

Draft Private Investment Bill 2016  
(Technical Draft)

CHAPTER I  
GENERAL PROVISIONS

Article 1  
Object

The present Law establishes the general bases of the legal framework for private investment in Timor-Leste.

Article 2  
Scope of application

1. This Law regulates investment and reinvestment made in Timor-Leste by a natural or legal person, whether foreign or national, resident or non-resident.
2. This Law applies to all areas and sectors of economic activity in the country.

Article 3  
Definitions

For the purposes of this Law, the following definitions are adopted:

- a) "Economic activity" is the production, distribution and marketing of goods or the provision of services, regardless of their nature, carried out in the country's economy;
- b) "Goods or capital equipment used in the construction or management of an investment or reinvestment project" are goods or capital equipment imported by the investor or its contractor or subcontractor, justifying the acquisition or import given the nature or size of the investment venture;
- c) "Investor Certificate" is a document issued to the investor defining the conditions and obligations of the investor vis-à-vis the proposed project or business venture;
- d) "Special Investment Agreement" is the document approved by the Council of Ministers, defining the conditions and obligations of investors and non-fiscal benefits granted by the State vis-à-vis the proposed project or business venture;
- e) "Association Agreement" means the agreement through which two or more companies combine to create a joint investment;
- f) "Business Venture" is the act of realizing an investment or reinvestment in a given sector of economic activity in the country;
- g) "Company" is any commercial entity or other type of legal structure, formed under the current legislation in the country;

- h) "Training" is any kind of specific learning program provided to a Timorese worker based on a pre-approved functional training plan, which can be ministered in or outside the workplace, with the aim of developing technical or management skills of a Timorese worker;
- i) "Private Investor" or "Investor" means any natural or legal private person, national or foreign, resident or non-resident, holder of an Investor Certificate;
- j) "National Investor" for the purposes of this Law, is a natural person of Timorese nationality or a legal person in that at least 51% of the shares with voting rights belong to Timorese nationals or permanent residents in Timor-Leste;
- k) "Foreign Direct Investor" for the purposes of this Law, is a natural or legal person, who is a national from another State which invests and hold at least 10% of the shares with voting rights in a company or investment venture in Timor-Leste;
- l) "External investor" for the purposes of this Law, the term covers both the foreign direct investor, as defined under paragraph k) above, as well as the Timorese national investor who is not resident in Timor-Leste, as defined under paragraph r) below;
- m) "Private Investment", is any form of investment or reinvestment as defined in the following three paragraphs;
- n) "Investment" is any direct investment in the country carried out by a private investor under own risk either with money, or property or goods that are monetarily quantifiable, such as:
- i) Cash or equivalent;
  - ii) Goods and capital equipment;
  - iii) Raw materials and semi-processed goods;
  - iv) Financial resources from bank loans;
  - v) Equity investments in commercial companies as well as new entries or supplementary capital;
  - vi) Patented technology, technical processes, industrial secrets and design models, franchising and transmission of know-how, trademarks, logos, names or registered establishment insignias, as well as any form of intellectual property;
  - vii) All rights recognized by law or contract and any licenses or permits issued in accordance with the law;
- o) "Reinvestment" is any investment in the same business venture that uses profits and dividends resulting from the economic activity of the business venture;
- p) "Value of Investment and Reinvestment", is the sum total of the capital amount invested or reinvested, including equity, bank loans, increases and supplementary capital actually invested in the business venture, profit values and dividends reinvested in the same company or business venture, CIF value of the goods and imported capital equipment, among others, as registered with the Investment and Export Promotion Agency;
- q) "National Resident", for the purposes of this Law, is any person of Timorese nationality, residing in the country or who has not resided out of the national territory for a consecutive period exceeding five years, as well as any national legal person;

- r) "National Non-Resident", for the purposes of this Law, is any person, of Timorese nationality residing abroad for a continuous minimum period exceeding five years and who intends to make investments with resources from abroad;
- s) "Effective Timorese Worker," is a worker of Timorese nationality or permanent resident, permanently employed by the employer;
- t) "Special Areas" are geographical areas defined under Article 9;
- u) Special Economic Zones "are those areas geographically defined for implementation and operation of specific economic activities according to the nature of each zone;
- v) "Free Zones" are parts of the customs territory or places located therein where foreign goods are considered as if they had not entered into the customs territory.

#### Article 4

##### General principles

The legal regime of private investment is based on the following general principles:

- a) Free enterprise, with exceptions as provided under paragraph 2 of Article 8;
- b) Equal treatment for domestic and foreign investors, with the exceptions provided for under Articles 10 and 14;
- c) Investment protection guarantee;
- d) Respect for international agreements or other agreements of economic nature already signed, in accordance with Articles 5 and 6.

#### Article 5

##### International agreements

Rights, guarantees and benefits granted to investors under this Law do not harm nor in any way restrict the regimes of international agreements and treaties ratified by Timor-Leste.

#### Article 6

##### Agreements with investors

Special Investment Agreements or accords of economic nature between the Government and national or foreign investors, as well as the Investor Certificates issued prior to the publication of this law remain valid and in force during the periods contained therein.

### CHAPTER II

### CONDITIONS OF INVESTMENT

#### Article 7

##### Investment Methods

The investment or reinvestment may consist of:

- a) Establishment of a company in accordance with applicable laws in the country;
- b) Acquisition of part or all the shares of a company or participation in the increase of its share capital;

- c) Execution of and amendment of consortium agreements, associations in participation, joint ventures and any other form of association agreement permitted by law;
- d) Execution of and amendment of contracts involving the ownership or management of companies, including operations of agricultural, industrial and commercial nature, real estate complexes and other facilities or equipment used for the development of economic activities;
- e) Loans or supplementary capital contributions made by an investor in a company in which he participates or any reinvestment-related loans in the company or profit sharing;
- f) Purchase, lease or purchase of any other real rights over immovable property in national territory, when such acquisition is part of private investment projects in accordance with current legislation in the country.

## Article 8

### Exceptions to the free investment initiative

1. To promote private investment, the State may grant benefits to eligible investors in all areas and sectors of economic activity, without prejudice to the following paragraph.
2. Investment is permitted in any sector of economic activity in the country, with the following exceptions:
  - a) All activities considered crime or offense under the applicable law in Timor-Leste;
  - b) All activities, which by their location can interfere with and adversely impact on the purpose or objectives of protected areas, as defined by current environmental legislation;
  - c) All activities related to the distribution or sale of arms or ammunition;
  - d) All activities whose development or management are reserved for the State.
3. Economic activity sectors reserved for the State may permit participation of private investors in accordance with the terms set by specific legislation.
4. The Government shall regulate by Decree the negative list of investments, which is updated periodically.

## Article 9

### Special Areas

In order to encourage private investment outside urban areas of Dili and Baucau, the State may provide more advantageous benefits to the following special areas:

- a) Rural areas, corresponding to those located outside the limits of the Administrative Posts of Cristo Rei, Dom Aleixo, Nain Feto, Vera Cruz and Baucau;
- b) Peripheral zones corresponding to the Municipality of Oe-Cusse and the Administrative Post of Atauro.

#### Article 10

##### Minimum Amounts for Investment or Reinvestment

1. A resident national investor only has access to benefits established in this law regarding an investment or reinvestment, whose minimum amount shall be established by Government Decree.
2. A foreign or non-resident national investor only has access to benefits established in this law regarding an investment or reinvestment, whose minimum amount shall be established by Government Decree.
3. In case of association agreements between a foreign investor and a national resident investor, the minimum investment or reinvestment, to access benefits shall be established by Government Decree.

#### Article 11

##### Free Zones

In order to encourage private investment directed at export activities of goods and services, Free Zones may be created under the law.

### CHAPTER III RIGHTS AND GUARANTEES

#### Article 12

##### Equal Treatment

1. All investors enjoy the same equal treatment and may not be subject to discrimination, including on grounds of nationality, except for the ownership of land, under the Constitution and the law.
2. All investors have equal access to benefits, according to award criteria and minimum amounts of investment or reinvestment defined in Article 10

#### Article 13

##### Right of access to courts

All investors are guaranteed equal access to the courts to defend their legally protected rights and interests under the Constitution and the law.

#### Article 14

##### Land Property and its Use

1. The State guarantees the right to private property and usufruct of land used for development of investment or reinvestment projects, subject to the limits provided under the Constitution and land legislation.
2. For the purposes of the preceding paragraph, the nationality of the investor is defined based on the criteria set out in the legislation on land, not applying the definition contained in Article 3 of this Law.

Article 15  
Guarantee Against Expropriation

1. The State commits to not adopt a land or private property nationalization policy that deliberately harm the development of the private investor in the country.
2. Where necessary to resort to requisition or expropriation for general public use of any property of an investor, the State undertakes to compensate fairly and expeditiously the investor under the law.

Article 16  
Protection Against Social Unrest

The State commits to protect private investment against social unrest by dispatching law and order forces to protect people, property and assets object of private investment authorized under the law.

Article 17  
Import and Export

All investors may import goods and equipment and export of products produced in accordance with the law.

Article 18  
Use of Credit

Investors may have free access to domestic and foreign credit to finance business ventures, under the law.

Article 19  
Transfer of Funds Abroad

1. All foreign investors are guaranteed the right of free transfer of funds from any investment in Timor-Leste abroad, under to the law, namely:
  - a) Profit and dividends paid as a result of implementation of an investment;
  - b) Capital from sale, liquidation and divestiture of shares in companies, which constitute investment, as well as the sale of business assets, which are the investor's property;
  - c) Proceeds resulting from the reduction of share capital in a investment company;
  - d) Amounts due on the basis of contracts which constitute investment, according to paragraph d) of Article 7;
  - e) Benefits payable due to amortization or payment of financial interest constituting investment under paragraph e) of Article 7;
  - f) Personal income obtained in the fulfillment of management and administration functions relating to investment participation in economic activities;
  - g) Income from transfer of intellectual property rights, which constitute investment;
  - h) Compensation payable under paragraph 3 of Article 15;
  - i) Payments arising from settlement of investment disputes.

2. All investors may request the conversion of funds into foreign currency through the banking system to transfer funds abroad to meet financial obligations incurred by the investment such as:

- a) Imports Payment;
- b) Payment of capital or interest on loans taken abroad;
- c) Payment of rights and management services.

3. The right of free transfer of funds abroad is only limited by the application of general legislation, such as tax and environmental legislation, and compliance with all legal and judicial obligations.

#### Article 20

##### Hiring Foreign Workers

1. All investors may hire foreign workers, as defined under the labor and immigration legislation in force.
2. With the approval of private investment project three work visas shall be automatically authorized for management personnel or highly skilled foreign technicians required by investor to initiate the investment project, without prejudice to other foreign personnel that may be required to implant and or operate the business venture.
3. Any foreign or non-resident national worker has the right to freely transfer abroad the net earned income from employment contract

#### Article 21

##### Intellectual Property

All investors are entitled to the protection of registered patents and design models, as well as trademarks, logos, names or emblems of the establishment and other information subject to protection under intellectual property legislation.

#### Article 22

##### Confidentiality

All investors are guaranteed respect for professional, banking and commercial confidentiality in accordance with the law.

### CHAPTER IV

#### BENEFITS

#### Article 23

##### State Land Lease

1. The State may enter into an agreement with the holder of an Investor Certificate or a Special Investment Agreement to lease public land required to implant the private investment business venture for a maximum period of up to fifty years, renewable once for up to the same time period.
2. In the case of a Special Investment Agreement, which is the object of the investment, the State may negotiate more favorable conditions for investments that meet most or all of the requirements of paragraph No. 1 of Article 27.

3. The provisions of paragraph No. 1 of this Article are subject to the procedures of the competent public authority, warranting an accelerated treatment process under the law.

#### Article 24

##### State Property Rental

1. The State may enter into an agreement with any holder of an Investor Certificate or a Special Investment Agreement to lease public property, for a maximum period of up to fifty years, renewable once for up to the same period.
2. The provisions of paragraph No. 1 of this Article is subject to the procedures of the competent public authority, warranting an accelerated treatment process under the law.

#### CHAPTER V

##### OBLIGATIONS OF INVESTORS

#### Article 25

##### General and Specific Obligations

1. All investors are required to comply with legislation in force in the country, as well as with the obligations vested in the Investor Certificate or the Special Investment Agreement, being subject to applicable penalties for the offenses under the law.
2. In particular, the investor is bound by the following:
  - a) Comply with deadlines for the development of the project and the business venture, including start up, implementation and conclusion of the project and initiation of business venture operation, according to the established schedule in the Investor Certificate or Special Investment Agreement;
  - b) Employ Timorese workers and promote their training to carry out tasks, including those of increasing technical or management skills;
  - c) Implement the rules and procedures related to environmental protection, health and safety, in accordance with legislation in force in the country;
  - d) Comply with the rules and procedures applicable to the funds build up and reserves, realization of provisions, proper accounting and instruments of accountability, especially in view of the provisions of the Companies Law and other legislation in the country;
  - e) Comply with the rules and procedures for the transfer of funds, according to the legislation in force in the country;
  - f) Provide timely information to the central agency for the promotion of investment and exports on transfers of capital to carry out the private investment, as well as transfers abroad under the law;
  - g) Submit annual reports of the private investment project and the business venture performance to the central body for the promotion of investment and exports;
  - j) Provide the central body for the promotion of investment and exports and other competent authorities data and information related to the development and operation of the business venture, upon request made in accordance with applicable laws in the country.



CHAPTER VI  
GRANTING OF RIGHTS, GUARANTEES AND BENEFITS

Article 26  
Investor Certificate

1. The Investor Certificate is the document of evidence of the rights, duties and benefits of the investor, bearing proof before all public entities for the purpose of assistance, facilitation and other benefits conferred by law to the investment project and business venture;
2. The Investor Certificate identifies the beneficiary and the respective investment project and provides the basis for all operations relating to private investment;
3. Public services are required to provide speedy assistance to the beneficiary upon presentation of the Investor Certificate;
4. The Investor Certificate is not transferable and shall expire with the divesture by the beneficiary from the investment project or business venture. The purchasing investor is required to obtain a separate Investor Certificate during the act of acquisition of the right over the private investment transaction.
5. The central body for the promotion of investment and exports is responsible for Investor Certificate application processing and maintenance of records, as regulated by Government Decree, including its issuance and possible revocation, in the case of a serious breach committed by the beneficiary, or, for which he is liable.

Article 27  
Special Investment Agreement

1. The State may convene with the investor an Investment Special Agreement defining the special conditions for the investment project or business venture, which by its size or nature or its economic, social, environmental or technological impact, may be of great interest to the country under the strategy of the National Development Plan, which warrants the adoption of special benefits to be negotiated with the investor.
2. The Special Investment Agreement referred to in the preceding paragraph shall be authorized by resolution of the Council of Ministers, with express indication of the justification that warrants the agreement and the special arrangements governing it.
3. The celebration of the Special Investment Agreement gives rise to the automatic issuance of the respective Investor Certificate, which serves as a facilitating document for assistance and service from public agencies and services.

Article 28  
Internal Appeal

1. The decision of denial of an investor admission can be appealed within fifteen working days to the member of government that oversees private investment.
2. The appeal referred to in the preceding paragraph does not have a deterrent effect.

## Article 29

### Judicial Review

The decision of denial of an investor admission under the preceding article is subject to judicial review, with merely devolving effects.

## CHAPTER VII

### PROMOTION AGENCIES AND FACILITATION OF REGISTRATION

## Article 30

### Investment Promotion Agencies

1. The Investment and Export Promotion Agency of Timor-Leste is the central body responsible for promoting, facilitating and private investment registration and export promotion, as well as the centralization of the administrative procedure aimed at granting Investor Certificates and Special Investment Agreements.
2. Without prejudice to the powers of the Investment and Export Promotion Agency of Timor-Leste established in paragraph 1 of this Article, promotion agencies can be created to facilitate private investment and exports at the level of special economic zones, as well as key infrastructure that support investment and export, such as industrial parks and export processing zones established in the country, which may enjoy special legal regimes.
3. The investment facilitation and export promotion organizations mentioned in the previous paragraph are obliged to follow the procedures for issuance of the Investor Certificate or the Special Investment Agreement regulated by Government Decree as well as provide the Investment and Export Promotion Agency of Timor-Leste all information related to private investment and export established in special economic zones or designed infrastructure that support investment and exports for statistical records purposes.

## Article 31

### Approval of Investment and Reinvestment Projects

1. As defined in paragraph 1 of Article 26, all investment and reinvestment projects or business ventures authorized under this Law are subject to an Investor Certificate, according to administrative procedure as defined by Government Decree.
2. The administrative procedure for granting the Investor Certificate includes obtaining and granting of all permits, visas, registrations and licenses required for the pursuit of the project and business venture, based on application to the competent authorities in accordance with applicable legislation in the country.
3. The Investor Certificate remains in force as long as the investor does not incur any justifiable cause for its revocation, in accordance with the legislation in force in the country.

## Article 32

### Single Processing Fee

The processing and handling of the application for the Investor Certificate and Special Investment Agreement shall be charged a single fee to the private investor at the time of submission of the request to the investment and export promotion organization in Timor-Leste, as regulated by Government Decree.

## Article 33

### Registration of Project Investment or Reinvestment

1. Once the proposed investment or reinvestment is approved, it must be registered in the Investment and Export Promotion Agency of Timor-Leste, as defined by Government Decree.
2. The registration referred to in the preceding paragraph is independent of the commercial registration of a company, under legislation in force in the country.

## CHAPTER VIII DISPUTE RESOLUTION

### Article 34

#### Conciliation and Arbitration

1. The resolution of any disputes between the State and an investor arising from the interpretation or application of this Law and its Regulations shall first seek amicable solutions.
2. Disputes not resolved in accordance with paragraph 1 of this Article should follow the conciliation or arbitration in accordance with current legislation in the country, if another procedure is not established in international agreements to which the Democratic Republic of Timor-Leste is part, or, an agreement between the State and the investor.
3. Disputes between the State and investors of foreign nationality, which cannot be resolved under the terms of the preceding paragraphs of this Article, unless otherwise agreed, are settled by arbitration in accordance with the rules of the International Convention Settlement of Investment Disputes between States and Nationals of Other States (ICSID).
4. The preceding paragraphs shall not prejudice the right of appeal to the courts of the Democratic Republic of Timor-Leste, whenever the parties so wish.

## CHAPTER IX FINAL AND TRANSITIONAL PROVISIONS

### Article 35

#### Prior Investments

1. Investment Certificates and Special Investment Agreements granted or signed before the entry into force of this Law remain in force.

2. The investor who has made an investment or reinvestment in Timor-Leste prior to the entry into force of this Law may benefit from the provisions established herein, provided that the investment meets the eligibility requirements as an investor provided for herein.

3. For the purposes of the preceding paragraph, interested investors should direct a request to the Investment and Export Promotion Agency of Timor-Leste, within a hundred and sixty days from the date of entry into force of this Law.

#### Article 36

##### Subsequent Regulation

The Government shall, within sixty days from the date of entry into force of this Law, approve complementary regulation necessary for its implementation by a Government Decree that approves the Regulation of Private Investment Procedures.

#### Article 37

##### Repeal and Transitional Provisions

1. The Law No. 14/2011 of 28 September is hereby is repealed, with exception of Articles 21, 22, 23 and 25, which remain in force as transitional norms, until the entry into force of appropriate tax legislation which enshrines fiscal and customs incentives in favor of private investment.

2. Wherever some of the provisions of this Law do not comply with international agreements ratified by the State, the latter shall prevail over this Law.

#### Article 38

##### Disclosure

The Government promotes the disclosure of the legal regime of private investment to investors, particularly through the publication of relevant information in the context of promoting domestic and foreign investment.

#### Article 39

##### Implementation

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

Approved in 2016 \_\_\_ of \_\_\_.

The President of the National Parliament

(President)

Promulgated on \_\_\_/\_\_\_ / 2016.

Post up.

The President

Taur Matan Ruak