

Timor-Leste

Private Investment Law (2011)

Unofficial translation

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Private Investment Law

Law No. 14/2011

[Preamble]

The private sector of the economy is an essential partner in the development of the Country, as it generates wealth and jobs outside the framework of State activities, by producing revenues which finance the sustainable economic development of the Country.

Therefore, first of all and with a view to attracting private investment, current legislation should be revised in order to produce a clear legal framework, by bringing together into one single diploma those regimes applicable to national and foreign investment.

Within this scope, all investors have the right to access courts in order to defend their legally protected rights and interests, to private property in accordance with the limits set out by the Constitution, to import capital goods and equipment, to export products produced according to legally established procedures and restrictions, to credit, to the free transfer of funds abroad, to free employment of foreign workers, to protect intellectual property and to the respect for professional, banking and commercial secrecy.

The current Law also proposes the definition of a process of benefits and incentives of a fiscal and customs nature, aimed at creating favourable conditions to investment and greater flexibility in terms of adjusting to investors' requirements.

The established system of benefits and subsidies follows a simple scale of geographical investment areas in order to favour economic development of the Special Zones defined by this legislation.

On the other hand, the approval of the current Law accepts, by way of its implementation, the need to adjust Public Administration and its procedures in order to defend the rights and duties of investors in the Country.

The National Parliament, under the scope of no. 1 of article 95 of the Constitution of the Republic, shall decree the following law:

Chapter I. General provisions

Article 1. Object

This Law shall establish the general bases of the legal regime governing private investment in Timor-Leste.

Article 2. Scope of Application

- 1) This Law shall regulate investments and re-investments made in Timor-Leste by a national or foreign, resident or non-resident individual or company.
- 2) This Law shall be applied to all sectors of economic activity on the national territory, with the following exceptions:
 - a. Prospection, research and production of oil and natural gas, as well as the mining industry of mineral resources, both the object of specific legislation;
 - b. Developments geared to the direct sale of goods and equipment to the final consumer;
 - c. All developments geared to the commercialisation of property.

Article 3. Definitions

For the purposes of the present Law:

- a. "Economic Activity" means the production, distribution and commercialisation of goods or the provision of services, regardless of their nature, undertaken within the scope of the economy of the Country;

- b. "Capital Goods or Equipment used in the construction or management of an Investment or Re-investment project" means the capital goods or equipment imported by the investor, their acquisition being justified by the nature or scale of the development, as is set out in the Investor's Certificate;
- c. "Investor's Certificate" means the document issued by the Specialised Investment Agency, which defines the investor's obligations, benefits and incentives to be granted by the State, the conditions for repeal and the dates of commencement, implementation and conclusion of the investment or re-investment project, in addition to other data;
- d. "Contract of Association" means the legal tie of a group of two or more companies to undertake joint investments;
- e. "Development" means the act of undertaking an investment or re-investment in a given sector of economic activity in the Country;
- f. "Company" means any kind of commercial company or other type of legal structure, incorporated under the terms of the applicable legislation of the Country;
- g. "Training" means any kind of learning to be provided to a permanent Timorese worker, in accordance with the vocational empowerment plan as specified in the Investor's Certificate, which can be administered in or outside the workplace, the objective of which is to develop the technical or management skills of permanent Timorese workers;
- h. "Private Investor" or "Investor" means a national or foreign, resident or non-resident individual or legal person, holder of an Investor's Certificate;
- i. "National Investor", for the purpose of this Law, means an individual of Timorese citizenship or a legal person, of which at least 75% of shares with voting rights belong to individuals of Timorese citizenship or other legal persons who are also nationals according to the present definition;
- j. "Foreign Investor", for the purpose of this Law, means an individual whose nationality is any but Timorese or a legal person, of which at least 75% of shares with voting rights do not belong to individuals of Timorese citizenship or other legal persons who are also nationals.
- k. "Private Investment" means any form of investment or re-investment, in accordance with the definition set out in the two following sub-paragraphs;
- l. "Investment" means any direct or indirect investment in the Country undertaken on behalf of and at the risk of the private investor with cash or other goods, quantifiable in money terms, such as:
- i. Capital goods or equipment or others;
 - ii. Financial resources originating from bank loans;
 - iii. Capital shares and restricted shares in commercial companies, as well as increases or supplementary inputs of capital;
 - iv. Patented technology, technical processes, industrial secrets and utility models, franchising and transfer of know-how, brands, logos, names or insignias of registered establishments, as well as any other form of intellectual property;
 - v. All rights recognised by law or contract and all licences or authorisations issued in accordance with the law.

- m. “Re-investment” means any investment made in the same business development by resorting to the profits and dividends resulting from the economic activity of such business development;
- n. “Investment or Re-investment Value” means the total sum of the capital invested or re-invested, including bank loans, increases and supplementary inputs of capital effectively applied in an investment project, profits and dividends re-invested in the same company and CIF value of imported capital goods and equipment, among others, as registered in the Specialised Investment Agency;
- o. “National Resident”, for the purpose of this Law, means any individual of Timorese nationality residing in the Country or who has not resided outside the national territory for a consecutive period of more than five years. This also applies to any national legal person;
- p. “National Non-resident”, for the purpose of this Law, means any individual of Timorese nationality who has resided abroad for a period of over five consecutive years and who has not, in the meantime, returned to Timor-Leste to permanently reside here;
- q. “Permanent Timorese worker” means any worker of Timorese citizenship with definitive and full-time employment;
- r. “Special Zones” means the geographical areas defined by article 9;
- s. “Free Zones” are parts of the customs territory or locations situated therein where foreign goods are considered as if they had not entered such customs territory.

Article 4. General Principles

The legal regime for private investment shall comply with the following general principles:

- a. Free initiative, with the exceptions set out in no. 1 of article 8;
- b. Equal treatment between national and foreign investors, with the exceptions set out in articles 10 and 14;
- c. Guaranteeing protection for the investment;
- d. Respect for international agreements or others of an economic nature which have already been entered into, as well as for Investor’s Certificates already issued, in accordance with articles 5 and 6.

Article 5. International Agreements

The rights, guarantees, benefits and incentives granted to investors under the terms of this Law in no way limit or replace the regimes resulting from international agreements or treaties ratified by Timor-Leste.

Article 6. Agreements with Investors

Economic agreements entered into between the Government and national or foreign investors, and Investor’s Certificates issued before publication of this Law shall remain valid and in force.

Chapter II. Investment conditions

Article 7. Forms of Investment

Investment or re-investment can consist of the following:

- a. Incorporation of a company under the terms of the applicable law of the Country;
- b. Acquisition of part or all the shares of a company or participation in the increase of its capital;
- c. Entering into or amending consortium agreements, partnerships, joint ventures or any other form of permissible contract of association, even if not set out in the applicable law of the Country;
- d. Entering into or amending agreements involving the property or the management of companies, establishments of an agricultural, industrial or commercial nature, real estate compounds and other installations or facilities geared to the development of economic activities;
- e. Loans taken out or supplementary inputs of capital made by an investor vis-à-vis a company in which such investor has shares, or any loans related to re-investment in the company or participation in profits;
- f. Purchase, leasing or acquisition of any other rights in rem over property on national territory, when the acquisition is part of a private investment project, in compliance with the applicable legislation of the Country.

Article 8. Exceptions to Free Investment Initiative

- 1) In order to promote private investment, the State may grant benefits and incentives to eligible investors in any sector of economic activity in the Country, without prejudice to the provisions set out in article 2 and the following paragraph:
- 2) Investments are authorised in any sector of economic activity in the Country, with the following exceptions:
 - a. All activities which are considered a crime or breach of order under the scope of the applicable law in Timor-Leste;
 - b. All activities which, given their location, may adversely interfere in the aim or objectives defined for protected areas, as is set out in the applicable environmental legislation;
 - c. All activities related to the distribution or sale of arms or ammunition;
 - d. All activities, the development or management of which are reserved for the State or for certain types of investors;
- 3) The sectors of economic activity reserved for the State may allow for the participation of private investors, in accordance with the terms defined by specific legislation.

Article 9. Special Zones

In order to boost private investment outside the urban areas of Dili and Baucau, the State shall grant more advantageous benefits and incentives to the following Special Zones:

- a. Rural Areas, corresponding to those located outside the limits of the sub-districts of Cristo Rei, Dom Aleixo, Nain Feto, Vera Cruz and Baucau, with the exceptions of the following sub-paragraph;
- b. Peripheral Areas, corresponding to the district of Oe-cussi and the sub-district of Ataúro.

Article 10. Minimum values for investment or re-investment

1) A national resident investor shall only have access to the incentives and benefits set out in this Law should the investment made by such investor reach a minimum amount of US\$50,000, the percentage of which invested in cash shall be at least 10% of the total value of the investment or re-investment.

2) A foreign or national non-resident investor shall only have access to the incentives and benefits set out in this Law should the investment or re-investment made by such investor reach a minimum amount of US\$1,500,000, the percentage of which invested in cash shall be at least 50% of the total value of the investment or re-investment.

3) In the event of contracts of association between foreign investors and national residents, where the national residents control at least 75% of the shares with voting rights of the companies involved, the minimum value of the investment or re-investment shall, for the purpose of access to benefits and incentives, be of US\$750,000.

Article 11. Free Zones

For the purpose of increasing private investment, the State shall create Free Zones, in accordance with the terms and conditions to be determined by Law.

Chapter III. Rights and guarantees

Article 12. Equal treatment

1) All investors shall enjoy non-discriminatory treatment in relation to nationality in terms of rights and guarantees, except as regards land ownership, as defined in the Constitution and in the legislation.

2) All investors shall have equal opportunities in terms of accessing benefits and incentives, in relation to criteria for granting such benefits and incentives and to the minimum investment or re-investment values defined in article 10.

Article 13. Right to access courts

All investors shall be guaranteed access to courts to defend their legally protected rights and interests, as set out in the Constitution and legislation.

Article 14. Land ownership and its use

1) The State shall grant the right to private property in order that investment or re-investment projects be undertaken, subject to the limits set out in the Constitution and in legislation on land and commercial companies.

2) For the purposes of the provisions in paragraph 1 above, the nationality of the investor shall be defined based on the criteria established in the legislation regarding land and commercial companies, and the definition set out in article 3 shall not be applied.

3) The State shall undertake not to adopt a nationalisations or land policy which would deliberately harm the property of the investors on national territory.

4) Should it be necessary to requisition or expropriate for public use part or all of the investor's property, the State shall give fair compensation to the investor, under the terms to be approved by Law.

Article 15. Imports and exports

All investors may proceed to import goods and equipment and to export products produced, in accordance with the legally established procedures and limits.

Article 16. Resorting to credit

Investors may resort to internal and external loans, under the terms of the applicable legislation.

Article 17. Transferring funds abroad

1) All investors shall, in accordance with the applicable legislation, be guaranteed the right to freely transfer funds abroad which result from any investment in Timor-Leste, notably:

- a. Distributed profits and dividends resulting from the realisation of an investment;
- b. Capital resulting from the sale, liquidation and extinction of shares or companies which constitute the investment, as well as the sales of company assets which belong to the investor;
- c. Capital resulting from the reduction of share capital of a company which constitutes the investment;
- d. Amounts due resulting from contracts which constitute an investment, in accordance with sub-paragraph d), Article 7;
- e. Inputs due resulting from depreciation or payment of financial interest which constitute the investment, in accordance with sub-paragraph e), Article 7;
- f. Personal income obtained from the performance of management or administration positions vis-à-vis economic activities in which such person participates as investor;
- g. Income obtained from the transfer of intellectual property rights which constitute the investment;
- h. Compensation due under the terms of no. 3, Article 14;
- i. Payments resulting from disputes over the investment.

2) All investors may request that the values be converted into foreign currency through the banking system, as well as transfer those values abroad to fulfil the financial obligations resulting from investments realised, such as:

- a. Payment of imports;
- b. Payment of capital or interest on loans taken out abroad;
- c. Payment of rights and management services.

3) The right to freely transfer funds abroad shall be only limited by way of the application of legislation of a general nature, such as tax and environmental legislation, and the fulfilment of all legal obligations.

Article 18. Employment of workers

1) All investors may employ foreign workers, as set out in the applicable legislation regarding labour and immigration.

2) Any non-resident foreign or national workers shall be entitled to freely transfer abroad their net income resulting from their labour agreement.

3) The worker's wages may not be lower than the minimum value set out by applicable law or collective labour agreement.

Article 19. Intellectual property

All investors shall be entitled to protect patents or utility models which they have registered as their being the authors, as well as trademarks, logos, names or insignias of establishments and other information, object of protection in terms of intellectual property, according to the applicable legislation of the Country.

Article 20. Secrecy

All investors shall be guaranteed respect for professional, banking and commercial secrecy, according to the applicable legislation of the Country.

Chapter IV. Benefits and incentives

Article 21. Tax benefits

1) A company involved in an investment or re-investment project may be exempt from income tax to the value of 100% for a period of:

- a. Five years as of the date of commencement of the project, as set out in the Investor's Certificate, in the event it is not an investment or re-investment to be totally or partially realised in Rural Areas or Peripheral Areas;
- b. Eight years as of the date of commencement of the project, as set out in the Investor's Certificate, in the event it is an investment or re-investment to be totally or partially realised in Rural Areas;
- c. Ten years as of the date of commencement of the project, as set out in the Investor's Certificate, in the event it is an investment or re-investment to be totally or partially realised in Peripheral Areas;

2) Besides the periods of exemption established in paragraph 1 above, up to 100% of all expenses incurred with the construction and repair of road access infrastructures not associated with the exercise of taxable business activities which benefit workers and populations in the corresponding areas shall be considered as costs, for the purpose of determining the tax base.

3) The holder of an Investor's Certificate may be exempt from sales tax to the value of 100% in relation to all capital goods and equipment used in the construction or management of the investment or re-investment project, for a period of:

- a. Five years as of the date of commencement of the project, as set out in the Investor's Certificate, in the event it is not an investment or re-investment to be totally or partially realised in Rural Areas or Peripheral Areas;
- b. Eight years as of the date of commencement of the project, as set out in the Investor's Certificate, in the event it is an investment or re-investment to be totally or partially realised in Rural Areas;
- c. Ten years as of the date of commencement of the project, as set out in the Investor's Certificate, in the event it is an investment or re-investment to be totally or partially realised in Peripheral Areas;

4) The State shall define by Decree-Law the categories and quantities of capital goods and equipment exempt from payment of sales tax in relation to each sector of economic activity, as well as their retail conditions upon customs clearance.

5) The holder of an Investor's Certificate may be exempt from service tax to the value of 100% in relation to developments geared towards the provision of specific services, as set out in the General Tax Law, for a period of:

a. Five years as of the date of commencement of the project, as set out in the Investor's Certificate, in the event it is not an investment or re-investment to be totally or partially realised in Rural Areas or Peripheral Areas;

b. Eight years as of the date of commencement of the project, as set out in the Investor's Certificate, in the event it is an investment or re-investment to be totally or partially realised in Rural Areas;

c. Ten years as of the date of commencement of the project, as set out in the Investor's Certificate, in the event it is an investment or re-investment to be totally or partially realised in Peripheral Areas;

6) The Specialised Investment Agency shall forward a copy of each Investor's Certificate which is entitled to tax benefits to the competent authorities of the Finance Ministry.

7) All holders of Investor's Certificates entitled to tax benefits shall on a yearly basis submit them to the Finance Ministry, together with their tax returns and other necessary documents, declaring that they do not pay tax.

Article 22. Customs incentives

1) The holder of an Investor's Certificate may be exempt from customs import duty to the value of 100% in relation to all capital goods and equipment used in the construction or management of the investment or re-investment project, for a period of:

a. Five years as of the date of commencement of the project, as set out in the Investor's Certificate, in the event it is not an investment or re-investment to be totally or partially realised in Rural Areas or Peripheral Areas;

b. Eight years as of the date of commencement of the project, as set out in the Investor's Certificate, in the event it is an investment or re-investment to be totally or partially realised in Rural Areas;

c. Ten years as of the date of commencement of the project, as set out in the Investor's Certificate, in the event it is an investment or re-investment to be totally or partially realised in Peripheral Areas;

2) The State shall define by Decree-Law the categories and quantities of capital goods and equipment exempt from payment of sales tax in relation to each sector of economic activity, as well as their retail conditions upon customs clearance.

3) The Specialised Investment Agency shall forward a copy of each Investor's Certificate which is entitled to customs incentives to the competent authorities of the Finance Ministry.

Article 23. Limits to benefits and incentives

This Law shall not exempt the investor from paying other, taxes, rates or fees of a fiscal or customs nature as set out in the applicable law of the Country.

Article 24. Leasing state property

The State may enter into a lease agreement concerning property belonging to the State with the holder of an Investor's Certificate for a maximum time period of fifty years, renewable once for an equal period of time.

Article 25. Training of Workers

In addition to the periods of exemption set out in article 21, up to 100% of expenses incurred with the vocational training of permanent Timorese workers undertaken under the terms set out in the empowerment plan specified in the IC shall be considered costs for the purpose of determining the tax basis.

Article 26. Foreign Investors and Workers

- 1) The State shall legislate on the granting of temporary residence authorisation to any foreign investor, be such investor an individual or member of a company, on the national territory, as well as on the granting of permanent residence authorisation to foreign investors who have legally resided in Timor-Leste for a minimum consecutive period of three years, in accordance with criteria of an economic nature to be set by Law.
- 2) The State shall legislate on the special administrative procedure to obtain a work visa for foreign professionals, in compliance with the terms set out in the Investor's Certificate, in order for them to be able to perform skilled positions in the development.
- 3) For the purposes of the provisions set out in the above paragraphs, those holding at least 10% of the shares of the investing company shall be covered.

Chapter V. Investor's obligations

Article 27. General and specific duties

- 1) All investors shall be obliged to comply with the applicable legislation in Timor-Leste, as well as the obligations set out in the Investor's Certificate, and shall be subject to the penalties established therein.
- 2) The investor shall fulfil the following, especially:
 - a. Observing the time limits for the commencement, implementation and completion of the investment or re-investment projects, in accordance with terms set out in the Investor's Certificate;
 - b. Employing Timorese workers and promoting their vocational training for the performance of skilled technical or management positions;
 - c. Implementing the rules and procedures regarding environmental protection, health and safety at the workplace, under the terms of the applicable legislation of the Country;
 - d. Complying with the applicable rules and procedures in terms of setting up funds and reserves, realisation of provisions, organised bookkeeping and accountability instruments, notably by considering the provisions set out in the Law of Commercial Companies and the other applicable legislation of the Country;
 - e. Fulfilling the applicable rules and procedures concerning the transfer of funds, under the terms of the applicable legislation of the Country;

f. Providing the Specialised Investment Agency and other competent authorities with data on such investor's business development, by way of a request made under the terms of the applicable legislation of the Country.

Chapter VI. Granting of rights, guarantees, benefits and incentives

Article 28. Investor's certificate

1) The Specialised Investment Agency issues an Investor's Certificate to qualified investors, thus regulating the investment or re-investment to be made in relation to each business development.

2) The Investor's Certificate shall describe the investment or re-investment project and shall contain the following data:

a. Investor's obligations, such as the date of commencement and conclusion, as well as implementation deadlines and project costs, requested location and infrastructures, capital goods and equipment to be imported, jobs to be created, corresponding vocational empowerment plans for permanent Timorese workers, the necessary residence permits and work visas already obtained and other necessary records and licences already granted, notably tax, commercial, intellectual property, construction or environmental, among others, and all duly annexed.

b. Tax benefits and customs incentives to be granted by the State, as well as possible terms under which lease agreements of State property have been entered into or costs for training;

c. Conditions under which the Investor's Certificate has been repealed, in the event investors do not fulfil part or all of their obligations.

3) The Investor's Certificate shall be the document supporting the rights and duties of the investor and shall serve as the basis for all operations undertaken within the scope of the private investment, notably access to benefits and incentives, the settlement of disputes and other facts resulting from the investment or re-investment project.

Article 29. Special Investment Agreements

1) The State may enter into special investment agreements with the investor, by defining special legal regimes for investment or re-investment projects which, given their scale or nature or their corresponding economic, social, environmental or technological impact, may be of great interest to the Country within the framework of the strategy of the National Development Plan, which justifies the adoption of incentives not considered under the provisions set out in Articles 21, 22, 24 and 25 of this Law.

2) The special investment agreements set out in paragraph 1 above must be authorised by Government resolution, expressly indicating the causes justifying such agreement and the special regime governing it.

Chapter VII. Body for promotion, authorisation and registration

Article 30. Specialised investment agency

The State shall, by Decree-Law, establish a Specialised Investment Agency, a public institute responsible for the promotion and registration of the private investment and for the promotion of exports, as well as the centralisation of the administrative procedures leading to the granting of the Investor's Certificate.

Article 31. Authorisation of Investment and Re-investment Projects

- 1) As set out in paragraph 1 of Article 28, all investment and re-investment projects authorised under the terms of this Law shall be granted an Investor's Certificate, in accordance with an administrative procedure to be defined by Government Decree.
- 2) The administrative procedure granting the Investor's Certificate shall contemplate the obtaining and granting of all authorisations, visas, registrations and licences required to pursue the business development, to be requested from the competent government authorities under the terms of the applicable legislation of the Country.
- 3) The Investor's Certificate shall be valid as long as the investor does not give any cause for justifying its repeal or invalidity, in accordance with the terms set put in the Investor's Certificate and other applicable legislation.

Article 32. Single Rate for Completion

- 1) For the processing and completion of the request for an Investor's Certificate to be granted a single rate of USD\$500 (five hundred US dollars) shall be charged national investors upon the submission of such request to Investe Timor-Leste.
- 2) In relation to foreign investors, the single rate for the processing and completion of the request for an Investor's Certificate to be granted shall be of USD\$2,000 (two thousand dollars) to be charged upon the submission of such request to Investe Timor-Leste.
- 3) The rate to which paragraphs 1 and 2 above refer shall be considered State revenue and shall be paid in the competent services of the Finance Ministry or in its bank account to be indicated, and the receipt of such payment shall be shown at the time of submission of request for an Investor's Certificate to Investe Timor-Leste.

Article 33. Registration of the investment or re-investment project

- 1) Once the investment or re-investment project has been authorised, it shall be registered at the Specialised Investment Agency, under the terms to be defined by Government Decree.
- 2) The registration to which paragraph 1 above refers shall be independent of the commercial company registration, under the terms of the applicable commercial legislation.

Chapter VIII. Settlement of disputes

Article 34. Reconciliation and arbitration

- 1) Any dispute between the State and an investor resulting from the interpretation or application of this Law and respective regulations shall be settled by reconciliation, under the terms to be defined by Government Decree, if no other procedure has been established in international agreements to which the Democratic Republic of Timor-Leste is party, or in an agreement between the State and the Investor.

2) Those disputes between the State and the investor which cannot be settled in accordance with the terms set out in paragraph 1 above shall be resolved by arbitration, in accordance with the rules of the International Chamber of Commerce, unless there is a convention to the contrary.

3) The terms and provisions set out in paragraphs 1 and 2 above shall not preclude the right to appeal to the competent courts of the Democratic Republic of Timor-Leste, whenever the parties so decide.

Chapter IX. Final and transitional provisions

Article 35. Previous investments

1) An investor who has realised an investment or re-investment in Timor-Leste before this Law has taken force may benefit from the regime established by it, as long as such investor fulfils the requirements to qualify as an investor as established in this Law, with the exception of the minimum investment or re-investment values determined by Article 10.

2) For the purpose of paragraph 1 above, the investors interested shall address a request to the Specialised Investment Agency, within a time limit of one hundred and eighty days as of the date the complementary legislation required for the application of this Law comes into force.

3) The benefits and incentives granted in the new Investor's Certificate, in accordance with chapter IV of this Law, may not be more unfavourable for the investor than those set out in the Investor's Certificate that has already been issued.

4) Without prejudice to the provisions set out in no 1 above, any benefits or incentives to be granted shall not be backdated.

Article 36. Subsequent regulations

The Government shall, within a time limit of ninety days as of the date this Law enters into force, approve the complementary regulations required for its implementation, notably the Decree-Law which shall create the Specialised Investment Agency and the Government Decree which shall approve the Private Investment Procedures Regulation.

Article 37. Repeal

1) Law no. 4/2005 of 5th June and Law no. 5/2005 of 5th July shall be repealed.

2) In the cases where the provisions of this Law do not conform with the international agreements ratified by the State, the latter shall prevail over this Law.

Article 38. Publication

The State shall publish this Law in the Journal of the Republic in the two official languages, as well as supplementary publications in the English and Indonesian language.

Article 39. Entry into force

This Law shall enter into force on the day immediately following its publication in the Official Journal.