



**PROPOSED LAW NO. / 2011**

**OF OF**

**PUBLIC DEBT REGIME**

With the adoption of Law No. 13/2009 of 21 October, on Budget and Financial Management, the possibility of state borrowing to finance public expenditure and the respective juridical framework defined in its Article 20 first appeared in the legal system of Timor-Leste.

In this context, it becomes necessary to define the strategic principles that should govern the creating and issuance of debt by the state, as a way of safeguarding the national interest. One such principle relies on the fact that public debt should not be used to finance current state expenditures, but only expenses that contribute to the strategic development of the country. On the other hand, is to ensure a balanced debt service, either through by distributing the cost of debt service over several annual budgets in order to prevent an excessive concentration, or by limiting the cost of public debt by reference to the economic return of public investment, intending thereby to minimize the direct and indirect costs of public debt in the long term and avoid excessive risk.

Thus, this Law approves the general scheme of creation, issuance and management of public debt in view of a balanced and efficient management of debt, particularly in the medium and long term.

The Government presents to the National Parliament, under Articles 97.1(c) and 115.2(a) of the Constitution of the Republic, with a request of priority and urgency, the following proposed law:

**CHAPTER I  
GENERAL PROVISIONS**

**Article 1  
Purpose**

This law establishes the general scheme of creation, issuance and management of public debt of the state.

**Article 2  
Principles**

1. The use of public debt must be motivated by financing needs resulting from the implementation of priority tasks of the State, related to the construction of strategic infrastructure for the development of the country.
2. Management of public debt should be guided by principles of accuracy and efficiency, including:
  - a) Safeguarding the balance of public accounts in the medium and long term;

- b) Minimizing direct and indirect costs in the long term;
  - c) Ensuring the availability of necessary funding in each budget period;
  - d) Balanced distribution of costs among several annual budgets, in order to prevent an excessive concentration of debt service;
  - e) No exposure to exaggerated risks;
  - f) Promoting a balanced and efficient functioning of financial markets.
3. The cost of public debt may not exceed the economic return of public investment, with the Minister of Finance to make the necessary studies and analysis.

## **CHAPTER II CREATION AND ISSUANCE OF DEBT**

### **Article 3 Terms**

The law approving the state budget, provides for each budget period, the general conditions governing the financing of state and the creation and issuing of public debt, including the maximum amount of indebtedness authorized and the maximum term of loans or other forms of public debt.

### **Article 4 Specific Conditions**

The Minister of Finance is to negotiate the specific conditions of each loan or other form of debt, and contract for loans and issue debt on behalf of the State, after approval of the Council of Ministers.

### **Article 5 Forms of Debt**

Public debt can take the following forms:

- a) Loan agreements or funding arrangements;
- b) Treasury bonds;
- c) Savings certificates.

## **CHAPTER III PUBLIC DEBT MANAGEMENT**

### **Article 6 Guaranteed payment of the Public Debt**

The payment of interest and capital depreciation on government debt are ensured by non-earmarked revenues included annually in the State Budget.

### **Article 7 Measures of public debt management**

1. The Minister of Finance, with a view to efficient management of public debt and improvement of the final terms of borrowing, shall do the following for public debt management:
  - a) Substitution between the issuance of various types of loans;
  - b) Increase in appropriations for repayment of capital;
  - c) Prepayment, in whole or part, of loans already contracted;
  - d) Conversion of existing loans, the terms and conditions of issue or the contract or agreement with their owners when the current conditions in financial markets so recommend.

2. It also up to the Minister of Finance to conduct financial transactions deemed appropriate for efficient management of public debt, including operations of changing the system of interest rates, currency and other financial conditions, as well as other transactions, based on the responsibilities arising from public debt.
3. The Minister of Finance is also responsible for ensuring the issuance of new debt securities to replace destroyed, damaged or lost securities, pursuant to applicable law.

**Article 8**  
**Information to the National Parliament**

1. The Government will regularly provide information to the National Parliament about the specific conditions of loans or other forms of debt and on debt management operations.
2. Information is provided jointly and deadlines for submission of quarterly reports and annual budget, referred to in Articles 44 and 45 of Law No. 13/2009 of 21 October.

**CHAPTER IV**  
**FINAL PROVISIONS**

**Article 9**  
**Jurisdiction**

1. Disputes arising from public debt operations are resolved by courts or by arbitration as provided in the instruments establishing the debt obligation.
2. In the case of foreign debts, the parties may, by mutual agreement, choose a foreign jurisdiction and venue.

**Article 10**  
**Regulation**

The regulations necessary to implement this law will be approved by Government decree.

**Article 11**  
**Entry into force**

This law shall enter into force on the day following its publication in the Official Gazette.

Approved by the Council of Ministers on 3 June 2011.

The Prime Minister,



Kay Rala Xanana Gusmão

A Ministra das Finanças,



Emília Pires



## **IV CONSTITUTIONAL GOVERNMENT**

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### **EXPLANATORY MEMORANDUM**

#### **Proposed Law**

#### **Regime of the Public Debt**

##### **I**

##### **Finality**

The purpose of this Act is to establish a comprehensive system of public debt management, including requirements for obtaining authorization to incur debt by the Government. Article 115.1(o) of the Constitution of the Republic gives the Government authority “To take actions and make all the arrangements necessary to promote economic and social development and to meet the needs of the Timorese people.” In addition to this context, Article 142 of the Constitution of the Republic provides for the establishment by law of a structure of the financial system to ensure forming, funding and security of savings, as well as applying the financial resources necessary for economic and social development.

##### **II**

##### **Context**

In order to fulfill its constitutional obligations, the Government intends to submit to the National Parliament a set of proposals, which include this law, in order to maximize the resources available for allocation to activities that promote development in order to stimulate the economy, ensure economic growth and create jobs for the Timorese people. At present, the financial resources of the national budget come mainly from income from the Petroleum Fund and the collection of taxes.

The Government intends to stimulate domestic growth through active public investment in the economic sector. In this context, various options are being examined, with a view to better management of resources that the Government has in order to maximize revenues while investing domestically in infrastructure and other capital projects. To achieve all these objectives, the Government needs to have a range of options, including access to financial instruments that can be used to extend its internal and external sources of income, as well as alternative sources of funding.

Development partners have been generous to Timor-Leste over the past few years, providing substantial support and funding the budget through grants to improve health, education and other vital sectors. However, the level and availability of grants in this difficult economic

environment will inevitably be considerably reduced, with the development partners themselves struggling to contain the turmoil in financial markets. Although Timor-Leste has so far escaped the effects of financial contagion, there is no guarantee that this will not affect us.

The measures may be needed include borrowing internally and externally, through the issuance of bonds, and may also include borrowing from international financial institutions and other governments. These options need to be explored and evaluated to determine whether they present opportunities or risks for Timor-Leste.

### III

#### **Proposed Law on Issuance and Management of Public Debt**

With the approval of Law no. 13/2009 of 21 October on Budget and Financial Management, the possibility of borrowing by the state first appeared in the legal system of Timor-Leste.

In this sense, it shows the need to enact a legal regime that defines the strategic principles that should govern the assumption of indebtedness by the state, namely the creation and issuance of public debt as a way of safeguarding the national interest.

One such principle is that public debt should not be used to finance current state expenditure, but only expenses that contribute to the strategic development of the country. On the other hand, is to ensure a balanced debt service, either through a distribution cost of debt for years to prevent an excessive concentration, or by limiting the cost of public debt by reference to the economic return of public investment, intending thereby minimizing the long-term direct and indirect costs of public debt and avoiding excessive risk.

Thus, this Law approves a general scheme of creation, issuance and management of public debt in view of a balanced and efficient management of debt, particularly in the medium and long term.

#### **1. Objective:**

The main purpose of the law is to ensure that the financial needs of the state and the fulfillment of the obligations involved are satisfied with the least possible cost in the medium and long term, consistent with a prudent degree of risk.

#### **2. Authorization:**

The authorization to borrow money or issue debt instruments is given by the National Parliament through the Law that approves the annual State Budget, which sets the maximum amount of debt and its maximum period.

The Government, through the Minister of Finance, provides information and justification necessary for the loan application or issuance of debt, under the approval of the State Budget Law, and is responsible for conducting operations in the negotiation of the specific conditions of loans and, later, by operation of public debt management.

The Government, through separate regulations, will establish such rules and specific conditions that must be taken into account in the negotiation and conclusion of agreements or contracts for loans or financing.

### **3. Details:**

#### **3.1. Limits on borrowing**

Article 2 of the bill states that the borrowing by the state can only be used to finance expenses related to construction of strategic infrastructure for the development of the country, and that the cost of debt may not exceed the economic return of public investment.

The standard also provides for other principles of accuracy and efficiency that also seek to preserve the balance of the debt service in the long term.

#### **3.2. Forms of Public Debt:**

In addition to contract loans by loan agreements or financing agreements, the law provides two forms debt instruments with which the State can seek financing:

- Treasury Bonds
- Savings Certificates.

#### **3.3. Public Debt Management:**

All operations relating to public debt management are the responsibility of the Minister of Finance, who will establish a Debt Management Unit within the structure of the Ministry of Finance. Such operations include debt service, the substitution of debt instruments and conversion of loans when current financial market conditions so require.

#### **3.4. Signing of Loan Agreements (Article 4)**

After authorization from the Council of Ministers, the Minister of Finance, on behalf of the state, may contract for loans and sign their contracts or agreements, or issue debt on behalf of RDTL.

#### **3.5. Reports**

The Government reports regularly to the National Parliament, under terms laid down in Law No. 13/2009 of 21 October (Law on Budget and Financial Management).