



PRESIDÊNCIA DO
**CONSELHO
DE MINISTROS**

VIII GOVERNO CONSTITUCIONAL



**Gabinete
Porta-Voz**

Komunikau Imprensa

Lighthouse vs Timor-Leste Court of Appeal (Supreme Court of Victoria)

6 December 2019

The Supreme Court of Victoria Court of Appeal today handed down judgment on the government of Timor-Leste's appeal against a decision of the Supreme Court of Victoria in May 2019 to grant Lighthouse Corporation Pty Ltd and Lighthouse Corporation IBC (together Lighthouse) the right to hear their case against the Democratic Republic of Timor-Leste and its electricity department (EDTL) in Victoria. The dispute relates to events that took place in Timor-Leste in 2010 and 2011 in respect of an alleged contract for the supply of fuel and generators in Timor-Leste. The government of Timor-Leste believes no binding contract was entered into.

The Court of Appeal found that it was open to the trial judge to find as he did, that Victoria was not a clearly inappropriate forum in which to hear the dispute. The Court of Appeal found that the judge did not err in his approach to determining the issue, and therefore refused leave to appeal.

Timor-Leste had argued that the trial judge erred in two important ways in reaching his finding on the issue of "forum non conveniens". This was not accepted by the Court of Appeal.

In particular, Timor-Leste had argued that the dispute's connections to Victoria were insubstantial, tangential to the main issues, and tenuous, and that there were a number of very substantial connections with Timor-Leste. Timor-Leste argued that the primary judge, Almond J, should have found Victoria was a clearly inappropriate forum for the dispute to be heard, given the relevance of Timorese law to determining the existence of a contract (an issue in dispute in the case) and other factors connecting the case with Timor-Leste.



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The case involved complex legal issues, and the government of Timor-Leste will now consider the detail of the judgment and review its legal options. The government of Timor-Leste remains confident in its legal position regarding the lack of contract between the parties, regardless of where the case is heard.

The dispute over whether Victoria was the appropriate forum for the case followed an unsuccessful attempt by Lighthouse in 2015 to have the dispute heard by the International Centre for the Settlement of Investment Disputes (ICSID). On the 23 December 2017 the Tribunal determined that ICSID had no jurisdiction to hear the case. **ENDS**

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ANNEX

Background on Lighthouse vs Timor-Leste, Supreme Court of Victoria

The following is presented as precis of events around the case brought against the Democratic Republic of Timor-Leste by the Lighthouse Corporation Limited (Lighthouse) in the Supreme Court of Victoria. It is by necessity a summary of a lengthy series of events and is not intended as a comprehensive review of matters before the Supreme Court of Victoria or a complete history of events surrounding the claim.

This dispute relates to events taking place in Timor-Leste in 2010 and 2011 in respect of an alleged contract for the supply of fuel in Timor-Leste.

In early 2010 the Timor-Leste government commenced discussions on an unsolicited offer from Lighthouse to supply diesel fuel to Timor-Leste.

These discussions continued throughout 2010 and by September 2010 had taken the form of a proposal for the supply of fuel and eight generators to meet urgent electricity shortages and to address power blackouts in Dili.

On 22nd October 2010 the then Prime Minister Mr Xanana Gusmão of Timor-Leste and the Secretary of State for Power, Water and Urbanisation, Mr Pereira, signed the proposal with the understanding that Lighthouse would supply, free of charge, the eight generators which could be used to meet the power supply shortages causing electricity blackouts in Dili.



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In further discussions it became apparent to the Timor-Leste government that difficulties were likely to arise due to the lack of storage facilities for the proposed fuel supply. Further documents were signed by the Prime Minister and Mr Pereira on 26 of November 2010 to amend the proposal signed on 22 October to take into account an interim storage solution proposed by Lighthouse.

Contrary to the Government's understanding, upon the signing of the document on 26 November 2010, Lighthouse sought to perform the terms of the proposal immediately, as if it were a binding contract, and required the Timor-Leste government to provide a letter of credit in favour of Lighthouse on the basis that the signed documents were binding and obliged the government to start taking delivery of 7 million litres of fuel per month with delivery of the generators.

The Timor-Leste government refused to provide the requested letter of credit to Lighthouse. Lighthouse did not otherwise have sufficient finances to supply any fuel or generators and was not in a position to supply the generators free of charge.

Position of the Timor-Leste government

The Timor-Leste government does not accept that there was ever any contract and that the documents took the form of a proposal to be subject to the Government's procurement processes, ahead of which would see eight generators supplied to meet emergency electricity needs in Dili free of charge.

Since the 2010 discussions, the Timor-Leste government now also argues that Lighthouse made a series of fraudulent misrepresentations about, among other things, their capacity, standing and ability to supply the fuel and generators and the proposed fuel supply.



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ICSID proceedings

In 2015 Lighthouse commenced proceedings against the Timor-Leste Government in the International Centre for the Settlement of Investment Disputes claiming in part that ICSID Tribunal had jurisdiction to hear and determine the proceedings.

The Timor-Leste government did not accept that ICSID had jurisdiction to hear the dispute. On the 23 December 2017 the Tribunal determined that ICSID had indeed no jurisdiction. In essence, the Tribunal concluded that Timor-Leste had not consented to arbitrate the dispute at ICSID and Lighthouse was not a foreign investor for the purposes of the *Timor-Leste Foreign Investment Law 2005*. The Tribunal also rendered an award of costs in favour of Timor-Leste.

Supreme Court of Victoria

On the 14 February 2018 Lighthouse re-enlived a statement of claim before the Supreme Court of Victoria that had been filed in late 2016 and stayed pending the outcome of the ICSID arbitration. That statement of claim sought effectively the same relief as sought before ICISD.

Application to set aside, dismiss, stay proceedings

The Timor-Leste government sought to have the proceedings set aside, dismissed or otherwise permanently stayed on the basis that the Court has no jurisdiction and is an inappropriate forum for the resolution of the dispute between the parties.

It is the position of the Timor-Leste government that this matter, if pursued by Lighthouse, should be resolved through domestic courts in Timor-Leste.

The Timor-Leste government sought to prevent the Supreme Court of Victoria from hearing the case on two grounds:



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1. The matters in dispute fell within the “act of State” doctrine, which would prevent the Victorian Court from hearing the issue
2. The Victorian Supreme Court was a “clearly inappropriate” forum.

The Timor-Leste government lost on both grounds, with the Supreme Court of Victoria determining that it could hear the case.

Re Act of State doctrine:

Almond J ruled that a transaction does not become an act of State merely because a state is party to it or a member of the executive executes the transaction. Nor does it become an act of State merely because a public benefit is intended or received from it. More than a commercial act is required. Lighthouse did not purport to challenge the validity of any foreign legislation and evaluating the effect of a commercial arrangement, including an executive act under applicable foreign law, does not offend the act of State doctrine.

Forum Non Conveniens (clearly inappropriate):

The Timor-Leste government argued that the Fuel Supply Agreement is insufficiently certain to be a binding contract and therefore the clause naming Victorian law did not apply. It noted a number of Timor-based witnesses would be called, as well as some additional Timorese expert witnesses, while the defendants being resident in Timor-Leste should also be influential; the Timor-Leste government also argued most relevant documentation was in Timor-Leste. Lighthouse pointed to a number of connections with Victoria including arguing: the contract was valid, and the governing law was therefore Victorian; some meetings occurred in Australia; the loss/damage is suffered in Victoria.

Almond J noted he was not determining whether Timor-Leste was a more appropriate forum but whether Victoria was clearly *inappropriate*. He found



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there were significant connecting factors with Victoria and Victoria was therefore not “clearly inappropriate”.

Almond J therefore dismissed the Timor-Leste government’s application that the proceeding be set aside, dismissed or otherwise permanently stayed.

Application for Leave to Appeal

On 29 May 2019 the Timor-Leste government filed an Application for Leave to Appeal regarding Almond J’s decision on the “forum non conveniens” issue.

The Timor-Leste government argued Almond J erred in ruling that Victoria was not “clearly inappropriate”. It contends the judge should not have been so influenced by the argument that Victorian law was the applicable law of the contract, given the existence of the contract is itself in dispute.

Further, the Timor-Leste government said there were a number of factors which suggested Victoria was an inappropriate forum for the dispute, including the need for the court to determine the scope of the Prime Minister’s powers under the Constitution of Timor-Leste and the powers of the Council of Ministers (which are relevant to the formation of the alleged contract), and also to address the issue of whether certain documents should be incorporated into the alleged contract. The Timor-Leste government argued that Timorese law applies to the formation of the contract itself and that this should have been given greater weight in determining the appropriate forum.

In summary, the Timor-Leste government argued the primary judge (Almond J) failed to take into account material considerations in not having regard both to matters relied on by the Timor-Leste government and failing to make a proper assessment of the factors connecting the dispute to Timor-Leste.

Supreme Court of Victoria Court of Appeal



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On 9 August 2019, the Court of Appeal heard the government of Timor-Leste case against the judgment of Almond J. The Court of Appeal reserved its judgment.

On 6 December 2019 the Court of Appeal handed down its judgment, finding that Almond J had not erred in his approach to finding that Victoria was not a clearly inappropriate forum and his conclusion that the case could therefore be heard in Victoria.

The government of Timor-Leste is confident in its legal position regarding the lack of contract between the parties and will continue to argue its case.

About the Lighthouse Corporation Limited

In March 2015 DLA Piper, who have been acting for the Timor-Leste government on this matter, wrote to the lawyers representing Lighthouse to raise concerns about the credentials of Lighthouse with respect to stated experience in the oil and gas industry.

Enquiries by DLA Piper identified that that representatives of the Lighthouse companies held no substantive experience in the oil and gas industry, that the companies themselves were practically invisible shelf companies, and that false assertions had been made regarding financial ability of Lighthouse.



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