

DEMOCRATIC REPUBLIC OF TIMOR-LESTE
GOVERNMENT

Law on Foreign Investment

Nr. /2005

(date)

The policies set down in the National Development Plan for economic growth and the promotion of the private sector are the fundamental levers for job creation and poverty reduction.

Timor-Leste is faced with huge challenges arising out of its historical process to gain independence and such challenges have not only affected most of the country's infrastructure but, more importantly, they have affected its most valuable assets – its human resources – thereby reducing drastically the technical and professional capability of the Timorese to promote on their own economic activities of a private nature that may generate wealth and job creation.

It behoves the State to establish the necessary policy conditions with a view to improving the country's economic performance by promoting and encouraging foreign investment, which is vital for the reconstruction of the economic and entrepreneurial sector, and for the reduction of unemployment, deriving the benefits that such investment brings in several areas: technical assistance and vocational training for the national workforce, industrial development and an increase in productivity, rehabilitation of economic infrastructure, and the development of the quality of people's lives in general.

The establishment of a legal framework that attracts and favours foreign investment in the country is of paramount importance to promote the development of natural and human resources, create jobs, and contribute towards the economic and social development of Timor-Leste.

This Law establishes a set of guarantees and incentives for foreign investors, which in fact are in keeping with the legislative policies for the sector being followed by many countries, especially in the Southeast Asian region.

This Law seeks to play a promoter role and, at the same time, it serves as a guarantor for foreign investment, either by foreign companies or individuals, or by the Timorese Diaspora wishing to contribute with their resources from overseas, with their capital, with their savings, and with their expertise or technology towards the building of the national economy and towards the creation of better living conditions inside the Timorese nation.

In this context, the approval of this regime also rests on the assumption that there will be a need to adjust public administration and its procedures to the implementation of this Law, so that the rights and obligations of investors and foreign investment in the country are empowered.

Pursuant to item 1, Section 92, of the Constitution, the National Parliament enacts the following, which shall have the force of law:

CHAPTER I

General Provisions

Article 1 Purpose

This Law establishes the general bases of the legal regime for foreign investment in Timor-Leste.

Article 2 Scope of Application

1. This Law applies to foreign investment made in Timor-Leste by a foreign natural person or corporate body, or by a non-resident Timorese national.
2. This Law does not apply to foreign investment already made or to be made in the areas of exploration, research and exploitation of gas and petroleum, neither does it apply to the area of extractive industry for mineral resources, as these areas shall both be dealt with by a separate law.

Article 3 Definitions

For the purpose of this Law:

- a) "**Economic activity**" is the production of and trading in goods or the provision of services, irrespective of their nature, that take place in the context of the country's economy;
- b) "**Foreign Investor's Certificate**" is a document made out to a foreign investor by the competent authority, certifying the foreign status of the investor;
- c) "**Undertaking**" is the making of foreign investment in any activity of an economic nature;
- d) "**Undertaking mostly focussed on export**" is the making of foreign investment in any activity of an economic nature where at least 85% of the goods production or service provision is meant for export;
- e) "**Economic infrastructure**" is any physical structure or set of physical structures, including equipment, buildings and constructions involved in structuring economic activities;
- f) "**Foreign investor**" is any foreign natural person or corporate body, or a non-resident Timorese national, that holds a foreign investor's certificate;
- g) "**Foreign investment**" is any direct investment made with financial resources originating overseas for the account and at the risk of a foreign investor, or investment that may be subjected to pecuniary assessment;
- h) "**Foreign reinvestment**" is investment made into the same undertaking by resorting to dividends resulting from a foreign investor's economic activity;

- i) “**Minister**” is the minister who oversees the area of foreign investment;
- j) “**Non-resident Timorese national**” is a natural person holding the Timorese citizenship who, by the date of applying for the status of foreign investor, has been residing overseas on a continuous basis for a period of not less than five years;
- k) “**Permanent Timorese worker**” is a worker holding the Timorese citizenship that is permanently employed on a full-time basis;
- l) “**Business**” is any kind of commercial company or any other type of structure or organisation of a legal nature, established under the terms of legislation applicable in Timor-Leste.

Article 4 International Agreements

The rights, guarantees, incentives, and benefits granted to foreign investors under the terms of this Law shall not restrict or supersede the regime resulting from international agreements or treaties to which Timor-Leste is a party.

Article 5 Agreements with Foreign Investors

Agreements of an economic nature that were entered into between the Government and foreign investors before this Law became effective shall be valid and continue in force.

CHAPTER II Foreign investment

Article 6 Composition of Foreign Investment

Any one of the following operations, applied in isolation or cumulatively to an undertaking, shall be considered as foreign investment as long as such operations may be subjected to pecuniary assessment:

- a) the direct transfer from overseas by a foreign or non-resident Timorese national of freely exchangeable currencies and the depositing of such currencies with financial institutions that have been lawfully established in Timor-Leste;
- b) the import of assets, services and titles with financial resources originating overseas;
- c) the generation of dividends by foreign investment and the reinvestment of such dividends under the terms of this Law;
- d) the granting, in specific cases and according to terms agreed with or endorsed by regulatory entities, of the rights to use patented technologies and foreign registered marks.

Article 7 Forms of Foreign Investment

Foreign investment may take the following forms:

- a) the establishment in the country of a business under the terms of applicable legislation;
- b) the acquisition of already existing national assets;
- c) the acquisition of part of the share capital of a business or participation in the growth of its capital;
- d) a contract that involves ownership or operation of companies, establishments, real property, and other premises or equipment designed for the development of economic activities;
- e) the transfer of equipment assets under a regime of leasing or equivalent arrangements, as well as any other regime requiring maintenance of such assets in a foreign investor's possession;
- f) loans or supplementary instalments of capital made directly by a foreign investor into a business of which the investor is a shareholder, or any loans linked to reinvestment, into the business, of profits not given to the foreign investor.

Article 8 **Areas of Foreign Investment**

1. Foreign investment shall be permitted in any sector of economic activity, provided that foreign investment in any such sector is not specifically banned or restricted to ownership and operation by the State or by national investors.
2. The Government shall define, in supplementary legislation:
 - a) the sectors of economic activity for which foreign investment is banned;
 - b) the sectors of economic activity that are specifically restricted to the State;
 - c) the sectors of economic activity that are not covered by the regime of incentives and benefits provided for in this Law;
 - d) the conditions of certification and access, procedures and other practical aspects related to the foreign investment referred to under item 1 above.
3. The areas or sectors of economic activity that are restricted to the State's public sector may have the participation of foreign investors under the terms of special legislation.

Article 9 **Minimum amount for foreign investment**

The minimum amount for a foreign investment to be granted access to the rights, guarantees, incentives, and benefits established by this Law is 100,000 US dollars.

CHAPTER III

Principles, rights, and guarantees

Article 10
Equal treatment

Treatment to be given to a foreign investor shall not be less favourable than the treatment established for national investors.

Article 11
Private ownership

1. The State shall guarantee the right to private ownership, especially ownership over the assets and titles that form the property of a business, which cannot be nationalised.
2. Expropriation of the property, assets or titles referred to under item 1 above shall always grant a foreign investor the right to a fair and prompt compensation as provided for in law, and such compensation shall be assessed on the basis of the real current value of the property on the date of expropriation.
3. The amount of the compensation referred to under item 2 above shall be established in an agreement between the Government and the investor or, where there is no agreement, by arbitration as provided for by Article 23 of this Law.
4. The compensation amount established under the terms of item 3 above shall only be freely transferable overseas in proportion to the foreign investment made into a business.

Article 12
Overseas transfer of funds

Every foreign investor shall be guaranteed the right to transfer overseas returns from foreign investment made in Timor-Leste, once all obligations towards the State have been complied with as provided for in law.

Article 13
Foreign workers

1. A business involving foreign investment may employ foreign workers under the terms of applicable law.
2. A foreign worker employed under the terms of item 1 above shall be entitled to transfer overseas his or her net income earned as a result of his or her employment contract.
3. The provisions of item 3 above shall also apply to Timorese workers who, by the date of recruitment, have continuously lived abroad for a period of not less than five years.

CHAPTER IV
Incentives and benefits

Article 14
Tax incentives

1. A business involving foreign investment shall, during the first five years of its economic activities, be entitled to tax credit over taxable profits in the amount of 300 US dollars for each permanent Timorese worker.
2. Where a business involving foreign investment is located:
 - a) in rural Timor-Leste, except for the District of Oecussi Ambeno or the Sub-district of Atauro, the period for tax credit shall be 7 years;
 - b) in the District of Oecussi Ambeno and the Sub-district of Atauro, the period for tax credit shall be 10 years.
3. Where foreign investment is made into an economic infrastructure designed, as a priority, for the provision of services on an outsourcing basis, the period for tax credit shall be:
 - a) 10 years in cases provided for under item 1 above;
 - b) 12 years in cases provided for under paragraph a), item 2, above;
 - c) 15 years in cases provided for under paragraph b), item 2, above.
4. Where foreign investment is mostly focussed on export, the period for tax credit shall be:
 - a) 7 years in cases provided for under item 1 above;
 - b) 9 years in cases provided for under paragraph a), item 2, above;
 - c) 12 years in cases provided for under paragraph b), item 2, above.
5. The tax credit contemplated under items 3 and 4 shall not be accrued.
6. In case of foreign re-investment, the foreign investor shall enjoy total exemption from any taxes on reinvested dividends related to the periods of tax credit established under the preceding items.
7. Tax credit shall be irrevocable during the periods set under the preceding items, provided that the conditions that substantiate its granting remain unchanged.
8. Tax credit shall be forfeited if it is not used during the periods referred to under the preceding items.

Article 15
Customs incentives

1. A business involving foreign investment shall be entitled to the following customs incentives:

- a) Exemption from customs duties and taxes on the import of capital assets, building materials for the construction of factories, hotels or economic infrastructure, raw materials for manufacturing transformation, half-completed products, components and spare parts for incorporation or use in the production of goods and services;
 - b) Exemption from customs duties and taxes on fuel used for own production of electric power used by a business, except for petrol, provided that there is no public supply of such power.
2. The customs incentives referred to under item 1 above shall be granted in accordance with the periods established under items 1 to 4 of Article 14.

Article 16
Limits on incentives

The customs incentives established by this Law do not preclude the payment of taxes and fees as remuneration for services provided and compliance with formalities related to customs clearance.

Article 17
Exemption from rent payment

A business involving foreign investment shall be exempted from rent payment under leasing contracts of State buildings located in rural Timor-Leste during the periods referred to under items 2 to 4 of Article 14.

CHAPTER V

Special conditions

Article 18
Special investment agreement

1. The Government may establish with a potential foreign investor a special investment agreement defining a special legal regime to apply to economic activities that, by their scale or nature, or by their economic, social, environmental or technological impact, prove to be of great interest for the country within the framework of the national development strategy, thereby justifying the adoption of special treatment or conditions not provided for under the general regime for foreign investment established by this Law.
2. The entering into a special investment agreement as contemplated under item 1 above shall be authorised by a Resolution from the Council of Ministers with a clear indication of the special conditions justifying the agreement, and of the special regime to which such agreement shall be subjected.

CHAPTER VI

Authorisation, registration and promotion agency

Article 19

Authorisation of foreign investment

1. Foreign investment to be made in the country pursuant to this Law shall be subject to authorisation and approval by the Government's competent entities under the terms of applicable legislation.
2. The authorisation referred to under item 1 above shall be granted as long as the requesting party meets the legally required conditions and the proposed investment is in conformity with the objectives of the National Development Plan.

Article 20

Registration of foreign investment

1. Once a request has been granted pursuant to Article 19, a foreign investment shall be registered with the competent entity under the terms of this Law and applicable regulations.
2. The registration referred to under item 1 above shall be separate from the commercial registration of a business under the terms of applicable commercial laws.

Article 21

Promotion and registration agency

The Government shall establish through a specific legal instrument an agency for the promotion and registration of foreign investment and the promotion of exports, and that agency shall specifically promote, coordinate, facilitate, and monitor foreign investment and exports, and it shall centralize the required administrative procedures to authorise applications for foreign investment.

CHAPTER VII

Obligations

Article 22

Obligations of a foreign investor

A foreign investor shall be under an obligation to:

- a) comply with the laws and other regulatory provisions of the Democratic Republic of Timor-Leste;
- b) employ Timorese workers and promote their vocational training and technical skills as required to perform managerial or supervisory functions;

- c) implement rules and procedures regarding the protection of the environment, health and occupational safety under the terms of applicable legislation;
- d) comply with the rules and procedures of applicable legislation regarding transfer of funds;
- e) regularly provide the agency responsible for foreign investment and export promotion with information and data related to their investment under the terms of applicable regulations.

CHAPTER VIII

Settlement of disputes

Article 23

Conciliation and arbitration

1. Disputes between the State and any foreign investor as a result of the interpretation and application of this Law and related regulations shall be settled by conciliation in accordance with the laws of Timor-Leste if no other procedure is established in international agreements entered into by the Democratic Republic of Timor-Leste and the foreign investor.
2. Disputes between the State and a foreign investor holding foreign citizenship, and where such disputes cannot be settled as provided for under item 1 above, shall be settled by way of arbitration in accordance with the rules of the International Convention on the Settlement of Investment Disputes between States and Citizens of Other States (ICSID), unless there is an agreement to the contrary.
3. The provisions of items 1 and 2 above shall be without prejudice to appeal to the competent courts of the Democratic Republic of Timor-Leste, as and whenever both parties decide to do so.

CHAPTER IX

Transitional and final provisions

Article 24

Previous investments

1. A foreign investor who has made an investment into a business in Timor-Leste before the entry into force of this Law may benefit from the regime established by this Law, provided that the investor meets the requirements to qualify as a foreign investor and the capital of their investment is equal to, or exceeds, half of the minimum amount required under the terms of Article 9.

2. For the purposes of item 1 above, interested investors should apply to the competent authority within 180 days from the date of entry into force of additional legislation required for the execution of this Law.
3. Without prejudice to the provisions of item 1 above, the incentives and benefits contemplated in Chapter IV of this Law shall not apply retroactively.

Article 25
Additional legislation

The Government shall approve additional legislation as required for the execution of this Law within 90 days from the date of its entry into force.

Article 26
Derogation of legislation

The special investment regime established by this Law shall prevail over the provisions of applicable legislation that are contrary to the application of this Law.

Article 27
Entry into force

This Law shall enter into force one day after its publication.

Approved on 2 May 2005.

The Speaker of the National Parliament
[signed]
Francisco Guterres “Lu-Olo”

Promulgated on 27 May 2005.

To be published.

[signed]
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