

# **PETROLEUM FUND LAW**

**LAW No. 9 /2005**

## **Preamble**

This Act establishes a Petroleum Fund which seeks to meet with the constitutional requirement laid down in Article 139 in the Constitution of the Republic. Pursuant to this provision, petroleum resources shall be owned by the State, be used in a fair and equitable manner in accordance with national interests, and the income derived therefrom should lead to the establishment of mandatory financial reserves.

The Petroleum Fund shall contribute to a wise management of the petroleum resources for the benefit of both current and future generations. The Petroleum Fund shall be a tool that contributes to sound fiscal policy, where appropriate consideration and weight is given to the long-term interests of Timor-Leste's citizens.

Efficient planning and proper execution of public sector budgets are key components of a sound management of the petroleum wealth. The Petroleum Fund is to be coherently integrated into the State Budget, and shall give a good representation of the development of public finances. The Petroleum Fund shall be prudently managed and shall operate in an open and transparent fashion, within the constitutional framework.

This Act lays down the key parameters for the operation and management of the Petroleum Fund. The Act governs the collection of and management of receipts associated with the petroleum wealth, regulates transfers to the State Budget, and provides for Government accountability and oversight of these activities.

Therefore, pursuant to Article 139 of the Constitution and for the purpose of establishing a fund of income from the exploitation of non-renewable petroleum resources for the needs of both current and future generations,

Pursuant to Article 92 of the Constitution of the Republic, the National Parliament enacts the following to have the force of law:

### **Chapter I – General Provisions**

#### Article 1

##### Citation

This Act may be cited as the Petroleum Fund Act.

#### Article 2

##### Definitions

2.1 In this Act, unless the context requires otherwise:

- (a) “Central Bank” means the authority to be established under Section 143 of the Constitution of the Republic or, until such authority is established, the Banking and Payments Authority;
- (b) “Code” means the Petroleum Mining Code and the Interim Petroleum Mining Code agreed and adopted by Timor-Leste and Australia under Article 7 of the Treaty, as amended, varied, modified or replaced from time to time, and regulations made and directions given under it;
- (c) “Estimated Sustainable Income” for a Fiscal Year means the amount determined in accordance with the formula set out in Schedule 1;
- (d) “Exchange of Notes” means:
  - (i) Exchange of Notes Constituting an Agreement between the Government of Australia and the United Nations Transitional Administration in East Timor, of 10 February 2000; or
  - (ii) Exchange of Notes Constituting an Agreement between the Government of Timor-Leste and the Government of Australia, of 20 May 2002.
- (e) “Fiscal Year” means the period of twelve (12) months from 1st July to 30<sup>th</sup> June;
- (f) “Independent Auditor” means an internationally recognised accounting firm appointed for the purpose of auditing the Government accounts as set out in the Timor-Leste law until the administrative, tax and audit courts is established, or thereafter an internationally recognised accounting firm appointed pursuant to Article 34;
- (g) “Investment Manager” means the Central Bank and any person appointed as external Investment Manager under Article 12;
- (h) “Minister” means the Minister in charge of finances;
- (i) “Parliament” means the National Parliament of Timor-Leste;
- (j) “Payer” means any entity on whom there is an obligation pursuant to this Act to make a payment into the Petroleum Fund;
- (k) “Petroleum” has the same meaning given to it in the Petroleum Act;
- (l) “Petroleum Act” means the Petroleum Act, as amended, varied, modified or replaced from time to time, and regulations made and directions given under it;
- (m) “Petroleum Authorisation” means:
  - (i) an access authorisation, a petroleum contract, a prospecting authorisation or a seepage use authorisation, or any agreement made in respect of such an authorisation or contract, granted or entered into under the Petroleum Act; or
  - (ii) an authorisation or production sharing contract, or any agreement made in respect of such an authorisation or contract, granted or entered into under the Code;
- (n) “Petroleum Fund” means the Petroleum Fund for Timor-Leste established under Article 5;

- (o) “Petroleum Fund Receipts” has the meaning given to it in Article 6;
- (p) “Petroleum Operations” means authorised activities under a Petroleum Authorisation;
- (q) “State Budget” means the State Budget referred to under Section 145 of the Constitution of the Republic;
- (r) “Tax Revenue” means any tax or duty imposed under Timor-Leste law;
- (s) “Timor-Leste” means the Democratic Republic of Timor-Leste; and
- (t) “Treaty” means the Timor Sea Treaty between the Government of Timor-Leste and the Government of Australia signed on 20th May 2002, as amended, varied, modified or replaced from time to time.

2.2 All terms in the present Act that are defined in the Timor-Leste law on budget and financial management have the same meaning given to it in that law.

### Article 3 Material Scope of the Act

This Act shall provide for the establishment and management of the Petroleum Fund, and the procedural rules relating thereto.

### Article 4 Inconsistencies

For the purposes of this Act, in the event of any inconsistency between the provisions of the Act and the provisions in the law of Timor-Leste on budget and financial management, or between the provisions of the Act and the terms of a Petroleum Authorization, the provisions of the present Act shall prevail.

## **Chapter II – The Petroleum Fund for Timor-Leste**

### Article 5 Petroleum Fund for Timor-Leste

5.1 There is hereby established a fund known as the Petroleum Fund for Timor-Leste.

5.2 The Petroleum Fund shall have an earmarked receipts account, held by the Central Bank in compliance with Articles 14 and 15, into which the Petroleum Fund Receipts set out in Article 6 are credited.

5.3 Transfers from the Petroleum Fund shall be made only in accordance with Articles 7 to 10.

5.4 The details concerning the account referred to in Section 5.2, and the State Budget account referred to in Section 7.1, shall be made public through the publication of the operational management agreement to which Section 11.3 refers.

## Article 6 Petroleum Fund Receipts

6.1 The following amounts are Petroleum Fund gross receipts:

- (a) the gross revenue, including Tax Revenue, of Timor-Leste from any Petroleum Operations, including prospecting or exploration for, and development, exploitation, transportation, sale or export of petroleum, and other activities relating thereto;
- (b) any amount received by Timor-Leste from the Designated Authority pursuant to the Treaty;
- (c) any amount received by Timor-Leste from the investment of Petroleum Fund Receipts;
- (d) any amount received from direct or indirect participation of Timor-Leste in Petroleum Operations; and
- (e) any amount received by Timor-Leste relating directly to petroleum resources not covered in paragraphs (a) to (d) above.

6.2 In the event that Timor-Leste participates in Petroleum Operations indirectly, as provided for in paragraph 6.1(d), through a national oil company, the receipts of the Petroleum Fund shall include the following:

- (a) any amount payable by the national oil company as tax, royalty or any other due in accordance with Timor-Leste law; and
- (b) any amount paid by the national oil company as dividend.

6.3. From the amount received in accordance with Section 6.1, the Central Bank shall be entitled to deduct, by direct debit of the Petroleum Fund account, any reasonable management expenses, as provided for in the operational management agreement referred to in Section 11.3.

## Article 7 Transfers

7.1 Subject to Section 6.3, the only debits permitted to the Petroleum Fund are electronic transfers made in accordance with this present article, as well as Articles 8 to 10, to the credit of a single State Budget account.

7.2 The total amount transferred from the Petroleum Fund for a Fiscal Year shall not exceed the appropriation amount approved by Parliament for the Fiscal Year.

7.3. Subject to Article 8 to 10, transfers from the Petroleum Fund by the Central Bank in the Fiscal Year, shall only take place after publication of the budget law, or any subsequent changes thereto, in the *Jornal da República*, confirming the appropriation amount approved by Parliament for that Fiscal Year.

Article 8  
Requirements for Transfers

No transfer shall be made from the Petroleum Fund in the Fiscal Year unless the Government has first provided Parliament with reports:

- (a) specifying the Estimated Sustainable Income for the Fiscal Year for which the transfer is made;
- (b) specifying the Estimated Sustainable Income for the preceding Fiscal Year; and
- (c) from the Independent Auditor certifying the amount of the Estimated Sustainable Income in paragraphs (a) and (b) above.

Article 9  
Transfers Exceeding the Estimated Sustainable Income

No transfer shall be made from the Petroleum Fund in a Fiscal Year in excess of the Estimated Sustainable Income for the Fiscal Year unless the Government has first provided Parliament with:

- (a) the reports described in paragraphs 8.(a) and 8.(b);
- (b) a report estimating the amount by which the Estimated Sustainable Income for Fiscal Years commencing after the Fiscal Year for which the transfer is made will be reduced as a result of the transfer from the Petroleum Fund of an amount in excess of the Estimated Sustainable Income of the Fiscal Year for which the transfer is made;
- (c) a report from the Independent Auditor certifying the estimates of the reduction in Estimated Sustainable Income in paragraph (b) above; and
- (d) a detailed explanation of why it is in the long-term interests of Timor-Leste to transfer from the Petroleum Fund an amount in excess of the Estimated Sustainable Income.

Article 10  
Transfers for Purposes of Refund of Tax

If required under the law of Timor-Leste, transfers from the Petroleum Fund are exceptionally permitted for purposes of refund of tax, in the event of overpayment of tax under paragraphs 6.1(a) and 6.2(a). This amount represents a reduction of the Petroleum Fund Receipts, and shall not be considered as part of the appropriation approved under Section 7.2.

**Chapter III – Petroleum Fund Investment and Protection**

Article 11  
Management of the Petroleum Fund

11.1 The Government is responsible for the overall management of the Petroleum Fund.

11.2 The Minister shall not make any decisions in relation to the investment strategy or management of the Petroleum Fund without first seeking the advice of the Investment Advisory Board in accordance with Article 16.

11.3 The Minister shall enter into an agreement with the Central Bank for the operational management of the Petroleum Fund and the Central Bank shall be responsible for the operational management of the Petroleum Fund.

11.4 The Petroleum Fund shall be managed prudently in accordance with the principle of good governance for the benefit of current and future generations.

## Article 12 External Investment Managers

12.1 The Central Bank may propose to the Minister, either of its own motion or at the request of the Minister, the appointment of one or more external Investment Managers to be responsible for managing the investment of amounts in the Petroleum Fund.

12.2 The Central Bank may select and appoint an external Investment Manager proposed under Section 12.1 only if the Minister is satisfied that:

- (a) the external Investment Manager is a legal person with sufficient equity capital and adequate guarantees and insurances against operational risks;
- (b) the external Investment Manager has a sound record of operational and financial performance; and
- (c) the references and reputation of the external Investment Manager in the field of fund management are of the highest standard.

12.3 The Central Bank shall be responsible for the tendering procedures required for any appointment made pursuant to Section 12.1, as well as for the contracting of any other professional services under the operational management agreement referred to in Section 11.3, and shall in doing so comply with the substantive provisions of Timor-Leste law.

12.4 The procedures for terminating a contract with an external Investment Manager shall be laid down in the operational management agreement referred to in Section 11.3.

12.5 The duty of the Investment Manager is to maximise the return on the Petroleum Fund investments having regard to appropriate risk as indicated by the investments permitted under Articles 14 and 15, any subsidiary legislation under this Act, any instructions by the Minister and the operational management agreement referred to in Section 11.3.

## Article 13 Quarterly Reports on the Petroleum Fund

13.1 The Central Bank shall present to the Minister quarterly reports on the performance and activities of the Petroleum Fund no later than twenty (20) days after the end of each quarter.

13.2 The Central Bank shall provide for the publication of its reports no later than forty (40) days after the end of the quarter.

13.3 The Central Bank shall ensure that in releasing, or allowing access to, such reports measures are taken to prevent the disclosure of confidential information.

Article 14  
Investment Rules

14.1 Not less than ninety per cent (90%) of the amounts in the Petroleum Fund shall be invested only in qualifying instruments described in Article 15.

14.2 Not more than ten per cent (10%) of the amounts in the Petroleum Fund may be, in accordance with all procedures laid down in this Act, invested in financial instruments other than those mentioned in Section 15.1, provided that such instruments are:

- (a) issued abroad;
- (b) liquid and transparent;
- (c) traded in a financial market of the highest regulatory standard.

14.3 The range of instruments included as qualifying instruments in Section 15.1 shall be reviewed by the Government, and approved by Parliament, at the end of the first five (5) years of the Petroleum Fund existence, having regard to the size of the Petroleum Fund and the level of institutional capacity.

Article 15  
Qualifying Instruments

15.1 Subject other provisions of this present article, a qualifying instrument is:

- (a) a debt instrument denominated in United States Dollars that bears interest or a fixed amount equivalent to interest, that is:
  - (i) rated Aa3 or higher by the Moody's rating agency or rated AA– or higher by Standard & Poor's rating agency; and
  - (ii) issued by or guaranteed by the World Bank or by a sovereign State, other than Timor-Leste, provided the issuer or guarantor is rated Aa3 or higher by the Moody's rating agency or rated AA– or higher by Standard & Poor's rating agency; or
- (b) a United States Dollars deposit with, or a debt instrument denominated in United States Dollars that bears interest or a fixed amount equivalent to interest issued by:
  - (i) the Bank for International Settlements;
  - (ii) the European Central Bank; or
  - (iii) the Central Bank of a sovereign State, other than Timor-Leste, with a long-term foreign currency rating of Aa3 or higher by the Moody's rating agency or AA– or higher by the Standard & Poor's rating agency;
  - (iv) a bank designated by Moody's rating agency with a long-term foreign currency rating of Aa3 or higher or designated by Standard & Poor's rating agency with a long-term foreign currency rating of AA– or higher.

15.2 The Investment Manager shall dispose of an instrument if it ceases to be a qualifying instrument because of a change in the rating of the instrument or the issuer of the instrument within one month of the instrument ceasing to be a qualifying instrument.

15.3 The average interest rate duration of Petroleum Fund qualifying instruments under Section 15.1 shall be less than six (6) years.

15.4 A derivative instrument is a qualifying instrument only if:

- (a) it is solely based on instruments that satisfy the requirements of Section 15.1; and

- (b) its acquisition reduces the financial exposure to the risks associated with the underlying instrument or instruments.

Article 16  
Investment Advisory Board

- 16.1 There is hereby established an Investment Advisory Board that is responsible for:
- (a) developing for the Minister performance benchmarks of desired returns from, and appropriate risks of, the investments of the Petroleum Fund;
  - (b) advising the Minister on the investment instructions that the Minister shall provide to the Investment Managers of the Petroleum Fund appointed pursuant to Article 12;
  - (c) advising the Minister on the performance of the external Investment Managers and making recommendations to the Minister on the appointment or removal of external Investment Managers; and
  - (d) advising the Minister on the need for changes in the overall investment strategy or management of the Petroleum Fund, including the making of recommendations as to such changes.

16.2 Subject to Article 18, the Minister shall seek the advice of the Investment Advisory Board before making a decision on any matter relating to the investment strategy or management of the Petroleum Fund.

16.3 Any advice given by the Investment Advisory Board on investment strategy or management of the Petroleum Fund shall take into account:

- (a) the overall objective that the Petroleum Fund be a fund of income from the exploitation of non-renewable petroleum resources for the benefit of current and future generations;
- (b) the current conditions, opportunities and constraints in investment markets, and the constraints under which the Central Bank and other key institutions in Timor-Leste operate; and
- (c) the need to ensure that sufficient amounts are available when needed for transfers referred to in Article 7.

16.4 The Investment Advisory Board shall determine the rules of procedure under which it operates.

Article 17  
Organisation of the Investment Advisory Board

17.1 The members of the Investment Advisory Board shall be:

- (a) the Director of Treasury;
- (b) the Head of the Central Bank;
- (c) two persons appointed by the Minister with significant experience in investment management; and
- (d) one other person appointed by the Minister.

17.2 The Central Bank shall provide the secretariat for the Investment Advisory Board and any support required by the board to carry out its functions.

17.3 The Minister shall provide, in accordance with Timor-Leste law:

- (a) a person to sit on the secretariat of the Investment Advisory Board; and
- (b) appropriate remuneration for the members of the Investment Advisory Board appointed under paragraphs 17.1(c) and 17.1(d).

17.4 The members of the Investment Advisory Board shall, on occasion of taking and vacating office, submit a declaration concerning their assets and income from property and capital, including information relating to their bank accounts.

#### Article 18

##### Absence of Advice from the Investment Advisory Board

18.1 The non-provision of advice by the Investment Advisory Board, within fifteen (15) days of the request, or within such longer time period as may be determined by the Minister having regard to the nature of the advice sought, shall not constitute an impediment for the Minister to make a decision.

18.2 If, having regard to the nature and urgency of the decision to be taken, there is insufficient time to seek the advice of the Investment Advisory Board, in relation to a particular decision, the Minister shall make a decision without first seeking the advice of the Investment Advisory Board.

18.3 If the Minister makes a decision under Section 18.1 or 18.2, the Minister shall immediately report the making of the decision to the Investment Advisory Board.

18.4 The Minister shall reexamine the decision having regard to any subsequent advice provided by the Investment Advisory Board.

#### Article 19

##### Release of Advices of the Investment Advisory Board

19.1 When required by Parliament, the Government shall without delay provide Parliament with all advices given thereto by the Investment Advisory Board.

19.2 The Minister shall ensure that in releasing, or allowing access to, advices given thereto, measures are taken to prevent the disclosure of confidential information.

#### Article 20

##### No Encumbrances on the Assets of the Petroleum Fund

20.1 Any amount that is invested pursuant to Articles 14 and 15 shall, at all times, remain the property of Timor-Leste.

20.2 Any contract, agreement or arrangement, to the extent that it purports to encumber the assets of the Petroleum Fund, whether by way of guarantee, security, mortgage or any other form of encumbrance, is null and void.

## **Chapter IV – Supervision of the Petroleum Fund**

### **Article 21**

#### **Maintenance of Petroleum Fund Accounts and Records**

21.1 The Director of Treasury is responsible for maintaining the Petroleum Fund accounts and records in accordance with the International Accounting Standards in force, to reflect the operations and financial condition of the Petroleum Fund.

21.2 The Director of Treasury shall submit to the Minister quarterly management information reports and analyses on the performance and activities of the Petroleum Fund no later than twenty (20) days after the end of each quarter.

21.3 The Director of Treasury is responsible for reporting on the performance and activities of the Petroleum Fund for the purpose of the annual financial statements of Timor-Leste.

### **Article 22**

#### **Internal Audit**

The accounts, records and other documents relating to the Petroleum Fund shall be audited every six months by the bodies responsible for internal audits of each of the entities involved.

### **Article 23**

#### **Annual Report**

23.1 The Government shall submit an Annual Report for the Petroleum Fund for a Fiscal Year to Parliament, at the same time as the annual financial statements of that year are submitted to Parliament.

23.2 The Annual Report referred to in Section 23.1 shall be published by Government within fifteen (15) days of its submission to Parliament.

### **Article 24**

#### **Information Contained in the Annual Report**

24.1 The Annual Report for the Petroleum Fund shall be prepared in a manner that makes it readily adaptable for public information, and shall contain in particular the following information for the Fiscal Year for which the Report is prepared:

- (a) audited financial statements certified by the Independent Auditor, comprising:
  - (i) an income and expenditure statement;
  - (ii) a balance sheet, including a note listing the qualifying instruments of the Petroleum Fund, valued at market value;
  - (iii) details of all appropriations and transfers from the Petroleum Fund; and
  - (iv) notes to the financial statements, as appropriate;
- (b) a report signed by the Minister describing the activities of the Petroleum Fund in the year, including all advice provided by the Investment Advisory Board, any reports prepared by the Independent Auditor under Article 35 and drawing attention to particular issues or matters that may be of concern or interest to Parliament;

- (c) a statement by the Director of Treasury drawing attention to any accounting issues or practices arising from the Report that may materially affect the interpretation of amounts or activities shown within it;
- (d) the income derived from the investment of Petroleum Fund assets during the Fiscal Year compared with the income of the previous three Fiscal Years;
- (e) a comparison of the nominal income on the investment of Petroleum Fund assets with the real return after adjusting for inflation;
- (f) a comparison of the income derived from the investment of Petroleum Fund assets with the benchmark performance indices provided to the Minister pursuant to Section 16.1;
- (g) a comparison of the Estimated Sustainable Income for the Fiscal Year with the sum of transfers from the Petroleum Fund for the year;
- (h) in the event of Government borrowings, the liabilities shall be reflected in the presentation of Petroleum Fund accounts so as to give a true representation of the past and expected future development of the Government's net financial assets and rate of savings; and
- (i) a list of persons holding positions relevant for the operation and performance of the Petroleum Fund, including:
  - (i) the Minister;
  - (ii) the Director of Treasury;
  - (iii) the members of the Investment Advisory Board;
  - (iv) the external Investment Managers;
  - (v) the Head of the Central Bank; and
  - (vi) the members of the Petroleum Fund Consultative Council.

24.2 The sources of the information described in Section 24.1, whatever their form, and including all reports and statements, shall be annexed to the Annual Report in unedited form.

## **Chapter V – Petroleum Fund Consultative Council**

### Article 25

#### Petroleum Fund Consultative Council

25.1 There is hereby established a Petroleum Fund Consultative Council.

25.2 The Petroleum Fund Consultative Council shall, of its own motion or at the request of Parliament:

- (a) advise Parliament on matters relating to the performance and operation of the Petroleum Fund;
- (b) advise Parliament on appropriations from the Petroleum Fund as set out in Section 30.2; and
- (c) in the context of the budgetary process, advise Parliament on whether the appropriations of the Petroleum Fund are being used effectively to the benefit of current and future generations.

### Article 26

#### Composition of the Petroleum Fund Consultative Council

The Petroleum Fund Consultative Council shall comprise the following members, all of whom are nationals of Timor-Leste:

- (a) former Presidents of the Republic;
- (b) former Speakers of the Parliament who have effectively been in office for at least three (3) years;
- (c) former Prime Ministers who have effectively been in office for at least three (3) years;
- (d) former Ministers in charge of finances who have effectively been in office for at least three (3) years;
- (e) former Heads of the Central Bank who have effectively been in office for at least three (3) years;
- (f) two members appointed by Parliament, elected in accordance with the rules laid down by Parliament;
- (g) two members appointed to represent civil society non-profit organisations;
- (h) a member appointed to represent the private business sector; and
- (i) a member appointed to represent religious organisations.

#### Article 27

#### Appointment and Tenure of Members

27.1 The term of office of the members of the Petroleum Fund Consultative Council is five (5) years, and it is not renewable.

27.2 The term of office of the members mentioned in paragraphs 26.(a) to 26.(e) shall be served from the end of their office, in accordance with procedures to be laid down by Parliament.

27.3 The members of the Petroleum Fund Consultative Council referred to in paragraphs 26.(g) to 26.(i) shall be freely appointed by the concerned organisations, duly registered in accordance with Timor-Leste law, under procedures to be laid down by Parliament.

27.4 If no appointment can be made to the Petroleum Fund Consultative Council pursuant to paragraphs 26.(a), 26.(b) or 26.(c), the President of the Republic, the President of Parliament, and the Prime Minister, respectively, shall appoint one member to fill such a vacancy. Any member of the Consultative Council appointed under this paragraph shall cease his or her functions as soon as the appointment of the member in question becomes possible under paragraphs 26.(a), 26.(b) or 26.(c).

27.5 Members of Parliament or of Government may not be appointed under paragraph 26.(f).

27.6 The members of the Petroleum Fund Consultative Council shall, on occasion of taking and vacating office, submit a declaration concerning their assets and income from property and capital, including information relating to their bank accounts.

#### Article 28

#### Limitations

28.1 A person shall not be appointed as a member of the Petroleum Fund Consultative Council if the person:

- (a) has been removed from office;
- (b) has been declared bankrupt or insolvent; or

(c) has been convicted of a criminal offence.

28.2 Members of the Petroleum Fund Consultative Council have security of tenure and, unless otherwise provided for by law, may not be suspended, retired or removed from office.

28.3 The appointment of a member of the Petroleum Fund Consultative Council ceases if the member:

- (a) is declared bankrupt or insolvent;
- (b) is convicted of a criminal offence; or
- (c) is unfit for office.

28.4 Until such time as specific procedures for the removal of a member under paragraph 28.3(c) are established under the general law, the procedures applicable for the removal of judges shall apply.

#### Article 29

#### Economic Advisor to the Petroleum Fund Consultative Council

Subject to approval by Parliament, the Petroleum Fund Consultative Council may select and appoint as its international adviser for economic and financial matters, for a period of two (2) years, an academic or professional of the highest reputation and competence.

#### Article 30

#### Functioning of the Petroleum Fund Consultative Council

30.1 In conducting its activities, the Petroleum Fund Consultative Council shall take into account:

- (a) the overall objective that the Petroleum Fund be a fund of income from the exploitation of non-renewable petroleum resources for the benefit of current and future generations; and
- (b) the principles for the operation of the Petroleum Fund as outlined in this Act.

30.2 When:

- (a) the Government introduces legislation to Parliament to appropriate an amount from the Petroleum Fund, and
  - (b) the amount the legislation would appropriate in the Fiscal Year is greater than the Estimated Sustainable Income of the Petroleum Fund for the Fiscal Year,
- the Petroleum Fund Consultative Council shall submit, in a timely manner, as decided by Parliament on a case by case basis, an advice to Parliament on the Government's proposed appropriation.

30.3 The non-provision of advice by the Petroleum Fund Consultative Council, within the time period decided by Parliament, shall not constitute an impediment for Parliament to make a decision.

30.4 For purposes of advising Parliament, the Petroleum Fund Consultative Council shall consult widely in the community and, to this end, shall hold an annual forum on issues relating to the Petroleum Fund.

30.5 The Petroleum Fund Consultative Council shall determine the rules of procedure under which it will operate, and its decisions shall only be valid if taken by majority, with a quorum of six (6) members.

30.6 Parliament shall provide adequate funding for the operations of the Petroleum Fund Consultative Council, including appropriate remuneration for members of the Petroleum Fund Consultative Council, through the budgetary appropriation for the operation of Parliament.

### Article 31 Release of Information

31.1 Parliament shall provide for the publication of the advices of the Petroleum Fund Consultative Council, including minority opinions, within thirty (30) days of having been provided.

31.2 Parliament shall ensure that in releasing, or allowing access to, advices of the Petroleum Fund Consultative Council, measures are taken to prevent the disclosure of confidential information.

31.3 The Minister and/or the Head of the Central Bank shall furnish the Petroleum Fund Consultative Council with information it requests on any aspect of the operation or performance of the Petroleum Fund for the purpose of its monitoring of the Petroleum Fund.

31.4 In dealing with the information furnished under Section 31.3, the Petroleum Fund Consultative Council shall ensure that measures are taken to prevent the disclosure of confidential information.

## **Chapter VI – Transparency**

### Article 32 Transparency as a Fundamental Principle

32.1 The management of the Petroleum Fund shall always be carried out, and the related duties of all relevant parties shall be discharged, with the highest standard of transparency.

32.2 Information or data whose disclosure to the public could, in particular:

- (a) prejudice significantly the performance of the Petroleum Fund;
- (b) be misleading, as it relates to:
  - (i) incomplete analysis, research or statistics;
  - (ii) to frankness and candour of internal discussion;
  - (iii) the exchange of views for the purposes of deliberation; or
  - (iv) the provision of confidential advice;
- (c) significantly affect the functioning of the Government;
- (d) amount to the disclosure of confidential communications;
- (e) substantially prejudice the management of the economy;
- (f) substantially prejudice the conduct of official market operations; or
- (g) result in or lead to improper gains or advantages;

may be declared as confidential. The declaration of confidentiality shall, taking into account the principle of transparency and the right of the public as regards to access to information, provide a clear reasoning on the motives for treating such information or data as confidential.

32.3 Any information that is kept confidential at the time at which it could have been published, as well as the reasoning for having been treated as confidential, shall be made available to the public, upon request, when the reasons for confidentiality are no longer valid, and in any case after five (5) years from the date at which it could have been published.

32.4 In the exercise of its functions and competences, and as provided for in this Act, Parliament, the Government, the Minister, Central Bank, Investment Advisory Board and the Petroleum Fund Consultative Council shall take all necessary measures to ensure transparency mechanisms and free access to public information.

32.5 The Minister shall ensure that this Act, any subsidiary legislation made thereunder, any instructions relating to the Petroleum Fund, the operational management agreement referred to in Section 11.3 and the reports referred to in Articles 8 and 9 are readily available to the public within thirty (30) days of having been finalised.

### Article 33

#### Payments into the Petroleum Fund Account

For all purposes of Timor-Leste law, an obligation to make a payment into the Petroleum Fund shall not be treated as discharged until the amounts have been deposited, integrally and unconditionally, into the Petroleum Fund earmarked receipts account.

### Article 34

#### Independent Auditor

34.1 Without prejudice to the jurisdiction of any court, there shall at all times be appointed an Independent Auditor, which shall be an internationally recognised accounting firm, selected and appointed by the Government.

34.2 The selection and appointment of the Independent Auditor shall be made in accordance with the procurement procedures established under Timor-Leste law.

34.3 The Independent Auditor appointed under this Act shall remain in function for the contracted period, unless the contract is terminated for serious misconduct or serious breach of contract, or if the Independent Auditor's conduct otherwise prejudices the performance of the Petroleum Fund.

### Article 35

#### Payments made as Petroleum Fund Receipts

35.1 The Independent Auditor shall prepare a report for the Minister of all payments made, or that should under this Act have been made, as Petroleum Fund Receipts for each Fiscal Year.

35.2 The Independent Auditor may require any Payer to provide any information, and to deliver proof of any facts which may be necessary for the full discharge and performance of the Independent Auditor's duties under this Act.

35.3 The Independent Auditor's report shall state the aggregate amounts of payments made as Petroleum Fund Receipts for each Payer for the Fiscal Year.

35.4 If the Independent Auditor concludes that there is a discrepancy between payments made and those which should have been made, and which cannot be explained, the Independent Auditor shall refer the matter to the Minister. In referring the matter to the Minister, the Independent Auditor shall provide all information that the Independent Auditor possesses regarding the discrepancy in question.

#### Article 36

#### Reports of the Independent Auditor

36.1 The Minister shall provide for the publication of the Independent Auditor's report, in particular through the Annual Report.

36.2 The Independent Auditor shall ensure that in preparing the report measures are taken to prevent the disclosure of confidential information.

### **Chapter VII – Penalties**

#### Article 37

#### Scope of the Chapter

The provisions included in this Chapter are without prejudice of criminal and civil liability under general law.

#### Article 38

#### Non-Compliance with an Obligation to Publicise Information

Whoever fails to comply with any obligation to publicise information, provided for in this Act, or leads someone else to fail to comply with, or in any manner hinders or leads someone else to hinder the compliance with, such an obligation, shall be punished by imprisonment for a period up to two (2) years or fine of not less than fifty (50) days.

#### Article 39

#### Misleading Information

39.1 Whoever gives information that is materially false or misleading, or knowingly includes or permits to be included, in any report or document, information that is materially false or misleading, shall be punished by imprisonment for a period up to three (3) years or fine of no less than seventy five (75) days.

39.2 An attempt is punishable.

#### Article 40

##### Hindering the Exercise of Powers by an Auditor

40.1 Whoever, directly or indirectly, in any measure or by any means, hinders or leads someone else to hinder the exercise of powers by an auditor under this Act, shall be punished by imprisonment for a period from three (3) months to four (4) years or fine of not less than one hundred (100) days.

40.2 An attempt is punishable.

#### Article 41

##### Accessory Penalties

In relation to the crimes provided for in this Act, the following accessory penalties may be applied:

- (a) Termination of contracts;
- (b) Publication of the conviction and sentence; and/or
- (c) Other injunctive relief as may be necessary taking into account the circumstances of the case in question.

#### Article 42

##### Liability of Legal Persons, Corporations and Other Legal Entities

42.1 Legal persons, corporations or any other legal entities, including those without juridical personality, are liable for contraventions provided for in this Chapter when committed by its organs or representatives in its name and in the collective interest.

42.2 The liability is excluded where the agent has acted against express orders or instructions properly issued.

42.3 The liability of the entities mentioned in Section 42.1 does not exclude the individual liability of the respective agents.

42.4 The entities mentioned in Section 42.1 are jointly and severally liable, as provided for in civil law, for the payment of any fines or compensations, or for the fulfillment of any obligations, derived from the facts or with incidence on matters covered by the scope of this Act.

#### Article 43

##### Fines to Legal Persons, Corporations and Other Legal Entities

43.1 In the case of legal persons, corporations or any other legal entities, including those without juridical personality, the daily rate for fines corresponds to an amount between one United States Dollar (USD \$1.00) and two thousand United States Dollars (USD \$2,000.00), as determined by the court, taking into account the economic and financial circumstances of the legal person, corporation or other legal entity.

43.2 If the fine is applied to an entity without juridical personality, its payment will be guaranteed by the entity's assets and, in the event of non-existence of such assets or under-capitalisation, jointly and severally, the assets of each of the partners or shareholders of the entity.

Article 44  
Subsidiary Legislation

General criminal law, both substantive and adjective, as well as the relevant administrative legislation, are applicable in a subsidiary manner, with the required adaptations, to the extent necessary to give effect to the provisions of this Chapter.

**Chapter VIII – Ombudsman for Human Rights and Justice**

Article 45  
Complaints to the Ombudsman for Human Rights and Justice

44.1 Any person, legal and natural, may lodge a complaint with the Ombudsman for Human Rights and Justice, on any matters covered by the scope of this Act, in accordance with general law.

44.2 Any recommendations forwarded by the Ombudsman for Human Rights and Justice to the competent authorities, on any matters covered by the scope of this Act, shall be treated as a matter of urgency.

**Chapter IX – Transitional and Final Provisions**

Article 46  
Implementation of Organizational Structure

46.1 All appointments necessary for the effective functioning of the Investment Advisory Board shall be made within three (3) months of the entry into force of this Act.

46.2 All appointments necessary for the effective functioning of the Petroleum Fund Consultative Council shall be made within six (6) months of the entry into force of this Act.

Article 47  
Subsidiary Laws and Regulations

The Government and the Minister may make regulations for the effective carrying out of the provisions of this Act, including regulations of a transitional nature consequent upon the making of this Act.

Article 48  
Opening Balance of the Petroleum Fund

48.1 The opening balance of the Petroleum Fund is the total amount of the payments received by Timor-Leste, up to the commencement of the present Act, as *First Tranche Petroleum*, from the Joint Authority pursuant to the terms of the Exchange of Notes, or from the Designated Authority pursuant to the terms of the Treaty, increased by such amount, if any, as determined by the Government.

48.2 A report on the determination of the opening balance of the Petroleum Fund shall be provided with the first quarterly report presented under Article 13.

Article 49  
Entry into force and application

49.1 This Act enters into force on the day following its publication in the *Jornal da República*.

49.2 This Act applies to Fiscal Years commencing on or after 1 July 2005.

49.3 Until the implementation of the organizational structure under this Act is fully completed, and in no case for a period of more than six (6) months starting from the date of entry into force of this Act, only the provisions that do not require the intervention of the organic structure to be constituted shall apply.

Approved on 20 June 2005.

The President of Parliament,

Francisco Guterres “Lu-Olo”

## SCHEDULE 1

### CALCULATING ESTIMATED SUSTAINABLE INCOME FOR A FISCAL YEAR

I. Estimated Sustainable Income for a Fiscal Year is the maximum amount that can be appropriated from the Petroleum Fund in that Fiscal Year and leave sufficient resources in the Petroleum Fund for an amount of the equal real value to be appropriated in all later Fiscal Years as determined in accordance with the formula in paragraphs II and III below.

II. Estimated Sustainable Income for a Fiscal Year is calculated according to the following formula:

$$r \times \textit{Petroleum wealth}$$

where:

**r** is the estimated average real rate of return, or real interest rate, on Petroleum Fund investments in the future and, for the purposes of these calculations, shall be 3.0%.

III. In this Schedule, "Petroleum wealth" is calculated according to the following formula:

$$V + \textit{present value} (R_0, R_1, \dots, R_n) = V + \sum_{t=0}^n \frac{R_t}{(1+i)^t}$$

where:

**V** is the estimated value of the Petroleum Fund at the end of the prior Fiscal Year

**R<sub>0</sub>, R<sub>1</sub>, etc.** are the published budget projections for expected annual Petroleum Fund Receipts minus investment returns for that Fiscal Year (R<sub>0</sub>) and future Fiscal Years (R<sub>1</sub>, etc.)

**i** is the estimated nominal yield on a U.S. government security, averaged over the years in which Petroleum Fund Receipts are expected

**n** is the number of years until no further Petroleum Fund Receipts are projected to be received.

IV. All assumptions upon which the calculations made pursuant to paragraphs II and III above are based shall be clearly identified and explained, and any changes made in these assumptions in subsequent calculations shall be clearly pointed out.

V. All assumptions made shall be prudent, reflect international best practice and be based upon internationally recognized standards.

VI. The amount determined in accordance with the formula in paragraphs II and III above shall be certified by the Independent Auditor.