

**DEMOCRATIC REPUBLIC OF TIMOR-LESTE
THE GOVERNMENT**

Law on Domestic Investment

Nr. /2005

(date)

It is the responsibility of the State to set down the policies required to improve the country's economic performance by promoting and encouraging domestic investment of a private nature as the determining factor for wealth generation and employment creation, which are critical aspects for the betterment of people's living standards.

It is important that a legal regime is established to support domestic investment of a private nature with a view to contributing to a more accelerated development of Timor-Leste's economic fabric.

In this context, this draft Law establishes a set of guarantees and incentives for domestic investors, in accordance with the policies on economic growth and promotion of the private sector described in the National Development Plan.

This Law is an important contribution to encourage private investment and it also embodies the commitment towards poverty reduction, employment creation, and promotion of sustainable economic growth, having in mind the well-being of the people of Timor-Leste.

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 private domestic investment in Timor-Leste.

Article 2

Scope of Application

1. This Law applies to domestic investment made in Timor-Leste by a natural person or a corporate body.

2. This Law does not apply to domestic 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) "**Domestic Investor's Certificate**" is a document made out to a domestic investor by the competent authority, certifying the domestic status of the investor;
- c) "**Undertaking**" is the making of domestic investment in any activity of an economic nature;
- d) "**Undertaking mostly focussed on export**" is the making of domestic 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) "**Domestic investor**" is any natural person or corporate body that holds a domestic investor's certificate;
- g) "**Domestic investment**" is any direct private investment made with financial resources originating in Timor-Leste for the account and at the risk of a domestic investor, or private investment that may be subjected to pecuniary assessment;
- h) "**Domestic reinvestment**" is investment made into the same undertaking by resorting to dividends resulting from a domestic investor's economic activity;
- i) "**Minister**" is the minister who oversees the area of private domestic investment;
- j) "**Permanent Timorese worker**" is a worker holding the Timorese citizenship that is permanently employed on a full-time basis;
- k) "**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.

CHAPTER II Domestic investment

Article 4 Composition of domestic investment

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

- a) currency;
- b) assets, services and titles already existing in Timor-Leste;
- c) dividends generated by a domestic investment and reinvested under the terms of this Law;
- d) the granting, in specific cases and according to terms agreed with or endorsed by national regulatory entities, of the rights to use patented technologies and trademarks registered in Timor-Leste.

Article 5 **Forms of domestic investment**

Domestic investment may take the following forms:

- a) the establishment of a business in Timor-Leste under the terms of applicable legislation;
- b) the acquisition of already existing 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 compounds, 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 domestic investor's possession;
- f) loans or supplementary instalments of capital made directly by a domestic 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 domestic investor.

Article 6 **Areas of domestic investment**

1. Domestic investment shall be permitted in any sector of economic activity, provided that domestic investment in any such sector is not specifically banned or restricted to ownership and operation by the State.
2. The Government shall define, in supplementary legislation:
 - a) the sectors of economic activity for which domestic 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 domestic 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 domestic investors under the terms of special legislation.

Article 7
Minimum amount for domestic investment

The minimum amount for a domestic investment to be granted access to the rights, guarantees, incentives and benefits established by this Law is 5,000 US dollars.

CHAPTER III

Principles, rights and guarantees

Article 8
Equal treatment

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

Article 9
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 domestic 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 mediation or arbitration as provided for in applicable law, without prejudice to appeal to competent courts of law.

Article 10
Foreign workers

1. A business involving domestic 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.

CHAPTER IV

Incentives and benefits

Article 11 Tax incentives

1. A business involving domestic 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 domestic 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 domestic 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 domestic 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 re-investment, a domestic investor shall enjoy total exemption from any taxes on reinvested profits and returns 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 12
Customs incentives

1. A business involving domestic 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 11.

Article 13
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 14
Exemption from rent payment

A business involving domestic 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 11.

CHAPTER V

Special conditions

Article 15
Special investment agreement

1. The Government may establish with a potential domestic 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 domestic 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 16

Authorisation of domestic investment

1. Domestic 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 project is in conformity with the objectives of the National Development Plan.

Article 17

Registration of domestic investment

1. Once a request has been granted pursuant to Article 16 of this Law, a domestic 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 18

Promotion and registration agency

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

CHAPTER VII

Obligations

Article 19
Obligations of a domestic investor

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

CHAPTER VIII

Settlement of disputes

Article 20
Conciliation and arbitration

1. Disputes between the State and any domestic investor as a result of the interpretation and application of this Law and related regulations shall be settled by conciliation or arbitration in accordance with the laws of Timor-Leste.
2. The provisions of item 1 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 21
Previous investments

1. A domestic 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 domestic investor.

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 22
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 23
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 24
Entry into force

This Law shall enter into force one day after its publication in the Official Gazette.

Approved on 9 May 2005.

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

Promulgated on 27 May 2005.

To be published.

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