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UNDERSTANDING TRINIDAD & TOBAGO'S NEW MARITIME BOUNDARIES

Vivian Rambarath-Parasram

On April 11, 2006 Trinidad and Tobago's maritime boundaries with Barbados were defined. This was the result of an application made by the Government of Barbados to an Arbitral Tribunal constituted in compliance with Part VII of the United Nations Convention on the Law of the Sea (UNCLOS). This route was pursued since the latter government was of the view that all diplomatic and bilateral negotiations had broken down for the negotiation of a mutually beneficial fishing agreement. Trinidad and Tobago had asserted that the claims of Barbados were outside the jurisdiction of the Tribunal. In the final analysis, Trinidad and Tobago submitted to the jurisdiction of the Tribunal for the purposes of delimiting its maritime boundaries with Barbados.

In 1986 Trinidad and Tobago adopted the Archipelagic Waters and Exclusive Economic Zones Act in order to define itself as an archipelagic State and to claim an Exclusive Economic Zone in accordance with UNCLOS. Trinidad and Tobago's maritime neighbours also declared similar zones which is indicative that there are many delimitation agreements that are yet to be concluded.

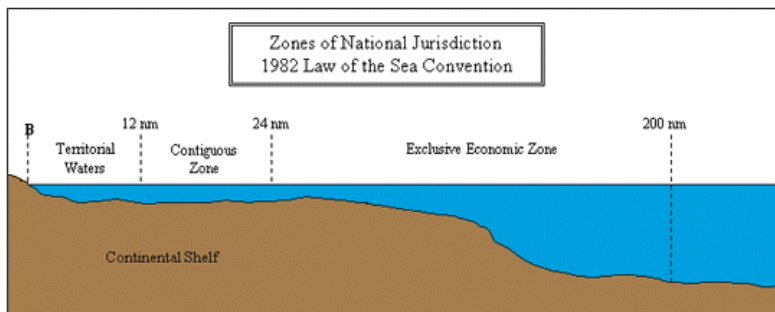
Such States include Grenada, St Vincent and the Grenadines and Barbados. Trinidad and Tobago had negotiated a maritime boundary with Venezuela in 1990. Trinidad and Tobago and Barbados now have defined boundaries between them since the Tribunal decided that it had the jurisdiction to delimit both the EEZ and the Continental Shelf.

Many have wondered about the impact of the Tribunal's award on Trinidad and Tobago's maritime zones. This article will explain the basic tenets of maritime zones established under the UNCLOS followed by an outline of the decision of the tribunal

Maritime Regimes

Under the UNCLOS coastal States are permitted to establish various maritime zones, such as the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf, and may establish straight baselines or, in the case of archipelagic States, archipelagic baselines, from which the breadth of these maritime zones is measured. Thus, coastal States exercise sovereignty, sovereign rights and jurisdiction over substantial portions of the seas. UNCLOS prescribes limits of the territorial sea at up to 12 nautical miles, 24 nautical miles for the contiguous zone, and 200 nautical miles for the exclusive economic zone.

These zones are illustrated below:



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RESIDENTIAL DEVELOPMENTS: QUESTIONS FREQUENTLY ASKED BY PURCHASERS

Rena Mahadeo and Celeste Mohammed

A residential development (sometimes simply called a subdivision) is typically a piece of property that is divided into subdivisions with houses constructed on each piece of subdivided land. Due to social and economic factors, residential developments in Trinidad & Tobago have become increasingly popular. However fancy names and exclusive locations do not always translate into a pleasant purchasing experience. Crucial information can become obscured among all the legal words and jargon with which a prospective purchaser is confronted, resulting in unwelcome surprises. This article is aimed at highlighting several factors which a prospective Purchaser should keep in mind when buying into a residential development.

It is important to note that many residential developments are structured as **leasehold** and therefore, the Purchaser will eventually become the Lessee/Purchaser and someone else, either the Vendor or an Owner's Association, will become the Lessor/Owner. The Lessee/Purchaser is expected to execute an Agreement for Sale and thereafter a Deed of Lease completes the purchase of a dwelling house and lot. In Developments a Deed of Lease is a document by which the Lessor/Owner transfers legal title of the Premises to the Lessee/Purchaser for a certain term of years.

There are also developments which offer **freehold** title. However, in either case, the Developer will attempt to impose restrictions against the activities or conduct which he deems unsavoury. In our experience, the following are some of the questions most asked by Purchasers after they are confronted with the Agreement for Sale.

How much of a deposit do I need to pay and when do I pay it?

A deposit serves two purposes – if the purchase is carried out, it goes against the purchase money. But, its primary purpose is that it is a guarantee that the Purchaser means business. The amount of the deposit is usually 10% of the consideration of the purchase price of the Dwelling house and is usually paid upon the signing of the Agreement for Sale. However, the Developer may require more than the 10% in one lump sum payment and upon signing the Agreement for Sale or for it to be in instalments prior to Completion of the Transaction.

Can I get back my deposit if I change my mind?

NO. The Agreement for Sale will usually set-out what is the position under the general law. That is, if, through no fault of the Vendor, the Purchaser fails to complete the purchase of the property, the Vendor can terminate the Agreement for Sale and forfeit the deposit paid, which is usually 10% of the purchase price. If more than 10% was paid to the Vendor, he has to show special circumstances in order for the law to allow him to forfeit more than 10%. So, upon termination, the Vendor should refund to the Purchaser any moneys paid by the Purchaser under the Agreement for Sale which is *in excess* of 10% of the purchase price. However, the Purchaser can always seek redress from the courts for forfeiture of the deposit.

Can the Vendor increase the price of the dwelling house?

IT DEPENDS. Under general law the parties are bound by the stated purchase price unless the Agreement for Sale says otherwise. In this country, it is common practice that the Agreement for Sale has a clause allowing for the increase of the purchase price. To be fair to the Purchaser, this increase is usually 'capped' at a certain percentage *e.g.* 12%. Where there is allowance for such an increase, the Agreement usually provides that this may only be done in certain circumstances. For example:

- (i) if there is an increase in the prices of materials, increase in wages or an increase in insurance in construction of the dwelling house; or
- (ii) for any further work in respect of the dwelling house required by the Authorities (*e.g.* WASA, Town & Country Planning etc.).

Purchasers need to be vigilant when reading their Agreement for Sale and, if necessary, cater for such increases after signing. This may be a real possibility considering that construction costs in Trinidad & Tobago have soared considerably.

When can I have the keys for my dwelling house?

On completion of the purchase. Completion occurs when the Purchaser has paid to the Vendor :

- the balance of the purchase price,
- legal fees for the preparation of the Agreement for Sale (providing that the Vendor or his Attorney prepares the Agreement for Sale) and the charges and costs in respect of preparing, stamping and registering the lease; and

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RESIDENTIAL DEVELOPMENTS: QUESTIONS FREQUENTLY ASKED BY PURCHASERS (cont'd)

- any sums due by way of rent, service charges and any additional costs pursuant to the lease or which are provided for in the Agreement for Sale.

Subsequently, the parties will execute the lease and the Purchaser will be let into vacant possession of the property at which time he/she will receive his/her keys.

Do I have to pay service charges, and for what services?

YES. In every leasehold residential development, certain services are provided to the Purchaser on an ongoing basis. These services may include the operation and maintenance of security systems around the development, the operation and maintenance of sewerage and drainage systems on the development, maintenance of the roads, opens spaces, play lots and recreation grounds on the development, street lighting for the development, insurance coverage for the buildings especially if they are Townhouses or Condominiums where the residents share common walls. These areas are common to **all residents** and so the cost of their upkeep should be borne by **all residents**. The Service Charge is meant to be the Purchaser's contribution to these costs. The amount of the service charge will obviously depend on the number of dwelling houses in the Development but the sum is not usually a very high amount and is most often paid monthly.

Can I sell my dwelling house before I complete the purchase?

IT DEPENDS. The strict answer to this question would be NO as many Agreements for Sale stipulate that the rights of the Purchaser under the Agreement are personal to that Purchaser alone and cannot be assigned or transferred. However some developers are more lenient and their Agreements (and Leases) may expressly provide a procedure for purchasers who want to re-sell. If you think you may be interested in re-selling please discuss this with your vendor/ developer beforehand.

Can I change the appearance of my Dwelling House?

IT DEPENDS. Some leases specify that a Purchaser cannot change the appearance of the Dwelling House. This includes not making any structural alterations to the Dwelling House or changing the colour of the external walls or exterior trimmings. Most leases also restrict certain activities e.g. the erection of fences, clothing lines, garages or other structures outside the house, the display of signs, flags or banners in the windows, etc. Landlords

are very specific with these covenants because they prefer uniformity and believe this increases the aesthetic value of the residential development as a whole.

In Trinidad & Tobago, these rules are not rigorously enforced. Many developers are sympathetic and will allow for reasonable departure from the rules provided that their consent is obtained.

Do I have to sign the lease if I do not have a final completion certificate?

IT DEPENDS. The Agreement for Sale will stipulate the document which signifies completion of the dwelling house: the Final Completion Certificate or the Practical Completion Certificate. Final Completion Certificates are issued by the Local Health Authority when they are satisfied that the Development meets the required standards. Practical Completion Certificates are issued by a professional third party (usually an architect or an engineer) appointed by the Vendor for that purpose. It is that person who inspects the property and certifies that the dwelling house has been constructed and completed in accordance with the drawings and specifications and with the requirements of all applicable statutory agencies, laws and regulations and that the standard of workmanship is satisfactory and in accordance with the standard of work in Trinidad and Tobago.

If your Agreement for Sale designates the Practical Completion Certificate as evidence of the completion of the dwelling house, it will usually state that within a certain time following the issue of that certificate, you will be required to complete the purchase as outlined above. Purchasers should be aware that if their Agreement for Sale designates the Practical Completion Certificate as evidence of completion, they may encounter difficulties in obtaining financing from mortgage institutions who may require the Developer to sign an indemnity.

Understanding Trinidad and Tobago's New Maritime Boundaries (cont'd)

The Territorial Sea and Contiguous Zones

States enjoy sovereignty over their territorial seas subject to the right of innocent passage for foreign ships through those seas. In addition to the rights of coastal States, the territorial sea also involves extensive responsibilities such as policing and maintaining order, buoying and marking channels and reefs, sandbanks and other obstacles; keeping navigable channels clear and giving notice of danger of navigation and providing rescue services.

In the zone contiguous to the territorial sea the Coastal State may exercise the control necessary to prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea. This zone may only extend up to 24 nautical miles from the baselines from which the territorial sea is measured.

The Continental Shelf

In many places the continental shelf is rich in natural resources. Trinidad and Tobago's continental shelf is in fact an extension of the South American shelf which indeed rich in oil and gas resources. The doctrine of the continental shelf was firmly established by 1969 and in the International Court of Justice (ICJ) stated in the *North Sea Continental Shelf* cases that the rights of the coastal State in respect of the area of the continental shelf that constitutes a natural prolongation of its land territory into and under the sea exists by virtue of the its sovereignty over the land, and as an extension of its in an exercise of sovereign rights for the purpose of exploring the seabed and exploiting its natural resources. The ICJ believed it to be an inherent right.

A certain amount of duplication and confusion arose with the emergence of the 200 mile EEZ. The continental shelf and the EEZ are two distinct legal bases for coastal States rights in relation to the sea bed. Their origins are quite different and while they may usually apply to the concurrently to the same geographic area, this is not always the case. The EEZ has a breadth of 200 miles which may be greater or less than the breadth of the physical continental shelf. It must also be noted that the while a continental shelf inherently exists and therefore need not be claimed; an EEZ must always be claimed. Thus there can be a continental shelf without an EEZ but there can never be an EEZ without a continental shelf.

Trinidad and Tobago had attempted to have the Tribunal make a determination with respect to its claim to an outer continental shelf.

The EEZ

The EEZ is a zone extending up to 200 nautical miles from the baseline. The coastal State has sovereign rights for the purpose of exploring and exploiting, conserving and managing the living and non living natural resources of the sea bed; sub soil and super-adjacent waters and any other economic exploitation that may arise from the zone such as the production of energy from water, currents and winds. Within this zone the coastal state also has jurisdiction over the establishment and use of artificial islands, installations, structures and marine scientific research. These rights must be exercised in accordance with the Continental Shelf Regime of UNCLOS.

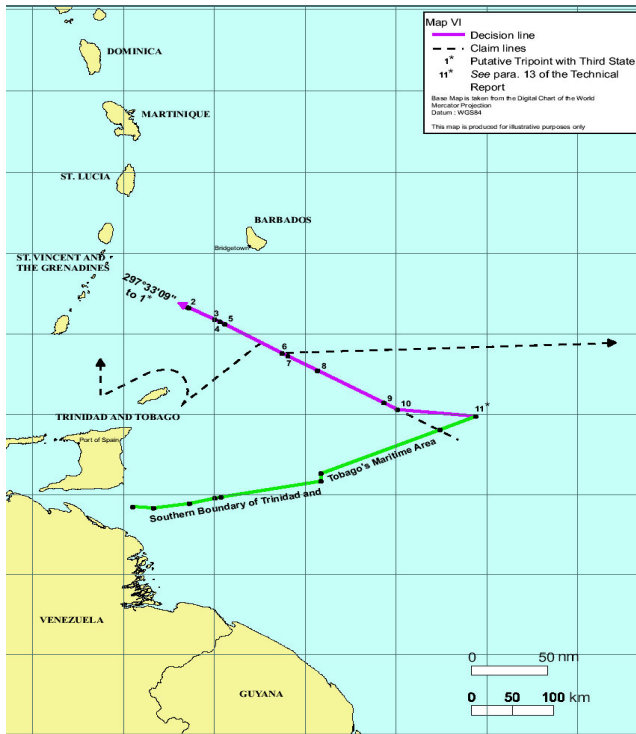
Within the EEZ all States enjoy the freedom of navigation, overflight and the laying of submarine cables and pipelines and other internationally lawful uses of the sea related to these freedoms. These freedoms are to be exercised with due consideration for the interests of other States.

The Decision and its Impact

The Award establishes a single maritime boundary between Barbados and Trinidad and Tobago. The boundary for the most part follows the equidistance line between Barbados and Trinidad and Tobago but in the eastern Atlantic Sector, adjusts that line to take account of the coasts of Trinidad and Tobago that abut upon the area of overlapping claims. The Tribunal also held that it lacked the jurisdiction to render a substantive decision on the fisheries regime inside Trinidad and Tobago's Exclusive Economic Zone. However it stated that Trinidad and Tobago are under a duty to agree upon measures necessary to coordinate and ensure the conservation and development of the flying fish stocks and to negotiate in good faith and conclude and agreement that will accord the fisherfolk of Barbados access to fisheries within the EEZ of Trinidad and Tobago subject to the limitation and conditions of that agreement and to the right and duty of Trinidad and Tobago to conserve and manage the living resources of waters within Trinidad and Tobago to manage the living resources of waters within its jurisdiction.

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Understanding Trinidad and Tobago's New Maritime Boundaries (cont'd)



The pink line illustrates the maritime boundaries of both States. The Tribunal determined a single boundary line for the delimitation of both the continental shelf and the EEZ to the extent of the overlapping claims without prejudice to the question of the separate legal existence of the EEZ and the continental shelf. The parties agreed that the delimitation should move from the hypothesis of a provisional equidistance line to a consideration of the question whether there are relevant circumstances that make departures from an equidistance line necessary to attain an equitable solution. The line was adjusted taking into significance the relevant circumstance of the significant coastal frontage of Trinidad and Tobago. It held that the particular coastal frontage abuts directly into the area subject to delimitation and it would be inequitable to ignore its existence. The tribunal was of the view that the bending of the equidistance line reflects a reasonable influence of the coastal frontages on the overall area of delimitation with a view to avoiding reciprocal encroachment which would otherwise result in some form of inequity.

On the issue of the Trinidad and Tobago's claim to an outer continental shelf beyond 200 nautical miles, the Tribunal determined that there is no single maritime boundary beyond 200 nautical miles. They also stated that the problems posed by the relationship on that

maritime area of continental shelf and EEZ rights are problems which they need not address. Thus the Tribunal took no position on the argument advanced by Trinidad and Tobago.

Trinidad and Tobago's maritime boundaries are now a closed area that would seem to have cut off its access to an outer continental shelf since the equidistance line between Barbados and Trinidad and Tobago intersects the latter's southern maritime boundary.

The decision reflects a compromise judgment that is typical of such Tribunals. No party can claim that they have been adversely affected by the new maritime boundaries since neither Trinidad and Tobago nor Barbados have exercised exploration or exploitation rights for oil and gas resources in the areas of delimitation. Barbados' claims around Tobago were effectively dismissed by the Tribunal and many of the concessions that Trinidad and Tobago had granted to oil and gas companies have remained valid in light of the decision of the Tribunal.

With respect to fishing rights these are still to be negotiated between both countries since the Tribunal has stated that it has no jurisdiction to render a decision in Trinidad and Tobago's EEZ. Access to the fisheries resources will therefore have to be negotiated in the light of Trinidad and Tobago international obligations under the UNCLOS and the other international conventions to conserve and sustainably manage its living resources.

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19 St. Vincent Street, Port of Spain, Trinidad & Tobago, W.I.
Tel: 1 (868) 623-4237/9 Fax: 1 (868) 627-8564
E-mail: mhs@trinidadlaw.com
Website: www.trinidadlaw.com

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