

By-laws of PETROTIL E.P. - Petróleo, Gás e Energia de Timor-Leste

Petroleum, Gas and Energy of Timor-Leste

Draft Decree-law

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Ministry of Natural Resources, Minerals and Energy Policy
12 February 2007



DEMOCRATIC REPUBLIC OF TIMOR-LESTE
GOVERNMENT

Decree-law No. ____/07
of __, __ 2007

By-laws of

PETROTIL E.P. - PETRÓLEO, GÁS E ENERGIA DE TIMOR-LESTE

Having laid down the regulations for the activities of the petroleum sector of industry in accordance with the determination of the Law on Petroleum Activities and subsequent decrees, the Government hereby creates the *Empresa Nacional de Petróleo, Gás e Energia de Timor-Leste E.P.* (National Petroleum, Gas and Energy Company of Timor-Leste E. P.) for purposes of managing the assets owned by the State of Timor-Leste in the business activities of the petroleum industry.

It is hoped that PETROTIL E.P. – once it is fully operational – may [sic] help to optimize the business result of the oil resources at the disposal of Timor-Leste by attracting technologies, developing qualified human resources and also guaranteeing the energy security of the country to become one of the principle drivers of economic and social development.

Thus, the Government enacts, under the terms of Article 115, Number 1 and 3, paragraph e, both of which are in the Consitution of the Democratic Republic of Timor-Leste, in conjunction with the provision of Article 3 of Decree-law 14 of 24 September 2003 (14/2003), and Article 33 of Decree-law 13 of 9 August 2003 (13/2006), into law, the following:

Chapter I General Principles

Article 1 Nature

The National Petroleum, Gas and Energy Company of Timor-Leste PETROTIL E.P. is a State-run Company (*Empresa Pública*) is a legal person and [judicial] jurisdiction with [independent] of equity, administration and funds, under the prerogatives of the Ministry of National Recourse, Minerals and Energy Policy, as a market agent, that is governed by the law on State-run companies¹, by these By-Laws and other rules of private law.

Article 2 Headquarters

PETROTIL E.P. is headquartered in Dili and has activities in the Country and abroad, where it may establish representations, delegations, subsidiaries, agencies, branches or offices.

Article 3 Purpose

1. The purpose of PETROTIL E.P. is:
 - a) the exploration, exploitation, refining, processing, trading, importation, export, storage, distribution and transport of petroleum, its derivatives, natural gas and other fluid hydrocarbons;
 - b) the development of activities in the petrochemical industry.
2. In energy-related activities, it promotes research, development, production, transport, distribution and sale of all forms of energy, including biofuels as well as any other related activities or ones arising therefrom.
3. The business activities relating to its corporate purpose are developed by the company on the basis of free competition with other companies according to market conditions and in observance of the other principles and guidelines of relevant Laws.
4. PETROTIL E.P., either directly or through subsidiaries, affiliated to third parties or not, may undertake in the Country or outside the national territory, any activities come under its corporate purpose.

Article 4 Basic Organizational Plan

The activities of PETROTIL E.P. follow a Basic Organizational Plan, approved by the Administrative Council, that shall contain a general structure and shall set forth the nature and powers of each body, and the relationships of hierarchy, coordination and control required for its operations pursuant to this Decree-law.

¹ Translator's Note: *empresa pública* may also be translated as public undertaking

Chapter II Formation Fund

Article 5 Statutory Capital

1. There is US\$ 2.000.000,00 (two million US dollars) in subscribed, statutory capital fully paid in by a funding allowance in the General Budget of the State.

2. PETROTIL E.P. receives all its oil-sector operational assets from those owned by the State of Timor-Leste including those assets provided for under Article 22 of the Law on Petroleum Activities, and it shall manage them pursuant to the principles of transparency and good corporate governance.

3. The description of the assets and rights that also constitute the initial statutory capital are on an official list approved by the Minister of Planning and Finance and the Minister of Natural Resources, Minerals and Energy Policy.

Article 6 Subsidiaries and The Right To Enter into Partnerships

To undertake the activities set forth in its purpose, PETROTIL E.P. may set up subsidiaries and enter into partnerships on a basis of minority or majority ownership of other undertakings.

Article 7 Shareholding Rights

PETROTIL E.P. and its subsidiaries may acquire shares, stakes or financial holdings in undertakings and other companies and enter into partnerships with national or foreign undertakings and form consortiums, either as lead company or not, for purposes of expanding its activities, bringing together technologies and widening the scope of investments in activities related to its purpose.

Article 8 Binding Relationship of Subsidiaries

The subsidiaries and controlled entities are bound by the guidelines and strategic planning approved by the Administrative Council of PETROTIL E.P. and by the joint corporate rules defined by an orientation that is technical, administrative, accounting, financial and legal in nature.

Chapter III Company Bodies

Article 9 Bodies

PETROTIL E.P. has the following bodies:

- a) a Administrative Council;
- b) a Chairman of the Administrative Council;
- c) a Audit Committee;
- d) an Executive Committee.

Section I Administrative Council

Article 10 Membership on the Administrative Council

1. PETROTIL E.P. is led by a Administrative Council with seven (7) members, with deliberative functions and an Executive Committee.
2. The Council of Ministers is entitled to nominate and exonerate the Chairman of the Administrative Council and the Minister of Natural Resources, Minerals and Energy Policy and entitled to nominate and exonerate other board members.
3. Members to the Administrative Council are appointed based on the criteria of recognized technical and management expertise (skills).
4. The Administrative Council shall mandatorily have the following members:
 - a) A representative from the Ministry of Planning and Finance;
 - b) The Executive Director of PETROTIL E.P.
 - c) A representative from the country's private sector; and
 - d) A representative elected by the workers of PETROTIL E.P.;
5. The term of the members of the Administrative Council shall be four (4) years and may be renewed.

Article 11 Powers

1. The Administrative Council is the highest level body that guides and leads PETROTIL E.P. and it shall undertake to, namely:
 - f) draw up the general orientation of the company's business, approve its mission, strategic goals and guidelines;²
 - g) assess and vote on the strategic plan, the pluri-annual plans and annual spending and investment programs and the budget thereof;
 - h) appoint members of the Executive Committee and oversee their management, examining, at any time, the books and documents of the company;
 - i) assess performance results;
 - j) annually approve the limit on the value above which acts, contracts or transactions, though a prerogative of the Executive Committee, shall be submitted for approval to the Administrative Council;
 - k) deliberate issuance of debt bonds or other unsecured, fixed-income obligations;
 - l) define the company's overall policies, including management policies on sales strategy, finance, investment, the environment and human resources;
 - m) approve the transfer of ownership of company assets, including production sharing agreement, refinery authorization, natural gas processing, transportation, importation and export of petroleum, its derivatives and natural gas, it having the power to set limits on the value of undertaking these Executive Committee acts;

² Translator's Note: There is no point e)

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2. The Administrative Council shall have sole power to deliberate the following matters:
- a) the General Organizational Plan and changes thereto, the assignment to Directors at the proposal of the Executive Director of the duties for the contact areas set forth in the **project referred to [unclear]**;
 - b) the election and removal of Executive Committee members;
 - c) assessment and voting on balance sheets and financial statements for the prior business year and the opinion of the Audit Committee thereon;
 - d) setting up subsidiaries and having shareholdings, or acquiring stakes, in companies or sales of such holdings;
 - e) approval of a Code of Best Practices and Internal Rules;
 - f) approval of the Corporate Governance Guidelines of PETROTIL E.P.;
 - g) selection and dismissal of independent auditors, who may not provide consulting services to the Company while their contract is in force;
 - h) analysis and approval of the management report and the financial statements of the Executive Committee;
 - i) creation and approval of the powers and operating rules for a Business Committee attuned to the General Organizational Plan;
 - j) setting up funds or reserve funds for the purposes of investment;
 - k) matters that, by virtue of legal provisions or determination by the Council of Ministers, shall be deliberated by it.

Article 12 Auditing of Accounts

The Administrative Council shall decide on verification, audits or accounting in the company and hiring of specialists, experts or external auditors to better examine matters on which it must deliberate.

Article 13 Functioning of the Administrative Council

1. The Administrative Council holds ordinary meetings called by the Chairman every ninety (90) days with a majority of its members, and extraordinary meetings whenever necessary.
2. Matters submitted for scrutiny by the Administrative Council are examined by decision of the Executive Committee, recommendations from the technical area or competent Committee, and a legal opinion is given on them when their examination shows this to be necessary.
3. The Chairman of the Board, at his own initiative or by request of any board member, may ask company managers to attend meetings and provide clarifications or information on matters under scrutiny.
4. The deliberations of the Administrative Council are made by a majority vote of members present and registered in the meeting record book.
5. In the event of a tie, the Chairman of the Board may cast a tie-breaking vote.

6. The details of Administrative Council' meetings are governed by internal rules.

Section II Chairman of the Administrative Council

Article 14 Chairman

The Chairman of the Administrative Council shall ensure that the Executive Committee properly executes management of the company according to the determinations of the Administrative Council and the orientation (guidelines) from the Ministry of Natural Resources, Minerals and Energy Policy.

Article 15 Duties

The Chairman of the Administrative Council shall coordinate and guide the activities of the Administrative Council and, in particular:

- a) Call and preside over meetings of the Administrative Council;
- b) Come together with the Executive Committee to guarantee the determinations of the Administrative Council are carried out.

Section III Audit Committee

Article 16 Audit Committee

The Audit Committee is the body in charge of assessing PETROTIL E.P., its duty being to ensure compliance with laws, legal statutes and regulations in force and to assess management of the company's budget, funds and equity.

Article 17 Membership and Appointment

The Audit Committee is comprised of three members appointed by joint Ministerial Decision of the Ministry of Planning and Finance and the Ministry of Natural Resources, Minerals and Energy Policy, for a term of three (3) years, that may be renewed once.

Article 18 Duties and Functions

1. The Audit Committee shall:

- a) Assess the management of PETROTIL E.P. on the basis of periodical examination of its books, accounting records and financial documents;
- b) Monitor implementation of the annual budgets and activity and investment programs;
- c) Issue an opinion on the annual management report;
- d) Verify the accuracy of the financial and assessment report and present a detailed opinion on them to the Administrative Council annually;
- e) Issue decisions on the legality and correct nature of acts having a financial impact on the company as required by law or at the request of the Administrative Council;

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- f) Have any one of its members assess the acts of directors and verify compliance with their legal duties and those in the by-laws;
 - g) Establish the company's internal rules (by-laws).
2. The meetings of the Audit Committee are defined in the internal rules.

Section IV Executive Committee

Article 19 Executive Committee

The Executive Committee shall manage the business of the company according to the mission, objectives, strategies and guidelines approved by the Administrative Council.

Article 20 Membership and Appointment

1. The Executive Committee is comprised of one Executive Director and up to four Board members, for a term not greater than four (4) years, and that may be renewed.
2. The Administrative Council shall appoint the members of the Executive Committee, and the Minister of Natural Resources, Minerals and Energy Policy shall designate one of those members as Executive Director.
3. The members of the Executive Committee may be removed from the committee at any time by decision of the Administrative Council, should there be grounds for so doing.
4. In selecting members of the Executive Committee, the Administrative Council shall observe the requirements of management skill and known expertise and specialization in the respective areas of assignment, in observance of the General Organization Plan.
5. The members of the Executive Committee carry out their assignments on an exclusive basis, though they are permitted to hold concomitant administrative duties in subsidiaries, controlled companies or affiliates of the company at the discretion of the Administrative Council.

Article 21 Duties

1. The Executive Committee shall draw up and submit for approval to the Administrative Council:
 - a) the bases and guidelines for drawing up the strategic plan, the annual programs and the pluri-annual plans;
 - b) the strategic plan and the respective pluri-annual plans and annual programs of expenditures and investments of the company for projects related thereto;
 - c) the company's cost and investment budgets;
 - d) the assessment of the performance result of the company's activities.
2. The Executive Committee shall approve:
 - a) the technical and business criteria of investment projects in terms of the plans for delegating responsibilities for their execution and implementation;

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- b) criteria for the efficient use of production areas, observing specific legislation;
 - c) pricing policy and basic price structures of the company's products;
 - d) accounting charts, basic criteria for determination of results, amortization and depreciation of capital investments and changes in accounting practices;
 - e) manuals and operating standards, accounting, finance, personnel management, contracting and performance of works and services, provision and disposal of materials and equipment et alia required for leading company operations;
 - f) standards for transfer, assignment or sale of use, rental or leasing rights on immovable assets owned by the company;
 - g) an annual insurance plan for the company;
 - h) the basic structure of the company's bodies and their Organizational Standards;
 - i) the creation, transformation or extinguishment of operational bodies or structures relating thereto as well as temporary works' bodies, agencies, subsidiaries, branches or offices in the Country or abroad;
 - j) plans laying down acceptance standards (*admissão*), career, access, benefits and disciplinary structure for its employees and the productivity thereof in the company bodies;
 - k) designation of persons with management positions in the company;
 - l) annual business plans;
 - m) formation of consortiums, joint ventures and special purpose companies in the Country and abroad;
 - n) raising funds and obtaining loans and financing in the Country or abroad, including doing so by issuing securities, after authorization from the Ministry of Planning and Finance is obtained;
 - o) granting of collateral or pledged securities by observing relevant legal and contractual provisions;
 - p) acquisition, as set forth in specific legislation, of immovable assets, ships and drilling and production units, as well as the right to pledge and assign company assets;
 - q) the pledging or assigning of shares or stakes in companies in which the company owns more than ten percent (10%) of the capital stock, and the transfer, assignment or sale of consortium or joint venture rights where the company owns more than ten (10%) of the investment, it being entitled to set limits on the value of these acts in delegating their execution to the Executive Director;
 - r) the execution of agreements or contracts with direct or indirect administrative bodies of the State, it being entitled to set limits on the value of these acts in delegating their execution to members of the Executive Committee.
3. The Executive Committee may authorize, as set forth in specific legislation, waiver acts or legal transactions, either judicially or extra-judicially to end disputes or pending matters;

Article 22 Functioning

1. The Executive Committee has an ordinary meeting once a month with the majority of its members, the Executive Director being among them, and has an extraordinary meeting when the Executive Director or two-thirds of its members call for one.

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2. Matters brought before the Executive Committee shall be examined on the basis of opinions from the technical area, the Business Committee and even a legal opinion, when examination of the matters shows it to be necessary.

3. The Executive Committee shall forward copies of the minutes of its meetings to the Administrative Council and shall provide information for assessment of Company performance.

Section V Executive Director

Article 23 Duties

The Executive Director shall direct and coordinate the work of the Executive Committee, and shall:

- a) call and preside over Executive Committee Meetings;
- b) propose Directors for the contact areas to the Administrative Council as defined in the General Organizational Plan;
- c) propose candidates to be Directors of the Company to the Administrative Council;
- d) designates, an Alternate Director, from among existing Directors, to act on the former's behalf in the event of absence or impediment;
- e) follows up and supervises the activities of all company bodies by coordinating the action of the Directors;
- f) designates representatives of the Company to attend Shareholders' Meetings of its subsidiaries, and controlled or affiliated companies, according to the guidelines drawn up by the Administrative Council;
- g) provides information to the Council of Minister, the Minister of Natural Resources, Minerals and Energy Policy and to the Government oversight bodies and other State entities, in particular, the National Parliament.

Chapter IV Legal Person Regime

Article 24 Contractual Regime

The employees of PETROTIL E.P. are subject to the individual work contract legal regime pursuant to legal provisions and internal regulations of the Company.

Article 25 Entry Into the Company

1. The acceptance of employees into and by PETROTIL E.P. and its subsidiaries and controlled companies is a selection process open to the public under terms approved by the Executive Committee.

2. An internal set of regulations shall provide for the share of compensation of public servants and shall be tied to productivity and the results of the Company.

Article 26
Functions of Management

1. The functions of upper management and the powers and responsibilities of those performing them are set forth in the Basic Organizational Plan of the Company.
2. The functions referred to under this Article may, exceptionally and at the discretion of the Executive Committee, be assigned to technical or other specialists who are not permanent staff of the Company.
3. The remaining levels of management functions for organizational staff of the Company shall have the powers and responsibilities assigned to the positions as defined in the internal regulations.

Chapter V
Business and Financial Management

Article 27
Management Principles

The management of PETROTIL E.P. follows the principles of good corporate governance and efficient corporate management by ensuring the business viability and financial health (equilibrium) of the company, aimed at defending the interests of the state pursuant to the National Development Plan.

Article 28
Revenue

The revenues of PETROTIL E.P. - unless otherwise specifically earmarked by law – are those:

- a) Arising from ongoing business activities of its purpose;
- b) Arising from the sale of other goods and services;
- c) From holdings, its budget funded allowance, loans or other subsidies it is granted;
- d) Proceeds or income from alienation of company-owned assets or rights thereto;
- e) Any other proceeds or amounts (values) coming from its activity and which it owns either on the basis of this statute or contract execution.

Article 29
Creation of Reserves and Funds

1. PETROTIL E.P. may create reserves, funds and provisions (allowances) whenever the Administrative Council deems this suitable for investment in projects attuned to the objectives of the company.
2. The creation of a reserve is mandatory for creating real property assets.

Article 30
Distribution of Results

1. PETROTIL E.P. shall earmark, from the net profit on the Annual Balance sheet, a minimum share of one percent (1%) of paid-in capital, for the creation of a special reserve

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to cover the costs of training programs, and research and technological development of the Company.

2. The Company shall earmark a share of the annual results to be distributed among its employees and members of the executive committee on the basis of profit sharing, pursuant to the criteria approved by the Administrative Council, and in observance of current legislation.

Article 31 Company Fiscal Year

The company fiscal year shall be the same as the calendar year, ending at 31 December of each year, at which time the statement of net worth of the company and other financial statements shall be drawn up in accordance with applicable provisions of the law.

Article 32 Simplified Provisioning and Procurement Procedure

Contracts entered into by PETROTIL E. P. for the acquisition of goods and services shall not be subject to the provisions of Decree-laws 10 (10/2005) and 12 (12/2005) of November 21, 2005 and shall be preceded by a simplified provisioning procedure in the form approved by the Administrative Council.

Article 33 Special Tax Regime

Non-Timorese employees hired by PETROTIL E.P. as permanent staff, who are not residents of the country, are exempt from customs' duties, for a period of six months after their arrival in the country and hiring, on goods and equipment imported for their personal use as part of their international relocation and that of their families.

Chapter VI General Provisions

Article 34 Liability

1. PETROTIL E.P. is answerable in civil law with regard to third parties for the acts and failure to act of its directors notwithstanding the company's right to seek legal remedy.

2. The members of the Administrative Council and of the Executive Committee are answerable for their acts and for damages arising from them to the Company, it being forbidden for them to participate in deliberations involving companies in which they have a stake, or at which they have held a management position immediately prior to joining the Company.

3. The Company shall provide for the defense of its directors in judicial and administrative law proceedings and shall maintain an insurance contract on their behalf, to safeguard them from incurring liability arising from regular acts while performing their duties or job functions throughout their respective terms.

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4. The guarantee provided in the foregoing paragraph is extended to the members of the Audit Committee and to all employers and agents who have been legally delegated to act on behalf of Company directors.

Article 35
Judicial and extrajudicial representation

The Company shall be represented, in court or out of court, by its Executive Committee, and, individually by its Executive Director, and it is entitled to appoint individuals with powers of attorney or representatives.

Article 36
Registry

The Articles of Association of PETROTIL E.P. and any modifications thereto shall be registered at the Registry of Commerce as stipulated by law.

Article 37
Entry into Force

This Decree-law shall enter into force on the date it is published.

Verified and approved in meetings of the Council of Ministers on ____ of _____, 2006.

Prime Minister

José Ramos Horta

Minister of Planning and Finance

Madalena Boavida

Minister of Natural Resources, Minerals and Energy Policy

José Teixeira

*Promulgated in
May It Be Published.
President of the Republic*

“Kay Rala” Xanana Gusmão