of the Joint Authority shall be arrived at by consensus. Where consensus cannot be reached, the matter shall be referred to the Ministerial Council.

5. Unless otherwise decided by the Ministerial Council, the Joint Authority shall have its head office in the Republic of Indonesia and an office in Australia, each of which shall be headed by an Executive Director.

6. The Joint Authority shall commence to function on entry into force of this Treaty.

#### \*482 Article 8

##### Functions of the Joint Authority

The Joint Authority, subject to directions from the Ministerial Council, shall be responsible for the management of activities relating to exploration for and exploitation of the petroleum resources in Area A in accordance with this Treaty, and in particular the Petroleum Mining Code and with production sharing contracts. These management functions shall be:

(a) dividing Area A into contract areas, issuing prospecting approvals and commissioning environmental investigations prior to contract areas being advertised, advertising of contract areas, assessing applications, and making recommendations to the Ministerial Council on applications for production sharing contracts;

(b) entering into production sharing contracts with corporations, subject to Ministerial Council approval, and supervising the activities of the contractor pursuant to the requirements of the Petroleum Mining Code, including regulations and directions thereunder, and the terms and conditions set out in the contract;

(c) recommending to the Ministerial Council the termination of production sharing contracts where contractors do not meet the terms and conditions of those contracts;

(d) terminating production sharing contracts by agreement with contractors;

(e) recommending to the Ministerial Council the approval of transfer of rights and responsibilities by contractors to other corporations that will then become contractors;

(f) collecting and, with approval of the Ministerial Council, distributing between the two Contracting States the proceeds of the Joint Authority's share of petroleum production from contracts;

(g) preparation of annual estimates of income and expenditure of the Joint Authority for submission to the Ministerial Council. Any expenditure shall only be made in accordance with estimates approved by the Ministerial Council or otherwise in accordance with regulations and procedures approved by the Council;

(h) controlling movements into, within and out of Area A of vessels, aircraft, structures and other equipment employed in exploration for and exploitation of petroleum resources; and, subject to Article 23, authorizing the entry of employees of contractors and their subcontractors and other persons into Area A;

(i) establishment of safety zones and restricted zones, consistent with international law, to ensure the safety of navigation and petroleum operations;

(j) issuing regulations and giving directions under the Petroleum Mining Code on all matters related to the supervision of and control of petroleum operations including on health, safety, environmental protection and assessments and work practices, pursuant to the Petroleum Mining Code;

(k) making recommendations to the Ministerial Council to amend the Petroleum Mining Code and to modify the Model Production Sharing Contract consistent with the objectives of this Treaty;

(l) requesting action by the appropriate Australian and Indonesian authorities consistent with this Treaty

\*483 (i) for search and rescue operations in Area A; and

(ii) in the event of terrorist threat to the vessels and structures engaged in petroleum operations in Area A;

(m) requesting assistance with pollution prevention measures, equipment and procedures from appropriate Australian or Indonesian authorities or other bodies or persons;

(n) preparation of annual reports for submission to the Ministerial Council;

(o) with the approval of the Ministerial Council, the variation of the following provisions of a production sharing contract with the agreement of the contractor:

(i) the Joint Authority's or the contractor's production share;

(ii) the operating cost recovery provisions;

(iii) the term of the contract; and

(iv) the contract area relinquishment provisions;

(p) with the approval of the Ministerial Council, the variation of the annual contract service fee;



- (q) variation, with the agreement of the contractor, of provisions in the production sharing contract other than those in paragraphs (o) and (p) of this Article;
- (r) with the approval of the Ministerial Council, the marketing of any or all petroleum production in circumstances determined by the Ministerial Council;
- (s) inspecting and auditing contractors' books and accounts relating to the production sharing contract for any calendar year;
- (t) monitoring and reporting to the Ministerial Council the distribution among the Republic of Indonesia, Australia and third countries, of expenditure on petroleum operations related to Area A; and
- (u) such other functions as may be conferred on it by the Ministerial Council.

## Article 9

### Structure of the Joint Authority

1. The Joint Authority shall consist of:

- (a) Executive Directors appointed by the Ministerial Council comprising an equal number of persons nominated by each Contracting State;
- (b) the following three Directorates responsible to the Executive Directors:
  - (i) a Technical Directorate responsible for operations involving exploration for and exploitation of petroleum resources including operations in respect of functions referred to in paragraph (1) of Article 8;
  - (ii) a Financial Directorate responsible for collecting fees and proceeds from the sale of the Joint Authority's share of production; and
  - (iii) a Legal Directorate responsible for providing advice on any legal issues relating to production sharing contracts and on the operation of law applying in Area A; and
- \*484 (c) a Corporate Services Directorate, to provide administrative support to the Executive Directors and the three other Directorates and to service the meetings of the Ministerial Council.

2. The personnel of the Joint Authority shall be appointed by the Executive Directors under terms and conditions that have regard to the proper functioning of the Joint Authority and the nature of the exploration for and exploitation of petroleum resources being undertaken from time to time in Area A from amongst individuals nominated by each Contracting State. Of the four Directors heading the Directorates, the Executive Directors shall appoint two from each Contracting State. If an Indonesian nominee is appointed to head the Technical Directorate, then an Australian nominee shall be appointed to head the Financial Directorate, and vice versa.

3. Unless otherwise decided by the Ministerial Council, the Technical Directorate shall be in the Joint Authority office located in Australia.

4. The Executive Directors and the four Directors shall constitute the Executive Board.

5. The Executive Directors and personnel of the Joint Authority shall have no financial interest in any activity relating to exploration for and exploitation of petroleum resources in Area A.

#### Article 10

##### Taxation of the Joint Authority and its Officers

1. The Joint Authority shall be exempt from the following existing taxes:

(a) in Australia, the income tax imposed under the federal law of Australia;

(b) in Indonesia, the income tax (Pajak-Penghasilan) imposed under the law of the Republic of Indonesia, as well as any identical or substantially similar taxes which are imposed after the date of signature of this Treaty in addition to, or in place of, the existing taxes.

2. The Executive Directors and other officers of the Joint Authority:

(a) shall be exempt from taxation of salaries, allowances and other emoluments paid to them by the Joint Authority in connection with their service with the Joint Authority other than taxation under the law of the Contracting State in which they are deemed under the provisions of Article 1 of this Treaty to be resident for taxation purposes; and

(b) shall, at the time of first taking up a post with the Joint Authority located in the Contracting State in which they are not resident under the provisions of Article 1 of this Treaty, be exempt from customs duties and other such charges (except payments for services) in respect of imports of furniture and other household and personal effects in their ownership or possession or already ordered by them and intended for their personal use or for their establishment; such goods shall be imported within six months of an officer's first entry but in exceptional circumstances an extension of time shall be granted by the Government of the Contracting State; goods which have been acquired or \*485 imported by officers and to which exemptions under this sub-paragraph apply shall not be given away, sold, lent, hired out, or otherwise disposed of except under conditions agreed in advance with the Government of the Contracting State in which the officer is located.

3. The Ministerial Council may recommend to the Contracting States that additional privileges be conferred on the Joint Authority or its officers, if that is necessary to promote the effective functioning of the Joint Authority. Such privileges shall be conferred only following the agreement of the two Contracting States.

#### Article 11

##### Financing

1. The Joint Authority shall be financed from fees collected under Part VI of the Petroleum Mining Code, provided that the Contracting States shall advance such funds as they jointly determine to be necessary to enable the Joint Authority to commence operations.

2. In the event that the Joint Authority cannot meet an obligation under an arbitral award arising from a dispute under a production sharing contract, the Contracting States shall contribute the necessary funds in equal shares to enable the Joint Authority to meet that obligation.

#### PART V

##### COOPERATION ON CERTAIN MATTERS IN RELATION TO AREA A

#### Article 12

##### Surveillance

1. For the purposes of this Treaty, both Contracting States shall have the right to carry out surveillance activities in Area A.

2. The Contracting States shall cooperate on and coordinate any surveillance activities carried out in accordance with paragraph 1 of this Article.

3. The Contracting States shall exchange information derived from any surveillance activities carried out in accordance with paragraph 1 of this Article.

#### Article 13

##### Security Measures

1. The Contracting States shall exchange information on likely threats to, or security incidents relating to, exploration for and exploitation of petroleum resources in Area A.

2. The Contracting States shall make arrangements for responding to security incidents in Area A.

#### \*486 Article 14

##### Search and Rescue

ศูนย์วิจัยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

The Contracting States shall cooperate on arrangements for search and rescue in Area A taking into account generally accepted international rules, regulations and procedures established through competent international organizations.

#### Article 15

##### Air Traffic Services

The Contracting States shall cooperate on the provision of air traffic services in Area A taking into account generally accepted international rules, regulations and procedures established through competent international organizations.

#### Article 16

##### Hydrographic and Seismic Surveys

1. Both Contracting States shall have the right to carry out hydrographic surveys to facilitate petroleum operations in Area A. Both Contracting States shall cooperate on:

- (a) the conduct of such surveys, including the provision of necessary on-shore facilities; and
- (b) exchanging hydrographic information relevant to petroleum operations in Area A.

2. For the purposes of this Treaty, the Contracting States shall cooperate in facilitating the conduct of seismic surveys in Area A, including in the provision of necessary on-shore facilities.

#### Article 17

##### Marine Scientific Research

Without prejudice to the rights under international law in relation to marine scientific research in Area A claimed by the two Contracting States, a Contracting State which receives a request for consent to conduct marine scientific research into the non-living resources of the continental shelf in Area A shall consult with the other Contracting State on whether the research project is related to the exploration for and exploitation of petroleum resources in Area A. If the Contracting States decide that the research is so related they shall seek the views of the Joint Authority on the research project and, in the light of such views, mutually decide on the regulation, authorization and conduct of the research including the duty to provide data, samples and results of such research to both Contracting States and the Joint Authority and participation by both Contracting States in the research project.

## Article 18

### Protection of the Marine Environment

1. The Contracting States shall cooperate to prevent and minimize pollution of the marine environment arising from the exploration for and exploitation of petroleum in Area A. In particular:

(a) the Contracting States shall provide such assistance to the Joint Authority as may be requested pursuant to paragraph (m) of Article 8 of this Treaty; and

\*487 (b) where pollution of the marine environment occurring in Area A spreads beyond Area A, the Contracting States shall cooperate in taking action to prevent, mitigate and eliminate such pollution.

2. Pursuant to paragraph (j) of Article 8 of this Treaty the Joint Authority shall issue regulations to protect the marine environment in Area A. It shall establish a contingency plan for combating pollution from petroleum operations in that Area.

## Article 19

### Liability of Contractors for Pollution of the Marine Environment

Contractors shall be liable for damage or expenses incurred as a result of pollution of the marine environment arising out of petroleum operations in Area A in accordance with contractual arrangements with the Joint Authority and the law of the State in which a claim in respect of such damage or expenses is brought.

## Article 20

### Unitization between Area A and Areas outside Area A

If any single accumulation of petroleum extends across any of the boundary lines of Area A of the Zone of Cooperation as designated and described in Article 1 and Annex A of this Treaty, and the part of such accumulation that is situated on one side of a line is exploitable, wholly or in part, from the other side of the line, the Contracting States shall seek to reach agreement on the manner in which the accumulation shall be most effectively exploited and on the equitable sharing of the benefits arising from such exploitation.

## Article 21

### Construction of Facilities

In the event that exploration for and exploitation of petroleum resources in Area A necessitates the construction of facilities and provision of services outside Area A, the Contracting States shall provide

every assistance to contractors and the Joint Authority to enable the construction and operation of those facilities, and the provision of those services. Construction and operation of such facilities and provision of such services shall be subject to the law and regulations of the relevant Contracting State and any terms and conditions set by the Contracting States.

PART VI  
APPLICABLE LAWS

Article 22

Law Applicable to Production Sharing Contracts

The law applicable to a production sharing contract shall be specified in that contract.

Article 23

Application of Customs, Migration and Quarantine Laws

1. Each Contracting State may, subject to paragraphs 3 and 5 of this Article, apply customs, migration and quarantine laws to persons, equipment and goods entering its territory from, or leaving its territory for, Area A. The Contracting States may adopt arrangements to facilitate such entry and departure.

\*488 2. Contractors shall ensure, unless otherwise authorized by the Contracting States, that persons, equipment and goods do not enter structures in Area A without first entering Australia or the Republic of Indonesia, and that their employees and the employees of their subcontractors are authorized by the Joint Authority to enter Area A.

3. One Contracting State may request consultations with the other Contracting State in relation to the entry of particular persons, equipment and goods to structures in Area A aimed at controlling the movement of such persons, equipment or goods.

4. Nothing in this Article prejudices the right of either Contracting State to apply customs, migration and quarantine controls to persons, equipment and goods entering Area A without the authority of either Contracting State. The Contracting States may adopt arrangements to coordinate the exercise of such rights.

5.(a) Goods and equipment entering Area A for purposes related to petroleum operations shall not be subject to customs duties.

(b) Goods and equipment leaving or in transit through a Contracting State for the purpose of entering Area A for purposes related to petroleum operations shall not be subject to customs duties.

(c) Goods and equipment leaving Area A for the purpose of being permanently transferred to a part of a Contracting State may be subject to customs duties of that Contracting State.

#### Article 24

##### Employment

1. The Contracting States shall take appropriate measures to ensure that preference is given in employment in Area A to nationals or permanent residents of Australia and the Republic of Indonesia, and to their employment in equivalent numbers over the term of a production sharing contract, but, with due regard to efficient operations and to good oilfield practice.

2. The terms and conditions under which persons are employed on structures in Area A shall be governed by employment contracts or collective agreements. The terms and conditions shall include provisions on insurance and compensation in relation to employment injuries, including death or disability benefits, and may provide for use of an existing compensation system established under the law of either Contracting State. The terms and conditions shall also include provisions in relation to remuneration, periods of duty or overtime, leave and termination. The terms and conditions shall be no less favourable than those which would apply from time to time to comparable categories of employment in both Australia and the Republic of Indonesia.

3. Paragraph 2 of this Article shall also apply to persons employed on seismic, drill, supply and service vessels regularly engaged in activities related to petroleum operations in Area A, regardless of the nationality of the vessel.

4. In relation to the provision of facilities and opportunities, there shall be no discrimination on the basis of nationality amongst persons to which paragraphs 2 and 3 of this Article apply.

\*489 5. Disputes arising between employers and employees shall be settled by negotiation in the first instance. Disputes which cannot be settled by negotiation shall be settled either by recourse to a tripartite dispute settlement committee, comprising representatives of employers, employees and persons nominated by the Contracting States, or by recourse to a conciliation and arbitration system available in either Contracting State.

6. Employer and employee associations recognised under the law of either Contracting State may respectively represent employers and employees in the negotiation of contracts or collective agreements and in conciliation and arbitration proceedings.

7. An employment contract or collective agreement shall provide that it shall be subject to the law of one or other Contracting State and shall identify, consistent with paragraph 5 of this Article, the applicable dispute settlement mechanism. Any arbitration decision shall be enforceable under the law of the Contracting State under which it is made.

#### Article 25

##### Health and Safety for Workers

The Joint Authority shall develop, and contractors shall apply, occupational health and safety standards and procedures for persons employed on structures in Area A that are no less effective than those standards and procedures that would apply in relation to persons employed on similar structures in both Australia and the Republic of Indonesia. The Joint Authority may adopt, consistent with this Article, standards and procedures taking into account an existing system established under the law of either Contracting State.

#### Article 26

##### Petroleum Industry Vessels

Except as otherwise provided in this Treaty, vessels engaged in petroleum operations shall be subject to the law of the Contracting State whose nationality they possess and, unless they are a vessel with the nationality of the other Contracting State, the law of the Contracting State out of whose ports they operate, in relation to safety and operating standards, and crewing regulations. Such vessels that enter Area A and do not operate out of either Contracting State shall be subject to relevant international safety and operating standards under the law of both Contracting States.

#### Article 27

##### Criminal Jurisdiction

1. Subject to paragraph 3 of this Article a national or permanent resident of a Contracting State shall be subject to the criminal law of that State in respect of acts or omissions occurring in Area A connected with or arising out of exploration for and exploitation of petroleum resources, provided that a permanent resident of a Contracting State who is a national of the other Contracting State shall be subject to the criminal law of the latter State.

2.(a) Subject to paragraph 3 of this Article, a national of a third State, not being a permanent resident of either Contracting State, shall be subject to the criminal law of both Contracting States in



respect of acts or omissions occurring in Area A connected with or arising out of the exploration for and exploitation of petroleum resources. Such a person shall not be subject to \*490 criminal proceedings under the law of one Contracting State if he or she has already been tried and discharged or acquitted by a competent tribunal or already undergone punishment for the same act or omission under the law of the other Contracting State or where the competent authorities of one Contracting State, in accordance with its law, have decided in the public interest to refrain from prosecuting the person for that act or omission.

(b) In cases referred to in sub-paragraph (a) of this paragraph, the Contracting States shall, as and when necessary, consult each other to determine which criminal law is to be applied, taking into account the nationality of the victim and the interests of the Contracting State most affected by the alleged offence.

3. The criminal law of the flag State shall apply in relation to acts or omissions on board vessels including seismic or drill vessels in, or aircraft in flight over, Area A.

4.(a) The Contracting States shall provide assistance to and cooperate with each other, including through agreements or arrangements as appropriate, for the purposes of enforcement of criminal law under this Article, including the obtaining of evidence and information.

(b) Each Contracting State recognizes the interest of the other Contracting State where a victim of an alleged offence is a national of that other State and shall keep that other State informed to the extent permitted by its law of action being taken with regard to the alleged offence.

5. The Contracting States may make arrangements permitting officials of one Contracting State to assist in the enforcement of the criminal law of the other Contracting State. Where such assistance involves the detention of a person who under paragraph 1 of this Article is subject to the jurisdiction of the other Contracting State that detention may only continue until it is practicable to hand the person over to the relevant officials of that other Contracting State.

#### Article 28

#### Civil Actions

Claims for damages or restitution of expenses as a result of activities in Area A may be brought in the Contracting State which has or whose nationals or permanent residents have suffered the damage or incurred the expense. The court in which the action is brought shall apply the law and regulations of that State.

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## Article 29

### Application of Taxation Law

1. For the purposes of the taxation law related directly or indirectly to:

(a) the exploration for or the exploitation of petroleum in Area A; or

(b) acts, matters, circumstances and things touching, concerning, arising out of or connected with any such exploration or exploitation,

Area A shall be deemed to be, and be treated by, each Contracting State as part of that Contracting State.

\*491 2. In the application of the taxation law:

(a) in Area A;

(b) to interest paid by a contractor; or

(c) to royalties paid by a contractor,

each Contracting State shall grant relief from double taxation in accordance with the Taxation Code.

3. A Contracting State shall not impose a tax not covered by the provisions of the Taxation Code in respect of or applicable to:

(a) the exploration for or exploitation of petroleum in Area A; or

(b) any petroleum exploration or exploitation related activity carried on in Area A,

unless the other Contracting State consents to the imposition of that tax.

## PART VII

### SETTLEMENT OF DISPUTES

## Article 30

### Settlement of Disputes

1. Any dispute arising between the Contracting States concerning the interpretation or application of this Treaty shall be resolved by consultation or negotiation between the Contracting States.

2. Each production sharing contract entered into by the Joint Authority shall contain provisions to the effect that any dispute concerning the interpretation or application of such contract shall be submitted to a specified form of binding commercial arbitration. The Contracting States shall facilitate the enforcement in their respective courts of arbitral awards made pursuant to such arbitration.

PART VIII  
FINAL CLAUSES

Article 31

Amendment

1. This Treaty may be amended at any time by agreement between the Contracting States.
2. The Petroleum Mining Code, in accordance with paragraph 1(b) of Article 6 of this Treaty and the Model Production Sharing Contract, in accordance with paragraph 1(c) of Article 6 of this Treaty, may also be amended or modified by decision of the Ministerial Council. Such amendments or modifications shall have the same status as the Petroleum Mining Code and the Model Production Sharing Contract.

Article 32

Entry into Force

This Treaty shall enter into force thirty (30) days after the date on which the Contracting States have notified each other in writing that their respective requirements for entry into force of this Treaty have been complied with.

\*492 Article 33

Term of this Treaty

1. This Treaty shall remain in force for forty (40) years from the date of entry into force of this Treaty.
2. Unless the two Contracting States agree otherwise, this Treaty shall continue in force after the initial forty (40) year term for successive terms of twenty (20) years, unless by the end of each term, including the initial term of forty years, the two Contracting States have concluded an agreement on a permanent continental shelf delimitation in the area covered by the Zone of Cooperation.
3. Where the Contracting States have not concluded an agreement on a permanent continental shelf delimitation in the area covered by the Zone of Cooperation five years prior to the end of any of the terms referred to in paragraphs 1 or 2 of this Article, representatives of the two Contracting States shall meet with a view to reaching agreement on such permanent continental shelf delimitation.
4. This Article shall be without prejudice to the continued operation of Article 34 of this Treaty.

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**Article 34****Rights of Contractors****1. In the event that**

(a) this Treaty ceases to be in force following conclusion of an agreement between the Contracting States on permanent continental shelf delimitation in the area of the Zone of Cooperation; and

(b) there are in existence immediately prior to the date on which this Treaty ceases to be in force, production sharing contracts with the Joint Authority, production sharing contracts shall continue to apply to each Contracting State or some other person nominated by the Contracting State concerned, in place of the Joint Authority, in so far as the contract is to be performed within the territorial jurisdiction of each Contracting State, having regard to the agreement on delimitation. Each Contracting State shall apply to contractors performing contracts within its territorial jurisdiction a regime no more onerous than that set out in this Treaty and the relevant production sharing contract.

2. The two Contracting States shall at the time of the conclusion of the permanent delimitation agreement make arrangements to give effect to paragraph 1 of this Article.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

DONE over the Zone of Cooperation on this 26 day of December, one thousand nine hundred and eighty nine, in two originals in the English language.

FOR AUSTRALIA

GARETH EVANS

MINISTER FOR FOREIGN AFFAIRS AND TRADE

FOR THE REPUBLIC OF INDONESIA

ALI ALATAS

MINISTER FOR FOREIGN AFFAIRS

ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

## \*493 ANNEX A

DESIGNATION AND DESCRIPTION INCLUDING MAPS AND COORDINATES OF THE AREAS  
COMPRISING THE ZONE OF COOPERATION

## NOTE

Where for the purposes of this Treaty it is necessary to determine the position on the surface of the Earth of a point, line or area, that position shall be determined by reference to the Australian Geodetic Datum, that is to say, by reference to a spheroid having its centre at the centre of the Earth and a major (equatorial) radius of 6 378 160 metres and a flattening of 1/298.25 and by reference to the position of the Johnston Geodetic Station in the Northern Territory of Australia. That station shall be taken to be situated at Latitude  $25^{\circ}56'54.5515''$  South and at Longitude  $133^{\circ}12'30.0771''$  East and to have a ground level of 571.2 metres above the spheroid referred to above.\*494

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE \*496 ZONE OF COOPERATION

## WHOLE

The area bounded by the line -

- a) commencing at the point of Latitude  $9^{\circ}12'19''$  South, Longitude  $127^{\circ}33'32''$  East;
- b) running thence south-easterly along the geodesic to the point of Latitude  $9^{\circ}22'53''$  South, Longitude  $127^{\circ}48'42''$  East;
- c) thence south-easterly along the geodesic to the point of Latitude  $9^{\circ}es 28'00''$  South, Longitude  $127^{\circ}56'00''$  East;
- d) thence south-easterly along the geodesic to the point of Latitude  $9^{\circ}es 29'57''$  South, Longitude  $127^{\circ}58'47''$  East;
- e) thence south-easterly along the geodesic to the point of Latitude  $10^{\circ}es 29'17''$  South, Longitude  $128^{\circ}12'24''$  East;
- f) thence south-easterly along the geodesic to the point of Latitude  $11^{\circ}es 42'10''$  South, Longitude  $128^{\circ}29'10''$  East;
- g) thence south-westerly along the geodesic to the point of Latitude  $12^{\circ}es 03'17''$  South, Longitude  $127^{\circ}45'00''$  East;
- h) thence south-westerly along the geodesic to the point of Latitude  $12^{\circ}es 15'28''$  South, Longitude  $127^{\circ}08'28''$  East;
- i) thence north-westerly along the geodesic to the point of Latitude  $11^{\circ}es 20'08''$  South, Longitude  $126^{\circ}31'54''$  East;

j) thence north-westerly along the geodesic to the point of Latitude  $10^{\circ}\text{es } 28' 00''$  South, Longitude  $126^{\circ} 00' 00''$  East;

k) thence north-easterly along the geodesic to the point of Latitude  $10^{\circ}\text{es } 06' 40''$  South, Longitude  $126^{\circ} 00' 25''$  East;

l) thence north-easterly along the geodesic to the point of Latitude  $9^{\circ}\text{es } 46' 01''$  South, Longitude  $126^{\circ} 00' 50''$  East; and

m) thence north-easterly along the geodesic to the point of commencement.

#### ZONE OF COOPERATION

##### AREA A

The area bounded by the line -

a) commencing at the point of Latitude  $9^{\circ} 22' 53''$  South, Longitude  $127^{\circ} 48' 42''$  East;

b) running thence south-westerly along the geodesic to the point of Latitude  $10^{\circ} 06' 40''$  South, Longitude  $126^{\circ} 00' 25''$  East;

c) thence south-westerly along the geodesic to the point of Latitude  $10^{\circ}\text{es } 28' 00''$  South, Longitude  $126^{\circ} 00' 00''$  East;

d) thence south-easterly along the geodesic to the point of Latitude  $11^{\circ}\text{es } 20' 08''$  South, Longitude  $126^{\circ} 31' 54''$  East;

e) thence north-easterly along the geodesic to the point of Latitude  $11^{\circ}\text{es } 19' 46''$  South, Longitude  $126^{\circ} 47' 04''$  East;

f) thence north-easterly along the geodesic to the point of Latitude  $11^{\circ}\text{es } 17' 36''$  South, Longitude  $126^{\circ} 57' 07''$  East;

g) thence north-easterly along the geodesic to the point of Latitude  $11^{\circ}\text{es } 17' 30''$  South, Longitude  $126^{\circ} 58' 13''$  East;

h) thence north-easterly along the geodesic to the point of Latitude  $11^{\circ}\text{es } 14' 24''$  South, Longitude  $127^{\circ} 31' 33''$  East;

i) thence north-easterly along the geodesic to the point of Latitude  $10^{\circ}\text{es } 55' 26''$  South, Longitude  $127^{\circ} 47' 04''$  East;

j) thence north-easterly along the geodesic to the point of Latitude  $10^{\circ}\text{es } 53' 42''$  South, Longitude  $127^{\circ} 48' 45''$  East;

k) thence north-easterly along the geodesic to the point of Latitude  $10^{\circ}\text{es } 43' 43''$  South, Longitude  $127^{\circ} 59' 16''$  East;

l) thence north-easterly along the geodesic to the point of Latitude  $10^{\circ}29'17''$  South, Longitude  $128^{\circ}12'24''$  East;

m) thence north-westerly along the geodesic to the point of Latitude  $9^{\circ}29'57''$  South, Longitude  $127^{\circ}58'47''$  East;

\*497 n) thence north-westerly along the geodesic to the point of Latitude  $9^{\circ}28'00''$  South, Longitude  $127^{\circ}56'00''$  East; and

o) thence north-westerly along the geodesic to the point of commencement.

#### ZONE OF COOPERATION

##### AREA B

The area bounded by the line -

a) commencing at the point of Latitude  $10^{\circ}29'17''$  South, Longitude  $128^{\circ}12'24''$  East;

b) running thence south-easterly along the geodesic to the point of Latitude  $11^{\circ}42'10''$  South, Longitude  $128^{\circ}29'10''$  South;

c) thence south-westerly along the geodesic to the point of Latitude  $12^{\circ}03'17''$  South, Longitude  $127^{\circ}45'00''$  East;

d) thence south-westerly along the geodesic to the point of Latitude  $12^{\circ}15'28''$  South, Longitude  $127^{\circ}08'28''$  East;

e) thence north-westerly along the geodesic to the point of Latitude  $11^{\circ}20'08''$  South, Longitude  $126^{\circ}31'54''$  East;

f) thence north-easterly along the geodesic to the point of Latitude  $11^{\circ}19'46''$  South, Longitude  $126^{\circ}47'04''$  East;

g) thence north-easterly along the geodesic to the point of Latitude  $11^{\circ}17'36''$  South, Longitude  $126^{\circ}57'07''$  East;

h) thence north-easterly along the geodesic to the point of Latitude  $11^{\circ}17'30''$  South, Longitude  $126^{\circ}58'13''$  East;

i) thence north-easterly along the geodesic to the point of Latitude  $11^{\circ}14'24''$  South, Longitude  $127^{\circ}31'33''$  East;

j) thence north-easterly along the geodesic to the point of Latitude  $10^{\circ}55'26''$  South, Longitude  $127^{\circ}47'04''$  East;

k) thence north-easterly along the geodesic to the point of Latitude  $10^{\circ}53'42''$  South, Longitude  $127^{\circ}48'45''$  East

l) thence north-easterly along the geodesic to the point of Latitude  $10^{\circ}es\ 43' 43''$  South, Longitude  $127^{\circ} 59' 16''$  East; and

m) thence north-easterly along the geodesic to the point of commencement.

#### ZONE OF COOPERATION

#### AREA C

The area bounded by the line -

a) commencing at the point of Latitude  $9^{\circ} 12' 19''$  South, Longitude  $127^{\circ} 33' 32''$  East;

b) running thence south-easterly along the geodesic to the point of Latitude  $9^{\circ} 22' 53''$  South, Longitude  $127^{\circ} 48' 42''$  East;

c) thence south-westerly along the geodesic to the point of Latitude  $10^{\circ}es\ 06' 40''$  South, Longitude  $126^{\circ} 00' 25''$  East;

d) thence north-easterly along the geodesic to the point of Latitude  $9^{\circ}es\ 46' 01''$  South, Longitude  $126^{\circ} 00' 50''$  East; and

e) thence north-easterly along the geodesic to the point of commencement.



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**\*498 ANNEX B****PETROLEUM MINING CODE FOR AREA A OF THE ZONE OF COOPERATION****PART I****DEFINITIONS****Article 1****Definitions**

1. For the purposes of this Petroleum Mining Code:

(a) "block" means a block constituted in accordance with Article 2 of this Petroleum Mining Code;

(b) "calendar year" means a period of twelve (12) months commencing on 1 January and ending on the following 31 December, according to the Gregorian Calendar;

(c) "contract operator" means the contractor appointed and authorized by the contractors to be responsible for petroleum operations and all dealings with the Joint Authority under the contract on behalf of the contractors;

(d) "contract year" means a period of twelve (12) consecutive months according to the Gregorian Calendar counted from the effective date of the contract or from the anniversary of such effective date;

(e) "discovery area" means the blocks declared by the Joint Authority under Article 16 of this Petroleum Mining Code to contain petroleum;

(f) "effective date" means the date a production sharing contract is entered into by and between the Joint Authority and the contractor;

(g) "operating costs" means those costs defined in a production sharing contract which are incurred and are recoverable by the contract operator in the course of undertaking petroleum operations;

(h) "petroleum pool" means a discrete accumulation of petroleum under a single pressure system;

(i) "pipeline" means a pipe or system of pipes and associated equipment necessary for conveying petroleum;

(j) "work program and budget of operating costs" means the details of petroleum operations to be carried out in or related to the contract area and the aggregate cost estimates for those operations;

(k) "Treaty" means the Treaty between Australia and the Republic of Indonesia on the Zone of Cooperation in an Area between the Indonesian Province of East Timor and Northern Australia to which this Petroleum Mining Code is an Annex.

2. The terms used in this Petroleum Mining Code shall, unless otherwise specified, have the same meaning as those in the Treaty.

## \*499 PART II

### AREA A

#### Article 2

##### Graticulation of Area A

1. The surface of Area A shall be divided by the Joint Authority into graticular sections defined by meridians of five (5) minutes of longitude (reference the meridian of Greenwich) and by parallels of latitude of five (5) minutes (reference the Equator). A block shall constitute a graticular section as described above and shall include part graticular sections. Each block in Area A shall be allocated a discrete identifying number.

2. The Joint Authority may subdivide each block into graticular sections. Where this is done, the graticular sections shall be defined by meridians of longitude and by parallels of latitude, and each section shall form a block. Each block so defined shall be allocated a discrete identifying number.

3. Contract areas within Area shall be described in terms of the component blocks.

#### Article 3

##### Geodetic Datum

Whenever it is necessary to determine the position of a line in Area A that position shall be determined by reference to a spheroid having its centre at the centre of the earth and a major (equatorial) radius of 6378160 metres and a flattening of 100/29825 and by reference to the position of the Johnston Geodetic Station in the Northern Territory of Australia. That station shall be taken to be situated at 133 degrees, 12 minutes and 30.0771 seconds of East Longitude and at 25 degrees, 56 minutes and 54.5515 seconds of South Latitude and to have a ground level of 571.2 metres above the spheroid referred to above.

## PART III

### THE CONTRACT

#### Article 4

##### Rights Conferred by Contract

1. A production sharing contract entered into by the Joint Authority, with the approval of the Ministerial Council, shall give to the contractor the exclusive right and the responsibility to undertake petroleum operations in a contract area, subject to the provisions of the Treaty, relevant regulations and directions issued by the Joint Authority, and the terms and conditions of the contract.

2. During each calendar year, any petroleum production shall be shared between the Joint Authority and the contractor.

3. The contract shall not confer on the contractor ownership of petroleum in the ground but shall provide for the contractor to take a share of petroleum production as payment from the Joint Authority for the petroleum operations undertaken by the contract operator pursuant to the contract. Ownership of the Joint Authority's share of petroleum production shall remain with the Joint Authority. Except as provided in paragraph 5 of this Article, the Joint Authority shall authorize the marketing of its share of petroleum production by the contractor who shall market all petroleum produced from the contract area.

\*500 4. Title to the contractor's portion of petroleum production shall pass to the contractor at the point of tanker loading. Subject to paragraph 5 of this Article the contractor shall have the right to lift, dispose of and export its share of petroleum, and retain abroad the proceeds obtained therefrom. Except where the Joint Authority markets petroleum as provided in paragraph 5 of this Article, the contract shall require the contractor to pay to the Joint Authority, at regular periods during each calendar year, an amount of money estimated to be equal to the value of the Joint Authority's share of petroleum production lifted for those periods. The contract shall specify the length of each period, monthly if workable, the means by which the value of the Joint Authority's share of petroleum production is estimated for each period, and when each payment shall be made. The estimated value of the Joint Authority's share of petroleum production for each period shall be based on the work program and budget of operating costs and revisions to it, and the expected value of quantities of petroleum to be produced. The estimated value shall be revised during the calendar year having regard to the actual operating costs and value of sales of petroleum.

5. The Joint Authority, with the approval of the Ministerial Council, may market any or all petroleum production. Where it is the Joint Authority's share of petroleum production which is to be marketed by the Joint Authority, the method of determining the estimated value of the Joint Authority's share shall be based on that method described in paragraph 4 of this Article. Where petroleum production

marketed by the Joint Authority includes the contractor's share, the contract shall require the Joint Authority to pay to the contractor, at regular periods during each calendar year, an amount of money estimated to be equal to the value of the contractor's share of petroleum production so lifted for those periods. The method of determining the estimated value of the Joint Authority's and the contractor's shares shall be based on that method described in paragraph 4 of this Article. The contract operator shall be obliged to coordinate the efficient lifting of the petroleum production, including tanker nomination and scheduling.

6. The contract shall also specify that within thirty (30) days after the end of each calendar year, adjustments and cash settlements between the contractor and the Joint Authority shall be made on the basis of the actual quantities, amounts and prices involved, in order to ensure that the Joint Authority receives the correct share of petroleum production for each calendar year.

7. In the case of a contract entered into with a group of corporations, each corporation shall be jointly and severally liable for meeting the conditions of the contract, and for complying with the requirements of this Petroleum Mining Code and the regulations and directions issued by the Joint Authority. Each corporation shall be a signatory to the contract with the Joint Authority.

#### Article 5

##### The Contract

1. Without limiting the matters to be dealt with, the contract shall be concluded on the basis of the Model Production Sharing Contract and shall include:

- (a) the definition of the responsibilities and rights of the contractor, the contract operator and the Joint Authority;
- (b) the term of the contract and block relinquishment provisions;
- \*501 (c) the work program and expenditure commitments;
- (d) the definition of operating costs and the method of recovery of those costs by the contract operator;
- (e) the petroleum production share to be allocated to the contractor;
- (f) provisions for the termination of the contract;
- (g) provisions for exemption from and variation of contract conditions;
- (h) provisions for the resolution of disputes between the contractor and the Joint Authority; and
- (i) any other provisions that are consistent with the Treaty.

## Article 6

### Contract Operator

1. Where a number of corporations enters into a contract with the Joint Authority, the corporations shall appoint and authorize one of their number to be the contract operator responsible, on behalf of the group of corporations, for petroleum operations and all dealings with the Joint Authority under the contract.

2. The contract operator shall undertake petroleum operations in an efficient manner which minimizes costs and in a manner in accordance with the provisions of the production sharing contract. Costs incurred by the contract operator in undertaking petroleum operations shall not include any component of profit which accrues to the contract operator solely by virtue of its role as contract operator.

3. All communications on matters related to the contract shall be effected between the contract operator and the Joint Authority. The contract operator shall establish an office in either the Republic of Indonesia or Australia.

## Article 7

### Term of Contract

1. Subject to the provisions of this Article, and Articles 22 and 48 of this Petroleum Mining Code, the term of a production sharing contract shall be thirty (30) years. In addition, the provisions of the production sharing contract shall include:

(a) an obligation on the Joint Authority to give sympathetic consideration to an extension of the term of the contract beyond the thirtieth (30th) contract year if petroleum production has not ceased by that year; and

(b) automatic extension of the term of the contract to allow continuation of petroleum production to meet natural gas sales contracts the terms of which extend beyond the thirtieth (30th) contract year of the production sharing contract.

2. The production sharing contract may also include a specified term after which the contract may be terminated if a discovery is not made.

## PART IV

### PETROLEUM EXPLORATION AND EXPLOITATION

## Article 8

### Advertisement of Blocks

1. The Joint Authority shall invite applications to enter into a contract over specific blocks. The invitation for applications shall specify:

\*502 (a) the blocks over which the rights shall be granted;

(b) the bidding system to apply;

(c) the basis on which bids shall be assessed;

(d) details of the contract to be entered into including the rights and responsibilities of the parties to the contract; and

(e) the period within which applications may be made.

2. Details of the invitation for applications shall be published in official Australian and Indonesian Government Gazettes and in such other ways as the Joint Authority decides.

## Article 9

### Bidding System

1. The Joint Authority shall invite applications to enter into a contract over parts of Area A using a work program bidding system which identifies annual exploration work program and expenditure commitments to be undertaken in the contract area.

2. The Joint Authority shall make available full details of the bidding system to be used at the time applications are invited.

## Article 10

### Application for Contracts

1. The Joint Authority shall set out in formal guidelines the form in which applications shall be prepared and lodged. As a minimum requirement a draft contract based on the Model Production Sharing Contract shall be completed and lodged, and applications shall set out details of the work program and expenditure commitments, and the financial capability and technical knowledge and ability available to the applicant.

2. Where an application is lodged by a group comprising several corporations, the application shall be accompanied by evidence that an agreement can be reached between those corporations for cooperation in petroleum operations in the contract area.

3. The application shall be accompanied by the fee specified in Article 44 of this Petroleum Mining Code.

#### Article 11

##### Consideration of Application

1. The Joint Authority shall set out in formal guidelines the basis on which applications will be considered and the relevant criteria which applicants will be expected to meet. Contracts shall be offered in accordance with the published criteria for that bidding round. The principal criteria shall be the amount and quality of the exploration work bid.

2. The Joint Authority shall be satisfied that an applicant has the necessary financial capability and technical knowledge and ability to carry out petroleum operations in a manner consistent with the terms and conditions of the contract and this Petroleum Mining Code, including the necessary environmental and safety requirements.

#### Article 12

##### Grant or Refusal of Contracts

1. The Joint Authority shall seek prior approval from the Ministerial Council to enter into a contract with the preferred applicant or group of applicants.

\*503 2. Subject to that approval, the Joint Authority shall notify in writing the successful applicant that it has Ministerial Council approval to enter into a contract with the applicant covering petroleum operations in a specified contract area on terms and conditions set out in the contract. The applicant shall have thirty (30) days within which to accept or refuse the offer in writing. On the applicant accepting the offer, paying the contract service fee, and providing evidence that it has fulfilled any prerequisite conditions such as insurance cover, the Joint Authority shall enter into the contract with the applicant.

3. Unsuccessful applicants shall be advised accordingly.

#### Article 13

##### Publication of Contracts

The Joint Authority shall publish in official Australian and Indonesian Government Gazettes summary details of:

(a) contracts entered into; and

(b) termination of contracts.

#### Article 14

##### Commencement of Work

The contract operator shall commence petroleum operations within six (6) months from the date the contract is entered into, except for reasons of force majeure.

#### Article 15

##### Discovery of Petroleum

1. The contract operator shall notify the Joint Authority in writing within twenty four (24) hours whenever any petroleum is discovered and on request by the Joint Authority shall provide details in writing of the:

- (a) chemical composition and physical properties of the petroleum; and
- (b) the nature of the sub-soil in which the petroleum occurs.

2. The contract operator shall provide the Joint Authority with any other information concerning the discovery on request by the Joint Authority.

3. The contract operator shall also do such things as the Joint Authority requests to determine the chemical composition and physical properties of any petroleum discovered, and to determine the geographical extent of any petroleum pool and the quantity of petroleum in that pool.

#### Article 16

##### Declaration of Discovery Area

1. The Joint Authority shall declare the blocks within the contract area covering a petroleum pool as a discovery area, provided that the Joint Authority and contract operator agree that the petroleum pool can be produced commercially. These blocks shall form a single contiguous area.

\*504 2. At any time after a discovery area has been declared, the Joint Authority may, of its own volition or on request from the contract operator, agree that certain blocks be included in or excluded from the discovery area. Blocks included in the discovery area in this way shall be from within the contractor's contract area.

#### Article 17

##### Approval to Produce Petroleum



The contract operator shall not construct any production structures without the approval of the Joint Authority. The Joint Authority shall not unreasonably withhold approvals.

#### Article 18

##### Approval to Construct Pipeline

1. The contract operator shall not construct a pipeline for the purpose of conveying petroleum within or from Area A without the approval of the Joint Authority, nor shall the contract operator operate or remove that pipeline without the approval of the Joint Authority.

2. The Joint Authority may direct a contract operator owning a pipeline to enter into a commercial agreement with another contract operator to enable the second mentioned operator to transport petroleum.

#### Article 19

##### Petroleum Production Work

Unless otherwise agreed between the contract operator and the Joint Authority, work on a permanent structure to produce petroleum shall commence within six (6) months of approval to construct the structure.

#### Article 20

##### Rates of Production

The Joint Authority may direct and make regulations about the commencement of petroleum production and the specific rates of petroleum production. In giving such directions and making such regulations the Joint Authority shall take account of good oilfield practice.

#### Article 21

##### Unitization

Where a petroleum pool is partly within a contract area and partly within another contract area, but wholly within Area A, the Joint Authority shall require the contractors to enter into a unitization agreement with each other within a reasonable time, as determined by the Joint Authority, for the purpose of securing the more effective and optimized production of petroleum from the pool. If no agreement has been reached within such reasonable time, the Joint Authority shall decide on the unitization agreement. Without limiting the matters to be dealt with, the unitization agreement shall define or contain the approach to define the amount of petroleum in each contract area, the method of producing the petroleum,

and shall appoint the contract operator responsible for production of the petroleum covered by the unitization \*505 agreement. The Joint Authority shall approve the unitization agreement before approvals under Article 17 of this Petroleum Mining Code are given. Any changes to the unitization agreement shall be subject to approval by the Joint Authority.

#### Article 22

##### Block Relinquishment

1. The contract shall contain provisions for the progressive relinquishment of blocks from the contract area.
2. In calculating the relinquishment requirements, the blocks in a discovery area shall not be counted as part of the original number of blocks in the contract area.
3. In the event that no discovery area has been declared in the contract area before the end of an initial period specified in the contract, the contract operator shall either relinquish all remaining blocks in the contract area and the contract shall be terminated, or the contract operator shall exercise the option provided in the contract to extend the term of the contract.

#### Article 23

##### Surrender of Blocks

1. The contractor may surrender some or all of the blocks in a contract area provided the conditions of the contract have been met to the satisfaction of the Joint Authority. Blocks surrendered in this way shall be credited towards the block relinquishment requirement in Article 22 of this Petroleum Mining Code.
2. Before agreeing to an application to surrender some or all of the blocks in a contract area, the Joint Authority may direct the contract operator to clean up the contract area or remove structures, equipment and other property from the contract area and the contract operator shall comply with that direction.

#### PART V

##### GENERAL ARRANGEMENTS

#### Article 24

##### Work Practices

It shall be the responsibility of the contract operator to ensure that petroleum operations are carried out in a proper and workmanlike manner and in accordance with good oilfield practice. The contract operator shall take the necessary action to:

- (a) protect the environment in and about the contract area; and
- (b) secure the safety, health and welfare of persons engaged in petroleum operations in or about the contract area.

#### Article 25

##### Insurance

1. The Joint Authority shall require the contractor to take out and maintain from the effective date of the contract, to the satisfaction of the Joint Authority, insurance on a strict liability basis and for an amount determined by the Joint Authority in consultation with applicants for contracts. It shall also agree with the \*506 contractor on a mechanism whereby compensation claims can be determined. The insurance shall cover expenses or liabilities or any other specified things arising in connection with the carrying out of petroleum operations and other activities associated with those operations in the contract area, including expenses associated with the prevention and clean-up of the escape of petroleum.

2. The contract operator shall ensure that transportation of petroleum in bulk as cargo from Area A only takes place in tankers with appropriate insurance commensurate with relevant international agreements.

#### Article 26

##### Maintenance of Property

The contract operator shall be responsible for maintaining in safe and good condition and repair all structures, equipment and other property in the contract area.

#### Article 27

##### Removal of Property

1. As directed by the Joint Authority, the contract operator shall remove all property brought into the contract area and comply with regulations and directions concerning the containment and clean-up of pollution.

2. In the event that the contract operator does not remove property or pollution to the satisfaction of the Joint Authority or take such other action as is necessary for the conservation and protection of the

marine environment in that contract area, the Joint Authority may direct the contract operator to take such remedial action as the Joint Authority deems necessary. If the contract operator does not comply with that direction, the contractor shall be liable for any costs incurred by the Joint Authority in rectifying the matter.

#### Article 28

##### Exemption from or Variation of Conditions

1. The Joint Authority may agree to exempt the contractor from complying with the conditions of the contract. The Joint Authority may also agree to vary those conditions.

2. The Joint Authority shall not exempt the contractor from or vary the following conditions of a contract without prior approval of the Ministerial Council:

- (a) the Joint Authority's or the contractor's production shares;
- (b) the operating cost recovery provisions;
- (c) the term of the contract;
- (d) the block relinquishment provisions; and
- (e) the annual contract service fee.

#### Article 29

##### Provision of Information

1. The Joint Authority may direct the contractor to provide the Joint Authority with data, documents or information relating to petroleum operations including but not limited to routine production and financial reports, technical reports and studies relating to petroleum operations.

\*507 2. The Joint Authority may require the contractor to provide that information in writing within a specified period. The Joint Authority shall have title to all data obtained from the petroleum operations.

3. A contractor shall not be excused from furnishing information on the grounds that the information might tend to incriminate the contractor but the information shall not be admissible in evidence against the contractor in criminal proceedings.

### Article 30

#### Safety Zones

1. The Joint Authority may declare a safety zone around any specified structure in Area A, and may require the contract operator to install, maintain or provide thereon, navigation, fog and illumination lighting, acoustic and other devices and equipment necessary for the safety of the petroleum operations. A safety zone may extend up to five hundred (500) metres from the extremities of the structure. Unauthorized vessels shall be prohibited from entering the safety zone.

2. Additionally, a restricted zone of one thousand two hundred and fifty (1250) metres may be declared around the extremities of safety zones and pipelines in which area unauthorized vessels employed in exploration for and exploitation of petroleum resources are prohibited from laying anchor or manoeuvring.

### Article 31

#### Records to be Kept

The Joint Authority shall require the contractor to keep accounts, records or other documents, including financial records, in connection with petroleum operations and to furnish to the Joint Authority in a specified manner data, reports, returns or other documents in connection with those activities. These arrangements shall also apply to cores, cuttings and samples taken in connection with petroleum operations in the contract area.

### Article 32

#### Prospecting Approval

The Joint Authority may issue a prospecting approval to any person to carry out petroleum exploration activities in blocks not in contract areas. The prospecting approval shall specify those conditions to which the person shall be subject. The conditions of a prospecting approval shall not include any preference for or rights to enter into a contract over those blocks. All data and reports resulting from such activities shall be submitted to the Joint Authority for its own free use.

### Article 33

#### Access Approval

1. In order to promote the optimum exploration for and exploitation of petroleum resources in Area A, the Joint Authority may give approval to a contract operator, and persons holding prospecting

approvals or undertaking marine scientific research, to enter a contract area, not being its contract area, to carry out activities in accordance with that approval. The Joint Authority shall \*508 consult with the contract operator of the contract area into which access is sought before giving approval. The terms and conditions of approval shall include an obligation to furnish to the Joint Authority in a specified manner data, reports, returns or other documents in connection with activities carried out under the access approval and a prohibition on the drilling of exploration wells.

2. The Joint Authority may also give approval to a contract operator to lay and fix petroleum production facilities on the seabed in a contract area not being its contract area, provided that such activities do not interfere with the petroleum operations in the first contract area.

#### Article 34

##### Inspectors

1. The Joint Authority may appoint a person to be an inspector for the purposes of this Petroleum Mining Code, the regulations and directions issued under Article 37 of this Petroleum Mining Code, and contract terms and conditions applying to petroleum operations in Area A. A person so appointed shall, at all reasonable times and on production of a certificate of appointment:

- (a) have the right to enter any structure, vessel or aircraft in Area A being used for petroleum operations;
- (b) have the right to inspect and test any equipment being used or proposed to be used for petroleum operations; and
- (c) have the right to enter any structure, vessel, aircraft or building in which it is thought there are any documents relating to petroleum operations in Area A and may inspect, take extracts from and make copies of any of those documents.

2. The contractor shall provide an inspector with all reasonable facilities and assistance that the inspector requests for the effective exercise of the inspector's powers.

#### Article 35

##### Service of Notices

1. A document to be served on a person other than the Joint Authority or a corporation shall be served:

- (a) by delivering the document to that person;
- (b) by posting the document as a letter addressed to that person;

(c) by delivering the document to that address and leaving the document with a person apparently in the service of that person;

(d) by sending the document in the form of a telex or facsimile to that person's telex or facsimile number, as appropriate; or

(e) by sending the document as a telegram addressed to that person.

2. A document to be served on a corporation shall be served by complying with sub-paragraphs (b), (c), (d) or (e) of paragraph 1 of this Article.

\*509 3. A document to be served on the Joint Authority shall be served by leaving it with a person apparently employed in connection with the Joint Authority, at a place of business of the Joint Authority specified in the contract or by posting the document as a letter or telegram addressed to the Joint Authority at that place of business or by sending the document as a telex or facsimile to the Joint Authority's telex or facsimile number.

4. Where a document is posted as a letter, service shall be deemed to have been effected within seven (7) days of the letter having been posted, unless the contrary is proved.

#### Article 36

##### Release of Information and Data

1. The Joint Authority may make such use as it wishes of information and data contained in a report, return or other document furnished to the Joint Authority, provided that information and data is not made publicly known before the periods of confidentiality identified below have expired.

2. Basic information and data about petroleum operations in a contract area may be released two (2) years after it was lodged with the Joint Authority or when the blocks to which that information and data relates cease to be part of the contract area, if earlier. However, conclusions drawn or opinions based in whole or in part on that information and data shall not be released until five (5) years after that information and data was lodged with the Joint Authority.

3. Information and data relating to a seismic or other geochemical or geophysical survey shall be deemed to have been lodged no later than six (6) months after the survey was essentially completed. Information and data on wells shall be deemed to have been lodged no later than three (3) months after the well was essentially completed.

4. Notwithstanding paragraph 2 of this Article, the contract operator shall have the right to have access to and use all information held by the Joint Authority relating to the blocks in Area A adjacent to its contract area. Where information and data has been released by the person or some party acting on the

person's behalf, the Joint Authority shall not be obliged to maintain the confidentiality of that information and data.

5. The Joint Authority shall be free to use any information and data relating to relinquished, surrendered and other blocks outside the contract area, including releasing it to any party.

6. Contractors shall not use such information and data outside Australia or the Republic of Indonesia without the approval of the Joint Authority.

7. Officials of the Australian and Indonesian Governments may have access to information and data provided to the Joint Authority under this Petroleum Mining Code, provided such officials comply with the provisions of this Article.

**\*510 Article 37**

**Regulations and Directions**

1. The Joint Authority shall issue regulations and directions to apply to persons, consistent with the Treaty including this Petroleum Mining Code, in order to carry out its functions. In particular, the regulations and directions shall deal with, but are not limited to, the following matters:

(a) the exploration for petroleum and the carrying on of operations, and the execution of works, for that purpose;

(b) the production of petroleum and the carrying on of operations, and the execution of works, for that purpose;

(c) the measurement and the sale or disposal of the Joint Authority's and the contractor's petroleum production, and the carrying on of operations for that purpose, including procedures for transfer of title to petroleum and measurement and verification of petroleum so transferred;

(d) the conservation, and prevention of the waste of, the natural resources, whether petroleum or otherwise;

(e) the construction, erection, maintenance, operation, use, inspection and certification and re-certification of structures, pipelines or equipment;

(f) the control of the flow or discharge, and the prevention of the escape, of petroleum, water of drilling fluid, or a mixture of water or drilling fluid with petroleum or any other matter;

(g) the clean-up or other remedying of the effects of the escape of petroleum;

(h) the prevention of damage to petroleum-bearing strata;

(i) the prevention of the waste or escape of petroleum;



(j) the removal from a contract area of structures, equipment and other property brought into the contract area for or in connection with petroleum operations;

(k) the carrying on of petroleum operations in a safe and environmentally sound manner;

(l) the preparation of assessments of the impact of petroleum operations on the environment;

(m) the authorization by the Joint Authority of entry into Area A by the employees of contractors and the employees of their sub-contractors; and

(n) the control of movement into, within and out of Area A of vessels, aircraft, structures and equipment employed in petroleum operations.

2. The Joint Authority may, by instrument in writing served on a person or class of persons, make a regulation or direction on a matter consistent with the above to apply specifically to that person or class of persons.

#### Article 38

##### Register of Contractors

The Joint Authority shall maintain a register setting out summary details of:

(a) areas over which contracts are in force;

(b) the contract operator and the contractor for each contract area;

(c) work and expenditure commitments relating to the contract area;

(d) changes to contract conditions, the contract operator and the undivided participating interest of the contractor in a contract area;

\*511 (e) blocks relinquished or surrendered from contract areas;

(f) changes in names and addresses of the contract operator and the contractor; and

(g) unitization agreements.

#### Article 39

##### Approval of Contractors

Corporations wishing to hold an undivided participating interest which would result in changes to the contractor or the contract operator in a contract area shall be required to obtain the Joint Authority's approval of those changes. The Joint Authority shall note such approval in the register. Until such approval is given by the Joint Authority, with the prior consent of the Ministerial Council, the new participating interest holders' agreement shall not be recognized by the Joint Authority, and the contractor's and contract operator's liabilities under a contract shall remain unchanged.

**Article 40****Inspection of Register**

The Joint Authority shall ensure the register is available for inspection by any person at all convenient times.

**Article 41****Auditing of Contractor's Books and Accounts**

The contractor's books and accounts shall be subject to audit by the Joint Authority, which shall be conducted annually. The Joint Authority may issue regulations and directions with respect to the auditing of books and accounts.

**Article 42****Security of Structures**

1. Operators of vessels, drilling rigs and structures in Area A shall be responsible for controlling access to their facilities; providing adequate surveillance of safety zones and their approaches; and establishing communications with, and arranging action by, the appropriate authorities in the event of an accident or incident involving threat to life or security.

2. To assist operators in meeting these responsibilities, the Joint Authority shall appoint persons, to be stationed at the office of the Technical Directorate of the Joint Authority, responsible for liaising with appropriate Australian and Indonesian authorities.

**Article 43****Amendment of Petroleum Mining Code**

Except in the case of amendments to Part VI of this Petroleum Mining Code, where the provisions of this Petroleum Mining Code are amended, to the extent that the amendments are not consistent with the provisions of contracts in force prior to the amendments, those amendments may only apply to such contracts by agreement between the contract operator and the Joint Authority.

**\*512 PART VI****FEES**

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#### Article 44

##### Application Fees

1. The fee to be lodged with applications for production sharing contracts is US\$ three thousand (3000).
2. The fee to be lodged with applications for a prospecting approval is US \$ five hundred (500).
3. Application fees shall not be refunded to unsuccessful applicants.

#### Article 45

##### Contract Service Fee

1. At the beginning of each contract year, the contract operator shall pay to the Joint Authority a contract service fee of US\$ fifty thousand (50,000).
2. In addition, if one or more discovery areas have been declared in the contract area, the contract operator shall pay to the Joint Authority at the beginning of the contract year a service fee of:
  - (a) US\$ twenty thousand (20,000) for the first discovery area; and
  - (b) US\$ ten thousand (10,000) for each additional discovery area within the contract area.
3. Where more than one production structure is installed in a discovery area in the contract area, the contract operator shall pay to the Joint Authority at the beginning of the contract year an additional service fee of US\$ ten thousand (10,000).

#### Article 46

##### Registration Fees

For the approval and registration of agreements between corporations which result in changes to the undivided participating interests of the contractor in a contract area, a fee of US\$ five hundred (500) shall be payable.

#### Article 47

##### Amendment of Fees

With the approval of the Ministerial Council, the Joint Authority may change the fees specified in this Part to reflect any changes in the costs of administration. Those changes in fees shall not be made more frequently than once a year and shall not be applied retrospectively.

PART VII  
PENAL PROVISIONS

Article 48  
Termination of Contracts

1. Where the contractor has not complied with the provisions of this Petroleum Mining Code, the regulations and directions issued by the Joint Authority, or the terms of the contract the Joint Authority may recommend to the Ministerial Council that the contract be terminated. The Joint Authority shall give thirty (30) days written notice to the contractor of the Joint Authority's intention to recommend termination of the contract.

\*513 2. The Ministerial Council shall not agree to the termination of the contract until the contractor has had an opportunity to provide the Joint Authority with reasons why the contract should not be terminated, and the Joint Authority has given full consideration to those reasons. The contractor must provide reasons for non-termination within thirty (30) days of receipt of notice of the Joint Authority's intention to terminate.

3. Notwithstanding the termination of a contract, the contractor shall remain liable to take such action as is necessary to clean-up the contract area and remove all property brought into that area. The contractor shall remain liable to the Joint Authority to pay any outstanding debts due to the Authority.

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## ANNEX C

MODEL PRODUCTION SHARING CONTRACT BETWEEN THE JOINT AUTHORITY  
AND (CONTRACTORS)

This production sharing contract, which has been approved by the Ministerial Council established under the Treaty between Australia and the Republic of Indonesia on the Zone of Cooperation in an Area between the Indonesian Province of East Timor and Northern Australia (hereinafter called the Treaty), is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 19\_\_ by and between the Joint Authority established under the Treaty and \_\_\_\_\_, (a) corporation(s) organized and existing under the law of \_\_\_\_\_ hereinafter called the "contractor", both hereinafter sometimes referred to either individually as the "Party" or collectively as the "Parties".

## WITNESSETH

WHEREAS, petroleum existing within Area A of the Zone of Cooperation established by the Treaty is a resource to be exploited jointly by the Contracting States;

WHEREAS, the Joint Authority, with the approval of the Ministerial Council, has an exclusive authority to contract for petroleum operations in and throughout the area described in Appendix A of this Contract and outlined on the map which is Appendix B of this contract, which area is hereinafter referred to as the "contract area";

\*514 WHEREAS, the Joint Authority wishes to promote petroleum operations in the contract area and the contractor desires to join and assist the Joint Authority in accelerating the exploration and development of the potential petroleum resources within the contract area;

WHEREAS, the contractor has the necessary financial capability, and technical knowledge and ability to carry out the petroleum operations hereinafter described;

WHEREAS, in accordance with the Treaty, including the Petroleum Mining Code set out in Annex B of the Treaty, a cooperative agreement in the form of a production sharing contract may be entered into between the Joint Authority and corporations for the purpose of petroleum operations; and

NOW, therefore, in consideration of the mutual covenants herein contained, it is agreed as follows:

## SECTION 1

## SCOPE AND DEFINITIONS

## SCOPE

1.1. This contract is a production sharing contract subject to the Treaty, including the Petroleum Mining Code. The Joint Authority shall be responsible for the management of the operations contemplated hereunder in accordance with its management functions defined under the Treaty, including the Petroleum Mining Code. The contractor appoints and authorizes (name of corporation to be the contract operator), being one of the contracting corporations, to be the contract operator who, on behalf of the contractor, shall be responsible to the Joint Authority for the execution of petroleum operations in accordance with the provisions of this contract, and is hereby appointed and constituted as the exclusive corporation to conduct petroleum operations. The contractor shall provide all human, financial and technical resources required for the performance of petroleum operations authorized by the contract, and shall therefore have an economic interest in the development of the petroleum pools in the contract area and be entitled to share in petroleum produced from the contract area in accordance with the provisions of Section 7 of this contract.

1.2. Except for expenditures on capital costs for the development of petroleum pools, the contractor shall not incur interest expenses to finance petroleum operations.

#### DEFINITIONS

1.3. Words and terms used in this contract shall have the same meaning as those defined in the Treaty, including the Petroleum Mining Code set out in Annex B to the Treaty, except where a new definition is expressly provided for in this contract.

\*515 (a) "Affiliated corporation or affiliate" means a corporation or other entity that controls, or is controlled by, a Party to this contract, it being understood that control shall mean ownership by one corporation or entity of at least fifty (50) per cent of:

- (i) the voting stock, if the other corporation is a corporation issuing stock; or
- (ii) the controlling rights or interests, if the other entity is not a corporation.

(b) "Barrel" means a quantity or unit of oil, having a volume of forty-two (42) United States gallons at the temperature of sixty (60) degrees Fahrenheit.

(c) "Contract area" means the area not relinquished or surrendered, constituted by the blocks which are the subject of this contract and which are specified in Appendices A and B of this contract.

(d) "Crude oil" means crude mineral oil and all liquid hydrocarbons in their natural state or obtained from natural gas by condensation or extraction.

(e) "Development plan" means a description of the proposed petroleum reservoir development and management program, details of the production facilities, the production profile for the expected life

of the project, the estimated capital and non-capital expenditure covering the feasibility, fabrication, installation and pre-production stages of the project, and an evaluation of the commerciality of the development of the petroleum from within a discovery area.

(f) "Exploration and appraisal strategy" means a brief description of the exploration/geological play concepts for, the extent to which the leads and prospects are identified in, and the data reviews, seismic surveys and exploration wells planned for the contract area.

(g) "First tranche petroleum" means the quantity of petroleum production defined in subsection 9 of Section 7.

(h) "Force majeure" means circumstances beyond the control and without the fault or negligence of the contract operator and the Joint Authority including but not restricted to acts of God or the public enemy, perils of navigation, fire, hostilities, war (declared or undeclared), blockade, labor disturbances, strikes, riots, insurrections, civil commotion, quarantine restrictions, epidemics, storms, earthquakes, or accidents.

(i) "Natural gas" means all gaseous hydrocarbons, including wet mineral gas, dry mineral gas, casinghead gas and residue gas remaining after the extraction of liquid hydrocarbons from wet gas.

## \*516 SECTION 2

### TERM OF THIS CONTRACT

2.1. Subject to the provisions of this Section and Section 13, the term of this contract shall be thirty (30) years as from the effective date.

2.2. If at the end of the initial six (6) years as from the effective date, no petroleum is discovered in commercial quantities in the contract area, the contractor shall have the option either to terminate this contract or to request the Joint Authority, by means of a sixty (60) days written notice prior to the end of the initial six (6) years, to extend this contract to the end of the tenth year from the effective date. Where a discovery is made but has not been appraised before the end of the tenth contract year, the Joint Authority shall extend the term of this contract so as to allow completion of an expeditious appraisal of the discovery, or if necessary in the case of a natural gas discovery, until marketing arrangements and sales contracts are completed. The extension shall be promptly granted, without prejudice to the provisions of Section 13 of this contract relating to termination, provided a work program and expenditures are agreed in accordance with subsection 3 of Section 4 of this contract.

2.3. If, at the end of the term of this contract as extended under subsection 2 of this Section, no petroleum is discovered in commercial quantities in the contract area, this contract shall automatically terminate in its entirety.

2.4. If petroleum is discovered in any block or blocks of the contract area within the initial six (6) year period or any extension pursuant to subsection 2 of this Section, which the Joint Authority and the contract operator agree can be produced commercially, based on the consideration of all pertinent operating and financial data, then as to that particular block or blocks of the contract area the Joint Authority shall declare a discovery area and the contract operator shall commence development. In other blocks in the contract area, the contract operator shall continue exploration without prejudice to the provisions of Section 3 regarding the relinquishment of blocks.

2.5. If petroleum production has not ceased permanently in and from the contract area by the end of the thirtieth contract year, the Joint Authority shall give sympathetic consideration to extending the term of this contract beyond the thirtieth contract year until production ceases permanently. In the case of a natural gas project, the contract term shall be automatically extended to the end of the term of the natural gas sales contract.

2.6. If petroleum production has ceased permanently in and from the contract area before the end of the thirtieth contract year, then this contract shall be terminated upon the permanent cessation of production.

### SECTION 3

#### RELINQUISHMENT OF BLOCKS

3.1. On or before the end of the third contract year as from the effective date, the contract operator shall relinquish twenty-five (25) per cent of the blocks in the original contract area.

\*517 3.2. On or before the end of the sixth contract year the contract operator shall relinquish an additional twenty-five (25) per cent of the blocks in the original total contract area.

3.3. Subject to the provisions of Section 2 of this contract, on or before the end of the tenth contract year, the contract operator shall relinquish all of the blocks in the contract area not contained in discovery areas.

3.4. The contract operator's obligation to relinquish parts of the contract area under the preceding provisions shall not apply to any blocks in the contract area declared as a discovery area. In this respect, in



calculating the percentages under subsections 1 and 2 of this Section, blocks in discovery areas shall be excluded from the original contract area.

3.5. Upon thirty (30) days written notice to the Joint Authority prior to the end of any contract year, the contract operator shall have the right to surrender some, but not all, of the blocks in the contract area, provided the conditions of the contract have been met to the satisfaction of the Joint Authority and such blocks shall then be credited against the blocks in the contract area which the contract operator is next required to relinquish under the provisions of subsections 1, 2 and 3 of this Section.

3.6. The contract operator shall advise the Joint Authority in advance of the date of relinquishment of the blocks to be relinquished. For the purpose of relinquishments, the contract operator and the Joint Authority shall consult with each other regarding which blocks are to be relinquished. So far as is reasonable, such blocks shall form an area of sufficient size and convenient shape to enable petroleum operations to be conducted thereon.

3.7. For the purposes of calculating the number of blocks to be relinquished under subsections 1 and 2 of this Section, where the number of blocks is not exactly divisible by four (4), only the whole number of blocks after the division by four (4) shall be relinquished.

#### SECTION 4

##### WORK PROGRAM AND EXPENDITURES

4.1. The contract operator shall commence petroleum operations not later than six (6) months after the effective date.

4.2. The amount of exploration work to be undertaken by the contract operator pursuant to the terms of this contract during the first six (6) years following the effective date shall, unless otherwise approved by the Joint Authority, be at least that specified for each of these six (6) years as follows:

	Data	Seismic	Wells	Expenditure
	Review	Surveys	No.	US
	US\$	Kms		

First  
Contract  
Year

Second  
Contract  
Year

Third  
Contract  
Year  
Fourth  
Contract  
Year  
Fifth  
Contract  
Year  
Sixth  
Contract  
Year

4.3. If the contract is still in force after the sixth contract year, the Joint Authority and the contract operator shall agree to an exploration work program and expenditures for those subsequent contract years.

\*518 4.4. The Joint Authority and the contract operator may negotiate a change to the exploration work program and expenditures covering contract years four (4) to ten (10), provided the changes are made at least three (3) months prior to the beginning of the contract year affected by the changes.

4.5. If during:

(a) the first three (3) contract years the contract operator completes less than the amount of exploration work required to be completed during those years, the Joint Authority shall terminate the contract;

(b) any of the contract years four (4) to ten (10) the contract operator completes less than the amount of exploration work required within that year, the Joint Authority may terminate the contract and, if the contract is not terminated, the Joint Authority shall require the completion of that work in the following contract year; or

(c) any contract year the contract operator completes more than the amount of exploration work required to be completed by the end of that year, the excess shall be counted towards meeting the exploration work obligations of the contract operator during succeeding contract years.

4.6. For the purpose of subsection 5 of this Section, the Joint Authority, in determining whether the contract operator has completed the exploration work required to be completed in the first three (3) contract years, and in later contract years if work commitments are specified, shall have regard to the

actual physical work completed, and not the estimates of expenditure. Where work commitments are not specified, the Joint Authority shall have regard to the estimates of expenditure.

4.7. At least two (2) months prior to the beginning of each calendar year, the contract operator shall prepare and submit, for approval by the Joint Authority, an exploration and appraisal strategy to be adopted for the ensuing contract year for the contract area.

4.8. At least one (1) month prior to the beginning of each calendar year, the contract operator shall prepare and submit, for approval by the Joint Authority, a work program and budget of operating costs to be carried out during the ensuing calendar year for the contract area.

4.9. Before work can commence on the development of a petroleum discovery, the contract operator shall prepare and submit, for approval by the Joint Authority, a development plan.

4.10. Should the Joint Authority wish to propose a revision to specified aspects of the work program and budget of operating costs, the Joint Authority shall specify its reasons for requesting those changes but shall not require the contract operator to undertake more petroleum operations than the minimum work program and expenditure commitments specified in this contract. The Parties shall reach agreement on any changes before they become effective.

4.11. It is recognized by the Joint Authority that the details of the work program and budget of operating costs, and the development plan may require changes in the light of existing circumstances and nothing herein contained shall limit the rights of the contract operator to make such changes, provided they do not change the general objective, quantity and quality of the petroleum operations.

\*519 4.12. The Joint Authority shall ensure that every effort is made to avoid delays in approving the exploration and appraisal strategy, the work program and budget of operating costs, and the development plan.

## SECTION 5

### RIGHTS AND OBLIGATIONS OF THE PARTIES

5.1. The contract operator shall have the rights accorded to it under the Treaty, including the Petroleum Mining Code and the Taxation Code, and in particular shall:

(a) subject to paragraph (k) of subsection 2 of this Section, have the right to enter and leave the contract area and move to and from the contract operator's facilities wherever located at all times;

(b) have the right to have access to and use all geological, geophysical, drilling, well (including well location maps), production and other information held by the Joint Authority relating to the contract area; and

(c) in accordance with the provisions of the Petroleum Mining Code, have the right to have access to and use all geological, geophysical, drilling, well, production and other information now or in the future held by the Joint Authority relating to the blocks in Area A adjacent to the contract area.

5.2. The contract operator shall comply with all of the obligations imposed on it by the Treaty, including the Petroleum Mining Code and the Taxation Code, and the regulations and directions issued under the Petroleum

Mining Code and, in particular, shall:

(a) provide all human, financial and technical resources required for the performance of the petroleum operations;

(b) carry out petroleum operations in a proper and workmanlike manner and in accordance with good oilfield practice;

(c) take the necessary precautions to avoid interference with navigation and fishing;

(d) develop an environmental management plan to be approved by the Joint Authority, prevent pollution of the marine environment, and pay for the costs associated with clean-up of any pollution from any petroleum operations within the contract area;

(e) upon the termination of this contract, clean-up the contract area and remove all structures, equipment and other property brought into the contract area;

(f) submit to the Joint Authority copies of all original geological, geophysical, drilling, well, production and other data (including cores, cuttings and samples taken in connection with petroleum operations in the contract area) and reports compiled during the term of this contract;

(g) appoint and authorize a person to represent the contract operator and communicate with the Joint Authority, and that person shall have an office in either Jakarta or Darwin or both;

(h) give preference to goods and services which are produced in Australia or the Republic of Indonesia, or provided by subcontractors operating out of Australia or the Republic of Indonesia, provided they are offered on \*520 competitive terms and conditions compared with those available from other countries;

(i) give preference to the employment of Indonesian and Australian nationals and permanent residents, and employ them in equivalent numbers over the term of this contract, having due regard to safe and efficient operations and good oilfield practice;

(j) take out and maintain, to the Joint Authority's satisfaction, from the effective date of this contract, insurance cover to the value of US\$\_\_\_\_\_ in accordance with Article 25 of the Petroleum Mining Code;

(k) except as otherwise approved by the Joint Authority, ensure that all persons, equipment and goods do not enter structures in the contract area without first entering Australia or the Republic of Indonesia, and notify the Joint Authority of all persons, vessels, aircraft and structures entering or leaving the contract area, and of movements within the contract area; and

(l) make secure and safe all structures in the contract area, including the installation of warning lights, radar and other appropriate equipment.

5.3. The contractor shall have the rights accorded under the Treaty, including the Petroleum Mining Code and the Taxation Code, and in particular shall:

(a) have the right to appoint a new contract operator subject to prior approval by the Joint Authority;

(b) have the right to transfer all or part of its undivided participating interest in this contract to any affiliated corporation or any other corporation with the approval of the Joint Authority. Such approval shall not be unreasonably withheld provided the corporation taking up those rights and obligations under this contract has, in the opinion of the Joint Authority, the necessary financial capability and technical knowledge and ability, in accordance with Article 11 of the Petroleum Mining Code;

(c) have the right during the term of this contract to lift, dispose of and export its share of petroleum production, subject to Section 7 of this contract, and retain abroad the proceeds obtained therefrom; and

(d) have the right to retain ownership and control of all property purchased or leased for the purposes of complying with the conditions of this contract, and be entitled to freely remove the same from the contract area, Australia or the Republic of Indonesia provided the conditions of this contract have been met.

5.4. The contractor shall comply with all of the obligations imposed on it by the Treaty, including the Petroleum Mining Code and the Taxation Code, and the regulations and directions issued under the Petroleum Mining Code and, in particular, shall:

(a) be jointly and severally liable to meet the obligations imposed on the contract operator; and

(b) be subject to the taxation law of the Contracting States, in accordance with Article 29 of the Treaty.

5.5. The Joint Authority shall comply with all of the obligations imposed on it by the Treaty, including the Petroleum Mining Code and, in particular, shall be responsible for the management of the petroleum operations contemplated hereunder having regard to the contract operator's responsibilities for undertaking the petroleum operations.

**\*521 SECTION 6**

**OPERATING COSTS**

**GENERAL PROVISIONS**

6.1. The accounting procedures in this Section shall be followed and observed in the performance of the contractor's obligations under the contract.

6.2. The contractor's books and accounts shall be prepared and maintained in accordance with a generally accepted and recognized accounting system consistent with modern petroleum industry practices and procedures. Books and accounts shall be available for the use of the Joint Authority in order that it may carry out its auditing responsibilities under this contract.

6.3. "Operating costs" means the sum of the following costs incurred in petroleum operations undertaken before or at the point of tanker loading:

- (a) current calendar year exploration costs;
- (b) current calendar year non-capital costs;
- (c) current calendar year depreciation of capital costs; and

(d) allowable operating costs incurred in previous calendar years which have not been recovered in accordance with subsection 2 of Section 7 of this contract; less

- (e) miscellaneous receipts as defined in subsection 8 of this Section.

6.4. All calculations required to determine operating costs shall be done in United States dollars. Where costs are denoted in any other currency, they shall be translated into United States dollars at the exchange rate set, on the day the cost was incurred, by a bank designated by the Joint Authority.

**HLA EXPLORATION COSTS** 6.5. "Exploration costs" means those operating costs incurred which relate directly to the current calendar year's exploration operations in the contract area and include but are not limited to the following:

- (a) costs of exploratory and appraisal drilling in the contract area including labor, materials and services used in the drilling of wells with the object of finding unproven reservoirs of petroleum;

(b) costs of surveys in the contract area including labor, materials and services (including desk studies and analysis of survey data) used in aerial, geological, geochemical, geophysical and seismic surveys, and core hole drilling; and

(c) costs of other exploration directly related to petroleum operations in the contract area, including the cost of auxiliary or temporary facilities used in exploration.

#### NON-CAPITAL COSTS

6.6. "Non-capital costs" means those operating costs incurred that relate directly to the current calendar year's operations in the contract area, excluding exploration costs and capital costs. Non-capital costs include, but are not limited to the following:

(a) costs of labor, materials and services used in day to day well operations, field production facilities operations, secondary recovery operations, storage handling, transportation and delivery operations, gas processing auxiliaries and utilities, and other operating activities, including repairs and maintenance;

\*522 (b) costs of office, services and general administration directly related to the petroleum operations carried out in the contract area including technical and related services, office supplies, office rentals and other rentals of services and property, and personnel expenses;

(c) costs of production drilling in the contract area including labor, materials and services used in drilling wells with the object of penetrating a proven reservoir such as the drilling of delineation wells as well as redrilling, deepening or recompleting wells;

(d) costs of feasibility studies and environmental impact assessments directly related to petroleum operations in the contract area;

(e) application fees, contract service fees, and registration fees directly related to petroleum operations in the contract area;

(f) premiums paid for insurance normally required to be carried for the petroleum operations carried out by the contract operator under this contract;

(g) closing down costs, being those expenditures incurred at the end of the production life of a petroleum pool in the contract area which could include the costs of:

(i) removal of all production facilities including the removal of platforms and associated facilities;

(ii) environmental restoration including any feasibility studies; and

(h) costs of purchased geological and geophysical information.

#### CAPITAL COSTS

6.7. "Capital costs" means expenditures made for items directly related to petroleum operations in the contract area and which normally have a useful life of more than one (1) year. Capital costs include but are not limited to the following:

(a) costs of construction utilities and auxiliaries, workshops, power and water facilities, warehouses, site offices, access and communication facilities;

(b) costs of production facilities including offshore platforms (including the costs of labor, fuel hauling and supplies for both the offsite fabrication and onsite installation of platforms, and other construction costs in erecting platforms), wellhead production tubing, sucker rods, surface pumps, flow lines, gathering equipment, delivery lines, storage facilities, all other equipment, facilities and modules on platforms, oil jetties and anchorages, treating plants and equipment, secondary recovery systems, gas plants and steam systems;

(c) costs of pipelines and other facilities for the transporting of petroleum produced in the contract area to the point of tanker loading;

(d) costs of movable assets and subsurface drilling and production tools, equipment and instruments, and miscellaneous equipment used for production in the contract area;

(e) costs of floating craft, automotive equipment, furniture and office equipment; and

(f) if approved by the Joint Authority, costs of employee and welfare housing, recreational, educational, health and meals facilities, and other similar costs necessary for petroleum operations in Area A.

#### \*523 MISCELLANEOUS RECEIPTS

6.8. "Miscellaneous receipt" means the value of property defined in paragraph (c) below and all monies received by the contractor, other than for the disposal of petroleum produced from the contract area, which are directly related to the conduct of petroleum operations in the contract area. Miscellaneous receipts include, but are not limited to, the following:

(a) any amounts received from the sale or disposal of petroleum produced from production testing operations undertaken in exploration and appraisal wells;

(b) any amounts received for the disposal, loss, or destruction of property the cost of which is an operating cost;

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(c) the value of property, the cost of which is an operating cost, when that property ceases to be used in petroleum operations in the contract area;

(d) any amounts received by the contract operator under an insurance policy, the premiums of which are operating costs, in respect of damage to or loss of property;

(e) any amounts received as insurance, compensation or indemnity in respect of petroleum production lost or destroyed prior to the point of tanker loading;

(f) any amounts received from the hiring or leasing of property, the cost of which is an operating cost;

(g) any amounts received from supplying information obtained from surveys, appraisals, or studies the cost of which is an operating cost;

(h) any amounts received as charges for the use of employee amenities, the cost of which is an operating cost; and

(i) any amounts received in respect of expenditures which are operating costs, by way of indemnity or compensation for the incurring of the expenditure, refund of the expenditure, or rebate, discount or commission in respect of the expenditure.

#### INELIGIBLE COSTS

6.9. The following expenditures are not eligible as operating costs:

(a) payments of principal or interest on a loan or other borrowing costs unless approved by the Joint Authority under paragraph (c) of subsection 10 of this Section;

(b) payments of interest components of credit-purchase payments;

(c) payments of dividends or the cost of issuing shares;

(d) repayments of equity capital;

(e) payments of private override royalties;

(f) payments associated with a farm-in agreement;

(g) payments of taxes under the taxation law of either Contracting State made in accordance with Article 29 of the Treaty;

(h) payments of administrative accounting costs, and other costs indirectly associated with petroleum operations in the contract area;

(i) costs incurred once petroleum production has passed the point of tanker loading;

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(j) costs incurred as a result of non-compliance by the contract operator with the provisions of this contract, the Petroleum Mining Code or the regulations and directions issued under the Petroleum Mining Code; and

\*524 (k) unless otherwise approved by the Joint Authority, costs incurred by contractors other than the contract operator.

#### ACCOUNTING METHODS TO BE USED TO CALCULATE RECOVERY OF OPERATING COSTS

6.10. The following methods shall be used to calculate the recovery of operating costs.

(a) Depreciation

Depreciation shall be calculated beginning in the calendar year in which the asset to be depreciated is placed into service. A full year's depreciation shall be allowed in that calendar year. In each calendar year the allowable recovery of capital cost depreciation shall be twenty (20) per cent of the individual asset's initial capital cost (calculated using the straight line method of depreciation).

(b) Allocation of overhead costs

General and administration costs, such as those listed in paragraph (b) of subsection 6 of this Section, but other than direct charges, allocable to petroleum operations in the contract area shall be determined by a detailed study, and the method determined by such a study shall be applied each year consistently. The method determined shall require agreement of the Joint Authority and the contractor.

(c) Interest Recovery

Interest on loans obtained by a contractor at rates not exceeding prevailing commercial interest rates on loans for capital investments in development of petroleum pools may be recoverable as an operating cost provided the Joint Authority has given its approval. The Joint Authority may give its approval if it is satisfied that recovery of interest is necessary to ensure the financial viability of the project.

(d) Gas Costs

The following procedures shall be used to allocate operating costs related to natural gas production.

(i) Operating costs directly related to the production of natural gas shall be directly chargeable against natural gas revenues in determining the entitlements of the Joint Authority and the contractor under Section 7.

(ii) Operating costs incurred for the production of both natural gas and crude oil shall be allocated to natural gas and crude oil revenues based on the relative value of the products produced for the current calendar year. Common support costs shall be allocated on an equitable basis agreed to by both Parties.

(iii) If after commencement of production, the natural gas revenues do not permit full recovery of natural gas costs, as outlined above, then the excess costs shall be recovered from crude oil revenues. \*525 Likewise, if there are excess crude oil costs (crude oil costs less crude oil revenues), this excess shall be recovered from natural gas revenues.

(iv) If production of either natural gas or crude oil has commenced while the other has not, the allocable production costs and common support costs shall be allocated on an equitable basis agreed to by both Parties. Propane and butane fractions extracted from natural gas but not spiked in crude oil shall be deemed as natural gas for the purpose of accounting.

(e) Inventory Accounting

Inventory levels shall be based on normal good oilfield practice. The value of inventory items used outside the contract area or sold, the cost of which has been recovered as an operating cost, shall be treated as miscellaneous receipts in accordance with subsection 8 of this Section. The costs of items purchased for inventory shall be recoverable as operating costs at such time as the items are landed in Area A.

(f) Insurance and Claims

Operating costs shall include premiums paid for insurance normally required to be carried for the petroleum operations relating to the contractor's obligations conducted under the contract, together with all expenditures incurred and paid in settlement of any and all losses, claims, damages, judgements and other expenses, including fees relating to the contractor's obligations under the contract.

(g) Apportioning of Costs and Miscellaneous Receipts

Where property, or any other thing, for which an operating cost is allowable or a miscellaneous receipt is assessable, is only used partially in conducting petroleum operations in the contract area, only that proportion of the cost or the receipt which relates to the conduct of petroleum operations in the contract area shall be allowed as an operating cost or assessed as a miscellaneous receipt.

SECTION 7

RECOVERY OF OPERATING COSTS AND SHARING OF PETROLEUM PRODUCTION

7.1. The contractor is authorized by the Joint Authority and obliged to market all petroleum produced and saved from the contract area subject to the following provisions.

7.2. Subject to subsections 9 and 10 of this Section, to recover operating costs, the contract operator shall be entitled to a quantity of petroleum production, which is produced and saved hereunder and not used in petroleum operations, equal in value to those costs. If in any calendar year, the operating costs exceed the value of petroleum produced and saved hereunder and not used in petroleum operations, then the unrecovered excess of operating costs shall be carried forward and recovered in succeeding years.

7.3. In each calendar year in which petroleum is produced from the contract area, if the investment credit and operating costs recoverable under subsections 10 and 2 of this Section respectively are less than the value of \*526 the quantity of petroleum produced from the contract area, then of the petroleum production remaining after deducting the quantity of petroleum production equal in value to the investment credit and operating costs, the Parties shall be entitled to take and receive the following:

(a) the Joint Authority fifty (50) per cent and the contractor fifty (50) per cent for the tranche of 0 to 50,000 barrels daily average of all crude oil production from the contract area for the calendar year;

(b) the Joint Authority sixty (60) per cent and the contractor forty (40) per cent for the tranche of 50,001 to 150,000 barrels daily average of all crude oil production from the contract area for the calendar year; and

(c) the Joint Authority seventy (70) per cent and the contractor thirty (30) per cent for the tranche of more than 150,000 barrels daily average of all crude oil production from the contract area for the calendar year.

7.4. The method of recovering investment credits and operating costs before the entitlements are taken by each Party as provided under subsection 3 of this Section shall be subject to the following proration method. For each calendar year, the recoverable investment credits and operating costs shall be apportioned for deduction from the production of each of the tranches defined in subsection 3 of this Section using the same ratios as the production from each such tranche over the total production of that calendar year.

7.5. Of the amount of natural gas, including propane and butane fractions extracted from natural gas but not spiked in crude oil, remaining after recovering investment credits and operating costs associated with natural gas operations, the Joint Authority shall be entitled to take and receive fifty (50) per cent and the contractor shall be entitled to take and receive fifty (50) per cent.

7.6. Title to the contractor's share of petroleum production under subsections 3, 5 and 9 of this Section as well as to the shares of petroleum production exported and sold to recover investment credits and operating costs under subsections 10 and 2 of this Section respectively shall pass to the contractor at the point of tanker loading.

7.7. The contractor shall use its best reasonable efforts to market petroleum production to the extent markets are available.

7.8. Any natural gas produced from the contract area and not used in petroleum operations hereunder may be flared if the processing and utilization of the natural gas is not considered by the Parties to be economic. Such flaring shall be permitted to the extent that gas is not required to enable the maximum economic recovery of petroleum by secondary recovery operations, including repressuring and recycling.

7.9. Notwithstanding the other provisions of this Section, in the initial five (5) calendar years of production from the contract area, the Parties shall be entitled to take and receive a quantity of petroleum equal to ten (10) per cent of the petroleum production in those years, called the "first tranche petroleum", before any recovery of investment credits and operating costs. In each subsequent calendar year, the first tranche petroleum shall be equal to twenty (20) per cent of the petroleum produced in that year. The quantity of first tranche \*527 petroleum from crude oil production for each calendar year shall be shared between the Joint Authority and the contractor in accordance with the sharing percentages as provided under subsection 3 of this Section, by apportioning it as applicable to the respective production tranches as therein defined, using the same ratios as the production from each such tranche over the total production of that calendar year. The quantity of first tranche petroleum from natural gas production for each calendar year shall be shared between the Joint Authority and the contractor in accordance with the sharing percentages as provided under subsection 5 of this Section.

7.10. Investment credits for exploration and capital costs defined in subsection 5 of Section 6 and paragraphs (b), (c) and (d) of subsection 7 of Section 6 shall be allowed to the contract operator, and, in each calendar year, shall be recoverable by the contract operator after the sharing of the first tranche petroleum but before the recovery of operating costs. The contract operator shall recover the investment credits, as a quantity of petroleum production equal in value to one hundred and twenty seven (127) per cent of such exploration and capital costs incurred. Investment credits not recovered in the calendar year in which the exploration and capital costs were incurred may be carried forward and recovered in subsequent years.

7.11. Notwithstanding the provisions of subsection 1 of this Section which oblige the contractor to market all petroleum produced from the contract area, the Joint Authority may market any or all petroleum when the Joint Authority secures a net realized price for the petroleum, f.o.b. the contract area, which is greater than the price which can be realized by the contractor. The Joint Authority's right to market any or all of the petroleum shall continue for such period as it can secure a net realized price, f.o.b.

the contract area, greater than that which can be realized by the contractor. The contract operator shall coordinate the efficient lifting of the petroleum production, including tanker nomination and scheduling.

## SECTION 8

### VALUATION OF PETROLEUM PRODUCTION

8.1. Petroleum production sold to third parties shall be valued as follows:

(a) all petroleum production to which the contractor is entitled under this contract and which is sold to third parties, shall be valued at the net realized price, f.o.b. the contract area;

(b) all petroleum production to which the Joint Authority is entitled under this contract which is sold to third parties shall be valued at the net realized price, f.o.b. the contract area; and

(c) where a contract of sale involves other than a net realized price f.o.b., the Joint Authority shall determine a fair and reasonable net f.o.b. price for the purposes of that sale.

8.2. Petroleum production sold to other than third parties shall be valued by the Joint Authority as follows:

(a) by using the weighted average per unit price, adjusted as necessary for quality, quantity, grade and specific gravity of the petroleum production, received by the contractor and the Joint Authority from sales to third parties during the three (3) months preceding such sale, excluding commissions and brokerages incurred in relation to such third party sales; and

(b) if there are no third party sales as defined in paragraph (a), at prevailing market prices, adjusted to take account of quality, quantity, \*528 grade and specific gravity of the petroleum production and taking into consideration any special circumstances with respect to sales of such petroleum production.

8.3. For the purpose of this Section, "third party sales" means sales by the contractor to independent purchasers with whom, at the time the sale is made, the contractor has no direct or indirect contractual relationship or joint interest.

8.4. Commissions or brokerages incurred in connection with sales to third parties, if any, shall not exceed the customary and prevailing rate.

8.5. During any calendar year in which petroleum is produced from the contract area, the contractor shall be liable to make provisional payments to the Joint Authority, equal to the estimated value of petroleum to which the Joint Authority is entitled under Section 7 of this contract. The provisional payments shall be made on a monthly basis unless the Joint Authority and the contractor agree on alternate arrangements. The amount of each provisional payment shall be calculated by the contractor

using the estimates of operating costs contained in the work program and budget of operating costs, and the contractor's estimate of the value of quantities of petroleum sold. During the calendar year the provisional payments may be adjusted having regard to actual operating costs and the actual value of sales of petroleum. Within thirty (30) days after the end of the calendar year, adjustments and cash settlements between the Joint Authority and the contractor shall be made on the basis of the actual amounts of the operating costs and actual value of sales of petroleum made during the calendar year, in order to comply with Section 7. Similarly, where the Joint Authority markets petroleum production pursuant to subsection 11 of Section 7, the Joint Authority shall be liable to make provisional payments to the contractor in a manner consistent with this subsection.

8.6. Petroleum production disposed of other than by sale or destruction shall be valued using the method defined in subsection 2 of this Section.

8.7. The contractor shall notify the Joint Authority of quantities and sales prices of all petroleum production sold or disposed of before the sales or disposals are made.

## SECTION 9

### PAYMENTS

9.1. The contract operator shall make all payments to the Joint Authority for which it is liable under this contract in United States dollars or some other currency agreed between the contract operator and the Joint Authority. Payments shall be made to a bank designated by the Joint Authority. Where a payment is made in currency other than United States dollars, the exchange rate used to convert the United States dollars liability into that currency shall be the exchange rate set down on the day of payment by a bank designated by the Joint Authority.

9.2. The Joint Authority shall make all payments to the contract operator in United States dollars or some other currency agreed between the contract operator and the Joint Authority. Where a payment is made in currency other than United States dollars, the exchange rate used to convert the United States dollar liability into that currency shall be the exchange rate set down on the day of payment by a bank designated by the Joint Authority.

\*529 9.3. Any payments required to be made pursuant to this contract shall be made within ten (10) days following the end of the month in which the obligation to make such payments is incurred.

## SECTION 10

### TENDERS FOR PETROLEUM OPERATIONS

10.1. The contract operator shall draw invitations to tender for sub-contracts to the attention of Australian and Indonesian sub-contractors.

10.2. Subject to subsection 4 of this Section, all tenders for petroleum operations called by the contract operator shall be subject to approval by the Joint Authority.

10.3. The Joint Authority shall provide its approval or non-approval within thirty (30) days of receipt of the tender details from the contract operator. The tender details to be provided by the contract operator shall include a summary of the tenders received compared against the tender criteria determined by the contract operator and the reasons for the selection of the preferred tender.

10.4. Notwithstanding subsection 2 of this Section, the contract operator may enter into sub-contracts without the approval of the Joint Authority where:

(a) the tender for petroleum operations is expected to involve expenditure of less than US\$ two million (2,000,000);

(b) the tender for petroleum operations is expected to involve expenditure of less than US\$ ten million (10,000,000) and those operations form part of a project for the development of petroleum resources, the cost of which is expected to exceed US\$ one hundred million (100,000,000); or

(c) the tender selected by the contract operator is the lowest cost tender and has been submitted by an Australian or Indonesian corporation.

10.5. The contract operator shall provide the Joint Authority, for information, with the full financial details of the sub-contract, irrespective of the amount of the expenditure involved.

## SECTION 11

### TITLE TO EQUIPMENT

11.1. Equipment purchased by the contract operator pursuant to the work program and budget of operating costs remains the property of the contractor and shall be used in petroleum operations.

## SECTION 12

### CONSULTATION AND ARBITRATION

12.1. Periodically, the Joint Authority and the contract operator shall meet to discuss the conduct of petroleum operations under this contract and shall make every effort to settle amicably any problems arising therefrom.



12.2. Disputes, if any, arising between the Joint Authority and contractor relating to this contract or the interpretation and performance of this contract which cannot be settled amicably shall be submitted to arbitration.

12.3. Except as may be otherwise agreed by the Parties, arbitration shall be conducted in accordance with the \*530 Rules of Arbitration of the International Chamber of Commerce.

12.4. The Joint Authority on the one hand and the contractor on the other hand shall each appoint one arbitrator and so advise the other Party, and these two arbitrators shall appoint a third. If either Party fails to appoint an arbitrator within thirty (30) days after receipt of a written request to do so, such arbitrator shall, at the request of the other Party, if the Parties do not otherwise agree, be appointed by the President of the International Chamber of Commerce. If the first two arbitrators appointed as aforesaid fail to agree on a third within thirty (30) days following the appointment of the second arbitrator, the third arbitrator shall, if the Parties do not otherwise agree, be appointed, at the request of either Party, by the President of the International Chamber of Commerce. If an arbitrator fails or is unable to act, that arbitrator's successor shall be appointed in the same manner as the arbitrator who is replaced.

12.5. The decision of a majority of the arbitrators shall be final and binding upon the Parties and an award may be enforced in any court having jurisdiction for that purpose. In accordance with paragraph 2 of Article 11 of the Treaty, in the event that the Joint Authority cannot meet an obligation under an arbitral award arising from a dispute under this contract, the Contracting States shall contribute the necessary funds in equal shares to enable the Joint Authority to meet that obligation.

12.6. The place of arbitration shall be \_\_\_\_\_ (to be agreed by the Parties before the contract is signed). The language of the arbitration shall be \_\_\_\_\_ (to be agreed by the Parties before the contract is signed).

### SECTION 13

#### TERMINATION

13.1. This contract shall not be terminated during the first three (3) years from the effective date.

13.2. Subject to subsection 1 of this Section, this contract may be terminated at any time by agreement of the Parties or in accordance with Article 48 of the Petroleum Mining Code.

### SECTION 14

#### BOOKS, ACCOUNTS AND AUDITS

#### BOOKS AND ACCOUNTS

14.1. In addition to any requirements pursuant to paragraph (b) of subsection 4 of Section 5, the contractor shall keep complete books and accounts recording all operating costs as well as monies received from the sale or disposal of petroleum production.

#### AUDITS

14.2. The Joint Authority may require independent auditing of the contractor's books and accounts relating to this contract for any calendar year and may require the independent auditor to perform such auditing procedures as are deemed appropriate by the Joint Authority. The contractor shall forward a copy of the independent accountant's report to the Joint Authority within sixty (60) days following the completion of the audit. The Joint Authority reserves the right to inspect and audit the contractor's books and accounts relating to this contract.

#### \*531 SECTION 15

#### OTHER PROVISIONS

#### NOTICES

15.1. Any notices required or given by either Party to the other shall be served in accordance with Article 35 of the Petroleum Mining Code.

15.2. All notices to be served on the contract operator shall be addressed to:

(contract operator's address)

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15.3. All notices to be served on the Joint Authority relating to matters for which the head office of the Joint Authority is responsible shall be addressed to:

(address of the Joint Authority's head office)

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15.4. All notices to be served on the Joint Authority relating to matters for which the Technical Directorate of the Joint Authority is responsible shall be addressed to:

(address of the Joint Authority's Technical Directorate)

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15.5. Either Party may substitute or change the above such address by giving written notice to the other.

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**APPLICABLE LAW**

15.6. Subject to the provisions of the Treaty, including the Petroleum Mining Code, the law of \_\_\_\_\_ shall apply to this contract.

**SUSPENSION OF OBLIGATIONS**

15.7. Any failure or delay on the part of either Party in the performance of its obligations or duties under the contract shall be excused to the extent that such failure or delay is attributable to force majeure.

15.8. If exploration is delayed, curtailed or prevented by force majeure the Joint Authority shall agree to vary the work program and expenditure commitments or exempt the contract operator from part or all of the work program and expenditure commitments during the period of force majeure.

15.9. The Party whose ability to perform its obligations is so affected by force majeure shall immediately notify the other Party in writing, stating the cause, and both Parties shall do all that is reasonably within their power to discharge their obligations.

**SECTION 16**

**EFFECTIVENESS**

16.1. This contract shall come into effect on the day it is entered into by and between the Joint Authority and the contractor.

16.2. This contract shall not be amended or modified in any respect, except by the mutual consent in writing of the Parties.

\*532 IN WITNESS WHEREOF, the Parties hereto have executed this contract, in triplicate and in the English language, on this \_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

THE JOINT AUTHORITY

BY \_\_\_\_\_

(CONTRACTOR)

BY \_\_\_\_\_

APPROVED BY THE MINISTERIAL COUNCIL on this \_\_\_\_ of \_\_\_\_\_, 19 \_\_\_\_

BY \_\_\_\_\_

BY \_\_\_\_\_

Minister of on behalf of the GOVERNMENT OF THE REPUBLIC OF INDONESIA

Minister for on behalf of the GOVERNMENT OF AUSTRALIA



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## ANNEX D

TAXATION CODE FOR THE AVOIDANCE OF DOUBLE TAXATION IN RESPECT OF  
ACTIVITIES CONNECTED WITH AREA A OF THE ZONE OF COOPERATION

## Article 1

## General Definitions

1. In this Taxation Code, unless the context otherwise requires:

(a) the term "Australian tax" means tax imposed by Australia, other than any penalty or interest, being tax to which this Taxation Code applies;

(b) the term "company" means any body corporate or any entity which is treated as a company or body corporate for tax purposes;

(c) the term "competent authority" means, in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of the Republic of Indonesia, the Minister of Finance or an authorised representative of the Minister;

(d) the term "Indonesian tax" means tax imposed by the Republic of Indonesia, other than any penalty or interest, being tax to which this Taxation Code applies;

(e) the term "law of a Contracting State" means the law of that Contracting State from time to time in force relating to the taxes to which this Taxation Code applies;

(f) the term "person" includes an individual, a company and any other body of persons; and

<sup>433</sup> (g) the terms "tax" or "taxation" mean Australian tax or Indonesian tax, as the context requires.

2. In the application of this Taxation Code by a Contracting State any term not defined in this Taxation Code or elsewhere in the Treaty shall, unless the context otherwise requires, have the meaning which it has under the law of that Contracting State from time to time in force relating to the taxes to which this Taxation Code applies.

## Article 2

## Personal Scope

The provisions of this Taxation Code shall apply to persons who are residents of one or both of the Contracting States as well as in respect of persons who are not residents of either of the Contracting States, but only for taxation purposes related directly or indirectly to:

- (a) the exploration for or the exploitation of petroleum in Area A; or
- (b) acts, matters, circumstances and things touching, concerning, arising out of or connected with any such exploration or exploitation.

### Article 3

#### Taxes Covered

1. The existing taxes to which this Taxation Code shall apply are:

(a) in Australia:

- (i) the income tax imposed under the federal law of Australia;
- (ii) the fringe benefits tax imposed under the federal law of Australia; and
- (iii) the sales tax imposed under the federal law of Australia;

(b) in Indonesia:

- (i) the income tax (Pajak-Penghasilan), including the tax on profits after income tax payable by a contractor, imposed under the law of the Republic of Indonesia, and its implementing regulations;
- (ii) the value-added tax on goods and services and sales tax on luxury goods (Pajak Pertambahan Nilai atas Barang dan Jasa dan Pajak Penjualan atas Barang Mewah) imposed under the law of the Republic of Indonesia, and its implementing regulations.

2. The provisions of this Taxation Code shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Treaty in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

### Article 4

#### Business Profits

1. For the purposes of the taxation law of each Contracting State, the business profits or losses of a person, other than an individual, derived from, or incurred in, Area A in a year shall be reduced by fifty (50) per cent.

\*534 2. Business profits derived from Area A in a year by an individual who is a resident of a Contracting State shall be taxable only in that Contracting State.

3. Business profits derived from Area A in a year by an individual who is not a resident of either Contracting State may be taxed in both Contracting States but subject to a rebate entitlement against the tax payable in each Contracting State of fifty (50) per cent of the gross tax payable on those profits in that Contracting State.

4. Business losses, incurred in Area A in a year by an individual who is not a resident of either Contracting State, that are eligible under the law of a Contracting State to be carried forward for deduction against future income shall, for the purposes of that law, be reduced by fifty (50) per cent.

5. For the purposes of paragraphs 1 and 4 of this Article any losses brought forward from prior years in accordance with the law of a Contracting State as a deduction from income shall not be taken into account in determining the profit or loss for the year.

6. For the purposes of this Article:

(a) the term "year" means:

- (i) in Australia, any year of income;
- (ii) in Indonesia, any taxable year; and

(b) the terms "business profits" and "business losses" do not include gains or losses of a capital nature to which Article 8 of this Taxation Code applies.

#### Article 5

##### Dividends

1. Dividends which are paid by a company which is a resident of a Contracting State wholly or partly out of profits derived from sources in Area A, and which are beneficially owned by a resident of the other Contracting State, may be taxed only in that other Contracting State.

2. The term "dividends" as used in this Article means income from shares or other rights participating in profits and not relating to debt claims, as well as other income which is subjected to the same taxation treatment as income from shares by the law of the Contracting State of which the company making the distribution is a resident.

#### Article 6

##### Interest

1. Interest paid by a contractor, being interest to which a resident of a Contracting State is beneficially entitled, may be taxed in that Contracting State.

2. Such interest may also be taxed in the other Contracting State, but the tax so charged shall not exceed ten (10) per cent of the gross amount of the interest.

3. Where such interest is taxed in the other Contracting State in accordance with paragraph 2 of this Article, that interest shall, for the purposes of determining a foreign tax credit entitlement under the taxation law of the Contracting State referred to in paragraph 1 of this Article, be deemed to be income derived from sources in the other Contracting State.

\*535 4. Interest paid by a contractor, being interest to which a person who is not a resident of either Contracting State is beneficially entitled, may be taxed in both Contracting States but the taxable amount of any such interest shall be an amount equivalent to fifty (50) per cent of the amount that would be the taxable amount but for this paragraph.

#### Article 7

##### Royalties

1. Royalties paid by a Contractor, being royalties to which a resident of a Contracting State is beneficially entitled, may be taxed in that Contracting State.

2. Such royalties may also be taxed in the other Contracting State, but the tax so charged shall not exceed ten (10) per cent of the gross amount of the royalties.

3. Where such royalties are taxed in the other Contracting State in accordance with paragraph 2 of this Article, those royalties shall, for the purposes of determining a foreign tax credit entitlement under the taxation law of the Contracting State referred to in paragraph 1 of this Article, be deemed to be income derived from sources in the other Contracting State.

4. Royalties paid by a Contractor, being royalties to which a person who is not a resident of either Contracting State is beneficially entitled, may be taxed in both Contracting States but the taxable amount of any such royalties shall be an amount equivalent to fifty (50) per cent of the amount that would be the taxable amount but for this paragraph.

#### Article 8

##### Alienation of Property

1. Where a gain or loss of a capital nature accrues to or is incurred by an individual who is a resident of a Contracting State, from the alienation of property situated in Area A or shares or comparable interests in a company, the assets of which consist wholly or principally of property situated in Area A,



the amount of the gain or loss shall be taxable, or otherwise recognised for taxation purposes, only in that Contracting State.

2. Where a gain or loss of a capital nature accrues to or is incurred by a person, other than an individual who is a resident of a Contracting State, from the alienation of property situated in Area A or shares or comparable interests in a company, the assets of which consist wholly or principally of property situated in Area A, the amount of the gain or loss shall, for the purposes of the law of a Contracting State, be an amount equivalent to fifty (50) per cent of the amount that would be the gain or loss but for this paragraph.

#### Article 9

##### Independent Personal Services

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services, or other independent activities of a similar character, performed in Area A shall be taxable only in that Contracting State.

2. Income derived by an individual who is not a resident of either Contracting State in respect of professional services, or other independent activities of a similar character, performed in Area A may be taxed in \*536 both Contracting States but subject to a rebate entitlement against the tax payable in each Contracting State of fifty (50) per cent of the gross tax payable in that Contracting State on the income referred to in this paragraph.

#### Article 10

##### Dependent Personal Services

1. Salaries, wages and other similar remuneration derived by an individual who is a resident of a Contracting State in respect of employment exercised in Area A shall be taxable only in that Contracting State.

2. Remuneration derived by an individual who is not a resident of either Contracting State in respect of employment exercised in Area A may be taxed in both Contracting States but subject to a rebate entitlement against the tax payable in each Contracting State of fifty (50) per cent of the gross tax payable in that Contracting State on the income referred to in this paragraph.

#### Article 11

##### Other Income

1. Items of income of a resident of a Contracting State, derived from sources in Area A, not dealt with in the foregoing Articles of this Taxation Code shall be taxable only in that Contracting State.

2. Items of income of a person who is not a resident of either Contracting State, derived from sources in Area A and not dealt with in the foregoing Articles of this Taxation Code may be taxed in both Contracting States but subject to a rebate entitlement against the tax payable in each Contracting State of fifty (50) per cent of the gross tax payable in that Contracting State on the income referred to in this paragraph.

#### Article 12

##### Fringe Benefits

For the purposes of the taxation law of Australia, the taxable value of any fringe benefits provided in a year of tax to employees, who are not residents of either Contracting State, in a year of tax in respect of employment exercised in Area A shall be reduced by fifty (50) per cent.

#### Article 13

##### Goods Imported into Area A

Goods imported into Area A from a place other than either Contracting State shall not be taxable in either Contracting State unless and until such goods are permanently transferred to another part of a Contracting State in which case the goods may be taxed only in the Contracting State last referred to.

#### Article 14

##### Mutual Agreement Procedure

1. Where a person considers that the actions of the competent authority of one or both of the Contracting States result or will result for the person in taxation not in accordance with the provisions of this Taxation Code, the person may, irrespective of the remedies provided by the domestic law of the Contracting States, present a case to the competent authority of the \*537 Contracting State of which the person is a resident, or to either competent authority in the case of persons who are not residents of either Contracting State. The case must be presented within three (3) years from the first notification of the action resulting in taxation not in accordance with the provisions of this Taxation Code.

2. The competent authority shall endeavour, if the claim appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in

accordance with the provisions of this Taxation Code. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Taxation Code.

#### Article 15

##### Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Taxation Code or of the domestic law of the Contracting States concerning taxes covered by this Taxation Code, insofar as the taxation thereunder is not contrary to this Taxation Code, in particular for the prevention of avoidance or evasion of such taxes. Any information received by the competent authority of a Contracting State shall be treated as secret in the same manner as information obtained under the domestic law of that Contracting State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Taxation Code and shall be used only for such purposes.

2. In no case shall the provisions of paragraph 1 of this Article be construed so as to impose on the competent authority of a Contracting State the obligation:

(a) to carry out administrative measures at variance with the law or the administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtainable under the law or in the normal course of the administration of that or of the other Contracting State; or

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.

29 I.L.M. 469, 29 I.L.M. 469 (1990), 1990 WL 595447 (I.L.M.)

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## ประกาศ

ใช้บันทึกความเข้าใจระหว่างราชอาณาจักรไทยและมาเลเซีย  
 เกี่ยวกับการจัดตั้งองค์กรร่วมเพื่อแสวงประโยชน์จากทรัพยากรในพื้นที่  
 ใต้ทะเลในบริเวณที่กำหนดของไหล่ทวีป  
 ของประเทศทั้งสอง ในอ่าวไทย

มีพระบรมราชโองการโปรดเกล้าฯ ให้ประกาศให้ทราบทั่วกันว่า

โดยที่บันทึกความเข้าใจระหว่างราชอาณาจักรไทยและมาเลเซียเกี่ยวกับการจัด  
 ตั้งองค์กรร่วมเพื่อแสวงประโยชน์จากทรัพยากรในพื้นที่ใต้ทะเลในบริเวณที่กำหนดของ  
 ไหล่ทวีปของประเทศทั้งสองในอ่าวไทย ซึ่งได้ลงนามกัน ณ เชียงใหม่ เมื่อวันที่๒๑กุมภาพันธ์  
 พุทธศักราช ๒๕๒๒ มีบทบัญญัติในข้อ ๘ ว่า บันทึกฉบับนี้จะเริ่มมีผลใช้บังคับในวันแรก  
 เปลี่ยนสัตยาบันสารกัน

และโดยที่ได้มีการแลกเปลี่ยนสัตยาบันสารกัน ณ กรุงกัวลาลัมเปอร์ เมื่อวันที่  
 ๒๔ ตุลาคม พุทธศักราช ๒๕๒๒

ฉะนั้น บันทึกฉบับนี้จึงมีผลใช้บังคับตั้งแต่วันที่ ๒๔ ตุลาคม พุทธศักราช ๒๕๒๒  
 เป็นต้นไป

ประกาศ ณ วันที่ ๒๕ มีนาคม พุทธศักราช ๒๕๒๓ เป็นปีที่ ๓๕ ในรัชกาลปัจจุบัน

ผู้วิบนองพระบรมราชโองการ

พลเอก ป. ศิวสุถานนท์

นายกรัฐมนตรี

ศูนย์วิทยทรัพยากร  
 จุฬาลงกรณ์มหาวิทยาลัย

**บันทึกความเข้าใจ**  
**ระหว่าง**  
**ราชอาณาจักรไทยและมาเลเซีย**  
**เกี่ยวกับการจัดตั้งองค์การร่วมเพื่อแสวงประโยชน์**  
**จากทรัพยากรในพื้นที่ดินใต้ทะเลในบริเวณที่กำหนด**  
**ของไหล่ทวีปของประเทศทั้งสองในอ่าวไทย**

ราชอาณาจักรไทยและมาเลเซีย

โดยความปรารถนาที่จะกระชับสายสัมพันธ์แห่งมิตรภาพทางประเพณีที่มีอยู่  
 ระหว่างประเทศทั้งสอง

โดยยอมรับว่า ผลจากการอ้างสิทธิที่เชื่อมต่อกัน โดยประเทศทั้งสองเกี่ยวกับเส้น  
 เขตไหล่ทวีปของประเทศทั้งสองในอ่าวไทย ทำให้มีบริเวณพื้นที่ที่เชื่อมต่อกันในไหล่ทวีปที่  
 ประชิดกัน

เห็นว่าการเจรจาที่กระทำกันอยู่ระหว่างประเทศทั้งสอง เกี่ยวกับการแบ่งเขตไหล่  
 ทวีปในอ่าวไทยจะมีต่อไปอีกเป็นเวลาพอสมควร

พิจารณาเห็นว่า การแสวงประโยชน์จากทรัพยากรในพื้นที่ดินใต้ทะเลในบริเวณ  
 ที่เชื่อมต่อกันโดยเร็วที่สุดที่จะทำได้ จะเป็นผลประโยชน์ที่สุดต่อประเทศทั้งสอง

เชื่อมั่นว่า กิจกรรมเช่นว่านั้นสามารถกระทำร่วมกันได้ ด้วยความร่วมมือซึ่งกัน  
 และกัน

ได้ตกลงกันดังต่อไปนี้

ข้อ ๑

คู่ภาคีเห็นว่าผลจากการอ้างสิทธิที่เชื่อมต่อกันของประเทศทั้งสองเกี่ยวกับเส้นเขต  
 ไหล่ทวีปของแต่ละฝ่ายในอ่าวไทย ทำให้มีบริเวณที่เชื่อมต่อกัน ซึ่งได้กำหนดเป็นพื้นที่  
 ที่มีเขตล้อมเป็นเส้นตรงเชื่อมกันโดยจุดพิกัด ดังต่อไปนี้

จุฬาลงกรณ์มหาวิทยาลัย

- |                    |                    |
|--------------------|--------------------|
| (A) ๖'๕๐'.๐ เหนือ  | ๑๐๒'๒๑'.๒ ตะวันออก |
| (B) ๗'๑๐'.๒๕ เหนือ | ๑๐๒'๒๕'.๐ ตะวันออก |
| (C) ๗'๕๕'.๐ เหนือ  | ๑๐๓'๐๒'.๕ ตะวันออก |
| (D) ๗'๒๒'.๐ เหนือ  | ๑๐๓'๕๒'.๕ ตะวันออก |
| (E) ๗'๒๐'.๐ เหนือ  | ๑๐๓'๓๕'.๐ ตะวันออก |
| (F) ๗'๐๓'.๐ เหนือ  | ๑๐๓'๐๖'.๐ ตะวันออก |
| (G) ๖'๕๓'.๐ เหนือ  | ๑๐๒'๓๕'.๐ ตะวันออก |

และแสดงไว้ในแผนที่บริติชแอตมิราลตี เลขที่ ๒๕๑๕ ฉบับปี ค.ศ. ๑๙๖๘ ต่อท้ายนี้

ข้อ ๒

คู่ภาคีตกลงที่จะแก้ปัญหาต่อไปในเรื่องการแบ่งเขตไหล่ทวีปในอ่าวไทย ระหว่างประเทศทั้งสองโดยการเจรจาและโดยสันติวิธีอื่น ๆ ที่คู่ภาคีตกลงกัน ตามหลักกฎหมายและการปฏิบัติระหว่างประเทศ โดยเฉพาะอย่างยิ่งที่ได้ตกลงกันในบันทึกที่ตกลงกันของการประชุมเจ้าหน้าที่มาเลเซีย-ไทย เกี่ยวกับการแบ่งเขตไหล่ทวีประหว่างมาเลเซียและประเทศไทยในอ่าวไทยและในทะเลจีนตอนใต้ เมื่อวันที่ ๒๗ กุมภาพันธ์-๑ มีนาคม พ.ศ. ๑๙๗๘ และด้วยเจตนารมณ์แห่งมิตรภาพและเพื่อผลประโยชน์แห่งความมั่นคงร่วมกัน

ข้อ ๓

๑ ให้จัดตั้งองค์กรร่วมซึ่งจะมีชื่อว่า "องค์กรร่วมมาเลเซีย-ไทย" (ต่อไปเรียกว่า "องค์กรร่วม") เพื่อวัตถุประสงค์ในการสำรวจและการแสวงประโยชน์จากทรัพยากรธรรมชาติในพื้นที่ดินใต้ทะเลและใต้ดินที่ไม่มีชีวิตในบริเวณเหลื่อมล้ำกัน เป็นเวลาห้าสิบปีนับจากวันที่บันทึกฉบับนี้มีผลใช้บังคับ

๒ องค์กรร่วม จะรวบรวมสิทธิและความรับผิดชอบแทนคู่ภาคีทั้งสอง ในการสำรวจและแสวงประโยชน์จากทรัพยากรธรรมชาติในพื้นที่ดินใต้ทะเลและใต้ดินที่ไม่มีชีวิตในบริเวณเหลื่อมล้ำกัน (ต่อไปเรียกว่า พื้นที่พัฒนาร่วม) และเพื่อการพัฒนา การควบคุม และการบริหาร พื้นที่พัฒนาร่วมกันด้วย การรวบรวมสิทธิและความรับผิดชอบเหล่านี้โดย

จุฬาลงกรณ์มหาวิทยาลัย

องค์การร่วมจะไม่กระทบกระเทือนหรือวิรอนในทางใด ๆ ซึ่งความถูกต้องของสัมปทานหรือใบอนุญาตที่ออกให้ก่อนความตกลงฉบับนี้ หรือความตกลงหรือข้อตกลงที่ได้ทำขึ้นก่อนความตกลงฉบับนี้ โดยภาคีแต่ละฝ่าย

๓. องค์การร่วมจะประกอบด้วย

ก. ประธานร่วมสองคน จากประเทศละหนึ่งคน และ

ข. สมาชิกจำนวนเท่ากันจากแต่ละประเทศ

๔. ภายใต้บทบัญญัติของบันทึกฉบับนี้ องค์การร่วมจะใช้อำนาจทั้งปวง แทนคู่

ภาคีเท่าที่จำเป็นสำหรับ หรือเป็นผลจาก หรือเกี่ยวเนื่องกับการปฏิบัติหน้าที่เกี่ยวกับการสำรวจและการแสวงประโยชน์จากทรัพยากรธรรมชาติที่ไม่มีชีวิตในพื้นดินใต้ทะเลและใต้ดินในพื้นที่ที่พัฒนาาร่วมกัน

๕. ค่าใช้จ่ายทั้งปวงที่เกิดขึ้นและผลประโยชน์ ที่องค์การร่วมได้รับจากกิจกรรม

ที่ดำเนินไปในพื้นที่พัฒนาาร่วม คู่ภาคีจะร่วมรับผิดชอบและแบ่งปันโดยเท่าเทียมกัน

๖. หากโครงสร้างทางธรณีวิทยาหรือบ่อเดียวกันใด ๆ ของปิโตรเลียมหรือก๊าซ

ธรรมชาติหรือแหล่งแร่แหล่งเดียวในลักษณะใด ๆ ซึ่งแผ่ขยายเลยออกนอกเขตของบริเวณ

พัฒนาาร่วมตามที่ได้กำหนดไว้ในข้อ ๑ องค์การร่วม และภาคีที่เกี่ยวข้อง จะแจ้งข้อมูลทั้งหมด

เกี่ยวกับเรื่องนี้ให้ทราบซึ่งกันและกัน และจะหาทางตกลงกันเกี่ยวกับวิธีที่จะแสวงประโยชน์

จากโครงสร้าง บ่อ หรือแหล่งแร่ที่มีประสิทธิภาพที่สุด และค่าใช้จ่ายซึ่งเกิดจาก และผล

ประโยชน์ซึ่งได้มาจากการนี้จะแบ่งกันอย่างเที่ยงธรรม

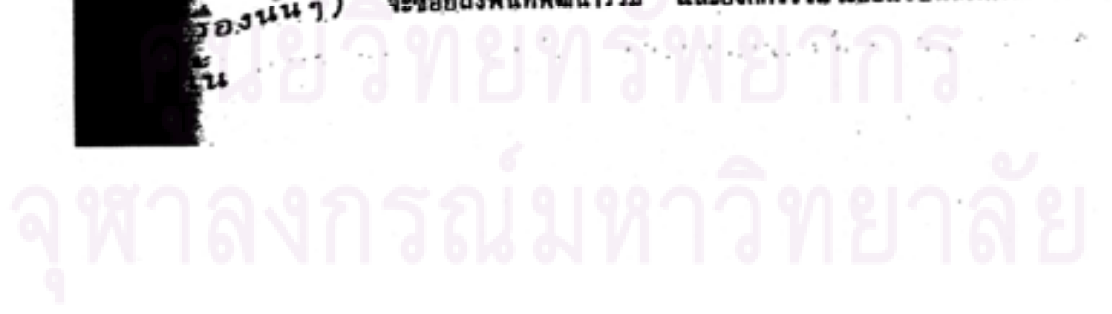
ข้อ ๕ (

๑. สิทธิที่ได้ ให้และใช้โดยเจ้าหน้าที่ แห่งชาติ ของภาคี แต่ละฝ่าย ในเรื่องการ

สำรวจ การเดินเรือ การสำรวจทางอุทกศาสตร์และสมุทรศาสตร์ การป้องกันและควบคุม

พิษทางทะเล และเรื่องอื่นในทำนองเดียวกัน (รวมทั้งอำนาจบังคับการทั้งปวงที่เกี่ยวข้อง

ข้ออื่น ๆ) จะขอยึดพื้นที่พัฒนาาร่วม และองค์การร่วมจะยอมรับและเคารพสิทธิเช่น



๒. ภาติ ทั้งสอง จะทำ ข้อตกลงเกี่ยวกับ ความมั่นคง ร่วม และประสาน ใน พื้นที่ พัฒนาร่วม

ข้อ ๕

เขตอำนาจศาลทางอาญาของมาเลเซียในพื้นที่พัฒนาร่วมจะครอบคลุมถึงพื้นที่ที่มีเขตล้อมเป็นเส้นตรงเชื่อมกันโดยจุดพิกัดดังต่อไปนี้

A 6° 50' .0 เหนือ	102° 21' .2 ตะวันออก
X 7° 35' .0 เหนือ	103° 23' .0 ตะวันออก
D 7° 22' .0 เหนือ	103° 42' .5 ตะวันออก
E 7° 20' .0 เหนือ	103° 39' .0 ตะวันออก
F 7° 03' .0 เหนือ	103° 06' .0 ตะวันออก
G 6° 53' .0 เหนือ	102° 34' .0 ตะวันออก

เขตอำนาจศาลทางอาญาของราชอาณาจักรไทยในบริเวณพัฒนาร่วม จะครอบคลุมถึงพื้นที่ที่มีเขตล้อมเป็นเส้นตรงเชื่อมกันโดยจุดพิกัดดังต่อไปนี้

A 6° 50' .0 เหนือ	102° 21' .2 ตะวันออก
B 7° 10' .25 เหนือ	102° 29' .0 ตะวันออก
C 7° 49' .0 เหนือ	103° 02' .5 ตะวันออก
X 7° 35' .0 เหนือ	103° 23' .0 ตะวันออก

พื้นที่เขตอำนาจศาลทางอาญาของภาติทั้งสองที่กำหนดภายใต้ข้อนี้จะไม่อาจแปลความหมายว่า เป็นการแสดงเส้นเขตไหล่ทวีประหว่างประเทศทั้งสองในพื้นที่พัฒนาร่วม ซึ่งเส้นเขตไหล่ทวีปนั้น จะกำหนดตามที่ระบุไว้ในข้อ ๒ และข้อกำหนดเขตอำนาจศาลทางอาญา เช่นว่า นั้นจะไม่ กระทบ กระเทือน ต่อสิทธิ อำนาจอธิปไตย ของภาติ แต่ละฝ่าย ในพื้นที่ พัฒนาร่วม

ข้อ ๖

๑. ถึงแม้ว่าจะมีข้อ ๓ ถ้าภาติทั้งสองสามารถหาข้อคิดเห็นที่พอใจสำหรับ ปัญหาการแบ่งเขตไหล่ทวีปได้ก่อนระยะเวลาที่กำหนดเอาไว้ข้างต้น ให้เลิกองค์การร่วมนี้

ศูนย์วิจัยทรัพยากรทางทะเลและชายฝั่ง  
จุฬาลงกรณ์มหาวิทยาลัย



และบรรดาทรัพย์สินที่ได้จัดการ และความรับผิดชอบต่าง ๆ ที่องค์กรก่อน ให้คู่ภาคีแบ่งและรับผิดชอบเท่า ๆ กันอย่างไรก็ดี ถ้าคู่ภาคีทั้งสองตกลง ก็อาจพิจารณาทำข้อตกลงใหม่ได้

๒. ถ้าไม่สามารถหาข้ออื่นเป็นที่พอใจสำหรับปัญหาการแบ่งเขตให้ทวีปได้ ภายในระยะเวลาห้าสิบปีดังกล่าว ให้ใช้ข้อตกลงที่มีอยู่นี้ต่อไป หลังจากกำหนดระยะเวลาดังกล่าวแล้ว

ข้อ ๑

ให้ระงับข้อแตกต่างหรือข้อพิพาทใด ๆ อันเกิดจากการตีความหรือการดำเนินการให้เป็นไปตามบทบัญญัติในบันทึกฉบับนี้โดยสันติ ด้วยการหารือกัน หรือการเจรจากระหว่างคู่ภาคี

ข้อ ๒

บันทึกฉบับนี้จะเริ่มมีผลใช้บังคับในวันแรกเปลี่ยนสัตยาบันสาวกัน  
ทำเป็นฉบับ ณ เชียงใหม่ เมื่อวันที่สิบเอ็ดกุมภาพันธ์ในปีคริสตศักราชหนึ่ง  
พันเก้าร้อยเจ็ดสิบเก้า เป็นภาษาไทย ภาษามาเลย์ และภาษาอังกฤษ

ในกรณีที่ตีความเพี้ยนขัดแย้งกัน ให้ถือตีความภาษาอังกฤษเป็นสำคัญ

สำหรับราชอาณาจักรไทย

พลเอก เกรียงศักดิ์ ชมะนันทน์

นายกรัฐมนตรี

สำหรับมาเลเซีย

ดาโต๊ะ ฮุสเซน ออหม์

นายกรัฐมนตรี

ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

พระราชบัญญัติ  
องค์การร่วมไทย-มาเลเซีย  
พ.ศ. ๒๕๓๓

ภูมิพลอดุลยเดช ป.ร.  
ให้ไว้ ณ วันที่ ๒๙ สิงหาคม พ.ศ. ๒๕๓๓  
เป็นปีที่ ๔๕ ในรัชกาลปัจจุบัน

พระบาทสมเด็จพระปรมินทรมหาภูมิพลอดุลยเดช มีพระบรมราชโองการโปรดเกล้าฯ ให้ประกาศว่า

โดยที่เป็นการสมควรมีกฎหมายว่าด้วยองค์การร่วมไทยมาเลเซีย

จึงทรงพระกรุณาโปรดเกล้าฯ ให้ตราพระราชบัญญัติขึ้นไว้โดยคำแนะนำและยินยอมของรัฐสภา ดังต่อไปนี้

มาตรา ๑ พระราชบัญญัตินี้เรียกว่า “พระราชบัญญัติองค์การร่วมไทย-มาเลเซีย พ.ศ. ๒๕๓๓”

มาตรา ๒ พระราชบัญญัตินี้ให้ใช้บังคับตั้งแต่วันถัดจากวันประกาศในราชกิจจานุเบกษาเป็นต้นไป

มาตรา ๓ บรรดาบทกฎหมาย กฎ หรือข้อบังคับอื่นใดในส่วนที่บัญญัติไว้แล้วในพระราชบัญญัตินี้ หรือซึ่งขัดหรือแย้งกับบทแห่งพระราชบัญญัตินี้ ให้ใช้พระราชบัญญัตินี้แทน

มาตรา ๔ ในพระราชบัญญัตินี้ เว้นแต่ข้อความจะแสดงให้เห็นเป็นอย่างอื่น “บันทึกความเข้าใจ ค.ศ. ๑๙๗๕ (พ.ศ. ๒๕๒๒)” หมายความว่า บันทึกความเข้าใจระหว่างราชอาณาจักรไทยและมาเลเซียเกี่ยวกับการจัดตั้งองค์การร่วมเพื่อแสวงประโยชน์จากทรัพยากรในพื้นที่ดินใต้ทะเลในบริเวณที่กำหนดของไหล่ทวีปของประเทศทั้งสองในอ่าวไทย ฉบับลงนามวันที่ ๒๑ กุมภาพันธ์ ค.ศ. ๑๙๗๕ (พ.ศ. ๒๕๒๒)

“ความตกลง” หมายความว่า ความตกลงว่าด้วยธรรมเนียมและเรื่องอื่นๆ ที่เกี่ยวเนื่องกับการจัดตั้งองค์การร่วมไทย-มาเลเซีย ซึ่งได้ลงนามโดยรัฐบาลแห่งราชอาณาจักรไทยและรัฐบาลแห่งมาเลเซีย เมื่อวันที่ ๓๐ พฤษภาคม พ.ศ. ๒๕๓๓ ณ กรุงกัวลาลัมเปอร์ ประเทศมาเลเซีย

**“รัฐบาลทั้งสอง”** หมายความว่า รัฐบาลแห่งราชอาณาจักรไทยและรัฐบาลแห่งมาเลเซีย

**“องค์กรร่วม”** หมายความว่า องค์กรร่วมไทย-มาเลเซีย

**“กองทุน”** หมายความว่า กองทุนองค์กรร่วมไทย-มาเลเซียตามมาตรา ๑๒

**“พื้นที่พัฒนาร่วม”** หมายความว่า พื้นที่ในบริเวณที่กำหนดของไหล่ทวีปของราชอาณาจักรไทยและมาเลเซียในอ่าวไทยตามมาตรา ๕

**“เส้นแบ่งเขตอำนาจ”** หมายความว่า เส้นตรงซึ่งเชื่อมจุดพิกัดดังต่อไปนี้

(เอ) ๖ องศา ๕๐.๐ ลิปดา เหนือ ๑๐๒ องศา ๒๑.๒ ลิปดา ตะวันออก

(เอ็กซ์) ๗ องศา ๑๕.๐ ลิปดา เหนือ ๑๐๓ องศา ๒๓.๐ ลิปดา ตะวันออกซึ่ง

แบ่งเขตอำนาจทางแพ่งและทางอาญาในพื้นที่พัฒนาร่วม

**“ทรัพยากรธรรมชาติ”** หมายความว่า ทรัพยากรธรรมชาติใดๆ ที่ไม่มีชีวิตรวมทั้งแร่ น้ำมัน แร่ดิบ และโลหะใดๆ

**“ปิโตรเลียม”** หมายความว่า น้ำมัน แร่ดิบใดๆ หรือไฮโดรคาร์บอนอื่นใดและก๊าซธรรมชาติซึ่งอยู่ในสภาพอันเป็นธรรมชาติและก๊าซธรรมชาติเหลวที่ปากหลุม รวมทั้งหินปิทูเมนและทรัพยากรอื่นที่สะสมอยู่เป็นชั้น ๆ ซึ่งสามารถจะสกัดน้ำมันออกมาได้

**“รัฐมนตรี”** หมายความว่า รัฐมนตรีผู้รักษาการตามพระราชบัญญัตินี้

มาตรา ๕ ให้รัฐมนตรีว่าการกระทรวงพลังงาน\*รักษาการตามพระราชบัญญัตินี้ และให้มีอำนาจแต่งตั้งพนักงานเจ้าหน้าที่กับออกกฎกระทรวงเพื่อปฏิบัติการตามพระราชบัญญัตินี้

กฎกระทรวงนั้น เมื่อได้ประกาศในราชกิจจานุเบกษาแล้ว ให้ใช้บังคับได้

#### หมวด ๑

#### องค์กรร่วมไทย-มาเลเซีย

มาตรา ๖ ให้จัดตั้งองค์กรขึ้นองค์กรหนึ่ง เรียกว่า “องค์กรร่วมไทย-มาเลเซีย”

ให้องค์กรร่วมเป็นนิติบุคคล และมีภูมิลำเนาอยู่ในราชอาณาจักรไทยและมาเลเซีย

ภายใต้บังคับและเพื่อวัตถุประสงค์แห่งพระราชบัญญัตินี้ ให้องค์กรร่วมมีอำนาจทำสัญญา ได้มา ซื้อ รับเอา ถือเอาประโยชน์ซึ่งสังหาริมทรัพย์และอสังหาริมทรัพย์ทุกรูปแบบ ยกเว้นการถือกรรมสิทธิ์ในที่ดิน และมีอำนาจ โอนสิทธิ มอบ คืน ก่อให้เกิดภาระติดพัน จำนอง มอบช่วง โอน หรือจำหน่าย โดยวิธีอื่นใด หรือจัดการเกี่ยวกับสังหาริมทรัพย์หรืออสังหาริมทรัพย์ใด ๆ หรือผลประโยชน์ใด ๆ ในทรัพย์สินดังกล่าว ซึ่งเป็นขององค์กรร่วม ทั้งนี้ ตามข้อกำหนดที่องค์กรร่วมจะเห็นสมควร

มาตรา ๗ ให้องค์กรร่วมมีอำนาจและปฏิบัติหน้าที่ตามที่จำเป็นสำหรับการดำเนินงานตามหน้าที่ของตน และสำหรับการใช้สิทธิและเอกสิทธิ์ของตนภายใต้และเท่าที่ไม่ขัดต่อพระราชบัญญัตินี้

มาตรา ๘ โดยผลแห่งพระราชบัญญัตินี้ องค์กรร่วมได้รับมอบอำนาจและเข้าถือเอาซึ่งสิทธิแต่ผู้เดียว อำนาจ ความเป็นอิสระ และเอกสิทธิ์ในการสำรวจและแสวงประโยชน์จากทรัพยากรธรรมชาติ โดยเฉพาะอย่างยิ่ง บิโตรเลียม ในพื้นที่พัฒนาร่วม

### หมวด ๒ พื้นที่พัฒนาร่วม

มาตรา ๙ พื้นที่พัฒนาร่วม คือ บริเวณที่กำหนดขอบเขตโดยเส้นตรงซึ่งเชื่อมจุดพิกัต ดังต่อไปนี้

- (เอ) ๖ องศา ๕๐.๐ ลิปดา เหนือ ๑๐๒ องศา ๒๑.๒ ลิปดา ตะวันออก
- (บี) ๗ องศา ๑๐.๒๕ ลิปดา เหนือ ๑๐๒ องศา ๒๙.๐ ลิปดา ตะวันออก
- (ซี) ๗ องศา ๔๙.๐ ลิปดา เหนือ ๑๐๓ องศา ๐๒.๕ ลิปดา ตะวันออก
- (ดี) ๗ องศา ๒๒.๐ ลิปดา เหนือ ๑๐๓ องศา ๔๒.๕ ลิปดา ตะวันออก
- (อี) ๗ องศา ๒๐.๐ ลิปดา เหนือ ๑๐๓ องศา ๓๙.๐ ลิปดา ตะวันออก
- (เอฟ) ๗ องศา ๐๓.๐ ลิปดา เหนือ ๑๐๓ องศา ๐๖.๐ ลิปดา ตะวันออก
- (จี) ๖ องศา ๕๓.๐ ลิปดา เหนือ ๑๐๒ องศา ๓๔.๐ ลิปดา ตะวันออกและแสดง

ไว้ในส่วนที่เกี่ยวข้องของแผนที่เดินเรืออังกฤษ เลขที่ ๒๔๑๔ ฉบับ ค.ศ. ๑๙๖๗ (พ.ศ. ๒๕๑๐) ดังปรากฏในแผนที่ท้ายพระราชบัญญัตินี้

### หมวด ๓ คำภาคหลวง

มาตรา ๑๐ ให้องค์กรร่วมชำระคำภาคหลวงแก่รัฐบาลทั้งสอง แต่ละฝ่ายในอัตราฝ่ายละร้อยละห้าของผลผลิตรวมของบิโตรเลียม ตามวิธีการและเวลาที่กำหนดโดยกฎกระทรวง

### หมวด ๔ การเงิน

มาตรา ๑๑ ค่าใช้จ่ายทั้งปวงที่เกิดขึ้นและผลประโยชน์ที่องค์กรร่วมได้รับจากกิจกรรมที่ดำเนินไปในพื้นที่พัฒนาร่วม รัฐบาลทั้งสองจะรับภาระและแบ่งปันเท่า ๆ กัน

ในระหว่างที่องค์กรร่วมยังไม่มีรายได้เพียงพอที่จะใช้เป็นการใช้จ่ายประจำปีในการดำเนินกิจการรัฐบาลแห่งราชอาณาจักรไทยจะชำระเงินเข้ากองทุนเป็นรายปีตามที่กำหนดตามความตกลง ทั้งนี้ ตามจำนวนเงินที่เท่ากับกับจำนวนเงินที่รัฐบาลแห่งมาเลเซียจะชำระด้วย

**หมวด ๔**  
**กองทุนองค์กรร่วมไทย-มาเลเซีย**

มาตรา ๑๒ เพื่อวัตถุประสงค์แห่งพระราชบัญญัตินี้และความตกลง ให้จัดตั้งกองทุนขึ้นกองทุนหนึ่ง เรียกว่า “กองทุนองค์กรร่วมไทย-มาเลเซีย” โดยให้องค์กรร่วมเป็นผู้บริหารและควบคุม

สินทรัพย์ของกองทุนประกอบด้วย

(๑) เงินอุดหนุนที่ได้จากรัฐบาลทั้งสองตามความตกลงและตามมาตรา ๑๑ วรรคสอง

(๒) เงินที่ได้จากการดำเนินโครงการ แผนงานหรือกิจการลงทุนใด ๆ ที่ใช้เงินกองทุน

(๓) เงินที่ได้จากหรือเกิดจากทรัพย์สิน การลงทุน การจ้างงหรือคำภะระใด ๆ ที่ได้มาหรือตกเป็นขององค์กรร่วม

(๔) เงินที่องค์กรร่วมยืมมาเพื่อปฏิบัติตามพันธกรณี หรือเพื่อปฏิบัติหน้าที่ใด ๆ และ

(๕) เงินหรือทรัพย์สินอื่นใดที่จะพึงชำระให้แก่หรือตกเป็นขององค์กรร่วมไม่ว่าด้วยวิธีใดและในเรื่องใดที่เกี่ยวข้องกับอำนาจและหน้าที่ขององค์กรร่วม

มาตรา ๑๓ กองทุนสามารถนำไปใช้เพื่อ

(๑) เป็นค่าใช้จ่ายที่เกิดจากการที่องค์กรร่วมปฏิบัติหน้าที่และใช้อำนาจตามบทบัญญัติว่าด้วยงบประมาณที่ได้รับความเห็นชอบแล้ว และภายใต้บังคับแห่งกฎกระทรวงที่ออกตามมาตรา ๑๔

(๒) ชำระเงินใด ๆ ที่องค์กรร่วมยืมมาตามมาตรา ๑๔ วรรคหนึ่ง (๓) รวมทั้งดอกเบี้ยและคำภะระอื่น ๆ อันเป็นผลจากการยืมนั้น

(๓) การลงทุนตามที่องค์กรร่วมจะตัดสินใจทำ โดยต้องได้รับความเห็นชอบจากรัฐบาลทั้งสอง และ

(๔) การชำระเงินในจำนวนเท่า ๆ กันให้แก่รัฐบาลทั้งสอง จากรายได้ซึ่งองค์กรร่วมได้รับหลังจากหักค่าใช้จ่ายตาม (๑) และ (๒) รวมทั้งค่าใช้จ่ายอื่น ๆ ตามที่รัฐบาลทั้งสองจะได้ตกลงกัน ทั้งนี้ ภายใต้บังคับมาตรา ๑๔

มาตรา ๑๔ ให้องค์กรร่วมตั้งและจัดการทุนสำรองในกองทุนตามข้อกำหนดและเงื่อนไขที่รัฐบาลทั้งสองจะได้ร่วมกันกำหนดขึ้น

มาตรา ๑๕ การกระทำดังต่อไปนี้ องค์การร่วมจะกระทำมิได้ เว้นแต่จะได้รับความเห็นชอบจากรัฐบาลทั้งสองก่อน

- (๑) ให้ความช่วยเหลือทางการเงินแก่บริษัท คณะบุคคล หรือบุคคลใด ๆ โดยเข้าถือหุ้นหรือซื้อหุ้นกู้ หรือโดยวิธีให้กู้ยืมหรือปล่อยเงินกู้ ให้เงินช่วยเหลือหรือโดยวิธีอื่น
- (๒) ซื้อ จัดจำหน่ายและรับประกันการจำหน่าย หรือทำให้ได้มาโดยวิธีอื่นใดซึ่งหุ้นประเภทใด ๆ ในบริษัทมหาชนหรือบริษัทเอกชน หรือ
- (๓) ยืมเงิน ค่าประกันหรือรับจะชดใช้ค่าสินไหมทดแทนที่เกี่ยวข้องกับความรับผิดทางการเงิน

ในการให้ความเห็นชอบตามวรรคหนึ่ง รัฐบาลทั้งสองจะร่วมกันวางข้อกำหนดและเงื่อนไขตามที่เห็นสมควรก็ได้

มาตรา ๑๖ บทบัญญัติทั้งหลายในพระราชบัญญัตินี้ไม่ก่อให้เกิดความรับผิดชอบใด ๆ แก่รัฐบาลแห่งราชอาณาจักรไทยหรือรัฐบาลแห่งมาเลเซีย สำหรับความรับผิดใด ๆ ขององค์การร่วม

#### หมวด ๖

#### สัญญาเพื่อการสำรวจและแสวงประโยชน์

มาตรา ๑๗ ไม่ว่าจะมิถุนายนอื่นใดบัญญัติเป็นลายลักษณ์อักษรไว้อย่างไรก็ตาม ห้ามมิให้ผู้ใดนอกจากองค์การร่วมประกอบธุรกิจการสำรวจและแสวงประโยชน์จากทรัพยากรธรรมชาติใด ๆ รวมทั้งปิโตรเลียมในพื้นที่พัฒนาร่วม เว้นแต่จะได้มีการทำสัญญาระหว่างองค์การร่วมกับผู้นั้นเพื่อสำรวจและแสวงประโยชน์จากทรัพยากรธรรมชาติดังกล่าว

สัญญาดังกล่าวจะต้องได้รับความเห็นชอบจากรัฐบาลทั้งสองก่อน ภายใต้บังคับของวรรคสี่ ในกรณีที่สัญญาดังกล่าวเป็นสัญญาเพื่อสำรวจและแสวงหาประโยชน์จากปิโตรเลียม สัญญานั้นจะต้องเป็นสัญญาแบ่งปันผลผลิตและนอกจากเรื่องอื่น ๆ ต้องมีข้อกำหนดและเงื่อนไข ดังต่อไปนี้ด้วย

(๑) เพื่อวัตถุประสงค์ตามมาตรา ๑๐ ผู้ได้รับสัญญาต้องชำระค่าภาคหลวงเป็นจำนวนร้อยละสิบของผลผลิตรวมของปิโตรเลียมให้แก่องค์การร่วมตามวิธีการและเวลาที่จะกำหนดในสัญญา

(๒) ให้ผู้ได้รับสัญญาใช้อัตราร้อยละห้าสิบของผลผลิตรวมของปิโตรเลียมเพื่อวัตถุประสงค์ในการหักค่าใช้จ่ายสำหรับการประกอบกิจการปิโตรเลียม

(๓) ให้ถือว่าส่วนที่เหลือของผลผลิตรวมของปิโตรเลียมหลังจากการหักเพื่อวัตถุประสงค์ตาม (๑) และ (๒) แล้ว เป็นปิโตรเลียมส่วนที่เป็นกำไร และให้แบ่งให้แก่องค์การร่วมและผู้ได้รับสัญญาเท่า ๆ กัน

(๔) สัญญาจะมีอายุไม่เกินสามสิบห้าปี แต่ต้องไม่เกินอายุของการใช้บังคับของ  
ความตกลง

(๕) ให้บรรดาค่าใช้จ่ายทั้งปวงในการประกอบกิจการปิโตรเลียมตกเป็นภาระ  
ของผู้ได้รับสัญญาและภายใต้บังคับของ (๒) ให้หักจากผลผลิตได้

(๖) จำนวนเงินขั้นต่ำที่ผู้ได้รับสัญญาต้องใช้เป็นค่าใช้จ่ายในการประกอบกิจการ  
ปิโตรเลียมตามสัญญาในฐานะข้อผูกพันขั้นต่ำ ตามที่ตกลงกันระหว่างองค์การร่วมและผู้ได้รับ  
สัญญา

(๗) ผู้ได้รับสัญญาต้องชำระเงินบำรุงการวิจัยให้แก่องค์การร่วมในอัตราร้อยละ  
ศูนย์จุดห้าของจำนวนรวมแห่งส่วนของผลผลิตรวมที่ใช้เพื่อวัตถุประสงค์ในการหักค่าใช้จ่ายตาม  
(๒) และส่วนแบ่งของปิโตรเลียมส่วนที่เป็นกำไรของผู้ได้รับสัญญาตาม (๓) ตามวิธีการและเวลา  
ที่จะได้กำหนดโดยองค์การร่วม แต่ทั้งนี้ การชำระเงินดังกล่าวจะหักจากผลผลิตมิได้ และ

(๘) ข้อพิพาทหรือข้อขัดแย้งใด ๆ ซึ่งเกิดจากหรือเกี่ยวเนื่องกับสัญญาซึ่งไม่  
สามารถตกลงกันได้โดยฉันทามติ ให้เสนอต่ออนุญาโตตุลาการ ซึ่งมีองค์คณะที่ประกอบด้วย  
อนุญาโตตุลาการ ๓ คน เพื่อชี้ขาด โดยคู่กรณีเป็นผู้ตั้งฝ่ายละหนึ่งคน และให้คู่กรณีร่วมกันตั้งคน  
ที่สาม หากคู่กรณีไม่อาจตกลงกันได้ในการเลือกอนุญาโตตุลาการคนที่สามภายในระยะเวลาที่  
กำหนดไว้ ให้เสนอเรื่องไปยังคณะกรรมการกฤษฎีกาการค้าระหว่างประเทศของสหประชาชาติ  
(UNCITRAL) เพื่อตั้งอนุญาโตตุลาการคนที่สาม กระบวนพิจารณาของอนุญาโตตุลาการให้  
เป็นไปตามกฎของคณะกรรมการการค้าดังกล่าว สถานที่พิจารณาของอนุญาโตตุลาการให้อยู่ที่  
กรุงเทพมหานครหรือกรุงกัวลาลัมเปอร์ หรือสถานที่อื่นใดตามแต่คู่กรณีจะตกลงกัน

ให้องค์กรร่วมเปลี่ยนแปลงอัตราตาม (๒) (๓) และ (๗) ของวรรคสามสำหรับ  
สัญญาใด ๆ ได้โดยความเห็นชอบของรัฐบาลทั้งสอง ทั้งนี้ การเปลี่ยนแปลงใด ๆ ดังกล่าวในสัญญา  
ที่ยังมีผลใช้บังคับอยู่จะกระทำมิได้ เว้นแต่ผู้ได้รับสัญญาจะตกลงยินยอมด้วย

เพื่อวัตถุประสงค์แห่งมาตรานี้ “ผลผลิตรวม” เมื่อเกี่ยวกับก๊าซให้หมายถึงรายได้  
ทั้งหมดจากการขายก๊าซ

#### หมวด ๗

#### กฎกระทรวง

มาตรา ๑๘ รัฐมนตรีโดยความเห็นชอบของรัฐบาลทั้งสองมีอำนาจออก  
กฎกระทรวงได้ในเรื่องดังต่อไปนี้

(๑) การประกอบการ หรือดำเนินธุรกิจหรือบริการใด ๆ ที่เกี่ยวเนื่องกับการ  
สำรวจและแสวงประโยชน์จากทรัพยากรธรรมชาติในพื้นที่พัฒนาร่วม

(๒) การชำระเงินใด ๆ ที่จะต้องชำระแก่รัฐบาลทั้งสองจากองค์การร่วมตาม  
มาตรา ๑๐ และมาตรา ๑๓(๔)

- (๓) ข้อกำหนดและเงื่อนไขในการแต่งตั้ง และการจ่ายค่าตอบแทนค่าเดินทาง และเบี้ยเลี้ยงที่ต้องจ่ายให้แก่ประธานร่วมและสมาชิกอื่นขององค์กรร่วม
- (๔) วิธีการสำหรับยื่นข้อเสนอลงและตกลงทำสัญญาใด ๆ ที่อาจทำตามมาตรา ๑๗ รวมทั้งข้อกำหนดและเงื่อนไขที่อาจมีในสัญญานั้น ๆ
- (๕) การทำบัญชีและบันทึกหลักฐานอื่น ๆ ที่ถูกต้องของกิจกรรมในเชิงธุรกิจ และกิจการต่าง ๆ ขององค์กรร่วม ตามหลักการทำบัญชีอันเป็นที่ยอมรับโดยทั่วไป
- (๖) การจัดทำงบการเงินประจำปี และการจัดสรรกำไรตามบทบัญญัติแห่งพระราชบัญญัตินี้
- (๗) การสอบบัญชีและการเสนอบัญชีต่อรัฐบาลทั้งสองหลังจากนั้น
- (๘) การจัดทำและการเสนองบประมาณประจำปีต่อรัฐบาลทั้งสอง
- (๙) หลักเกณฑ์และวิธีการสำหรับการสำรวจและแสวงประโยชน์จากปิโตรเลียมในพื้นที่พัฒนาร่วม และ
- (๑๐) เรื่องอื่นใดเพื่อวัตถุประสงค์ในอันที่จะทำให้บทบัญญัติแห่งพระราชบัญญัตินี้บังเกิดผล
- ทั้งนี้ กฎกระทรวงในส่วนที่เกี่ยวกับเรื่องตาม (๑) (๔) (๕) (๖) (๗) (๘) และ (๙) จะออกได้เมื่อได้หารือองค์กรร่วมแล้ว

#### หมวด ๘

พนักงานเจ้าหน้าที่ เจ้าหน้าที่ และเขตอำนาจศาล

มาตรา ๑๙ ให้สมาชิก เจ้าหน้าที่ ลูกจ้าง และตัวแทนขององค์กรร่วม และพนักงานเจ้าหน้าที่ซึ่งรัฐมนตรีแต่งตั้งตามมาตรา ๕ เป็นเจ้าพนักงานตามประมวลกฎหมายอาญา

มาตรา ๒๐ ไม่ว่าจะมิกฎหมายอื่นใดบัญญัติเป็นลายลักษณ์อักษรไว้อย่างไรก็ตาม ให้ศาลจังหวัดสงขลา ศาลแพ่ง หรือศาลอาญา มีเขตอำนาจที่จะพิจารณาพิพากษาคดีตามพระราชบัญญัตินี้หรือตามกฎหมายใด ๆ ที่ออกตามพระราชบัญญัตินี้

เพื่อวัตถุประสงค์ในการใช้เขตอำนาจศาลเหนือความผิดใด ๆ ที่ได้กระทำตามพระราชบัญญัตินี้ หรือตามกฎหมายที่ออกตามมาตรา ๑๘ ให้นำมาตรา ๒๑ วรรคสอง และมาตรา ๒๑ วรรคหก (๒) และ (๔) มาใช้บังคับ

#### หมวด ๙

เขตอำนาจ

มาตรา ๒๑ ภายใต้บังคับวรรคสอง และวรรคสาม ราชอาณาจักรไทยยังคงมีและใช้เขตอำนาจเหนือพื้นที่พัฒนาร่วมต่อไป



## เขตอำนาจทางแพ่งและทางอาญาของ

(๑) ราชอาณาจักรไทยในพื้นที่พัฒนาร่วมคลุมถึงบริเวณที่กำหนดขอบเขตโดยเส้นตรงซึ่งเชื่อมจุดพิกัด ดังต่อไปนี้

- (เอ) ๖ องศา ๕๐.๐ ลิปดา เหนือ ๑๐๒ องศา ๒๑.๒ ลิปดา ตะวันออก
- (บี) ๗ องศา ๑๐.๒๕ ลิปดา เหนือ ๑๐๒ องศา ๒๕.๐ ลิปดา ตะวันออก
- (ซี) ๗ องศา ๔๕.๐ ลิปดา เหนือ ๑๐๓ องศา ๐๒.๕ ลิปดา ตะวันออก
- (เอ็กซ์) ๗ องศา ๓๕.๐ ลิปดา เหนือ ๑๐๓ องศา ๒๓.๐ ลิปดา ตะวันออก

(๒) มาเลเซียในพื้นที่พัฒนาร่วมคลุมถึงบริเวณที่กำหนดขอบเขตโดยเส้นตรงซึ่งเชื่อมจุดพิกัดดังต่อไปนี้

- (เอ) ๖ องศา ๕๐.๐ ลิปดา เหนือ ๑๐๒ องศา ๒๑.๒ ลิปดา ตะวันออก
- (เอ็กซ์) ๗ องศา ๓๕.๐ ลิปดา เหนือ ๑๐๓ องศา ๒๓.๐ ลิปดา ตะวันออก
- (ดี) ๗ องศา ๒๒.๐ ลิปดา เหนือ ๑๐๓ องศา ๔๒.๕ ลิปดา ตะวันออก
- (อี) ๗ องศา ๒๐.๐ ลิปดา เหนือ ๑๐๓ องศา ๓๕.๐ ลิปดา ตะวันออก
- (เอฟ) ๗ องศา ๐๓.๐ ลิปดา เหนือ ๑๐๓ องศา ๐๖.๐ ลิปดา ตะวันออก
- (จี) ๖ องศา ๕๓.๐ ลิปดา เหนือ ๑๐๒ องศา ๓๕.๐ ลิปดา ตะวันออก

บทบัญญัติแห่งพระราชบัญญัตินี้ ไม่มีผลกระทบต่อสิทธิอธิปไตยของราชอาณาจักรไทยเหนือพื้นที่พัฒนาร่วมแต่อย่างใด และการสะเขตอำนาจใด ๆ ตามมาตรานี้ ไม่มีผลบังคับ และไม่มีผลเกินอายุของการใช้บังคับของความตกลง

การที่ราชอาณาจักรไทยยินยอมให้มาเลเซียใช้เขตอำนาจทางแพ่งและทางอาญาตามวรรคสอง (๒) และยอมให้ใช้เขตอำนาจในเรื่องที่เกี่ยวกับศุลกากรและสรรพสามิต และภาษีอากรภายในพื้นที่พัฒนาร่วมต่อไป ให้เป็นไปตามเงื่อนไขแห่งการรับรองในลักษณะต่างตอบแทนต่อสิทธิของราชอาณาจักรไทยตามวรรคสอง (๑)

เขตอำนาจใด ๆ ที่เป็นของราชอาณาจักรไทยหรือของมาเลเซียตามมาตรานี้ในส่วนที่เกี่ยวกับพื้นที่พัฒนาร่วม ให้มีเฉพาะในเรื่องและภายในขอบเขตเท่าที่กำหนดไว้ในกฎหมายที่เกี่ยวข้องกับไหล่ทวีปและตามที่เป็นที่ยอมรับกันตามกฎหมายระหว่างประเทศ

เพื่อวัตถุประสงค์แห่งมาตรานี้

(๑) เขตอำนาจทางแพ่งและทางอาญาไม่รวมถึงเขตอำนาจในเรื่องที่เกี่ยวกับศุลกากรและสรรพสามิต และภาษีอากร

(๒) เขตอำนาจทางอาญาเหนือความผิดที่ได้กระทำลงบนแท่นหรือสิ่งติดตั้งซึ่งอยู่คร่อมเส้นแบ่งเขตอำนาจ และได้สร้างไว้เพื่อวัตถุประสงค์ในการสำรวจและแสวงประโยชน์จากทรัพยากรธรรมชาติในพื้นที่ดินใต้ทะเลและใต้ดินภายในพื้นที่พัฒนาร่วม ให้ราชอาณาจักรไทยหรือมาเลเซียใช้อำนาจนั้นแต่เพียงผู้เดียว ตามแต่จะกำหนดว่าแท่นหรือสิ่งติดตั้งนั้นเป็นไทยหรือมาเลเซีย

(๓) การวินิจฉัยว่าแท่นหรือสิ่งติดตั้งซึ่งอยู่คร่อมเส้นแบ่งเขตอำนาจ และได้สร้างไว้เพื่อวัตถุประสงค์ในการสำรวจและแสวงประโยชน์จากทรัพยากรธรรมชาติในพื้นที่ดินใต้

ทะเลและใต้ดินภายในพื้นที่พัฒนาร่วมเป็นของราชอาณาจักรไทยหรือของมาเลเซีย ในเรื่องที่เกี่ยวข้องกับปัญหาใด ๆ ที่จะต้องมีการวินิจฉัยในกระบวนการพิจารณาทางแพ่งใด ๆ หรือเพื่อวัตถุประสงค์ของการเข้าไปใช้หรือใช้เขตอำนาจทางแพ่งโดยราชอาณาจักรไทยหรือมาเลเซีย ให้เป็นไปตามการกำหนดว่าแท่นหรือสิ่งติดตั้งนั้นเป็นไทยหรือมาเลเซียและ

(๔) การกำหนดว่าแท่นหรือสิ่งติดตั้งเป็นไทยหรือมาเลเซียตาม (๒) และ (๓) ให้วินิจฉัยตามหลักการว่าที่ตั้งส่วนใหญ่อยู่ที่ใด

#### หมวด ๑๐ สิทธิในห้วงน้ำ

มาตรา ๒๒ บทบัญญัติแห่งพระราชบัญญัตินี้ ไม่ใช้บังคับแก่สิทธิ ความเป็นอิสระ และเอกสิทธิ์ใด ๆ ซึ่งรวมถึงเรื่องที่เกี่ยวข้องกับการประมง และไม่กระทบกระเทือนต่อการอ้างสิทธิดังกล่าว ที่ราชอาณาจักรไทยหรือมาเลเซียอาจมีเหนือห้วงน้ำของพื้นที่พัฒนาร่วมโดยผลของข้อ ๔ แห่งบันทึกความเข้าใจ ค.ศ. ๑๙๗๙ (พ.ศ. ๒๕๒๒)

#### หมวด ๑๑ ความผิดและบทกำหนดโทษ

มาตรา ๒๓ ภายใต้บังคับมาตรา ๒๔ ผู้ใด รวมทั้งกรรมการหรือเจ้าหน้าที่ของนิติบุคคลฝ่าฝืนมาตรา ๑๗ วรรคหนึ่ง ต้องระวางโทษจำคุกไม่เกินห้าปี หรือปรับไม่เกินห้าแสนบาทหรือทั้งจำทั้งปรับและในกรณีที่เป็นความผิดต่อเนื่อง ต้องระวางโทษปรับอีกไม่เกินหนึ่งหมื่นบาทต่อวันหรือเศษของวันในระหว่างที่ความผิดนั้นยังดำเนินอยู่ต่อไปหลังจากวันแรกที่มีคำพิพากษา และบรรดาเครื่องจักร เครื่องมือโรงงาน สิ่งก่อสร้าง และทรัพย์สินอื่นใด หรือสิ่งของที่ได้ใช้หรือมีไว้เพื่อใช้ในการกระทำความผิด ให้ริบเสียทั้งสิ้น

มาตรา ๒๔ ภายใต้บังคับมาตรา ๒๓ และมาตรา ๒๕ ผู้ใด รวมทั้งกรรมการหรือเจ้าหน้าที่ของนิติบุคคล ฝ่าฝืนบทบัญญัติแห่งพระราชบัญญัตินี้ หรือกฎกระทรวงที่ออกตามมาตรา ๑๔ ต้องระวางโทษจำคุกไม่เกินสองปี หรือปรับไม่เกินสองแสนบาท หรือทั้งจำทั้งปรับและในกรณีที่เป็นความผิดต่อเนื่อง ต้องระวางโทษปรับอีกไม่เกินสองพันบาทต่อวันหรือเศษของวันในระหว่างที่ความผิดนั้นยังดำเนินอยู่ต่อไปหลังจากวันแรกที่มีคำพิพากษา

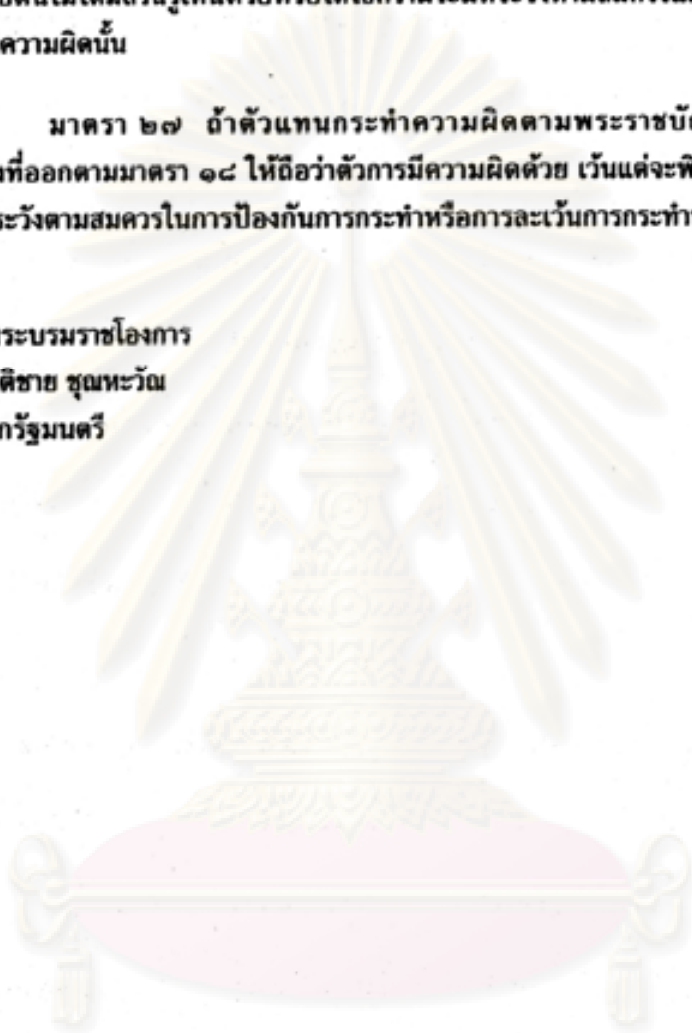
มาตรา ๒๕ ในกรณีที่ผู้ซึ่งถูกพิพากษาว่าได้กระทำความผิดตามมาตรา ๒๓ หรือมาตรา ๒๔ เป็นนิติบุคคล ผู้นั้นจะถูกลงโทษได้เพียงโทษปรับตามที่กำหนดไว้ในมาตราดังกล่าว

มาตรา ๒๖ ในกรณีที่ผู้ต้องหาว่ากระทำความผิดตามพระราชบัญญัตินี้ หรือกฎกระทรวงที่ออกตามมาตรา ๑๔ เป็นนิติบุคคล บุคคลทุกคนซึ่งในขณะที่มีการกระทำความผิด

นั้น เป็นกรรมการหรือเจ้าหน้าที่ของนิติบุคคลดังกล่าว อาจถูกฟ้องร่วมกันในคดีเดียวกับนิติบุคคลนั้น และในกรณีที่นิติบุคคลนั้นถูกพิพากษาว่าได้กระทำความผิดตามฟ้อง ให้ถือว่ากรรมการหรือเจ้าหน้าที่ดังกล่าวทุกคนได้กระทำความผิดนั้น เว้นแต่ผู้นั้นจะพิสูจน์ได้ว่าความผิดนั้นได้กระทำลงโดยคนไม่ได้มีส่วนรู้เห็นด้วยหรือได้ใช้ความระมัดระวังตามสมควรแล้วที่จะป้องกันมิให้มีการกระทำความผิดนั้น

มาตรา ๒๗ ถ้าตัวแทนกระทำความผิดตามพระราชบัญญัตินี้ หรือตามกฎหมายกระทรวงที่ออกตามมาตรา ๑๘ ให้ถือว่าตัวการมีความผิดด้วย เว้นแต่จะพิสูจน์ได้ว่าคนได้ใช้ความระมัดระวังตามสมควรในการป้องกันการทำหรือการละเว้นการกระทำนั้น

ผู้รับสนองพระบรมราชโองการ  
พลเอกชาติชาย ชุณหะวัณ  
นายกรัฐมนตรี



ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

หมายเหตุ :- เหตุผลในการประกาศใช้พระราชบัญญัติฉบับนี้ คือ เนื่องจากได้มีการลงนามในบันทึกความเข้าใจระหว่างราชอาณาจักรไทยและมาเลเซียเกี่ยวกับการจัดตั้งองค์การร่วมเพื่อแสวงประโยชน์จากทรัพยากรในพื้นที่ดินใต้ทะเลในบริเวณที่กำหนดของไหล่ทวีปของประเทศทั้งสองในอ่าวไทย เมื่อวันที่ ๒๑ กุมภาพันธ์ พ.ศ. ๒๕๒๒ และต่อมาได้มีการลงนามในความตกลงว่าด้วยธรรมนูญและเรื่องอื่น ๆ ที่เกี่ยวเนื่องกับการจัดตั้งองค์การร่วมไทย-มาเลเซียระหว่างรัฐบาลแห่งราชอาณาจักรไทยและรัฐบาลแห่งมาเลเซีย เมื่อวันที่ ๓๐ พฤษภาคม พ.ศ. ๒๕๓๓ ตามความตกลงดังกล่าวมีข้อกำหนดด้วยว่า ทั้งสองประเทศจะต้องออกกฎหมายอนุวัติการก่อตั้งองค์การร่วมไทย-มาเลเซีย โดยมีสาระสำคัญเหมือนกัน และประกาศใช้บังคับพร้อมกันด้วย จึงจำเป็นต้องตราพระราชบัญญัตินี้

\*[รูปภาพแผนที่ท้าย พ.ร.บ.ฯ รก.๒๕๓๔/๑๑/๑พ/๒๒ มกราคม ๒๕๓๔]

ภคินี/แก๊ซ

๖/๒/๒๕๔๕

A+B (C)

\*พระราชกฤษฎีกาแก้ไขบทบัญญัติให้สอดคล้องกับการโอนอำนาจหน้าที่ของส่วนราชการให้เป็นไปตามพระราชบัญญัติปรับปรุงกระทรวง ทบวง กรม พ.ศ. ๒๕๔๕ พ.ศ. ๒๕๔๕<sup>๖</sup>

มาตรา ๑๒๗ ในพระราชบัญญัติองค์การร่วมไทย-มาเลเซีย พ.ศ. ๒๕๓๓ ให้แก้ไขคำว่า “รัฐมนตรีว่าการกระทรวงอุตสาหกรรม” เป็น “รัฐมนตรีว่าการกระทรวงพลังงาน”

หมายเหตุ :- เหตุผลในการประกาศใช้พระราชกฤษฎีกาฉบับนี้ คือ โดยที่พระราชบัญญัติปรับปรุงกระทรวง ทบวง กรม พ.ศ. ๒๕๔๕ ได้บัญญัติให้จัดตั้งส่วนราชการขึ้นใหม่โดยมีการกิจใหม่ ซึ่งได้มีการตราพระราชกฤษฎีกาโอนกิจการบริหารและอำนาจหน้าที่ของส่วนราชการให้เป็นไปตามพระราชบัญญัติปรับปรุงกระทรวง ทบวง กรม นั้นแล้ว และเนื่องจากพระราชบัญญัติดังกล่าวได้บัญญัติให้โอนอำนาจหน้าที่ของส่วนราชการ รัฐมนตรีผู้ดำรงตำแหน่งหรือผู้ซึ่งปฏิบัติหน้าที่ในส่วนราชการเดิมมาเป็นของส่วนราชการใหม่ โดยให้มีการแก้ไขบทบัญญัติต่าง ๆ ให้สอดคล้องกับอำนาจหน้าที่ที่โอนไปด้วย ฉะนั้น เพื่ออนุวัติให้เป็นไปตามหลักการที่ปรากฏในพระราชบัญญัติและพระราชกฤษฎีกาดังกล่าว จึงสมควรแก้ไขบทบัญญัติของกฎหมายให้สอดคล้องกับการโอนส่วนราชการ เพื่อให้ผู้เกี่ยวข้องมีความชัดเจนในการใช้กฎหมายโดยไม่ต้องไปค้นหาในกฎหมายโอนอำนาจหน้าที่ว่าตามกฎหมายใดได้มีการโอนภารกิจของส่วนราชการหรือผู้รับผิดชอบตามกฎหมายนั้นไปเป็นของหน่วยงานใดหรือผู้ใดแล้ว โดยแก้ไขบทบัญญัติของกฎหมายให้มีการเปลี่ยนชื่อส่วนราชการ รัฐมนตรี ผู้ดำรงตำแหน่งหรือผู้ซึ่งปฏิบัติหน้าที่ของส่วนราชการให้ตรงกับภารกิจที่โอนอำนาจหน้าที่ และเพิ่มผู้แทนส่วนราชการในคณะกรรมการให้ตรงตามภารกิจที่มีการตัด

<sup>๖</sup> ราชกิจจานุเบกษา เล่ม ๑๑๔/ตอนที่ ๑๐๒ ก/หน้า ๖๖/๔ ตุลาคม ๒๕๔๕

โอนจากส่วนราชการเดิมมาเป็นของส่วนราชการใหม่รวมทั้งตัดส่วนราชการเดิมที่มีการยุบเลิกแล้ว  
ซึ่งเป็นการแก้ไขให้ตรงตามพระราชบัญญัติและพระราชกฤษฎีกาดังกล่าว จึงจำเป็นต้องตราพระ  
ราชกฤษฎีกานี้

สัญญา/ปรับปรุง

๑๕ สิงหาคม ๒๕๕๙



ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

**Memorandum of Understanding between Malaysia and the Socialist Republic of Vietnam for the  
Exploration and Exploitation of Petroleum in a Defined Area of the Continental Shelf Involving the  
Two Countries**

Malaysia and the Socialist Republic of Vietnam,

**Desiring** to further strengthen the cooperation between the two countries;

**Recognizing** that as a result of overlapping claims made by the two countries regarding the boundary lines of their continental shelves located off the northeast coast of west Malaysia and off the southwest coast of Vietnam, there exists an overlapping area of their continental shelves;

**Consistent** with the agreement reached by the leaders of the two countries to cooperate in that part of the overlapping area involving the two countries only;

**Mindful** of the decision by the leaders of the two countries to resolve peacefully the question of all overlapping claims involving multiple parties with the parties concerned at an appropriate time;

**Considering** that it is in the best interests of both countries, pending delimitation of their continental shelves located off the northeast coast of West Malaysia and off the southwest coast of Vietnam, to enter into an interim arrangement for the purpose of exploring and exploiting petroleum in the seabed in the overlapping area;

**Convinced** that such activities can be carried out through mutual cooperation;

Have agreed as follows;

**Article 1**

(1) Both parties agree that as a result of overlapping claims made by the two countries regarding the boundary lines of their continental shelves located off the northeast coast of West Malaysia and off the

southwest coast of Vietnam, there exists an overlapping area (the Defined Area), being that area bounded by straight lines joining the following coordinated points:

Point	Longitude (E)	Latitude (N)
A	103° 42'.5	7° 22'
B	103° 39'	7° 20'
C	103° 35'.71	7° 18'.31
D	103° 52'	7° 3'
E	105° 49'.2	6° 5'.8
F	104° 30'	6° 48'.25

and shown in the relevant part of the British Admiralty Chart No: 2414, Edition 1967, annexed hereto.

(2) The actual location at sea of the points referred to in Clause (1) of this Article shall be determined by a method to be mutually agreed upon by the competent authorities of both parties. The competent authorities in relation to Malaysia means the Directorate of National Mapping Malaysia and includes any person authorized by it and in relation to the Socialist Republic of Vietnam means the Department of Geo-Cartography and the Navy Geo-Cartography Section and includes any person authorized by them.

จุฬาลงกรณ์มหาวิทยาลัย

## Article 2

(1) Both parties agree, pending final delimitation of the boundary lines of their continental shelves pertaining to the Defined Area, through mutual cooperation, to explore and exploit petroleum in that area in accordance with the terms of, and for a period of the validity of this Memorandum of Understanding.

(2) Where a petroleum field is located partly in the Defined Area and partly outside that area in the continental shelf of Malaysia or the Socialist Republic of Vietnam, as the case may be, both parties shall arrive at mutually acceptable terms for the exploration and exploitation of petroleum therein.

(3) All costs incurred and benefits derived from the exploration and exploitation of petroleum in the Defined Area shall be borne and shared equally by both parties.

## Article 3

For the purpose of this Memorandum of Understanding-

(a) Malaysia and the Socialist Republic of Vietnam agree to nominate PETRONAS and PETROVIETNAM, respectively, to undertake, on their respective behalves, the exploration and exploitation of petroleum in the Defined Area;

(b) Malaysia and the Socialist Republic of Vietnam shall cause PETRONAS and PETROVIETNAM, respectively, to enter into a commercial arrangement as between them for the exploration and exploitation of petroleum in the Defined Area provided that the terms and conditions of that arrangement shall be subject to the approval of the Government of Malaysia and the Government of the Socialist Republic of Vietnam;

(c) both parties agree, taking into account the significant expenditures already incurred in the Defined Area, that every effort shall be made to ensure continued early exploration of petroleum in the Defined Area.



**Article 4**

Nothing in this Memorandum of Understanding shall be interpreted so as to in any way-

(a) prejudice the position and claims of either party in relation to and over the Defined Area; and

(b) without prejudice to the provisions of Article III, confer any rights, interests or privileges to any person not being a party hereto in respect of any petroleum resources in the Defined Area.

**Article 5**

This Memorandum of Understanding shall continue for a period to be specified by an exchange of Diplomatic Note between the two parties.

**Article 6**

Any dispute arising out of the interpretation or implementation of the provisions of this Memorandum of Understanding shall be settled peacefully by consultation or negotiation between both parties.

**Article 7**

This Memorandum of Understanding shall come into force on the date to be specified by an exchange of Diplomatic Notes between the two parties.

ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

**Article 8**

For the purpose of this Memorandum of Understanding-

(a) 'Defined Area' means the area referred to in Article 1(1) of this Memorandum of Understanding;

(b) 'petroleum' means any mineral oil or relative hydrocarbon and natural gas existing in its natural condition and casinghead petroleum spirit, including bituminous shales and other stratified deposits from which oil can be extracted;

(c) 'petroleum field' means an area consisting of a single reservoir or multiple reservoirs all grouped on, or related to, the same individual geological structural feature, or stratigraphic conditions from which petroleum may be produced commercially;

(d) 'PETRONAS' is the short form of petroleum Nasional Berhad, a company incorporated under the Malaysia Companies Act 1965; and

(e) 'PETROVIETNAM' is the short form of Vietnam National Oil and Gas Company established by the Decree of No. 250/HDBT of 6 July 1990.

Done in duplicate at Kuala Lumpur the 5<sup>th</sup> day of June in the year One Thousand Nine Hundred and Ninety Two in the English language.

ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย

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**TIMOR SEA TREATY**  
**BETWEEN**  
**THE GOVERNMENT OF EAST TIMOR**  
**AND**  
**THE GOVERNMENT OF AUSTRALIA**  
(DBL, 20 May 2002)  
**TIMOR SEA TREATY**  
**THE GOVERNMENT OF AUSTRALIA**  
**and**  
**THE GOVERNMENT OF EAST TIMOR**

**CONSCIOUS** of the importance of promoting East Timor's economic development;

**AWARE** of the need to maintain security of investment for existing and planned **petroleum** activities in an area of seabed between Australia and East Timor;

**RECOGNISING** the benefits that will flow to both Australia and East Timor by providing a continuing basis for **petroleum** activities in an area of seabed between Australia and East Timor to proceed as planned;

**EMPHASISING** the importance of developing **petroleum** resources in a way that minimizes damage to the natural environment, that is economically sustainable, promotes further investment and contributes to the long-term development of Australia and East Timor;

**CONVINCED** that the development of the resources in accordance with this Treaty will provide a firm foundation for continuing and strengthening the friendly relations between Australia and East Timor;

**TAKING INTO ACCOUNT** the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982, which provides in Article 83 that the delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law in order to achieve an equitable solution;

**TAKING FURTHER INTO ACCOUNT**, in the absence of delimitation, the further obligation for States to make every effort, in a spirit of understanding and co-operation, to enter into provisional arrangements of a practical nature which do not prejudice a final determination of the seabed delimitation;

**NOTING** the desirability of Australia and East Timor entering into a Treaty providing for the continued development of the **petroleum** resources in an area of seabed between Australia and East Timor;

**HAVE AGREED** as follows:

**Article 1: Definitions**

For the purposes of this Treaty:

- (a) "Treaty" means this Treaty, including Annexes A-G and any Annexes subsequently agreed between Australia and East Timor.
- (b) "contractor" means a corporation or corporations which enter into a contract with the Designated Authority and which is registered as a contractor under the **Petroleum Mining Code**.
- (c) "criminal law" means any law in force in Australia and East Timor, whether substantive or procedural, that makes provision for or in relation to offences or for or in relation to the investigation or prosecution of offences or the punishment of offenders, including the carrying out of a penalty imposed by a court. For this purpose, "investigation" includes entry to an installation or structure in the JPDA, the exercise of powers of search and questioning and the apprehension of a suspected offender.

- (d) "Designated Authority" means the Designated Authority established in Article 6 of this Treaty.
- (e) "fiscal scheme" means a royalty, a Production Sharing Contract, or other scheme for determining Australia's and East Timor's share of **petroleum** or revenue from **petroleum** activities and does not include taxes referred to in Article 5 (b) of this Treaty.
- (f) "initially processed" means processing of **petroleum** to a point where it is ready for off-take from the production facility and may include such processes as the removal of water, volatiles and other impurities.
- (g) "Joint Commission" means the Australia-East Timor Joint Commission established in Article 6 of this Treaty.
- (h) "JPDA" means the Joint **Petroleum** Development Area established in Article 3 of this Treaty.
- (i) "Ministerial Council" means the Australia-East Timor Ministerial Council established in Article 6 of this Treaty.
- (j) "**petroleum**" means:
- i. any naturally occurring hydrocarbon, whether in a gaseous, liquid, or solid state;
  - ii. any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or
  - iii. any naturally occurring mixture of one or more hydrocarbons, whether in a gaseous, liquid or solid state, as well as other substances produced in association with such hydrocarbons; and includes any **petroleum** as defined by sub-paragraphs (i), (ii) or (iii) that has been returned to a natural reservoir.
- (k) "**petroleum** activities" means all activities undertaken to produce **petroleum**, authorised or contemplated under a contract, permit or licence, and includes exploration, development, initial processing, production, transportation and marketing, as well as the planning and preparation for such activities.
- (l) "**Petroleum** Mining Code" means the Code referred to in Article 7 of this Treaty.
- (m) "**petroleum** project" means **petroleum** activities taking place in a specified area within the JPDA.
- (n) "**petroleum** produced" means initially processed **petroleum** extracted from a reservoir through **petroleum** activities.
- (o) "Production Sharing Contract" means a contract between the Designated Authority and a limited liability corporation or entity with limited liability under which production from a specified area of the JPDA is shared between the parties to the contract.
- (p) "reservoir" means an accumulation of **petroleum** in a geological unit limited by rock, water or other substances without pressure communication through liquid or gas to another accumulation of **petroleum**.
- (q) "taxation code" means the code referred to in Article 13 (b) of this Treaty.

#### Article 2: Without prejudice

- (a) This Treaty gives effect to international law as reflected in the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982 which under Article 83 requires States with opposite or adjacent coasts to make every effort to enter into provisional arrangements of a practical nature pending agreement on the final delimitation of the continental shelf between them in a manner consistent with international law. This Treaty is intended to adhere to such obligation.
- (b) Nothing contained in this Treaty and no acts taking place while this Treaty is in force shall be interpreted as prejudicing or affecting Australia's or East Timor's position on or rights relating to a seabed delimitation or their respective seabed entitlements.

#### Article 3: Joint Petroleum Development Area

- (a) The Joint **Petroleum** Development Area (JPDA) is established. It is the area in the Timor Sea contained within the lines described in Annex A.
- (b) Australia and East Timor shall jointly control, manage and facilitate the exploration, development and exploitation of the **petroleum** resources of the JPDA for the benefit of the peoples of Australia and East Timor.

(c) **Petroleum** activities conducted in the JPDA shall be carried out pursuant to a contract between the Designated Authority and a limited liability corporation or entity with limited liability specifically established for the sole purpose of the contract. This provision shall also apply to the successors or assignees of such corporations.

(d) Australia and East Timor shall make it an offence for any person to conduct **petroleum** activities in the JPDA otherwise than in accordance with this Treaty.

#### Article 4: Sharing of petroleum production

(a) Australia and East Timor shall have title to all **petroleum** produced in the JPDA. Of the **petroleum** produced in the JPDA, ninety (90) percent shall belong to East Timor and ten (10) percent shall belong to Australia.

(b) To the extent that fees referred to in Article 6(b)(vi) and other income are inadequate to cover the expenditure of the Designated Authority in relation to this Treaty, that expenditure shall be borne in the same proportion as set out in paragraph (a).

#### Article 5: Fiscal arrangements and taxes

Fiscal arrangements and taxes shall be dealt with in the following manner:

(a) Unless a fiscal scheme is otherwise provided for in this Treaty:

i. Australia and East Timor shall make every possible effort to agree on a joint fiscal scheme for each **petroleum** project in the JPDA.

ii. If Australia and East Timor fail to reach agreement on a joint fiscal scheme referred to in sub-paragraph (i), they shall jointly appoint an independent expert to recommend an appropriate joint fiscal scheme to apply to the **petroleum** project concerned.

iii. If either Australia or East Timor does not agree to the joint fiscal scheme recommended by the independent expert, Australia and East Timor may each separately impose their own fiscal scheme on their proportion of the production of the project as calculated in accordance with the formula contained in Article 4 of this Treaty.

iv. If Australia and East Timor agree on a joint fiscal scheme pursuant to this Article, neither Australia nor East Timor may during the life of the project vary that scheme except by mutual agreement between Australia and East Timor.

(b) Consistent with the formula contained in Article 4 of this Treaty, Australia and East Timor may, in accordance with their respective laws and the taxation code, impose taxes on their share of the revenue from **petroleum** activities in the JPDA and relating to activities referred to in Article 13 of this Treaty.

#### Article 6: Regulatory bodies

(a) A three-tiered joint administrative structure consisting of a Designated Authority, a Joint Commission and a Ministerial Council is established.

(b) Designated Authority:

i. For the first three years after this Treaty enters into force, or for a different period of time if agreed to jointly by Australia and East Timor, the Joint Commission shall designate the Designated Authority.

ii. After the period specified in sub-paragraph (i), the Designated Authority shall be the East Timor Government Ministry responsible for **petroleum** activities or, if so decided by the Ministry, an East Timor statutory authority.

iii. For the period specified in sub-paragraph (i), the Designated Authority has juridical personality and such legal capacities under the law of both Australia and East Timor as are necessary for the exercise of its powers and the performance of its functions. In particular, the Designated Authority shall have the capacity to contract, to acquire and dispose of movable and immovable property and to institute and be party to legal proceedings.

iv. The Designated Authority shall be responsible to the Joint Commission and shall carry out the day-to-day regulation and management of petroleum activities.

v. A non-exclusive listing of more detailed powers and functions of the Designated Authority is set out in Annex C. The Annexes to this Treaty may identify other additional detailed powers and functions of the Designated Authority. The Designated Authority also has such other powers and functions as may be conferred upon it by the Joint Commission.

vi. The Designated Authority shall be financed from fees collected under the Petroleum Mining Code.

vii. For the period specified in sub-paragraph (i), the Designated Authority shall be exempt from the following existing taxes:

(1) in East Timor, the income tax imposed under the law of East Timor;

(2) in Australia, the income tax imposed under the federal law of Australia; as well as any identical or substantially similar taxes which are imposed after the date of signature of this Treaty in addition to, or in place of, the existing taxes.

viii. For the period specified in sub-paragraph (i), personnel of the Designated Authority:

(1) shall be exempt from taxation of salaries, allowances and other emoluments paid to them by the Designated Authority in connection with their service with the Designated Authority other than taxation under the law of Australia or East Timor in which they are deemed to be resident for taxation purposes; and

(2) shall, at the time of first taking up the post with the Designated Authority located in either Australia or East Timor in which they are not resident, be exempt from customs duties and other such charges (except payments for services) in respect of imports of furniture and other household and personal effects in their ownership or possession or already ordered by them and intended for their personal use or for their establishment; such goods shall be imported within six months of an officer's first entry but in exceptional circumstances an extension of time shall be granted by the Government of Australia or the Government of East Timor; goods which have been acquired or imported by officers and to which exemptions under this sub-paragraph apply shall not be given away, sold, lent or hired out, or otherwise disposed of except under conditions agreed in advance with the Government of Australia or the Government of East Timor depending on in which country the officer is located.

(c) Joint Commission:

i. The Joint Commission shall consist of commissioners appointed by Australia and East Timor. There shall be one more commissioner appointed by East Timor than by Australia. The Joint Commission shall establish policies and regulations relating to petroleum activities in the JPDA and shall oversee the work of the Designated Authority.

ii. A non-exclusive listing of more detailed powers and functions of the Joint Commission is set out in Annex D. The Annexes to this Treaty may identify other additional detailed powers and functions of the Joint Commission.

iii. Except as provided for in Article 8(c), the commissioners of either Australia or East Timor may at any time refer a matter to the Ministerial Council for resolution.

iv. The Joint Commission shall meet annually or as may be required. Its meetings shall be chaired by a member nominated by Australia and East Timor on an alternate basis.

(d) Ministerial Council:

i. The Ministerial Council shall consist of an equal number of Ministers from Australia and East Timor. It shall consider any matter relating to the operation of this Treaty that is referred to it by either Australia or East Timor. It shall also consider any matter referred to in sub-paragraph (c) (iii).

ii. In the event the Ministerial Council is unable to resolve a matter, either Australia or East Timor may invoke the dispute resolution procedure set out in Annex B.

iii. The Ministerial Council shall meet at the request of either Australia or East Timor or at the request of the Joint Commission.

iv. Unless otherwise agreed between Australia and East Timor, meetings of the Ministerial Council where at least one member representing Australia and one member representing East Timor are physically present shall be held alternately in Australia and East Timor. Its meetings shall be chaired by a representative of Australia or East Timor on an alternate basis.

v. The Ministerial Council may, if it so chooses, permit members to participate in a particular meeting, or all meetings, by telephone, closed-circuit television or any other means of electronic communication, and a member who so participates is to be regarded as being present at the meeting. A meeting may be held solely by means of electronic communication.

(e) Commissioners of the Joint Commission and personnel of the Designated Authority shall have no financial interest in any activity relating to exploration for and exploitation of petroleum resources in the JPDA.

#### Article 7: Petroleum Mining Code

(a) Australia and East Timor shall negotiate an agreed Petroleum Mining Code which shall govern the exploration, development and exploitation of petroleum within the JPDA, as well as the export of petroleum from the JPDA.

(b) In the event Australia and East Timor are unable to conclude a Petroleum Mining Code by the date of entry into force of this Treaty, the Joint Commission shall in its inaugural meeting adopt an interim code to remain in effect until a Petroleum Mining Code is adopted in accordance with paragraph (a).

#### Article 8: Pipelines

(a) The construction and operation of a pipeline within the JPDA for the purposes of exporting petroleum from the JPDA shall be subject to the approval of the Joint Commission. Australia and East Timor shall consult on the terms and conditions of pipelines exporting petroleum from the JPDA to the point of landing.

(b) A pipeline landing in East Timor shall be under the jurisdiction of East Timor. A pipeline landing in Australia shall be under the jurisdiction of Australia.

(c) In the event a pipeline is constructed from the JPDA to the territory of either Australia or East Timor, the country where the pipeline lands may not object to or impede decisions of the Joint Commission regarding a pipeline to the other country. Notwithstanding Article 6(c)(iii), the Ministerial Council may not review or change any such decisions.

(d) Paragraph (c) shall not apply where the effect of constructing a pipeline from the JPDA to the other country would cause the supply of gas to be withheld from a limited liability corporation or limited liability entity which has obtained consent under this Treaty to obtain gas from a project in the JPDA for contracts to supply gas for a specified period of time.

(e) Neither Australia nor East Timor may object to, nor in any way impede, a proposal to use floating gas to liquids processing and off-take in the JPDA on a commercial basis where such proposal shall produce higher revenues to Australia and East Timor from royalties and taxes earned from activities conducted within the JPDA than would be earned if gas were transported by pipeline.

(f) Paragraph (e) shall not apply where the effect of floating gas to liquids processing and off-take in the JPDA would cause the supply of gas to be withheld from a limited liability corporation or limited liability entity which has obtained consent under this Treaty to obtain gas from the JPDA for contracts to supply gas for a specified period of time.

(g) Petroleum from the JPDA and from fields which straddle the boundaries of the JPDA shall at all times have priority of carriage along any pipeline carrying petroleum from and within the JPDA.

(h) There shall be open access to pipelines for **petroleum** from the JPDA. The open access arrangements shall be in accordance with good international regulatory practice. If Australia has jurisdiction over the pipeline, it shall consult with East Timor over access to the pipeline. If East Timor has jurisdiction over the pipeline, it shall consult with Australia over access to the pipeline.

#### Article 9: Unitisation

(a) Any reservoir of **petroleum** that extends across the boundary of the JPDA shall be treated as a single entity for management and development purposes.

(b) Australia and East Timor shall work expeditiously and in good faith to reach agreement on the manner in which the deposit will be most effectively exploited and on the equitable sharing of the benefits arising from such exploitation.

#### Article 10: Marine environment

(a) Australia and East Timor shall co-operate to protect the marine environment of the JPDA so as to prevent and minimise pollution and other environmental harm from **petroleum** activities. Special efforts shall be made to protect marine animals including marine mammals, seabirds, fish and coral. Australia and East Timor shall consult as to the best means to protect the marine environment of the JPDA from the harmful consequences of **petroleum** activities.

(b) Where pollution of the marine environment occurring in the JPDA spreads beyond the JPDA, Australia and East Timor shall co-operate in taking action to prevent, mitigate and eliminate such pollution.

(c) The Designated Authority shall issue regulations to protect the marine environment in the JPDA. It shall establish a contingency plan for combating pollution from **petroleum** activities in the JPDA.

(d) Limited liability corporations or limited liability entities shall be liable for damage or expenses incurred as a result of pollution of the marine environment arising out of **petroleum** activities within the JPDA in accordance with:

- i. their contract, licence or permit or other form of authority issued pursuant to this Treaty; and
- ii. the law of the jurisdiction (Australia or East Timor) in which the claim is brought.

#### Article 11: Employment

(a) Australia and East Timor shall:

- i. take appropriate measures with due regard to occupational health and safety requirements to ensure that preference is given in employment in the JPDA to nationals or permanent residents of East Timor; and
- ii. facilitate, as a matter of priority, training and employment opportunities for East Timorese nationals and permanent residents.

(b) Australia shall expedite and facilitate processing of applications for visas through its Diplomatic Mission in Dili by East Timorese nationals and permanent residents employed by limited liability corporations or limited liability entities in Australia associated with **petroleum** activities in the JPDA.

#### Article 12: Health and safety for workers

The Designated Authority shall develop, and limited liability corporations or limited liability entities shall apply, occupational health and safety standards and procedures for persons employed on structures in the JPDA that are no less effective than those standards and procedures that would apply to persons employed on similar structures in Australia and East Timor. The Designated Authority may adopt, consistent with this Article, standards and procedures taking into account an existing system established under the law of either Australia or East Timor.

#### Article 13: Application of taxation law

(a) For the purposes of taxation law related directly or indirectly to:

- i. the exploration for or the exploitation of **petroleum** in the JPDA; or



ii. acts, matters, circumstances and things touching, concerning arising out of or connected with such exploration and exploitation

the JPDA shall be deemed to be, and treated by, Australia and East Timor, as part of that country.

(b) The taxation code to provide relief from double taxation relating to petroleum activities is set out in Annex G.

(c) The taxation code contains its own dispute resolution mechanism. Article 23 of this Treaty shall not apply to disputes covered by that mechanism.

#### Article 14: Criminal jurisdiction

(a) A national or permanent resident of Australia or East Timor shall be subject to the criminal law of that country in respect of acts or omissions occurring in the JPDA connected with or arising out of exploration for and exploitation of petroleum resources, provided that a permanent resident of Australia or East Timor who is a national of the other country shall be subject to the criminal law of the latter country.

(b) Subject to paragraph (d), a national of a third state, not being a permanent resident of either Australia or East Timor, shall be subject to the criminal law of both Australia and East Timor in respect of acts or omissions occurring in the JPDA connected with or arising out of petroleum activities. Such a person shall not be subject to criminal proceedings under the law of either Australia or East Timor if he or she has already been tried and discharged or acquitted by a competent tribunal or already undergone punishment for the same act or omission under the law of the other country or where the competent authorities of one country, in accordance with its law, have decided in the public interest to refrain from prosecuting the person for that act or omission.

(c) In cases referred to in paragraph (b), Australia and East Timor shall, as and when necessary, consult each other to determine which criminal law is to be applied, taking into account the nationality of the victim and the interests of the country most affected by the alleged offence.

(d) The criminal law of the flag state shall apply in relation to acts or omissions on board vessels including seismic or drill vessels in, or aircraft in flight over, the JPDA.

(e) Australia and East Timor shall provide assistance to and co-operate with each other, including through agreements or arrangements as appropriate, for the purposes of enforcement of criminal law under this Article, including the obtaining of evidence and information.

(f) Both Australia and East Timor recognize the interest of the other country where a victim of an alleged offence is a national of that other country and shall keep that other country informed, to the extent permitted by its law, of action being taken with regard to the alleged offence.

(g) Australia and East Timor may make arrangements permitting officials of one country to assist in the enforcement of the criminal law of the other country. Where such assistance involves the detention of a person who under paragraph (a) is subject to the jurisdiction of the other country that detention may only continue until it is practicable to hand the person over to the relevant officials of that other country.

#### Article 15: Customs, quarantine and migration

(a) Australia and East Timor may, subject to paragraphs (c), (e), (f) and (g), apply customs, migration and quarantine laws to persons, equipment and goods entering its territory from, or leaving its territory for, the JPDA. Australia and East Timor may adopt arrangements to facilitate such entry and departure.

(b) Limited liability corporations or other limited liability entities shall ensure, unless otherwise authorised by Australia or East Timor, that persons, equipment and goods do not enter structures in the JPDA without first entering Australia or East Timor, and that their employees and the employees of their subcontractors are authorised by the Designated Authority to enter the JPDA.

(c) Either country may request consultations with the other country in relation to the entry of particular persons, equipment and goods to structures in the JPDA aimed at controlling the movement of such persons, equipment or goods.

(d) Nothing in this Article prejudices the right of either Australia or East Timor to apply customs, migration and quarantine controls to persons, equipment and goods entering the JPDA without the authority of either country. Australia and East Timor may adopt arrangements to co-ordinate the exercise of such rights.

(e) Goods and equipment entering the JPDA for purposes related to petroleum activities shall not be subject to customs duties.

(f) Goods and equipment leaving or in transit through either Australia or East Timor for the purpose of entering the JPDA for purposes related to petroleum activities shall not be subject to customs duties.

(g) Goods and equipment leaving the JPDA for the purpose of being permanently transferred to a part of either Australia or East Timor may be subject to customs duties of that country.

#### **Article 16: Hydrographic and seismic surveys**

(a) Australia and East Timor shall have the right to carry out hydrographic surveys to facilitate petroleum activities in the JPDA. Australia and East Timor shall co-operate on:

- i. the conduct of such surveys, including the provision of necessary on-shore facilities; and
- ii. exchanging hydrographic information relevant to petroleum activities in the JPDA.

(b) For the purposes of this Treaty, Australia and East Timor shall co-operate in facilitating the conduct of seismic surveys in the JPDA, including in the provision of necessary on-shore facilities.

#### **Article 17: Petroleum industry vessel - safety, operating standards and crewing**

Except as otherwise provided in this Treaty, vessels of the nationality of Australia or East Timor engaged in petroleum activities in the JPDA shall be subject to the law of their nationality in relation to safety and operating standards and crewing regulations. Vessels with the nationality of other countries shall apply the law of Australia or East Timor depending on whose ports they operate, in relation to safety and operating standards, and crewing regulations. Such vessels that enter the JPDA and do not operate out of either Australia or East Timor under the law of both Australia or East Timor shall be subject to the relevant international safety and operating standards.

#### **Article 18: Surveillance**

(a) For the purposes of this Treaty, Australia and East Timor shall have the right to carry out surveillance activities in the JPDA.

(b) Australia and East Timor shall co-operate on and co-ordinate any surveillance activities carried out in accordance with paragraph (a).

(c) Australia and East Timor shall exchange information derived from any surveillance activities carried out in accordance with paragraph (a).

#### **Article 19: Security measures**

(a) Australia and East Timor shall exchange information on likely threats to, or security incidents relating to, exploration for and exploitation of petroleum resources in the JPDA.

(b) Australia and East Timor shall make arrangements for responding to security incidents in the JPDA.

#### **Article 20: Search and rescue**

Australia and East Timor shall, at the request of the Designated Authority and consistent with this Treaty, co-operate on and assist with search and rescue operations in the JPDA taking into account generally accepted international rules, regulations and procedures established through competent international organisations.

**Article 21: Air traffic services**

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Australia and East Timor shall, in consultation with the Designated Authority or at its request, and consistent with this Treaty, co-operate in relation to the operation of air services, the provision of air traffic services and air accident investigations, within the JPDA, in accordance with national laws applicable to flights to and within the JPDA, recognizing established international rules, regulations and procedures where these have been adopted by Australia and East Timor.

**Article 22: Duration of the Treaty**

This Treaty shall be in force until there is a permanent seabed delimitation between Australia and East Timor or for thirty years from the date of its entry into force, whichever is sooner. This Treaty may be renewed by agreement between Australia and East Timor. Petroleum activities of limited liability corporations or other limited liability entities entered into under the terms of the Treaty shall continue even if the Treaty is no longer in force under conditions equivalent to those in place under the Treaty.

**Article 23: Settlement of Disputes**

(a) With the exception of disputes falling within the scope of the taxation code referred to in Article 13(b) of this Treaty and which shall be settled in accordance with that code, any dispute concerning the interpretation or application of this Treaty shall, as far as possible, be settled by consultation or negotiation.

(b) Any dispute which is not settled in the manner set out in paragraph (a) and any unresolved matter relating to the operation of this Treaty under Article 6(d)(ii) shall, at the request of either Australia or East Timor, be submitted to an arbitral tribunal in accordance with the procedure set out in Annex B.

**Article 24: Amendment**

This Treaty may be amended at any time by written agreement between Australia and East Timor.

**Article 25: Entry into force**

(a) This Treaty shall enter into force upon the day on which Australia and East Timor have notified each other in writing that their respective requirements for entry into force of this Treaty have been complied with.[]

(b) Upon entry into force, the Treaty will be taken to have effect and all of its provisions will apply and be taken to have applied on and from the date of signature.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Treaty.

DONE at Dili, on this twentieth day of May, Two thousand and two in two originals in the English language.

For the Government of Australia

For the Government of East Timor

John Howard (Prime Minister)

Mari Alkatiri (Prime Minister)

**Annex A under Article 3 of this Treaty****Designation and Description of the JPDA****NOTE**

Where for the purposes of the Treaty it is necessary to determine the position on the surface of the Earth of a point, line or area, that position shall be determined by reference to the Australian Geodetic Datum, that is to say, by reference to a spheroid having its centre at the centre of the Earth and a major (equatorial) radius of 6 378 160 metres and a flattening of 1/298.25 and by reference to the position of the Johnston Geodetic Station in the Northern Territory of Australia. That station shall be taken to be situated at Latitude

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25°56'54.5515" South and at Longitude 133°12'30.0771" East and to have a ground level of 571.2 metres above the spheroid referred to above.

#### THE AREA

The area bounded by the line-

- (a) commencing at the point of Latitude 9deg. 22' 53" South, Longitude 127deg. 48' 42" East;
- (b) running thence south-westerly along the geodesic to the point of Latitude 10deg. 06' 40" South, Longitude 126deg. 00' 25" East;
- (c) thence south-westerly along the geodesic to the point of Latitude 10deg. 28' 00" South, Longitude 126deg. 00' 00" East;
- (d) thence south-easterly along the geodesic to the point of Latitude 11deg. 20' 08" South, Longitude 126deg. 31' 54" East;
- (e) thence north-easterly along the geodesic to the point of Latitude 11deg. 19' 46" South, Longitude 126deg. 47' 04" East;
- (f) thence north-easterly along the geodesic to the point of Latitude 11deg. 17' 36" South, Longitude 126deg. 57' 07" East;
- (g) thence north-easterly along the geodesic to the point of Latitude 11deg. 17' 30" South, Longitude 126deg. 58' 13" East;
- (h) thence north-easterly along the geodesic to the point of Latitude 11deg. 14' 24" South, Longitude 127deg. 31' 33" East;
- (i) thence north-easterly along the geodesic to the point of Latitude 10deg. 55' 26" South, Longitude 127deg. 47' 04" East;
- (j) thence north-easterly along the geodesic to the point of Latitude 10deg. 53' 42" South, Longitude 127deg. 48' 45" East;
- (k) thence north-easterly along the geodesic to the point of Latitude 10deg. 43' 43" South, Longitude 127deg. 59' 16" East;
- (l) thence north-easterly along the geodesic to the point of Latitude 10deg. 29' 17" South, Longitude 128deg. 12' 24" East;
- (m) thence north-westerly along the geodesic to the point of Latitude 9deg. 29' 57" South, Longitude 127deg. 58' 47" East;
- (n) thence north-westerly along the geodesic to the point of Latitude 9deg. 28' 00" South, Longitude 127deg. 56' 00" East; and
- (o) thence north-westerly along the geodesic to the point of commencement.

#### Annex B under Article 23 of this Treaty

##### Dispute Resolution Procedure

(a) An arbitral tribunal to which a dispute is submitted pursuant to Article 23 (b), shall consist of three persons appointed as follows:

- i. Australia and East Timor shall each appoint one arbitrator;
- ii. the arbitrators appointed by Australia and East Timor shall, within sixty (60) days of the appointment of the second of them, by agreement, select a third arbitrator who shall be a citizen, or permanent resident of a third country which has diplomatic relations with both Australia and East Timor;
- iii. Australia and East Timor shall, within sixty (60) days of the selection of the third arbitrator, approve the selection of that arbitrator who shall act as Chairman of the Tribunal.

(b) Arbitration proceedings shall be instituted upon notice being given through the diplomatic channel by the country instituting such proceedings to the other country. Such notice shall contain a statement setting forth in summary form the grounds of the claim, the nature of the relief sought, and the name of the arbitrator appointed by the country instituting such proceedings. Within sixty (60) days after the giving of such notice the respondent country shall notify the country instituting proceedings of the name of the arbitrator appointed by the respondent country.

(c) If, within the time limits provided for in sub-paragraphs (a) (ii) and (iii) and paragraph (b) of this Annex, the required appointment has not been made or the required approval has not been given, Australia or East Timor may request the President of the International Court of Justice to make the necessary appointment. If the President is a citizen or permanent resident of Australia or East

Timor or is otherwise unable to act, the Vice-President shall be invited to make the appointment. If the Vice-President is a citizen, or permanent resident of Australia or East Timor or is otherwise unable to act, the Member of the International Court of Justice next in seniority who is not a citizen or permanent resident of Australia or East Timor shall be invited to make the appointment.

(d) In case any arbitrator appointed as provided for in this Annex shall resign or become unable to act, a successor arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator.

(e) The Arbitral Tribunal shall convene at such time and place as shall be fixed by the Chairman of the Tribunal. Thereafter, the Arbitral Tribunal shall determine where and when it shall sit.

(f) The Arbitral Tribunal shall decide all questions relating to its competence and shall, subject to any agreement between Australia and East Timor, determine its own procedure.

(g) Before the Arbitral Tribunal makes a decision, it may at any stage of the proceedings propose to Australia and East Timor that the dispute be settled amicably. The Arbitral Tribunal shall reach its award by majority vote taking into account the provisions of this Treaty and relevant international law.

(h) Australia and East Timor shall each bear the costs of its appointed arbitrator and its own costs in preparing and presenting cases. The cost of the Chairman of the Tribunal and the expenses associated with the conduct of the arbitration shall be borne in equal parts by Australia and East Timor.

(i) The Arbitral Tribunal shall afford to Australia and East Timor a fair hearing. It may render an award on the default of either Australia or East Timor. In any case, the Arbitral Tribunal shall render its award within six (6) months from the date it is convened by the Chairman of the Tribunal. Any award shall be rendered in writing and shall state its legal basis. A signed counterpart of the award shall be transmitted to Australia and East Timor.

(j) An award shall be final and binding on Australia and East Timor.

#### **Annex C under Article 6(b)(v) of this Treaty**

##### **Powers and Functions of the Designated Authority**

The powers and functions of the Designated Authority shall include:

(a) day-to-day management and regulation of **petroleum** activities in accordance with this Treaty and any instruments made or entered into under this Treaty, including directions given by the Joint Commission;

(b) preparation of annual estimates of income and expenditure of the Designated Authority for submission to the Joint Commission. Any expenditure shall only be made in accordance with estimates approved by the Joint Commission or otherwise in accordance with regulations and procedures approved by the Joint Commission;

(c) preparation of annual reports for submission to the Joint Commission;

(d) requesting assistance from the appropriate Australian and East Timor authorities consistent with this Treaty

i. for search and rescue operations in the JPDA;

ii. in the event of a terrorist threat to the vessels and structures engaged in **petroleum** operations in the JPDA ; and

iii. for air traffic services in the JPDA;

(e) requesting assistance with pollution prevention measures, equipment and procedures from the appropriate Australian and East Timor authorities or other bodies or persons;

(f) establishment of safety zones and restricted zones, consistent with international law, to ensure the safety of navigation and **petroleum** operations;

(g) controlling movements into, within and out of the JPDA of vessels, aircraft, structures and other equipment employed in exploration for and exploitation of **petroleum** resources in a manner consistent with international law; and, subject to Article 15, authorising the entry of employees of contractors and their subcontractors and other persons into the JPDA;

(h) issuing regulations and giving directions under this Treaty on all matters related to the supervision and control of **petroleum** activities including on health, safety, environmental protection and assessments and work practices, pursuant to the **Petroleum Mining Code**; and

(i) such other powers and functions as may be identified in other Annexes to this Treaty or as may be conferred on it by the Joint Commission.

#### **Annex D under Article 6(e)(ii) of this Treaty**

##### **Powers and Functions of the Joint Commission**

1. The powers and functions of the Joint Commission shall include:

- (a) giving directions to the Designated Authority on the discharge of its powers and functions;
- (b) conferring additional powers and functions on the Designated Authority;
- (c) adopting an interim **Petroleum Mining Code** pursuant to Article 7(b) of the Treaty, if necessary;
- (d) approving financial estimates of income and expenditure of the Designated Authority;
- (e) approving rules, regulations and procedures for the effective functioning of the Designated Authority;
- (f) designating the Designated Authority for the period referred to in Article 6(b)(i);
- (g) at the request of a member of the Joint Commission inspecting and auditing the Designated Authority's books and accounts or arranging for such an audit and inspection;
- (h) approving the result of inspections and audits of contractors' books and accounts conducted by the Joint Commission;
- (i) considering and adopting the annual report of the Designated Authority;
- (j) of its own volition or on recommendation by the Designated Authority, in a manner not inconsistent with the objectives of this Treaty amending the **Petroleum Mining Code** to facilitate **petroleum** activities in the JPDA;

2. The Joint Commission shall exercise its powers and functions for the benefit of the peoples of Australia and East Timor having regard to good oilfield, processing, transport and environmental practice.

#### **Annex E under Article 9(b) of this Treaty**

##### **Unitisation of Greater Sunrise**

(a) Australia and East Timor agree to unitise the Sunrise and Troubadour deposits (collectively known as 'Greater Sunrise') on the basis that 20.1% of Greater Sunrise lies within the JPDA. Production from Greater Sunrise shall be distributed on the basis that 20.1% is attributed to the JPDA and 79.9% is attributed to Australia.

(b) Either Australia or East Timor may request a review of the production sharing formula. Following such a review, the production sharing formula may be altered by agreement between Australia and East Timor.

(c) The unitisation agreement referred to in paragraph (a) shall be without prejudice to a permanent delimitation of the seabed between Australia and East Timor.

(d) In the event of a permanent delimitation of the seabed, Australia and East Timor shall reconsider the terms of the unitisation agreement referred to in paragraph (a). Any new agreement shall preserve the terms of any production sharing contract, licence or permit which is based on the agreement in paragraph (a).

#### **Annex F under Article 5(a) of this Treaty**

##### **Fiscal Scheme for Certain Petroleum Deposits**

Contracts shall be offered to those corporations holding, immediately before entry into force of the Treaty, contracts numbered 91-12, 91-13, 95-19, and 96-20 in the same terms as those contracts, modified to take into account the administrative structure under this Treaty, or as otherwise agreed by Australia and East Timor.

#### **Annex G under Article 13 (b) of this Treaty**

##### **Taxation Code for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion in Respect of Activities Connected with the Joint Petroleum Development Area**

#### **Article 1**

##### **General definitions**

1. In this Taxation Code, unless the context otherwise requires:

(a) the term "Australian tax" means tax imposed by Australia, other than any penalty or interest, being tax to which this Taxation Code applies;

(b) the term "company" means anybody corporate or any entity which is treated as a company or body corporate for tax purposes;

(c) the term "competent authority" means, in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of East Timor, the Minister for Finance or an authorised representative of the Minister;

(d) the term "East Timor tax" means tax imposed by East Timor, other than any penalty or interest, being tax to which this Taxation Code applies;

(e) the term "framework percentage" means, in the case of Australia, ten (10) percent and, in the case of East Timor, ninety (90) percent;

(f) the term "law of a Contracting State" means the law from time to time in force in that Contracting State relating to the taxes to which this Taxation Code applies;

(g) the term "person" includes an individual, a company and any other body of persons;

(h) the term "reduction percentage" means, in the case of Australia, ninety (90) percent and, in the case of East Timor, ten (10) percent;

(i) the terms "tax" or "taxation" mean Australian tax or East Timor tax, as the context requires; and

(j) the term "year" means, in Australia, any year of income and, in East Timor, any tax year.

2. In the application of this Taxation Code at any time by a Contracting State any term not defined in this Taxation Code or elsewhere in the Treaty shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that Contracting State for the purposes of the taxes to which this Taxation Code applies, any meaning under the applicable tax law of that State prevailing over a meaning given to the term under other law of that State.

**Article 2****Personal scope**

The provisions of this Taxation Code shall apply to persons who are residents of one or both of the Contracting States as well as in respect of persons who are not residents of either of the Contracting States, but only for taxation purposes related directly or indirectly to:

- (a) the exploration for or the exploitation of petroleum in the JPDA; or
- (b) acts, matters, circumstances and things touching, concerning, arising out of or connected with any such exploration or exploitation.

**Article 3****Resident**

1. For the purposes of this Taxation Code, resident of a Contracting State means:

(a) in the case of Australia, a person who is liable to tax in Australia by reason of being a resident of Australia under the tax law of Australia; and

(b) in the case of East Timor, a person who is liable to tax in East Timor by reason of being a resident of East Timor under the tax law of East Timor, but does not include any person who is liable to tax in that Contracting State in respect only of income from sources in that Contracting State.

2. Where by reason of the provisions of paragraph 1 of this Article, an individual is a resident of both Contracting States, then the status of the person shall be determined as follows:

(a) the person shall be deemed to be a resident solely of the Contracting State in which a permanent home is available to the person;

(b) if a permanent home is available to the person in both Contracting States, or in neither of them, the person shall be deemed to be a resident solely of the Contracting State in which the person has an habitual abode;

(c) if the person has an habitual abode in both Contracting States, or if the person does not have an habitual abode in either of them, the person shall be deemed to be a resident solely of the Contracting State with which the person's personal and economic relations are the closer. For the purposes of this subparagraph, an individual's nationality or citizenship of one of the Contracting States shall be a factor in determining the degree of the individual's personal and economic relations with that Contracting State;

(d) if it cannot be determined with which Contracting State the person's personal and economic relations are the closer, the competent authorities of the Contracting States shall consult with a view to settling the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 of this Article, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident solely of the Contracting State in which its place of effective management is situated.

**Article 4****Taxes covered**

1. The existing taxes to which this Taxation Code shall apply are:

(a) in Australia:

(i) the income tax, but excluding the petroleum resource rent tax;

(ii) the fringe benefits tax;

(iii) the goods and services tax; and

(iv) the superannuation guarantee charge, imposed under the federal law of Australia;



(b) in East Timor:

(i) the income tax, including either the tax on profits after income tax or the additional profits tax, as applicable to a specified **petroleum** project or part of a project;

(ii) the value added tax and sales tax on luxury goods ("value added tax"); and

(iii) the sales tax, imposed under the law of East Timor.

2. The provisions of this Taxation Code shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Treaty in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any relevant changes which have been made in their respective taxation law as soon as possible after such changes.

3. A Contracting State shall not impose a tax not covered by the provisions of the Taxation Code in respect of or applicable to:

(a) the exploration for or exploitation of **petroleum** in the JPDA; or

(b) any **petroleum** exploration or exploitation related activity carried on in the JPDA,

unless the other Contracting State consents to the imposition of that tax.

4. Nothing in paragraph 3 of this Article shall be taken to prevent a Contracting State from imposing, in accordance with its law, penalty or interest charges relating to the taxes covered by this Taxation Code.

#### Article 5

##### Business profits

1. For the purposes of the taxation law of each Contracting State, the business profits or losses of a person, other than an individual, derived from, or incurred in, the JPDA in a year shall be reduced by the reduction percentage.

2. (a) Business profits or losses derived from the JPDA in a year by an individual who is a resident of a Contracting State may be taxed in both Contracting States as reduced by the reduction percentage.

(b) Notwithstanding subparagraph 2(a), the Contracting State of which the individual is a resident may tax those profits or recognise those losses without such reduction. In such a case, that Contracting State shall provide a tax offset against the tax payable on those profits by the individual in that State for the tax paid in the other Contracting State.

3. Business profits derived from the JPDA in a year by an individual who is not a resident of either Contracting State may be taxed in both Contracting States but subject to a rebate entitlement against the tax payable in each Contracting State of the reduction percentage of the gross tax payable on those profits in that Contracting State.

4. Business losses, incurred in the JPDA in a year by an individual who is not a resident of either Contracting State, that are eligible under the law of a Contracting State to be carried forward for deduction against future income shall, for the purposes of that law, be reduced by the reduction percentage.

5. Where losses are brought forward from prior years as a deduction, those losses may not also be taken into account when calculating the business profits or business losses for the year in which they are brought forward as a deduction.

6. Where profits include items of income which are dealt with separately in other Articles of this Taxation Code or where losses are dealt with separately in other Articles of this Taxation Code, then the provisions of those Articles shall not be affected by the provisions of this Article.

7. In establishing whether business profits are derived from the JPDA for the purposes of this Article, regard is to be had to internationally accepted principles on the source of business profits, particularly taking into consideration the extent to which activities in the JPDA, or assets located in the JPDA, rather than elsewhere, contributed to those business profits. In applying such internationally accepted principles special regard shall be had to the location of:

- (a) any activities or functions contributing to the business profits;
- (b) any assets relevant to the derivation of the business profits; and
- (c) any business and financial risks assumed by an entity and which relate to the business profits.

8. For the purposes of paragraph 7, particular account should be had to the terms of any relevant unitisation agreement to the extent to which they do not conflict with the internationally accepted principles referred to in that paragraph.

9. In determining whether business losses are incurred in the JPDA, regard is to be had to internationally accepted principles as to where business losses are incurred, with a view to an approach consistent with paragraphs 7 and 8 of this Article.

10. Where particular business profits are derived wholly or principally from the JPDA, or particular business losses are incurred wholly or principally in the JPDA, then such profits or losses shall be treated as fully derived from or fully incurred in, as the case may be, the JPDA. In other cases, the relevant proportion should be attributed to the JPDA. In the application of this paragraph the Contracting States shall seek a consistent approach, including as between the treatment of profits and losses, and should consult if necessary to this end.

11. For the purposes of this Taxation Code, the East Timor additional profits tax shall be regarded as a tax on business profits.

#### Article 6

##### Shipping and air transport

1. Profits from all shipping and air transport, where the transport of the relevant goods or persons commences at a place in the JPDA to any other place, whether inside or outside the JPDA, shall in their entirety be regarded as business profits derived from the JPDA.

2. Profits from all shipping and air transport internal to the JPDA, shall in their entirety be regarded as business profits derived from the JPDA.

3. Profits from all shipping and air transport, where the transport of the relevant goods or persons commences outside the JPDA, and ends in the JPDA, shall not be regarded as derived from the JPDA.

#### Article 7

##### Petroleum Valuation

The value of **petroleum** shall for all purposes under the taxation law of both Contracting States be the value as determined in accordance with internationally accepted arm's length principles having due regard to functions performed, assets used and risks assumed.

#### Article 8

##### Dividends

1. Dividends paid or credited by a company which is a resident of a Contracting State wholly or mainly out of profits, income or gains derived from sources in the JPDA, and which are beneficially owned by a resident of the other Contracting State, may be taxed in that other Contracting State. However, such dividends may also be taxed in the first-mentioned Contracting State and according to the law of that State, but the tax so charged shall not exceed fifteen (15) per cent of the gross amount of the dividends.

2. Dividends paid or credited by a company which is a resident of a Contracting State wholly or mainly out of profits, income or gains derived from sources in the JPDA, and which are beneficially owned by a resident of that Contracting State, shall be taxable only in that State.

3. Dividends paid or credited by a company which is a resident of a Contracting State wholly or mainly out of profits, income or gains derived from sources in the JPDA, and which are beneficially owned by a person who is not a resident of either Contracting

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State, may be taxed in both Contracting States but the taxable amount of any such dividends shall be an amount equivalent to the framework percentage of the amount that would be the taxable amount but for this paragraph.

4. The term "dividends" as used in this Article means income from shares or other rights participating in profits and not relating to debt claims, as well as other income which is subjected to the same taxation treatment as income from shares by the law of the Contracting State of which the company making the distribution is a resident.

5. Notwithstanding any other provisions of this Taxation Code, where a company which is a resident of a Contracting State derives profits, income or gains from the JPDA, such profits, income or gains may be subject in the other Contracting State to a tax on profits after income tax in accordance with its law, but such tax shall not exceed fifteen (15) per cent of the gross amount of such profits, income or gains after deducting from those profits, income or gains the income tax imposed on them in that other State. Such tax shall be imposed upon the amount equivalent to the framework percentage of the amount that would be taxed but for this paragraph.

6. For the purposes of this Article, "derived from" has the same meaning as expressed in Article 5.

#### Article 9

##### Interest

1. Interest paid or credited by a contractor, being interest to which a resident of a Contracting State is beneficially entitled, may be taxed in that Contracting State.

2. Such interest may also be taxed in the other Contracting State, but the tax so charged shall not exceed ten (10) per cent of the gross amount of the interest.

3. Interest paid or credited by a contractor, being interest to which a person who is not a resident of either Contracting State is beneficially entitled, may be taxed in both Contracting States but the taxable amount of any such interest shall be an amount equivalent to the framework percentage of the amount that would be the taxable amount but for this paragraph.

4. The term "interest" in this Taxation Code, includes interest from bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, interest from any form of indebtedness and all other income assimilated to income from money lent by law, relating to tax, of the Contracting State in which the income arises.

#### Article 10

##### Royalties

1. Royalties paid or credited by a contractor, being royalties to which a resident of a Contracting State is beneficially entitled, may be taxed in that Contracting State.

2. Such royalties may also be taxed in the other Contracting State, but the tax so charged shall not exceed ten (10) per cent of the gross amount of the royalties.

3. Royalties paid or credited by a contractor, being royalties to which a person who is not a resident of either Contracting State is beneficially entitled, may be taxed in both Contracting States but the taxable amount of any such royalties shall be an amount equivalent to the framework percentage of the amount that would be the taxable amount but for this paragraph.

4. The term "royalties" in this Article means payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for:

(a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark or other like property or right;

(b) the use of, or the right to use, any industrial, commercial or scientific equipment;

(c) the supply of scientific, technical, industrial or commercial knowledge or information;

(d) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in subparagraph (a), any such equipment as is mentioned in subparagraph (b) or any such knowledge or information as is mentioned in subparagraph (c); or

(e) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

#### **Article 11**

##### **Alienation of property**

1. Where a gain or loss of a capital nature accrues to or is incurred by a person, other than an individual who is a resident of a Contracting State, from the alienation of property situated in the JPDA or of shares or comparable interests in a company, the assets of which consist (directly or indirectly, including for example through a chain of companies), wholly or principally of property situated in the JPDA, the amount of gain or loss shall, for the purposes of the law of a Contracting State, be an amount equivalent to the framework percentage of the amount that would be the gain or loss but for this paragraph.

2. When a gain or loss of a capital nature accrues to or is incurred by an individual who is a resident of a Contracting State, from the alienation of property situated in the JPDA or of shares or comparable interests in a company, the assets of which consist (directly or indirectly, including for example through a chain of companies), wholly or mainly of property situated in the JPDA, the amount of the gain or loss may, for the purposes of the law of a Contracting State, be an amount equivalent to the reduction percentage of the amount that would be the gain or loss but for this paragraph.

3. Notwithstanding paragraph 2, the Contracting State of which the individual is a resident may tax that gain or recognise that loss of a capital nature without such reduction. In such a case, that Contracting State shall provide a tax offset against the tax payable on that gain by the individual in that other Contracting State.

#### **Article 12**

##### **Independent personal services**

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services, or other independent activities of a similar character, performed in the JPDA may be taxed in both Contracting States as reduced by the reduction percentage.

2. Notwithstanding paragraph (1), the Contracting State of which the individual is a resident may tax such income without such reduction. In such a case, that Contracting State shall provide a tax offset against the tax payable on that income by the individual in that State for the tax paid in the other Contracting State.

3. Income derived by an individual who is not a resident of either Contracting State in respect of professional services, or other independent activities of a similar character, performed in the JPDA may be taxed in both Contracting States but subject to a rebate entitlement against the tax payable in each Contracting State of the reduction percentage of the gross tax payable in that Contracting State on income referred to in this paragraph.

#### **Article 13**

##### **Dependent personal services**

1. Salaries, wages and other similar remuneration derived by an individual who is a resident of a Contracting State in respect of employment exercised in the JPDA may be taxed in both Contracting States as reduced by the reduction percentage.

2. Notwithstanding paragraph (1), the Contracting State in which the individual is a resident may tax such remuneration without such reduction. In such a case, that State shall provide a tax offset against the tax payable on such remuneration by the individual in that Contracting State for the tax paid in the other Contracting State.

3. Remuneration derived by an individual who is not a resident of either Contracting State in respect of employment exercised in the JPDA may be taxed in both Contracting States but subject to a rebate entitlement against the tax payable in each Contracting State of the reduction percentage of the gross tax payable in that Contracting State on the income referred to in this paragraph.

#### Article 14

##### Other income

1. Items of income of a resident of a Contracting State other than an individual, derived from sources in the JPDA and not dealt with in the foregoing Articles of this Taxation Code, shall be reduced by the reduction percentage.

2. Items of income of a resident individual of a Contracting State derived from sources in the JPDA and not dealt with in the foregoing Articles of this Taxation Code, may be taxed in both Contracting States as reduced by the reduction percentage.

3. Notwithstanding paragraph (2), the Contracting State in which the individual is a resident may tax such items of income without such reduction. In such a case, that State shall provide a tax offset against the tax payable on those items of income by the individual in that State for the tax paid in the other Contracting State.

4. Items of income of a person who is not a resident of either Contracting State, derived from sources in the JPDA and not dealt with in the foregoing Articles of this Taxation Code may be taxed in both Contracting States but subject to a rebate entitlement against the tax payable in each Contracting State of the reduction percentage of the gross tax payable in that Contracting State on the income referred to in this paragraph.

5. For the purposes of this Article, "derived from" has the same meaning as expressed in Article 5.

#### Article 15

##### Fringe benefits

For the purposes of the taxation law of Australia, the amount of Australian fringe benefits tax payable in relation to fringe benefits provided to employees in a year, in respect of employment exercised in the JPDA, shall be:

- (a) in the case of such employees who are residents of Australia, the fringe benefits tax may be applied without reduction;
- (b) in respect of employees who are residents of East Timor, the fringe benefits tax shall not be applied; and
- (c) in respect of employees who are not residents of either Contracting State, the amount payable shall be reduced by the reduction percentage.

#### Article 16

##### Superannuation guarantee charge

The superannuation guarantee charge imposed by Australia in respect of employment exercised in the JPDA in a year may be applied only in so far as it relates to employees who are residents of Australia, in which case it may be applied without reduction.

#### Article 17

##### Miscellaneous

In any case where income, profits or gains are not derived from the JPDA as that term is used in Article 5, for the purposes of this Code, neither Contracting State shall tax those income, profits or gains on a basis, in effect, of their source in the JPDA.

#### Article 18

##### Indirect taxes

Goods introduced into the JPDA, whether or not from a Contracting State, and services provided to a person in the JPDA, may, at or following introduction, be taxed in both Contracting States in accordance with applicable Australian goods and services tax law or the East Timor value added tax or sales tax law as the case may be, but the taxable amount in relation to such goods and services shall be an amount equivalent to the framework percentage of the amount that would be the taxable amount but for this paragraph.

**Article 19****Avoidance of double taxation**

1. In the case of Australia, subject to the provisions of the law of Australia from time to time in force which relate to the allowance of a credit against Australian tax of tax paid in a country outside Australia (which shall not affect the general principle of this Article), East Timor tax paid under the law of East Timor and in accordance with this Taxation Code, whether directly or by deduction, in respect of income derived by a person who is a resident of Australia of the following types:

- (a) dividends paid wholly or mainly out of profits, income or gains as referred to in paragraph 1 of Article 8;
- (b) interest paid by a contractor as referred to in paragraph 2 of Article 9;
- (c) royalties paid by a contractor as referred to in paragraph 2 of Article 10; or
- (d) profits, income or gains after income tax as referred to in paragraph 5 of Article 8, shall be allowed as a credit against Australian tax payable in respect of that income.

2. In the case of East Timor, subject to the provisions of the law of East Timor from time to time in force which relate to the allowance of a credit against East Timor tax of tax paid in a country outside East Timor (which shall not affect the general principle of this Article), Australian tax paid under the law of Australia and in accordance with this Taxation Code, whether directly or by deduction, in respect of income derived by a person who is a resident of East Timor of the following types:

- (a) dividends paid wholly or mainly out of profits, income or gains as referred to in paragraph 1 of Article 8;
- (b) interest paid by a contractor as referred to in paragraph 2 of Article 9;
- (c) royalties paid by a contractor as referred to in paragraph 2 of Article 10; or
- (d) profits, income or gains after income tax as referred to in paragraph 5 of Article 8, shall be allowed as a credit against East Timor tax payable in respect of that income.

3. The dividends, interest or royalties taxed by a Contracting State in accordance with the provisions of this Taxation Code and referred to in this Article shall for the purposes of determining a foreign tax credit entitlement under the law of the other Contracting State, be deemed to be income derived from sources in the first-mentioned Contracting State.

**Article 20****Mutual agreement procedure**

1. Where a person considers that the actions of the competent authority of one or both of the Contracting States result or will result for the person in taxation not in accordance with the provisions of this Taxation Code, the person may, irrespective of the remedies provided by the domestic law of the Contracting States, present a case to the competent authority of the Contracting State of which the person is a resident, or to either competent authority in the case of persons who are not residents of either Contracting State. The case must be presented within thirty-six (36) months from the first notification of the action resulting in taxation not in accordance with the provisions of the Taxation Code.

2. The competent authority shall endeavour, if the claim appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the provisions of this Taxation Code. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. In considering whether the actions of a Contracting State are or are not in accordance with the provisions of this Taxation Code for the purposes of this Article, particular regard is to be had to the objects and purposes of this Taxation Code, including especially that of the avoidance of double taxation.

4. The competent authorities of the Contracting States shall jointly endeavour to resolve any difficulties or doubts arising as to the interpretation or application of this Taxation Code. The competent authorities of the Contracting States may meet from time to time or otherwise communicate for the purposes of discussing the operation and application of this Taxation Code. They may also consult together in relation to juridical or economic double taxation in cases not specifically provided for in this Taxation Code.

5. For the purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that, notwithstanding that paragraph, any dispute between them as to whether a measure falls within the scope of this Taxation Code may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 4 of this Article or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.

#### **Article 21**

##### **Exchange of information**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Taxation Code or of the domestic law of the Contracting States concerning taxes covered by this Taxation Code, insofar as the taxation thereunder is not contrary to this Taxation Code, in particular for the prevention of avoidance or evasion of such taxes. Any information received by the competent authority of a Contracting State shall be treated as secret in the same manner as information obtained under the domestic law of that Contracting State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Taxation Code and shall be used only for such purposes. Such persons or authorities may disclose the information in public courts or tribunal proceedings or in judicial or tribunal decisions relating to taxes covered by this Taxation Code.

2. In no case shall the provisions of paragraph 1 of this Article be construed so as to impose on the competent authority of a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the law or the administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the law or in the normal course of the administration of that or of the other Contracting State; or
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or to supply information the disclosure of which would be contrary to public policy.

#### **Article 22**

##### **Interaction with other taxation arrangements**

Nothing in this Taxation Code is intended to limit the operation of a taxation arrangement concluded by either Contracting State with a third country or territory unless so provided for in such treaty.

#### **Article 23**

##### **Transitional provisions**

1. Business losses incurred in the JPDA by a person in a year previous to the year in which this Taxation Code enters into force and business losses apportionable in accordance with paragraph 2 to that part of the year prior to the date that this Taxation Code enters into domestic law effect, may, for the purposes of the taxation law of a Contracting State and in accordance with the provisions of that law, be carried forward for deduction against income which is subject to the provisions of this Taxation Code, in accordance with the provisions of this Taxation Code.

2. In the year in which this Taxation Code enters into force the Contracting States shall only apply the framework percentage or reduction percentage to that proportion of income, losses and other items addressed by this Taxation Code which corresponds to that portion of the period from the date of entry into domestic law effect to the end of the year.

#### Article 24

##### Review mechanism

At the request of either of the Contracting States, the Contracting States shall review the terms and operations of this Taxation Code with a view to amending the Taxation Code, if considered necessary.

#### Article 25

##### Entry into force

This Taxation Code shall enter into force at the same time as the Treaty to which it forms part.



ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย



## ประวัติผู้เขียนวิทยานิพนธ์

นายชนะพล สุทธิพิทักษ์วงศ์ เกิดเมื่อวันที่ 13 เมษายน พ.ศ. 2525 ที่จังหวัดชลบุรี จบการศึกษาชั้นมัธยมศึกษาปีที่ 6 จากโรงเรียนอัสสัมชัญศรีราชา และจบการศึกษาปริญญาตรี คณะนิติศาสตร์ จากมหาวิทยาลัยอัสสัมชัญ ในปีการศึกษา 2552 สอบไล่ได้ความรู้ชั้นเนติบัณฑิตตามหลักสูตรของสำนักอบรมศึกษากฎหมายแห่งเนติบัณฑิตยสภา เมื่อสมัยที่ 62 และได้ศึกษาต่อในหลักสูตรนิติศาสตร์มหาบัณฑิต คณะนิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย



ศูนย์วิทยทรัพยากร  
จุฬาลงกรณ์มหาวิทยาลัย