

Timor-Leste

PRIVATE INVESTMENT LAW (2017)

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The year indicated in brackets after the title of the law refers to the year of publication in the Official Gazette or, when this is not available, the year of adoption of the law.

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(DECREE-LAW N.35/2012, OF JULY 18)

PRIVATE INVESTMENT LAW

LAW NO. 15 /2017

[Preamble]

The promotion of the private sector of the economy is a mandate deriving from Article 140 of the Constitution of the Republic, which determines the State's duty to promote national investments and create the conditions to attract foreign investments, taking into account national interests.

In this view, the guidelines outlined in the 2011-2030 Strategic Development Plan for economic growth and private sector promotion, as conditions that are essential for job creation, diversification of sources of income, and sustainability of our economy, calls for the adoption of a new vision for attracting both national and external investments.

The revision provided for by this law thus modernizes the current legal regime of private investment, removing some outdated devices that no longer comply with best practices on the matter and ensuring compliance of the national investment legislation with the guidelines of the Global ASEAN

Comprehensive Investment Agreement, aiming at a national alignment on this matter and Timor-Leste's membership to the organization.

In this context, the emphasis of the new private investment law will be directed not only on the fiscal and customs benefits, and incentives offered but will also emphasize private investment promotion and facilitation, investment protection, as well as the attention and quality of investor support in the post-investment phase.

The National Parliament, therefore, under the terms of Article 95 (1) of the Constitution of the Republic, hereby passes into law, the following:

CHAPTER I General provisions

Article 1 Object

The present Law establishes the general basis for the legal framework for private investment in Timor-Leste.

Article 2 Scope of application

Article 3 Definitions

For the purposes of this Law, the terms below shall have the following meanings:

- a) «Economic activity» means the production, distribution and commercialization of goods or the provision of services, regardless of their nature, carried out in the Country's economy;
- b) «Goods or capital equipment allocated to the venture» mean goods or capital equipment for the construction of or to be installed in the venture, imported by the investor or its contractor or subcontractor, justifying the acquisition or import given the nature or size of the venture;
- c) «Association Agreement» means the agreement through which two or more companies combine to create a joint investment or reinvestment;
- d) «Business Venture» is the result of the act of realizing an investment or reinvestment in a given sector of economic activity in the Country;
- e) «Company» means the combination of human resources, capital, goods, rights and obligations allocated in a structured manner to the conducting of a certain economic activity;
- f) «Training» means any kind of specific learning program to be provided to a Timorese worker based on a pre-approved functional capacity-building plan, which can be delivered in or outside the workplace, with the aim of developing technical or management skills of the Timorese worker;
- g) «Private Investor» or «Investor» means any natural or legal private person, national or foreign, resident or non-resident who intends to invest or who invests in Timor-Leste;
- h) «National Investor» means a natural person of Timorese nationality or a legal person under Timorese law where over 75% is held by Timorese nationals, developing an economic activity;
- i) «Foreign Investor» means a natural person of foreign nationality or a legal person governed by foreign law where foreign nationals hold more than 25%, and develops an economic activity;
- j) «Private Investment» means any form of investment or reinvestment as defined in sub-paragraphs k) and l);
- k) «Investment» means any direct investment in the Country carried out by a private investor under own risk either with money, or property or goods that are monetarily assessable under the terms provided for by Article 8;
- l) «Reinvestment» means any investment in the same business venture that uses profits and dividends resulting from the economic activity of the same business venture that made the venture;
- m) «Value of Investment and Reinvestment» is the sum of the total value attributed to the forms of investment, as declared by the private investor;
- n) «Special Industrial Zones» mean geographically defined economic spaces reserved by the State for installation of industrial, agricultural, mining and other units.

Article 4 General Principles

The legal regime of private investments shall obey the following general principles of:

- a) Promoting and facilitating private investments, diversifying the economy and promoting employment aimed at poverty reduction and, through its impact on national production, increase State revenues;
- b) Promoting sustained, inclusive and sustainable economic growth through the rational use of resources, the building of resilient infrastructures and respect for natural ecosystems;
- c) Promoting gender equality by encouraging female participation in investment projects;
- d) Reducing socioeconomic inequalities in the national territory;
- e) Strengthening Timorese business class and productive capacity;
- f) Economic and commercial integration in the regional market;
- g) Free initiative and free competition, except in areas defined as reserved to the State;
- h) Equal treatment for domestic and foreign investors, with the exceptions provided for by law;
- i) Investment protection guarantee, as provided for by law;
- j) Respect for international agreements or other agreements of economic nature already signed.

Article 5 International Agreements

Rights, guarantees and benefits granted to investors under this Law do not harm nor in any way restrict the regimes of international agreements and treaties which Timor-Leste is party to.

Article 6 Bilateral Agreements on Investment Promotion and Protection

The Government promotes the establishment of bilateral investment promotion and protection agreements with the largest number of countries in order to promote international trade.

Article 7 Double Taxation

1. The Government promotes the establishment of international agreements with the largest number of countries in order to avoid international double taxation.
2. Foreign investors are entitled to the provision of proof of tax payments made in Timor-Leste.

CHAPTER II Investment Conditions

Article 8 Forms of Investment

Investments or reinvestments may consist of the following:

- a) Establishment or expansion of an individual or collective company, under the terms of the law in force in the Country;
- b) Acquisition of part or all of the shareholdings of a commercial company, participation in the increase of its capital or call-up of additional capital contributions;
- c) Entering into or amending consortium agreements, partnerships, joint ventures or any other form of permissible contracts of association;
- d) Entering into or amending of contracts involving the ownership or management of companies, establishments of agricultural, industrial and commercial nature, real estate complexes and other facilities or equipment used for the development of economic activities;
- e) Financial resources or supplementary capital contributions made by an investor in a commercial partnership in which the investor participates or any reinvestment-related financial resources of profits or dividends in the company;
- f) Purchase, lease or acquisition of any other real rights over immovable property in the national territory, when such acquisition is part of private investment projects in accordance with current legislation in force in the country;
- g) Acquisition or importation of good or capital equipment for the company allocated to the venture, including the contracting of the respective insurance and freight;
- h) Acquisition or importation of raw material or semi-processed goods company, for exclusive use in the investment or reinvestment;
- i) Free transmission to the company of industrial secrets, copyrights, industrial property rights, distinctive trade mark, or any other intellectual property rights recognized by law;
- j) All rights recognized by law or contract and all licenses or authorizations issued in accordance with the law;
- k) Provision of any other amounts in cash or equivalent for exclusive realization of the investment or reinvestment.

Article 9 Private Initiative

1. Investments or reinvestments in any economic activity in Timor-Leste, as long as permitted by law, is free and does not require any prior authorization beyond those procedures provided for in the legislation in force.
2. Exceptions to the number above are those economic activities expressly reserved for exclusive ownership or exploitation of the State.
3. The entity responsible for promoting, facilitating and monitoring private investments and exports is required to prepare, in accordance with the legislation in force, a list of activities and sectors that may not be exercised by national investors, foreign investors, and may not be subject to the incentives provided for in this law.

CHAPTER III Investor Rights and Guarantees

Article 10 Equal Treatment

1. All investors, regardless of nationality, enjoy the same rights and are subject to the same duties and obligations, under the terms of the law.
2. Exception to the terms of the previous paragraph, is the right to land ownership, under the terms of the Constitution and the law.
3. All investors have equal opportunities of access to the special benefits provided for in this law, depending on the criteria set out herein, namely by Article 2 (3).
4. Exceptions to the previous paragraphs are those cases of investments, which, by their nature or size, are subject to special agreements, investments by nationals that may deserve support and more favorable treatment by the State, and the favoring of investments that contribute to national development priorities, in particular those in special economic zones and special industrial areas.

Article 11 Fair and Equitable Treatment

All investors are entitled to fair and equitable treatment and, to this end, have at their disposal all legal means of a judicial and administrative nature legally in force to guarantee the full protection and security of their investments.

Article 12 Right of Access to the Courts

All investors are guaranteed equal access to the courts for the defense of their legally protected rights and interests, under the terms of the Constitution and the law.

Article 13 Access to Information

1. All investors are entitled to freely access all legislation regulating the legal regime on private investments and to any other information that may influence the investment in question, namely tax, labor, immigration and social security legislation.
2. For the purposes of the preceding paragraph, the governmental entity responsible for promoting, facilitating and monitoring private investments and exports shall make available on its website the updated version of all laws, regulations, procedures and forms, used in the private investment legal

regime.

Article 14 Land Ownership and Land Use

1. The State guarantees the right to private ownership and use of land for development of investment or reinvestment projects, subject to the limits provided under the Constitution and land legislation.
2. For the purposes of the preceding paragraph, the nationality of the investor is defined based on the criteria set out in the legislation on land, not applying the definition contained in Article 3 of this Law.

Article 15 Guarantee against Expropriation

1. The State commits to not adopt an expropriation or nationalization policy that directly or through equivalent measures may deliberately harm the development venture of a private investor in the national territory.
2. Where necessary to resort to requisition or expropriation of part or whole of the property of an investor, the State undertakes to do so in a duly justified, nondiscriminatory manner and upon adequate and fair compensation to the investor under the terms of the law.
3. The payment of compensation provided for in the previous number shall take place immediately after the completion of the necessary legal and administrative procedures.

Article 16 Import and Export

Investors may import goods and equipment and export products and services produced, in accordance with the law.

Article 17 Resorting to Credit

Investors may freely resort to domestic and foreign credit to finance business ventures, in accordance with the law.

Article 18 Overseas Transfer of Funds

1. All investors are guaranteed the right to freely transfer funds abroad from any investment or reinvestment in Timor-Leste, in accordance with the applicable legislation, namely:
 - a) Profit and dividends paid as a result of an investment made;
 - b) Capital resulting from the sale, liquidation and extinction of shares in commercial companies which constitute investment, as well as the sale of business assets, which are the property of the investor;
 - c) Capital resulting from the reduction of the capital stock of a commercial company constituting an investment;
 - d) Amounts due on the basis of contracts which constitute investment, according to Article 8 subparagraph d);
 - e) Benefits payable due to amortization or payment of financial interest constituting an investment under paragraph e) of Article 8;
 - f) Personal income obtained in the discharge of management and administration functions relating to investment participation in economic activities;
 - g) Income from the transfer of intellectual property rights which constitute investment;
 - h) Compensation payable under paragraph 2 of Article 15;
 - i) Payments arising from settlement of investment disputes.
2. All investors may request the conversion of funds into foreign currency through the banking system to transfer funds abroad to meet financial obligations incurred by the investment made such as:
 - a) Payment of imports;
 - b) Payment of capital or interest on loans taken abroad;
 - c) Payment of rights and management services.
3. The right to freely transfer funds abroad must be exercised in accordance with the applicable Central Bank regulations, and is limited only by the application of a general legislation, such as tax legislation.

Article 19 Intellectual Property

All investors are entitled to the protection of industrial secrets, copyrights, industrial property rights, distinctive trademark signs, or any other intellectual property rights recognized by law.

Article 20 Secrecy

All investors are guaranteed respect for professional, banking and commercial secrecy in accordance with the law.

Article 21 Confidentiality

Authorities, services, officials and agents of the State are bound to the confidentiality of all information and documents provided under an investment or reinvestment carried out under this law.

Article 22 Hiring of foreign workers and collaborators

1. Investors may hire qualified foreign workers or collaborators for technical, supervisory or management functions, as provided for under the asylum and immigration law.
2. Any foreign or non-resident national worker or collaborator has the right to freely transfer abroad the net income earned from employment contract celebrated under the terms of this Article.
3. The Government may determine the number of workers and collaborators whose recruitment is permitted under paragraph 1 of this Article, depending on the evolution of the national market.

CHAPTER IV DUTIES OF INVESTORS

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Article 23 General and Specific Duties

1. All investors are required to comply with legislation in force in the country, being subject to applicable penalties or sanctions for the offenses under the law.
2. In particular, the investor must:
 - a) Ensure that the investment respects, in particular, all existing environmental legislation and complies with all the rules and procedures imposed by said legislation;
 - b) Ensure utmost compliance with existing labor, tax and social security legislation and applicable collective bargaining agreements, in accordance with minimum wage legal provisions and best international practices on hygiene, health and safety in the work place;
 - c) Employ Timorese workers and promote their professional training for the performance of qualified functions, including the improvement of technical or managerial knowledge, for which they may count on State support in a manner to be determined by the State or in a special investment agreement;
 - d) Comply with the rules and procedures applicable to the accumulation of funds and reserves, realization of provisions, organized accounting and instruments of accountability, especially in view of the provisions of the Companies Law and other legislation in the country;
 - e) Comply with the rules and procedures for the transfer of funds, according to the legislation in force in the country;
 - f) Provide the central agency for investment and exports promotion with timely information on transfers of capital to carry out the private investment, as well as transfers abroad, in accordance with the law;
 - g) Provide the central agency for investment and exports promotion with truthful, updated, and timely information, namely regarding the value of the investment or reinvestment and the assessment method used, when necessary;
 - h) Make available to the central agency for investment and exports promotion and other competent authorities data and information related to the business venture, upon request, in accordance with applicable laws in the country;
 - i) Comply with deadlines for the beginning, implementation and conclusion phases of the project development, as provided for in the Special Investment Agreement.

CHAPTER V Special Benefits

SECTION I Special Benefits to Investors

Article 24 Hiring Foreign Workers and Collaborators

1. An investor holding a Declaration of Benefits or Special Investment Agreement shall be guaranteed a minimum of five work visas for workers or collaborators qualified for supervisory, directing or technical functions as appropriate to the investment project.
2. The application for granting work visas under the terms of the previous number is submitted jointly with the request for (Investor Certificate) declaration of benefits, under the terms provided for in a specific legal document.
3. The provisions of paragraph 1 shall not affect the investor's right to request, at any time, the granting of work visas for other foreign workers or collaborators who may be required to install and operate the venture, in accordance with the law.

Article 25 Leasing of State Property

1. The State may enter into a contract with the holder of a Declaration of Benefits or a Special Investment Agreement to lease State property required to implement the investment project for a maximum period of fifty years, renewable for periods of twenty-five years up to a total of 100 years.
2. In the case of an investment that is object of a Special Investment Agreement, the State may negotiate more favorable conditions in order to maximize the investment.
3. The celebration of a leasing contract shall be subject to the rules and procedures of the competent public authority, warranting an accelerated treatment of the process, under the terms of the law.

SECTION II Special Benefits to Zones

Article 26 Development Zones

In order to encourage private investments in certain zones in the country, the State may provide special benefits to the following zones:

- a) Zone A: urban area of the Municipality of Díli, corresponding to the administrative units of Cristo-Rei, Dom Aleixo, Na'i- Feto and Vera Cruz;
- b) Zone B: Zones corresponding to those located outside the limits of the urban area of the Municipality of Díli;
- c) Zone C: Peripheral Zones corresponding to the geographical area of Oe-Cusse Ambeno and Ataúro, in accordance with the law.

Article 27 Special Zones

Special Economic Zones and Special Industrial Zones may be created as geographically defined areas for the implementation and operation of specific economic activities according to their nature

for the implementation and operation of specific economic activities according to their nature.

CHAPTER VI Tax Benefits

Article 28 Scope of Tax Benefits

Investors who submit investment projects in the areas of economic activity listed in the Annex to this law, of which it is an integral part, may request a Declaration of Benefit recognizing the tax and customs benefits under this chapter.

Article 29 Tax Benefits

1. An enterprise associated with an investment or reinvestment project whose activity is provided for in the Annex to this law may enjoy an income tax exemption of 100% for the period provided for in Article 31.
2. In addition to the exemption period provided for in Article 31, up to 100% of all expenses incurred in the construction and repair of road access infrastructures not associated with taxable business activities that benefit workers and populations in their respective areas shall be considered as costs for the purposes of determining the taxable amount.
3. Holders of a Declaration of Benefits may enjoy a 100% tax exemption in respect of sales regarding all capital goods and equipment used in the construction or management of the investment or reinvestment project for the period provided for under Article 31.
4. The law defines the categories and quantities of goods and capital equipment exempt from payment of sales tax in respect of each sector of economic activity, as well as the conditions for resale after the respective customs clearance.
5. Holders of a Declaration of Benefits may enjoy a 100% service tax exemption in respect of ventures designed to provide specified services, as set forth in the General Tax Law, for the period provided for by Article 31.
6. Any holder of a Declaration of Benefits that provides for tax benefits must submit said Declaration on an annual basis to the Ministry of Finance together with the tax statement and other necessary documents stating that he does not pay taxes.

Article 30 Customs incentives

1. The holder of a Declaration of Benefits may enjoy 100% customs duty exemption on imports of all capital goods and equipment used in the construction or management of the investment or reinvestment project for the period provided for by Article 31.
2. The law defines the categories and quantities of capital goods and equipment exempt from payment of customs duties on imports in respect of each sector of economic activity, as well as the conditions of resale after customs clearance.

Article 31 Period for granting tax benefits and customs incentives

The period for granting tax benefits and customs incentives, as of the project begin date included in the Investor Certificate, is of:

- a) Five years, in the case of an investment or reinvestment to be carried out in whole or in part in Zone A;
- b) Eight years, in the case of an investment or reinvestment to be carried out in whole or in part in Zone B;
- c) Ten years, in the case of an investment or reinvestment to be carried out in whole or in part in Zone C.

Article 32 Limitation on Benefits and Incentives

This law does not exempt the investor from payment of other taxes, charges or fees of a fiscal or customs nature provided for in the legislation in force in the country.

CHAPTER VII Concession of Special Benefits

Article 33 Requirements

The granting of special benefits provided for in Articles 24 and 25 shall be subject to compliance with the provisions of this Chapter.

Article 34 Minimum Amounts for Investment or Reinvestment

1. The special benefits provided for in Articles 24 and 25 of this law may only be granted to investors whose investment or reinvestment respect the minimum values defined in the provisions of the paragraph below.
2. The minimum amounts for investment or reinvestment are approved and updated periodically by Government decree.

Article 35 Granting Benefits

Special benefits may be granted to the investor through the award of a Declaration of Benefits or the conclusion of a Special Investment Agreement.

CHAPTER VIII Declaration of Benefits and Special Investment Agreements

Article 36 Declaration of Benefits

1. The Declaration of Benefits is a document issued at the request and in favor of the investor attesting to benefits granted, in particular those provided for under Articles 24 and 25.
2. The processing of the request and the issuance of the Declaration of Benefits shall follow a simplified procedure and are subject to regulation by government decree.

Article 37 Judicial Challenge

The decision of refusal to issue a Declaration of Benefits is susceptible to judicial challenge, under the terms of the law.

Article 38 Special Investment Agreement

1. The State may, exceptionally, enter into a special investment agreement with an investor, defining special conditions for investment projects which, by reason of their size or nature, or their economic, social, environmental or technological impact, may be of great interest within the Strategic Development Plan framework, which justifies the adoption of the special benefits provided for in Articles 24 and 25 and other specific non-fiscal benefits to be negotiated with the investor.
2. The Special Investment Agreement is authorized by resolution of the Government, with explicit indication of the reasons justifying the agreement and the special regime governing it.

Article 39 Compliance with the Law

Issuance of the Declaration of Benefits or the conclusion of the Special Investment Agreement does not exempt the investor from complying with other legal provisions in force for granting of visas and for leasing of State properties.

Article 40 Expedite Service

Public services are obliged to provide expedite services to the investor upon presentation of the Declaration of Benefits or Special Investment Agreement.

Article 41 Protection of Benefits Conferred

The special and fiscal benefits conferred under this law may not be revoked or reduced until the expiration of the agreed investment period, provided that there is no failure to comply with the obligations established by the beneficiary.

CHAPTER IX Investment Promotion and Facilitation Entities, Agencies and Infrastructures

Article 42 Government Agency

The Government shall establish a government agency responsible for the promotion, facilitation and monitoring of private investment and exports, and the issuance of Declaration of Benefits and negotiation of Special Investment Agreements.

Article 43 Entities

1. The provisions of the preceding paragraph shall not affect the possibility of establishing in Special Economic Zones other entities responsible for the promotion and facilitation of private investment and exports, as well as structural infrastructures to support investment and exports, namely industrial parks and export processing zones, which may enjoy special legal regimes.
2. Investment promotion and facilitation entities established under the terms of the preceding paragraph shall be obliged to provide the central government entity responsible for investment and export promotion all the information regarding private investments and exports for statistical purposes.

Article 44 Exemption of Fees

The services of investment promotion and facilitation, as well as the treatment and processing of the application for the Declaration of Benefits and negotiation of Special Investment Agreement are provided free of charge.

Article 45 Registration of Investment or Reinvestment Projects

1. The central government entity responsible for promoting investment and exports shall maintain, for statistical purposes, a record of investments made, under the terms to be defined by a Government decree.
2. The registration referred to in the preceding paragraph shall be independent of the commercial register, in accordance with the commercial legislation in force.

CHAPTER X Settlement of Disputes

Article 46 Amicable Resolution

1. Disputes between the State and an investor arising out of the interpretation or application of this Law and its Regulations or of the terms and conditions set forth in a Special Investment Agreement shall preferably be settled amicably.
2. For the purposes of the preceding paragraph, the interested party must notify the other party in writing of the grounds of the dispute and submit a proposal for its resolution.

Article 47 Litigious Resolution

1. All disputes or conflicts between the State and national investors that cannot be resolved within sixty

...disputes or conflicts between the State and national investors that cannot be resolved within sixty days, in accordance with the terms of the previous Article, shall be submitted to the competent judicial entities, in accordance with the legislation in force.

2. Notwithstanding the preceding paragraph, disputes between the State and a national private investor may be submitted to arbitration, under the terms to be entered into in an arbitration agreement.

Article 48 Binding nature of Arbitration

1. All disputes or conflicts between the State and foreign investors, holders of a Declaration of Benefits or a Special Investment Agreement, which cannot be resolved within sixty days, in accordance with the provisions of Article 46, may be resolved definitively, through arbitration, without the possibility of recourse, in accordance with the International Convention on the Settlement of Investment Disputes between States and Citizens of other States (ICSID) and the rules set forth in the Supplementary Mechanism Regulation approved on September 27, 1978, at its International Center.

2. Special Investment Agreements may expressly include rules of other international bodies of recognized reputation, provided the parties have expressly specified the conditions for their implementation, including the manner in which the arbitrators are appointed and the deadline for decision-making.

3. The provisions of the preceding paragraphs shall not preclude prior recourse to the competent judicial authorities.

CHAPTER XI Final and Transitional Provisions

Article 49 Previous Investments

1. Investor Certificates issued and Special Investment Agreements entered into before the entry into force of this law shall remain valid and in force for the duration set out therein.

2. Competent authorities shall carry out an annual audit of Investor Certificates issued and Special Investment Agreements concluded before the entry into force of this law in order to assess and quantify the impact of the tax benefits granted.

Article 50 Subsequent Regulations

The Government shall approve, within a period of sixty days from the date of entry into force of this Law, the complementary regulations necessary for its implementation.

Article 51 Applicable Law

If any provision of this law, whether in whole or in part, is inconsistent with international agreements to which Timor-Leste is a party, the latter shall prevail.

Article 52 Dissemination

The Government promotes the dissemination of the private investment legal regime among investors, namely through the publication of relevant information within the framework of promoting domestic and foreign investments.

Article 53 Revocation

Law no. 14/2011, of September 28 is hereby revoked.

Article 54 Entry into force

This law becomes effective on January 1st, 2018.

Passed into law on April 25, 2017.

ANNEX SECTIONS, DIVISIONS AND CLASSES ON THE CLASSIFICATION OF ECONOMIC ACTIVITIES (DECREE-LAW N.35/2012, OF JULY 18)