

Kluwer Arbitration Blog

The Democratic Republic of Timor-Leste Accedes to the New York Convention

Adriana Abu Abara (Clifford Chance) · Tuesday, September 26th, 2023

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“Maritime Boundary Office, Timor-Leste’s Signing Maritime Boundary Treaty with Australia, <http://www.gfm.tl/wp-content/uploads/2021/01/FACT-SHEET-MARCH-2018.pdf>. Timor-Leste has since turned its attention towards finalising its land and boundaries with Indonesia and is engaged in ongoing bil...”

On 17 January 2023, the Democratic Republic of Timor-Leste (“Timor-Leste”) became the 172nd country to accede to the United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards 1958 (the “New York Convention”)¹. Thereafter, in accordance with the convention’s Article XII(2), the New York Convention entered into force for Timor-Leste on 17 April 2023².

Timor-Leste joins a number of countries in the South Pacific region to accede to the New York Convention, including Australia, New Zealand, Marshall Islands, Cook Islands, Fiji, Papua New Guinea, Palau, and Tonga.

The Timor-Leste legal system is a mix of Indonesian laws, acts passed by the United Nations Transitional Administration, and post-independence Timorese legislation modelled on Portuguese civil law³. Timor-Leste’s accession to the Convention is a landmark development that should help harmonise the country’s approach to arbitral enforcement and improve the ease of doing business in Timor-Leste.

Background

Timor-Leste is the youngest nation in the South Pacific, with a population of approximately 1.3

million. Since declaring independence from the Indonesian occupation in 2002, it has made significant progress in developing its institutional frameworks and public infrastructure.

Being a coastal state, one of Timor-Leste's national priorities following its independence has been to establish permanent maritime boundaries with its neighbours, Australia and Indonesia. To that end, it pursued, for many years, bilateral negotiations with Australia to delimit their maritime boundaries before commencing in 2016, the first-ever Compulsory Conciliation process under Annex V of the United Nations Conference on the Law of the Sea, leading to the signing of the Maritime Boundary Treaty in 2018⁴⁾.

Establishing maritime boundaries has been essential to developing Timor-Leste's oil and gas resource endowment. Timor-Leste's investment in its natural resources has, in turn, encouraged private-sector growth in the nation, with a key focus on increasing productivity and opportunities in the business sector.

Commercial Arbitration in Timor-Leste

Prior to 2021, Timor-Leste did not have an arbitration law in place to govern arbitration proceedings seated in Timor-Leste, or the enforcement or recognition of foreign arbitration awards.

In 2021, Timor-Leste adopted the [Voluntary Arbitration Law](#),⁵⁾ which approved the accession to the New York Convention and embodies the structure and principles of the UNCITRAL Model Law on International Commercial Arbitration of 1985 ("Model Law").⁶⁾

Some notable sections of the Voluntary Arbitration Law are:

- Provisions on the procedures for the appointment, acceptance, and challenges to arbitrators (see Chapters 2 and 3).
- Requirements of having valid arbitration agreements in writing only (see Article 8).
- Grounds for the annulment of arbitral awards (see Article 60 and Article 61). It bears mentioning here that arbitral awards from non-Timor Leste-seated arbitrations are subjected to a separate judicial confirmation process (see Article 69).
- In principle, the Courts of Timor-Leste are not allowed to interfere in subject matters of the Voluntary Arbitration Law, other than in exceptional circumstances set out in the Voluntary Arbitration Law (see Article 7).

The Voluntary Arbitration Law applies to arbitration proceedings commenced from 1 April 2021, including proceedings that arise from arbitration agreements that were entered into prior to that date, and is also applicable to both domestic and international arbitrations seated in Timor-Leste. The Voluntary Arbitration Law also applies to the confirmation and execution of provisional measures and foreign arbitral awards, i.e., awards obtained in international arbitrations seated outside Timor-Leste (Article 2).

Comment

Timor-Leste's accession to the New York Convention demonstrates its commitment to the global legal order and its focus on attracting international investment. It strengthens the investment landscape in Timor-Leste, providing certainty for foreign investors who previously relied upon domestic Timorese law to enforce arbitral awards. This is particularly notable in light of Timor-Leste's substantial activity in natural resources and the oil and gas sector, where arbitration is a

favoured form of dispute resolution. The move to accede to the New York Convention will therefore provide confidence to investors and encourage greater participation of business and private sector-led growth.

Timor-Leste's adoption of the New York Convention also brings Timor-Leste in line with the majority of the region, as well as key trading partners, including Australia, Indonesia, Singapore, Switzerland, Japan, and Malaysia.


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