

PRIVATE INVESTMENT POLICY FOR TIMOR-LESTE (Summary Draft)

1.0 Introduction

This document aims to present a summary of the proposed private investment policy for Timor-Leste for discussion at the Workshop on Private Investment Policy. The document deals only with private investment. Other important areas such as public investment by the State and investment in the cooperative sector are purposely not addressed in this proposal because they constitute specific economic fields, better treated separately from the scope of private investment.

Given the intimate linkage between national and international economies in the world today a private investment policy must include both its domestic and external aspects. To be sure, foreign investment or foreign direct investment (FDI), as referenced in this text, is but a small part of the overall framework of the national private sector, within which it operates. Therefore, a dynamic and favorable business enabling environment that can stimulate the development of the private sector as a whole is essential both to the development of private investment and FDI in particular.

To support this proposal, various data sources and information, both secondary and primary were consulted. In particular, the large body of knowledge in the field generated by the World Bank Group was of immense contribution. Similarly, the Monetary Fund (IMF), has made important contributions, particularly in the areas of tax incentives. Of particular note is the contribution of UNCTAD, the specialized United Nations agency, in terms of policy, best practices and inventory of the stock of private investment internationally, especially FDI, in its already well-known annual publication of the World Investment Report (WIR). Other organizations such as the Organisation for Economic Co-operation and Development (OECD) has also made important contributions in the many in-depth analyses on private investment in many countries and regions, most notably the keen analysis of Perspective of Investment Policy in Southeast Asia 2014 .

Among the main guiding documents consulted in Timor-Leste foremost are the Constitution, the Strategic Development Plan (SDP) 2011-2030 and the Program of the VI Constitutional Government. In addition, numerous studies and documents relating to the development of the private sector in Timor-Leste were also consulted as background reference.

Finally, the guidance provided by H.E. the Minister of State, Coordinator for Economic Affairs (MECAE) were indispensable for shaping this document. Important contributions also came from representatives of the private sector in Timor-Leste. Collaboration from colleagues, advisers and key international organizations personnel who collaborate with the Government in the development of the private sector were also important contributions that served to frame this proposal for private investment policy for Timor-Leste.

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2.0 The Analytical Framework of the Private Investment Policy

Two basic documents served to guide and theoretically frame this private investment policy. The first is the document from UNCTAD, entitled Investment Policy Framework for Sustainable Development (IPFSD), recently published in 2015. The second is the ASEAN Comprehensive Investment Agreement (ACIA).

2.1 UNCTAD Investment Policy for Sustainable Development

Overall, the UNCTAD IPFSD argues that new approaches now guide the development of investment policies, the called "new generation" framework. This is characterized by three main goals: 1) Recognition of the role of investment as the main driver of economic growth and development and the acknowledgement that investment policies play a central role in development strategies; 2) The desire to pursue sustainable development through responsible investment, putting social and environmental objectives on an equal footing with growth and economic development objectives; and 3) The common recognition of the need to improve the effectiveness of policies to promote and facilitate investment.

2.2 ASEAN Comprehensive Investment Agreement

ACIA is the Agreement that guides and seeks to harmonize the development of the framework for investment in ASEAN. It is the result of a merger of two previous agreements, including the Comprehensive Agreement on Investment in ASEAN and the Framework Agreement for Investment in the ASEAN. The two previous agreements respectively provided for investment guarantees, protection and progressive liberalization of investment, which are now included in a single comprehensive investment agreement. Before the ACIA, these two aspects were considered separately. Thus, ACIA will simplify and clarify the investment regime in ASEAN in that it provides a clear interaction of liberalization and protection provisions of private investment. ACIA applies particularly to the sectors of manufacturing, agriculture, fishing, forestry, mining and quarrying, as well as to services related to manufacturing. However, ACIA does not apply to other service sectors. All ASEAN countries undertake to follow ACIA guidelines, although the newer members have negotiated a phased timeline for its full implementation. Recognition and enforcement of the guiding principles of ACIA is of particular relevance in the preparation of this document considering the firm intention of Timor-Leste to become a full member of ASEAN in the near future.

3.0 Definition and Framework of Private Investment

Private investment, whether originating within the country or from abroad is divided into two basic categories: "Direct investment" and "Indirect of portfolio investment." Direct investment is separated into domestic investment and foreign investment.

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"Direct Investment" refers to the investment required to establish a greenfield project or to purchase and/or manage an existing business or company. Thus, by "direct investment" is meant both investments made by the national investor as well as investments made by foreign investors.

"Foreign direct investment" (FDI) occurs when a firm or individual from one country transfers capital to establish a business or to acquire assets in another country in order to manage and/or operate the FDI business. Internationally, FDI is considered to be a participation of 10% or more of shares with voting rights in a company or 10% or more of a non-corporated investment.

On the other hand, a stake of less than 10% is conventionally known as indirect or portfolio investment, unless there is an agreement to the contrary between the parties. The indirect or portfolio investment is an essentially passive participation and the investment is usually done to derive short-term returns.

In this document, the concept of *investidor externo* is adopted. This concept is broader and encompasses both the foreign investor, i.e. the non-Timorese, as well as the Timorese emigrant who resides abroad for a minimum of five (5) years) and make an investment with funds obtained abroad.

4.0 Types of Private Investment

Private investment is regulated by both specific legislation and by comprehensive legislation applied in general as well as specifically to each sector of the economy, including cross-cutting areas such as fiscal, environmental, labor, migration, among others.

4.1 The National Private Investment

The domestic private investment is regulated by a wide array of legislation in the country, starting with the Constitution, passing through laws governing each sector of the economy, including tax and customs and ends with administrative procedures to be followed. This is often referred to as the regulatory framework of the private sector.

4.2 Foreign Direct Investment

FDI is mainly characterized by the origin of the invested capital, the movement of capital into and out of the country, as well as the control of assets from investment.

4.2.1 Types of Foreign Direct Investment

There are two basic types of FDI regimes: (1) the "open investment" and (2) the "authorized or licensed investment."

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4.2.1.1 "Open" Investment Regime

The "open" investment regime operates within a relatively simple framework with a minimum of restrictions on entry and limited special conditions beyond international standards generally practiced in the establishment and operation of good business practices internationally, whilst safeguarding the interests of public safety, health, morals and the environment. This type of investment is usually practiced in the more advanced countries, although not always applied in its entirety to all sectors of the economy, many of which are quite often restricted by specific conditional of access.

4.2.1.2 "Authorized or Licensed" Investment Regime

By "authorized or licensed" investment is meant all FDI that require prior authorization by authorities. This is usually done by way of screening mechanisms, either at entry or during successive stages before being receiving authorization to implement the project or FDI activity.

4.2.3 FDI Regulatory Regime

In addition to the above legislative framework, which encompasses and regulates private economic activity in the country, FDI is usually specifically regulated by a specific set of applicable laws and regulations. The core legislative and regulatory framework governing FDI, including the rights and duties of foreign investors as well as the incentives and guarantees offered is usually referred to as the FDI "regime". These are usually enshrined either in the private investment law, or in a particular law on foreign direct investment, as is the case in many countries. Thus, this regime is regulated either by specific FDI legislation or provisions in the private investment law that are specific to FDI. The latter option seems to be the increasing trend in the development of legislation on private investment and FDI. Additionally, there are also additional legislation that restrict or even prohibit the entry of FDI in certain sectors of the economy, these usually reserved for the State or certain types of national investors, especially small and medium enterprises.

4.3 Supplemental Private Investment Legislation

Complementary to specific legislation that regulate FDI and private investment there are other key subsidiary legislation covering a wide range of areas that support and buttress private investment. Chief among these are fiscal legislation, legislation to form and register companies, labor laws, environment legislation, immigration legislation, currency legislation, etc.

5.0 The motivation for FDI

From an economic point of view, FDI exists for two main reasons: (1) to develop and control sources of supply of natural resources, both non-renewable and renewable, used as raw material to produce goods for the economic market worldwide, and/or (2) to dominate or defend market or segment thereof within the target country or in the regional market.

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5.1 IDE Motivation Categories

FDI is motivated by four main reasons:

1. **Resource Seeking** - (access to raw materials, manpower and physical infrastructure resources)
2. **Market Seeking** - (access to the market or horizontal strategy to access the target country of the internal market)
3. **Efficiency Seeking** - (vertical strategy to take advantage of lower labor cost, especially in developing countries)
4. **Strategic Asset Seeking** - (access to research and development, innovation and advanced technology)

6.0 Incentives and Disincentives to FDI

The existence of incentives is an important consideration in the decision of foreign investors to invest or not in a given country. Incentives can be "real" or "artificial", both of which can be negatively impacted by the presence of "disincentives" to investment.

6.1 "Real" Incentives

"Real" incentives are identifiable aspects, which are continuous and predictable in the economic environment of the country's business environment that give confidence to potential investors. These preconditions give investors the confidence that their investments can generate returns under conditions of minimum risk. Generally, these are historical, political and macroeconomic aspects taken into account by foreign investors in the decision making process. Some of these factors, such as a sound regulatory framework for private investment and macroeconomic policy, for example, may be controlled by the government in the short and medium term. Others, however, such as confidence in the functioning of institutions and the political and social stability are long term solutions that may take decades before trust can be established in the country in the eye of the foreign investor. These incentives are called "real" because they exist as a general framework of the country and are therefore perceived as desirable in the context predictability and low risk. Typically, incentives "real" incentives exist in the aggregate, and no particular incentive stands out or is considered more important than another.

6.2 Disincentives and Need of "Artificial" Incentives

A lack of conditions that gives rise to 'real' incentives constitute disincentives to private investment, especially for FDI, which have other options to seek more favorable alternative destinations where to invest. Unfortunately, the domestic private investor is limited to the internal conditions of the country, with few investment options beyond the border, except in cases of major private sector operators, but this usually done under difficult circumstances.

Unlike "real" incentives that are evaluated in the aggregate by foreign investors, disincentives may be considered singularly, with any one critical factor being sufficient reason to rule an investment.

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6.3 "Artificial" FDI Incentives

"Artificial" incentives, sometimes called "positive incentives" are conditions usually offered by governments to make investing in the country more attractive. To the extent that these incentives do not exist naturally in the economy, they are called "artificial" incentives because they are created to attract foreign investment and, in many cases, to mitigate the negative impact of disincentives or to reduce the perception of risks present in the economy or in the country. Four main types of 'artificial' incentives are typically offered today: (1) tax incentives, (2) financial incentives, (3) commercial incentives, and (4) other cash or materially quantifiable incentives.

The following figure illustrates the cycle of measures necessary for effective promotion, attraction and retention of private investment, especially FDI.

Figure 1. Measuring Cycle to Promote, Attract and Retain the IDE



Source: World Bank / UNCTAD 2014

Currently, more than 200 countries worldwide actively promote his country as a prime location for foreign investment, looking for each position itself as the best place to invest. If you still consider federated countries in each state, province or department also actively presented as FDI destination and also the many cities and regions of those countries that the sub-national level seeking to attract foreign investment, this number amounts to tens thousands of sites that struggle to attract FDI.

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7.0 The Regional Context of Private Investment in ASEAN

The level of openness to foreign investment in ASEAN countries vary according to the economic, political, market as well as the underlying economic models ranging from market economy to erstwhile socialist models. Substantial discrepancies still exist today in terms of sophistication and substance of protection provisions found in the national legislation of member countries. Investment regulations of member countries still have a long way to go to reach a unified and coherent legal framework to protect investments under the umbrella of ACIA. However, reform efforts are underway to different degrees in member countries, albeit with a clear trend towards gradual market opening and investment, thus opening the way to regionalism in Southeast Asia. Each country has advanced gradually to harmonize their national legislation in accordance with the rules of common protection, based on ACIA. However, the implementation of ACIA may take some time and will require changes and incorporation of its guidelines at the level of each member country's legislation.

8.0 East Timor Context

Timor-Leste is still recovering from the consequences of more than five centuries of colonialism and foreign occupation, the last quarter of the last century characterized by intense conflicts that culminated in the massive destruction of physical infrastructure with the withdrawal of the Indonesian administration in September 1999. The latter event left the country in a state of humanitarian crisis that rendered it among nations with the highest poverty rate. Additionally, the internal conflicts of 2006 further exacerbated the political and social context of country, with clear negative effects on the perception of potential foreign investors. Fortunately, the country is today in a situation of political and social stability, being clear assets that can contribute to the development and promotion of private investment in Timor-Leste.

Timor-Leste has a young and predominantly rural population. Of its approximately 1.2 million inhabitants, over 50% are under 17 years old. Over 70% of the population lives in rural areas. Life expectancy is only 63 years. Illiteracy is high at about 50% of the population over 15 years of age.

Recent official employment data point to an unemployment rate of around 13%, although it is estimated that unemployment could reach over 40% among young workers in urban areas.

The predominance of economic activity in Timor-Leste remains mainly based in rural areas, mainly linked to agriculture and livestock. Agricultural production is the main economic activity and is intended mainly for subsistence production. The main agricultural produces intended for subsistence of the population are rice and corn.

The main commercial agricultural produce today is coffee. There is considerable potential for other agricultural and industrial crops such as, cashew, cocoa, coconut, nutmeg, among others. The country also has great potential for the production of spices such as black pepper, clove, cinnamon, vanilla, etc. But the greatest economic potential of the country lies in forestry, with high value trees such as

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sandalwood, rosewood, teak and other endemic species as predominant hardwoods. However, the potential in agriculture and forestry areas have yet to be harnessed. It will take considerable investment in the short, medium and long term but the pay back is also expected to be quite high.

9.0 Strategy Guidance for Private Investment in Timor-Leste

The orientation for the development of the private investment strategy in East Timor emanates from the national Strategic Development Plan for Timor-Leste, 2011-2030 approved by the National Parliament. The following state encapsulates its Vision:

"The economic vision for the country is that, in 2030, Timor-Leste will be part of the group of upper middle income countries, extreme poverty will be eradicated and a diversified and sustainable non-oil economy will be established."

Thus, to achieve the goal enunciated in this vision, Timor-Leste's economic development strategy should be guided by an open economic model, based on market principles and led by the private sector, thereby creating wealth for the country and improving the living conditions of the population.

10.0 Types of Investors in Timor-Leste

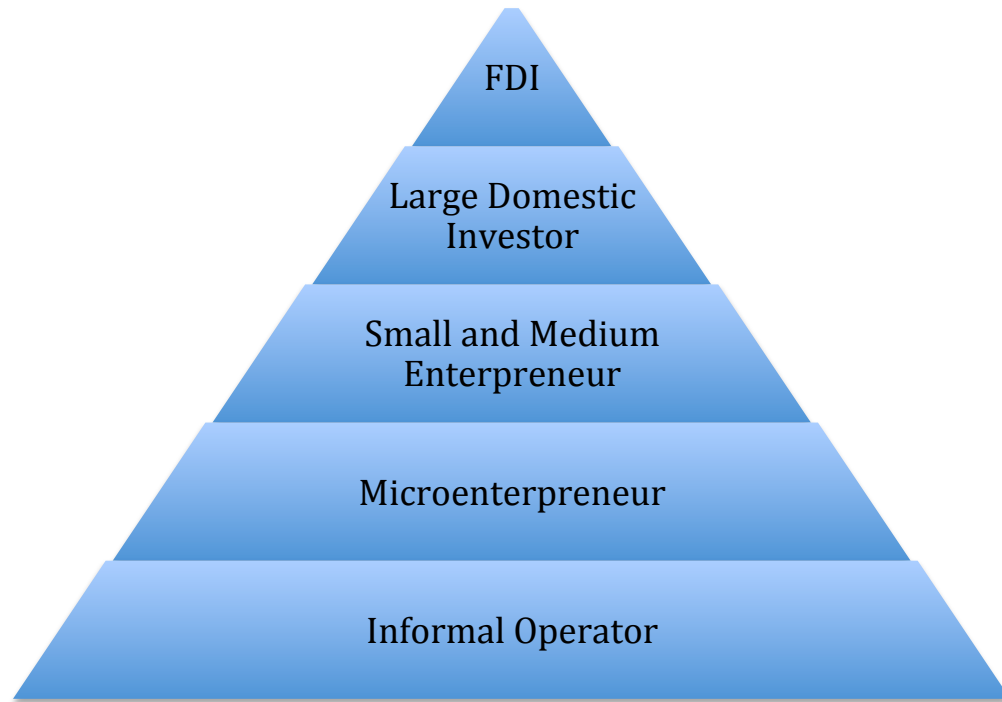
In order to develop differentiated policies and investment programs that best meet the needs of different types of investors, the following distinction is made between the various types of investors in Timor-Leste. For practical reasons, investors should be understood as two major types: the domestic investor and the foreign investor. The two concepts are mutually exclusive under the Private Investment Law, meaning, someone that is considered a national investor is not a foreign investor and vice versa, although the law gives equal treatment to both types of investors once admitted.

10.1 The National Investor

The national investor is a Timorese citizen or permanent resident alien in Timor-Leste who intends to conduct private investment in sectors of the economy permitted by law, either alone or in partnership with other(s) investor(s). As shown in Figure 2 below after, theoretically, the national private investor spans the informal operator to the large domestic investor. For the purpose of implementation of concepts presented here, the domestic private investor is divided into four main segments, in accordance with its capacity as an economic agent and the amount of investment made. Thus, the private investor may be (1) the informal operator, (2) the micro- entrepreneur, (3) the small and medium entrepreneur, and (4) the large national entrepreneur. Specific programs should be adopted to support and facilitate investments from each investor segment or national operator.

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Figure 2. Pyramid of Investors in Timor-Leste



Source: Author JSG

10.1.1 The Informal Operator

The informal operator is all private economic agents operating outside the framework of the formal or regulated economy. This group covers a wide range of economic operators that reach almost all sectors of the economy, from street vendors, farmers, fishermen, artisans, arts and crafts, among many others. Although in the context of this proposal the focus relates more about the operators of the formal sector of the economy, it is not to belittle the importance of the informal sector in the national economy as a source of income, the creation of self-employment, combating poverty, and in the production of goods and services for the most disadvantaged segments of the population. These economic operators also deserve specific support in their economic activities, especially as related to access to capital, professional training and the creation of minimum capacity to manage their business activities. The better positioned informal operators who ready to move to the next level of micro-entrepreneur, it is important that counseling and support to help them be establish in order to help them formalize their operations into small business units. Further down, concrete suggestions will be made regarding the support and guidance that should be devoted for this group at the bottom of the pyramid of domestic investors.

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10.1.2 Micro-entrepreneur

The micro-entrepreneur is the first rank in the formal economic sector. This group is usually organized in small production units, mainly family-owned, employing between one to three or five workers and sometimes more. The micro-entrepreneur can emerge either from the informal sector or from the formal sector where the person may have worked in a small, medium or large business, where he/she may have acquired professional skills in basic business concepts that contribute to the decision to venture into the world of small business. Many micro-entrepreneur may be engaged in craft-oriented professions or semi-industrial, such as the food service, repairs and maintenance, carpentry and metalworking, among others. It is estimated that most however prefer the retail trade. Like the informal operator, the micro-entrepreneur tends to lack access to capital, training and business support and counseling in order to improve business practices.

10.1.3 The Small and Medium Entrepreneur

The dividing line between a micro-entrepreneur and a small business is often fluid and subjective, varying greatly from country to country. However, the characterization is often more a matter of scale and complexity of the business unit. Naturally, operating a small business is a more complex task than running a microenterprise. However, given a certain level of subjectivity of definitions, conventionally, the small and medium-sized business (SMEs) tend to be grouped together for programmatic support and assistance reasons. Whereas SMEs tend to have greater business management capacity than micro-entrepreneurs, both seem to be conditioned by the same lack of access to capital, limited business counseling and limited support in business training. Although typically mainly producing goods and services targeted to specific segments of the domestic consumer market, often the SME unit produces goods and services to supply the larger national business or even specific products and services for the national exporter and the foreign investor.

10.1.4 The Large Scale Investor and the Exporter

The large domestic investor and exporter investor are relatively sophisticated economic operators in businesses within the country and often have a good knowledge of business practices beyond the national borders. This group is positioned at the top of the pyramid of domestic private investors because of their size and their relative business sophistication. However, given their small numbers in Timor-Leste today, their impact on the national economy is still quite minimal. Nonetheless, it is necessary to create conditions and specific programs to support private initiatives of those operators who are expected to play an increasingly important role as promoters in boosting the national economy, as well as strategic partners for foreign investors.

10.2 The Foreign Investor

As defined in the first part of this document and used here, the foreign investor includes both foreign direct investor and the Timorese emigrant who makes direct investments with resources obtained from

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abroad. To this end, the foreign investor brings and applies the capital or cash, either by way of equipment, raw material or otherwise clearly measurable assets in the investment project. The law shall regulate sectors of the economy accessible to FDI and the minimum amount of investment required by the foreign investor.

11.0 Assistance to Investors

The Government recognizes that all investors interested in establishing economic activities in Timor-Leste, under the terms of the law, must be treated equally and with dignity. To this end, it undertakes to improve and create the conditions to render service and support different target investors groups as defined above. Figure 2 above illustrates five types of investors or operators in Timor-Leste, each one requiring appropriate service and support.

For domestic investors there are three options of service structures, according to the needs of each type of investor segment. Specifically, IADE SERVE (Registry and Verification of Companies) and TradeInvest are all service structures that meet the needs of the investor or national operator. The only exception is the informal trader who does not have a place of service, although it is expected that a diagnosis of the informal sector will be carried out soon and recommendations will certainly be made for the proper place to provide support to these socio-economic operators.

11.1 Assisting Operators in the Informal Sector

Although the informal trader operates outside the formal sector, given its main economic activities, particularly in agri-food domain as well peddling and informal sales outlets, it is advisable that a minimum level of discipline is introduced in this sphere of activity economic in order to protect the interests of public health and public order. Thus, it is recommended that the informal operator is assisted at the level of the municipal administration or administrative post. A simplified form should register their business by paying a small annual contribution and receive an identity card as an "informal agent". This form of minimal regulation will contribute to minimally discipline informal economic activities and contribute to public health and public order, without adversely affecting these operators as "breadwinners" for the family. A simple registration system of informal operators will also serve to collect statistical data on the activity of the informal sector, as well as serve as a source of information to inform them of the existence of possible programs to assist them.

11.2 Assisting the Micro-entrepreneur and the Small and Medium Business

The micro and small entrepreneurs (MSEs) have two assistance options, namely IADE and SERVE.

11.2.1 IADE

IADE has as its main objective supporting business development, namely by supporting and facilitating private investment from the MSMEs. As such, IADE works as a facilitator to assist and support MSMEs with counseling, training and capacity building. IADE is a public institution that was established in 2005

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as an entity with administrative and financial autonomy and is now under the supervision of MECAE. IADE has its headquarters in Dili and has offices in all municipalities. This local presence makes it accessible and close to micro-entrepreneurs and SMEs throughout the country. The services offered by IADE are optional. It is up to the MSME to choose whether or not available services meet their needs. For MSME investors who use IADE, these are referred to SERVE in order to form and register their business units.

11.2.2 SERVE

SERVE is a specialized service for registration and verification of companies. For domestic investors who do not need extensive counseling services, SERVE works like 'single window' (one-stop-shop) because there, the entrepreneur can deal with the formation of companies, registration and even business operation licenses for low-risk business cases. Under a protocol between the Ministry of Finance and SERVE, this service facilitates the process of issuance of the Tax Identification Number (TIN). As a result of its role in the establishment and registration of companies and facilitating the issuance of the TIN, SERVE is a mandatory service for all investors in the formal sector, both domestic and foreign. SERVE works under the supervision of MECAE and works as a service with administrative and financial autonomy. SERVE is currently being reorganize. It is likely that it will be turned into a public institute, since it operates as one now.

11.3 Assisting the National Large Investors and Exporters

The large national investors also have two options for assistance. One is SERVE for those who do not need special support other than assistance in business registration and licensing. The other is TradeInvest for those who need personalized assistance or are exporters.

11.3.1 TradeInvest

For large national investors or the exporter, the Investment Promotion and Export Agency, abbreviated "TradeInvest" is the place to go for assistance. This Agency, which has existed since 2005, but briefly extinguished in late 2014, was recently restored and is now undergoing a major reorganization. TradeInvest is an optional service for the domestic investor who is not an exporter. But it is a required service for the non-resident foreign investor in Timor-Leste.

TradeInvest performs the following six functions: (1) Generate Investment (2) Promote Exports, (3) Facilitate and Provide Investor Care, (4) Facilitate and Provide Exporter Care, (5) Creates and disseminates the country's image abroad, and (6) Advocates for Business Environment Improvement. These functions are summarized in the promotion and facilitation of investment and export, through the pre-and during, as well as investor and exporter after care.

TradeInvest Timor-Leste works as "One-Stop-Shop" and facilitator of investment and export from target investors and exporters segments. TradeInvest is also responsible for processing application for

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investment or for export, prepare and record the "Investor Certificate" and "Exporter Certificate", which are duly signed by the supervising Minister. Furthermore, it also processes the Special Agreements Investment, which are approved by the Council of Ministers.

Notwithstanding the formalities and steps so you need to pass the formal request for private investment and exports, TradeInvest Timor-Leste is responsible for processing their requests within a period of 30 days. Means the deadline for approval or rejection of the same is expected to exceed 30 days after the delivery of the complete file, otherwise tacit approval of the request.

11.4 Assistance to the External Investor

In order to reduce the possibility of unequal treatment between the national investor and the foreign investors, as mandated by ACIA guidelines, equal or 'national treatment' must be provided. Thus, as stated above, foreign direct investor will benefit from the service on an equal footing with large national investors as well as the national entrepreneur who is dedicated to the production of goods and services for exports. TradeInvest is the place par excellence to assist foreign investors.

In addition to its function as a "One-Stop-Shop" facilitating the investment export process TradeInvest also registers and issues the foreign investor with a 'Foreign Investor Certificate' once formalities are completed. Given the prevalence of Internet use worldwide, the foreign investor application process will be handled via the Internet. Thus, to complete the form and submit the required information and complete other formalities, the foreign investor may perform these tasks from abroad.. Once all required documentation are submitted properly, TradeInvest will have 30 days to process and notify the investor/exporter of the decision. If approved, the "Foreign Investor Certificate" is prepared for signature by the Minister, which may be received by the interested party or an authorized representative, duly accredited for this purpose. In the case of Special Investment Agreement, the process may be initiated via Internet, but the investor or his representative will be required to appear in person to handle part of the process.

12.0 Guidelines for Revision of the Private Investment Law

12.1 Background

Timor-Leste joined the rank of private investment promotion in 2005, shortly after the regaining its national independence in 2002, or nearly a quarter century later than its peers. The program was developed from a solid foundation, based on studies and analyses of comparative countries. As a result of this effort, resulting in a modern regulatory framework and institutional set-up, aiming to position the promotion of private investment in Timor-Leste on an equal footing with its main competitors, especially member countries of the Africa, Caribbean and Pacific (ACP) group.

To lead the promotion of private investment in Timor-Leste, a parallel system was created, one for domestic private investment and another for foreign direct investment. To this end, the two private

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investment promotion avenues were structured in parallel, anticipating the eventual merger of the two into a single private investment regime within seven to ten years (which actually came about in 2011, although with some legislative and regulatory deficiencies).

The option to create a hybrid institution in Timor-Leste to promote both FDI and exports - an increasingly common solution today - was mainly due to economic and technical reasons, taking into account the limitations of financial and human resources in the country. Thus, to successfully implement this initiative, and considering the small size of the domestic market, it was necessary to look to export opportunities in major international markets. Consequently, the focus of the program is to attract both domestic and foreign investors with the intent of producing goods and services for exports.

12.2 Reasons for Revising the Private Investment Law

The revision now of Law No. 14/2011 on Private Investment is needed for three main reasons:

The need to modernize the law governing private investment in Timor-Leste by removing some outdated dispositions that no longer conform to best practices today;

The need to comply with ACIA guidelines, given the commitment of Timor-Leste to become full member of ASEAN in the near future, thereby giving a clear sign that Timor-Leste is committed to respecting ASEAN guidelines, including as regards private investment;

The need to comply with the overall revision of the tax laws in Timor-Leste, as part of the Fiscal Reform Program, now underway.

12.3 Major Changes to the Private Investment Law

Considering the three basic reasons above that give rise to the need to revise the current Private Investment Law, the emphasis of the new Private Investment Law will cease to be on customs and tax incentives, and will now focus more on investment rights and guarantees and in the quality of services to promote and facilitate private investment and provide after care service to investors and exporters. Thus, the following are main changes to be adopted in this regard:

12.3.1 Removal of Customs and Tax Incentives

The first major change in the law is the removal of tax incentives dispositions. Thus, the customs and tax incentives to encourage investment and exports will now be included in the general tax legislation, in particular in the General Taxation Act and in Law on Value Added Tax (VAT).

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12.3.2 Scope of Law

Considering the removal of provisions on customs and fiscal incentives and the corresponding emphasis on the quality of customer service for investors, the scope of the Law will cover all sectors of the economy, subject to specific conditions within sector legislation.

12.3.3 Investment Minimum Values

For domestic investors, the minimum value of \$ 50,000 will be retained. For foreign investors, it is recommended that the value pass to US \$ 500,000, which is the minimum 'standard' practiced by most countries and is therefore considered international best practices. In case of partnership between the national investor and FDI, the minimum will be \$ 500,000. The option of this amount is designed to prevent less desirable practices and maintain consistency in the amount of FDI. (The previous option immeasurably worsened the national investor - \$ 50,000 vs. \$ 750,000 - for the benefit of the FDI). All values will be regulated in a Government Decree and not in PIL.

12.3.4 Rights and Investor Guarantees

All guarantees and rights in the current Private Investment Law will be maintained, with the necessary adjustments and clarifications.

Regarding the right to hire skilled foreign workers, the draft law introduces a disposition to automatically approve three work visas for management and/or technical experts required to start, deploy, or launch the investment project.

12.3.5 Benefits and Incentives

Considering the provision of customs and tax incentives that will now pass to the general tax legislation, these will be removed from the Private Investment Law. However, benefits relating to access to land and property belonging to the state, which may be provided through long-term rental contract (50 + 50) and visa for management and specialized technical personnel and their dependent family member will be provided.

The Tax Reform is guided by 'pro-investment' provisions, i.e. customs and tax benefits that will be accessible to all investors, both new and existing. These provisions will be included in the General Tax Act and in the Value Added Tax (VAT) Act.

12.3.6 Investor Obligations

Keep the Investor Obligations mutatis mutandis.

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12.3.7 Grant of Rights, Guarantees and Benefits

They keep the Grant of Rights Chapter, Guarantees and Benefits with the necessary adaptations, aimed at simplifying and strengthening it.

12.3.8 Promotion, Authorization, Registration and Monitoring

Keep the Promotion Chapter Authorization. Registration and private investment Monitoring mutatis mutandis, with a view to simplification.

12.3.9 Dispute Resolution

Keep the Chapter on Dispute Resolution mutatis mutandis.

12.3.10 Final and Transitory Provisions

They keep the chapter on Transitional and Final Provisions mutatis mutandis.

Important Note: Considering the extensive revisions necessary to the current Private Investment Law, it is recommended that a new PIL be drafted and the current PIL be repealed. However, all Investor Certificates and Special Investment Agreements will remain will be in force for their valid period.

13.0 Next Steps

Next steps include consultation on the private investment policy, followed by development, consultations, socialization, adoption, promulgation and adoption of the new Private Investment Law. It is anticipated that the process through the adoption of the Law by the National Parliament may extend to end of June 2016, if an urgent treatment is given. The promulgation of the law by the President of the Republic and its publication in the *Jornal da República* are the last steps before the law is enacted. The entry into force of the Law is anticipated for the last quarter 2016.