NATIONAL PARLIAMENT OF TIMOR-LESTE

Secretariat

TRANSMISSION NOTE

FROM: SECRETARY-GENERAL

TO : PRESIDENT OF NATIONAL PARLIAMENT

DATE: 20/10/2016

Committee for Economy and Development

Your Excellency,
Acting President of the National Parliament
Eduardo de Deus Barreto

Date: 20th October 2016

Ref. no: 18 / 5ª / III Com. D

Subject: Remittance of the report and opinion of Proposed Law No. 39 / III (4a) - New Commercial Companies Law, Proposed Law No. 43 / III (4a) - Export Promotion Law, and Proposed Law No 44 / III 4a) - Private Investment Law.

Mr. President,

The Economy and Development Committee has the honour to submit to you the report and opinion on the Proposed Law No. 39 / III (4a) - New Commercial Companies Law, Proposed Law No. 43 III (4a) - Law for the Promotion of Exports in Law No 44 / III (4a) - Private Investment Law that was approved at the meeting of said Committee, held on Wednesday, October 19, 2016, with 8 votes in favor, 0 against and 0 abstentions.

On behalf of the Committee I subscribe with high esteem and consideration.

Chairperson of Committee D

Jacinta Abucau Pereira

REPORT AND OPINION

Referring to

Proposed Law no. 44 / III / (4a)

PRIVATE INVESTMENT LAW

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I. INTRODUCTION

I.1 - Announcement of the entry of Proposed Law no. 44 / III / (4a) and referral to Committee D

Proposed Law no. 44 / III / 4a was presented to the Presidency of the National Parliament on August 12, 2016 and, by order of His Excellency, the Chairman of the PN on 21 September 2016 wrote to Committee "D" for the preparation of the report and opinion in 30 days ending on October 22, 2016. As it is a Saturday, the deadline is extended to the next business day, October 24, 2016.

The Proposed Law is drafted in one of the official languages, in this case Portuguese, and is presented in the form of 44 articles distributed in 9 chapters, and contains a title that reflects its central purpose and is accompanied by a justifying introductory text, of the preamble type, and it has attached an "explanatory note" of 5 pages and an "Exposition of Motives" with 4 pages.

It is thus in conformity with the formal requirements of Rules of Procedure of the National Parliament no. 1 and 98.

1.2 - Competence of the permanent specialized committees

Pursuant to Articles 79 and 80 of the Rules of Procedure of the PN, it is incumbent upon the permanent specialized committees to hold public hearings, for which purpose they may convene meetings that they deem necessary with the participation of public entities and civil society to discuss legislative matters under consideration, with a view to The report shall be referred to in art. 103 of the Rules of Procedure of the PN.

II. The work of the Committee

Once the text of the PPL was received in Committee "D", the President of the Committee asked the Economic Advisor of National Parliament to prepare a proposal for an opinion and, with the other members of the Committee, to organize the work for the proper execution of what was the organization of such hearings as may be appropriate.

These were organized as follows:

Date	Time	Entities	Subject
29th September, 2016	9:30am	MECAE, Coordinating Minister for Economic Affairs, Estanislau da Silva	Hearing on PPL no. 44 / III / (4a) - **Private Investment Law.** Having two other PPLs originating in the Minister's Office decided to take advantage of his presence to listen to him on the other two PPLs: (a) the Commercial Companies Law (PPL No. 39 / III (4a)); (b) the Law of Promoting Exports (PPL No. 43 / II (4a)
12th October 2016	9:30am	MCIA - Minister of Trade Industry and Environment	Hearing on PPL no. 44 / III / (4a) - **Private Investment Law** There were two other PPLs about which there was interest in hearing the participants in the

	12:30pm	BNCTL- National Commercial Bank of Timor-Leste	hearing and it was decided to use their presence in the NP to hear about the other two PPLs: (a) the Commercial Companies Law(PPL No 39 / III (4a)); (b) the Law of Promotion of Exports(PPL No 43 / II (4a)
13th October 2016	9:30am 12:30pm	CCITL - Chamber of Commerce and Industry of Timor-Leste BNU - Banco Nacional Ultramarino	Hearing on PPL 44 / III / (4a) - **Private Investment Law** There were two other PPLs about which there was interest in hearing the participants in the hearing, and it was decided to take advantage of their presence in the PN to hear about the other two PPLs: (a) the Commercial Companies Law(PPL No 39 / III (4a)); (b) the Law for the Promotion of Exports (PPL No 43 / II (4a)

III. Analysis of the content of the Law Proposal:

i) overview; and

(ii) the main issues raised and suggestions for improving the document

1) Overview

In the analysis of the Law in question, the following documents prepared by the Government (Coordinating Minister of Economic Affairs) were considered: "explanatory statement", "justification note", text Introduction / preamble and body / articulation of the Proposal.

The analysis of a Law such as this, which intends to regulate private investment in its relationship with the State, must be made, first and even before the analysis of its specific articulation and the solutions it proposes, looking at several questions that we would classify as "Of principle" and which are gleaned from the documents annexed to the Law, particularly its "explanations of motives".

In order to better understand the scope of the PPL allow us to cite here, at length, its own justification as it appears in its "Explanatory Note" attached to it:

"Justification and basis of legislation"

With a view to attracting private investment, it is important to review current legislation in order to create a transparent, modern and competitive legal framework to promote both domestic private investment and foreign direct investment.

Thus, this revision is justified, essentially, by **three orders of reason**.

- The first and the need to modernize the current regime, removing some outdated devices that no longer comply with the best practices on the subject, namely:
    - Remove from the law of private investment the activities and sectors that are excluded from its scope of application, leaving such matter for later regulation, through the approval of the negative investment rate;

- To withdraw from the law of private investment the minimum investment amounts, leaving such for later need;
- End the administrative procedure for granting the investor certificate that will be unnecessary for the future. In fact, since tax benefits are eliminated and tax legislation is designed to grant benefits to all investors, the existence of the investor certificate is no longer justified.
- Introduce the figure of the benefit declaration, subject to a simplified issuance procedure, only for cases in which the investor intends to lease state property for 100 years and obtain 3 work visas.

- The second reason justifies a review of the current framework and the need to ensure that the national legal framework complies with the guidelines of the ASEAN Global Investment Agreement (ACIA), in view of Timor-Leste's commitment to become a full-rights member of ASEAN in the near future. This proposal has been drafted taking into account the guidelines contained in the ACIA which correspond to what is internationally considered to be the best practices in terms of private investment.
- The third reason is the need to ensure that the legal regime for private investment complies with national tax legislation, which is under review in the framework of the Fiscal Reform Program and covers all matters of a fiscal nature, including fiscal benefits to be attributed to investors. In this context, the emphasis of the new legislation on private investment is no longer on the tax and customs incentives offered previously, and now emphasizes the emphasis on the rights, duties and guarantees of the investor, as well as the attention and quality of services to facilitate investment in the post-investment phase. It was therefore sought that the two reforms align themselves with the law of private investment leaving all matters of a tax nature to the tax law. In order to guarantee a good and transparent application of the new regime, it is foreseen that the law of private investment will only come into force when the tax law comes into force. "

The Committee of Economy and Development considers that these three reasons justify the changes that are intended to be introduced in the current Law, and the Government, in the person of its Coordinating Minister for Economic Affairs, welcomes the changes that are intended to be made and which go towards the most modern equivalent legislations.

In fact and mainly, it is intended to introduce a greater degree of freedom of the entrepreneurs in the decision to invest, being no longer subject, in principle, to a regime of governmental authorization. This becomes the exception and the freedom to invest the rule - even if some control mechanisms are maintained in some situations, as in the case of the future creation of a "negative investment list".

It also welcomes the decision to begin, also in this domain, to make the convergence between the Timorese and the legislation in use in ASEAN, an association to which the country will come to belong in the future. This gives a clear signal to our future partners in the community that our country is very much committed to its decision to join the group of countries that constitute it. At the same time it gives investors, in general, a clear signal that it is intended to liberalize investment and align it with the legislation of our regional partners. This is expected to have positive effects on the volume of investment in our country, particularly foreign investment.

Let us end this as the "introduction" of the PPL approach with reference to two extremely important aspects. The first concerns the fact that PPL retains any explicit reference to fiscal inventions to investment, in what amounts to a "setback" in relation to the legislation currently in force, which cannot be denied, leaves this Committee somewhat "uncomfortable "in relation to the PPL compared to the current law.

It does not take much effort to realize that the current Law cannot properly be considered a success since the volume of productive private investment in the country, national or foreign, remains

modest, much less than is necessary to boost the national economy, particularly the private sector - admittedly weak in quantity and quality.

This allows us to bridge the second issue we wanted to address at the outset: the popular Portuguese exhortation that "a swallow does not make Spring" and applies here with the sense of stressing that private productive investment is by no means the Product of a single law but a legal, economic and social framework conducive to investment. The weakness of private investment in Timor-Leste must be viewed in the context of the weakness of this legal, economic and social context. It will be, therefore, a set of factors --- and Laws --- that will help to improve this context. Therefore, it is not expected that a single Law such as the one proposed by the Government will affect the "miracle of the multiplication of countries", i.e. the miracle of a significant increase in private investment. The current one was not and this one will not be either.

In fact, it needs a set of laws to define such a favorable environment. This will not be the most important of them but it is certainly an important part of the set of Laws that will help increase investment.

2) Main issues raised and suggestions for improvement of the diploma

Let's look now at the PPL's articles, the **main issues** it raises and some **suggestions for improving** the diploma.

The first (but not necessarily the most important) problem we identified in the PPL and which we believe needs to be changed in order to find a more equitable and economically more interesting solution and the distinction between "foreign investor", "resident national investor" and "**NON**-resident national investor" in Article 3 (Definitions). Especially in relation to **the latter** its simple naming in relation to other types of investors does not seem fortunate, and **we suggest its pure and simple elimination from the Law**.

In fact, the existence of this category goes not only against the constitutional principle of equality of national citizens before the law but also can be a strong economic and social disincentive - the stigma of the "foreigner" ... - the return of national citizens to East Timor, accompanied by their know-how and entrepreneurial skills, which they may have acquired abroad and which is so important and for the referee of the national economy, in which East Timorese entrepreneurship has shown itself to be more "merchant" than "industrial" - being It is necessary to radically change this situation.

In addition, and as is easy to imagine, the status of "resident" and "non-resident" in these cases can change easily, eliminating much of the effectiveness of the rule of law.

> It is difficult to understand the "rationale" of the norm and the indication, still in Article 3, that
>
> "National Investor" means a natural person of Timorese nationality or a Timorese legal entity in which **at least 91%** of the voting rights belong to natural persons of Timorese or other nationality with a permanent residence permit in Timor-Leste "

Why such a percentage and not another? We suggest that the Government explain the reason for this provision and, if necessary, replace it.

In fact, we believe that such a high percentage can go against the country's interest in modernizing its business fabric, namely through the realization of joint ventures between domestic and foreign businesses who, with such a percentage, will be practically cut off from any type of control of essential companies for the modernization of the latter.

In Article 4 there is a reference to "DECENT work" which, following common norms in the language and legislation in Portuguese, is proposed to be replaced by the expression "DIGNIFIED work" since the "opposition" is not between "Decent" and (possibly) "indecent" (?) but between work that

dignifies or not the Man (the human being, man or woman) who exercises it. At the end of this same paragraph we do not find it economically correct and attractive for investors to say that their investment is desired by its effect in increasing public revenues. In fact, this influence is not direct but indirect, through the impact of investing in increasing national production.

All in all, we suggest that the wording of this paragraph be as follows:

> (a) "Promotion and facilitation of private investment, diversification of the economy and promotion of decent work in order to reduce poverty and, indirectly, through its impact on national production, increased State revenues;"

A more "radical" version of revising the text of this paragraph is the elimination of the whole text after the word "poverty".

Article 6 (a) of the PPL suggests that it is clear that investment or reinvestment should be aimed at the production of goods or services that increase the wealth and well-being of East Timorese. Thus, it is suggested that the wording of this paragraph should be as follows:

> "Creation or expansion of a company, singular or collective, under the terms of the law in force in the country **with the purpose of effectively participating in the national production of goods and services;"**

In paragraph ***(e)*** of the same Article 6, it seems to us that there is another economic error which we suggest correcting.

In fact, it speaks twice on bank loans as "investment or [reinvestment"). In fact, a loan **is not** in itself an investment (or reinvestment) but "only" one of the multiple ways of financing the real investment. At the limit, if an entrepreneur requests a bank loan and "divert" part of it to finance consumption of luxuries --- housing, cars, etc. ---, this cannot be considered a PRODUCTIVE INVESTMENT. Thus, it is suggested that in the course of a discussion in the specialty the PPL proponent clarifies the meaning of this paragraph and helps to find a better alternative of writing.

Due to its generality**, it is suggested that the current item g) becomes the final line of this Article 6.**

Considering that the linguistic norm in East Timor and that of Portugal and that the term "allocated" and mainly Anglicism imported into the Portuguese language through its Brazilian variant, **it is suggested that that term, used in h) of Article 6 is Replaced by the most correct (in "Portuguese of Portugal") "affection".**

Section j) of this same article raises an important practical question: the effective valuation of something that is defined as free, in the context of the calculation of the value of the investment. It is necessary **to require further explanation from the PPL proponent in order to find a better solution than PPP.**

Finally, in the same Article 6, "rights or recognized by law or contract" are identified as "investment or reinvestment." Without a better understanding, rights alone are an investment only if they are properly valued, namely in a transaction. Here it is necessary **to clarify the intention of the legislator and the practical way of assessing such rights.**

Article 7, and in particular in its initial part, which may be considered as the real key to understanding the new Investment Law and its basic philosophy and which has already been pointed out - a philosophy which, as we have said, is in the More modern legislation on the subject:

"Article 7
Executes the free investment initiative

The realization of investment or reinvestment in Timor-Leste does not require any authorization, (...)"

Even if there were exceptions to this rule - namely that of the future "negative investment rate", which is a common solution in other ASEAN countries, its existence and the fact that it is the rule and not the exception is already To enhance and welcome.

Article 8 ("equal treatment") suffers, if at all, from a certain amount of doubt, since, in point 3, it stipulates that

"All investors have equal opportunities to access the special benefits provided for in this law, in accordance with the criteria for granting and minimum investment or reinvestment amounts approved for the domestic investor and the foreign direct investor."

This is: as the well-known expression says, "all are equal but some are more equal than others". It is therefore necessary that the legislator clarify - possibly in the body of this PPL - what is the difference in treatment between the various types of investment, in particular the "minimum values" mentioned, since these may actually be too high to be considered as an incentive for investment.

If there is no care in this domain, and if we want to copy more or less blindly norms from other countries of the region (or not) but at a much higher level of development than Timor-Leste, we can set values incomprehensible for many East Timorese entrepreneurs and disincentives for foreign investors. This deserves **clarification, if not some kind of compromise (in the proper law?), By the Government.**

In Article 11 it is suggested that the word "publicity" in its title be replaced by the words "Access to information". Moreover, it is suggested that its point 1 should have the following wording that seems to us to be much more appropriate and complete:

"All investors have the right freely to accede to all the legislation regulating the legal regime of private investment **as well as to any one that, in one way or another, can influence it as are tax, labor and social security legislation"**

Article 13 deals with "guarantees against expropriation". The mere use of the word "expropriation" often causes some concern among investors. Therefore, it is justified that the wording of a law that mentions the subject must be extremely careful, cautious. In particular, the possibility of recourse to expropriation or nationalization should be treated with the utmost care so as not to leave doubt that recourse to either of them will always be exceptional, punctual, and not identifiable as a policy, almost by definition and somewhat systematic. Following these concerns, it is suggested that the wording of point 2 of this article should be as follows:

> "In the event of an exceptional principle, if it is necessary to resort to the request or expropriation of part or all of an investor's property, the State undertakes to do so only for reasons of public utility, in a non-discriminatory manner and upon payment Prompt, adequate and fair compensation to the investor, in accordance with the law. "

Article 14 establishes **the principle of freedom of importation by investors**. This is done, however, in a strictly economic way since it refers to the "importation of goods and equipment" when the latter are also "goods". It does not therefore make explicit reference to goods unless it is made explicit that they are "**raw materials, intermediate consumer goods, final consumer goods or equipment**" used in the investment. It should also be clarified by the legislator if he intends to include the "services", which seems to us to be more correct.

Moreover, it should be mentioned in this PPL - and not only by reference to legislation (tax) to be published - whether the investor will have the right (and at what rate) to some type of customs duty exemption, as is currently the case. In fact, not mentioning this type of tax benefit may cause some kind of "discomfort" and distrust of investors, who will tend to think twice before deciding to invest.

If so, the wording of this Rule 14 could be as follows:

"1 - All investors may import **raw materials, intermediate consumer goods, final consumer goods or equipment as well as services" necessary for the proper functioning of the production unit as well** as the export of products and services produced, in the Accordance with the law.

2 - **The imports referred to in the preceding paragraph shall have the right to different levels of exemption from customs duties according to their purpose ".**

In Article 16, point 1, the following is provided:
"To all investors and guaranteed, in accordance with current legislation, the right of free transfer of funds from any investment or reinvestment in Timor-Leste abroad"

This commitment is extremely important to the investor, but the inclusion of the term **"in accordance with current legislation"** may raise some fears because the "legislation in force" at a given moment may not be the same as when the investment was decided by the entrepreneur And performed, changing the data of the decision-making equation.

Thus, it is suggested to eliminate the expression "according to the legislation in force" or its substitution by any other that does not leave the "door open" to withdraw tomorrow what is given today.

Article 17 legislates on "Intellectual Property" and its protection in the investments. However, a specific law on the subject does not yet exist in East Timor, leaving the aforementioned protection in the PPL in an analysis that is devoid of any practical meaning. The Government should clarify this matter.

In Article 19, it is legislated **on "Hiring of foreign workers or employees"** ensuring (point 1) that "**All** investors may hire foreign workers or qualified employees for **supervisory** or **management** functions, **according to the law.**

This standard raises several issues that must be overcome in the discussion of the PPL in the specialty. One is the specification of the type of workers and their functions. Probably more important than "supervision or direction" are, at some stages of the investment - such as the day-to-day operation - eminently technical functions, such as that of equivalent engineers and technicians, economists, accountants and other specialties. The Law has, in our opinion, to be clear in this area and include this type of professionals. It is therefore **suggested that the group of technical specialists be included in the list.**

In addition, and in order to limit the possibility of future legislation to contradict what is stipulated herein, we suggest that at the end of this point the following should be stated: "(...) terms of the law, **which cannot in practice contradict the principle of Freedom of contracting guaranteed here. "**

Paragraph 3 of the same article makes a misinterpretation of the "previous" point when it should have been "point 1". **To correct.**

In addition, it is said that authorizations are dependent on "the evolution of the national labor market". If we can theoretically consider this restriction to be normal, in practice we do not see much use in it since, unfortunately, we do not anticipate that the labor market situation vis-à-vis the workers concerned - which we recall are only those in the area of " Direction, "and, if our suggestion is taken, of the more technical area --- because of the recognized scarcity of quality human capital in our

country, to justify this provision that, on the contrary, may prove unnecessarily restrictive due to the behaviour of some less qualified decision-makers.

It is therefore suggested that the reference to the labour market situation be eliminated because it could be a factor of uncertainty for investors and even for those responsible for implementing the Law, since there is great uncertainty about the market indicators to be used to define the situation.

Article 202 of the PPL lists the "general and specific duties" of all investors.

In section 2 there are some aspects that seem to merit some reflection and even decision to change the current terms of the PPL.

Thus, **it is suggested that in the list of sub-paragraph (b), both the tax laws and those relating to the social security system should be distinguished.**

Point (c) of this point refers to the obligations of investors in the employment of East Timorese workers and "their professional training for the performance of qualified duties".

These charges may be important and the entrepreneur's perspective may be different from that of the employees who will then have to judge the situations without there being any unequivocal methods of assessing the training that may have been carried out, which may even lead to misconduct.

This is one more factor of increased operating costs of companies and potential source of some uncertainty for investors. It should be noted that the generality that is given to this obligation - in fact it is integrated into the "obligations of investors" - means that potentially ALL investors are required to provide vocational training and have a training plan for Its employees, a heavy burden that is not conducive to smaller investments that do not justify vocational training actions.

Thus, it is suggested that

i. **by stating "gradually" the word "promote",** if it is recognized that such training should be gradual, leading to anticipation of a generous spirit for its attainment; Without this reference the investor may be at the mercy of unrealistic decisions of less qualified officials;
ii. the addition of the phrase **"for which you can count on the State's financial support, including financial support"**
iii. that this obligation is explicitly **limited in this PPL to investments involving** a certain number of East Timorese workers (20-30 plus) and / or an amount to be set (one million USD?).

Article 21 legislates on the "hiring of foreign workers and employees" of the investments to be made.

In point 1, it is stated that "To the investor holding a declaration of Special investment agreement **three work visas** are guaranteed for workers or qualified employees for **supervisory** or **management** duties indicated to **start** the investment project."

This wording is **unreasonably restrictive**: its application is restricted to investments under a "declaration of benefits" or a "special investment agreement", which may in principle require only "three visas" "For supervisory or direction functions" "to start the project".

Again the **eminently technical functions are left out**, just as the workers / cadres are left after the project is started. These restrictions are excessive and **it is suggested that they be reviewed in the course of discussion in the specialty,** possibly by extending the number of work visas to be granted and the **phases of the project to be covered**, to include also the stage of its current operation.

It should be noted that, as regards the number of working views, the PPL on "export promotion" is inexplicably (?), More "generous" when referring to 5 (five) visas. It is advisable to at least **standardize the number of these.** The "D" Committee, however, considers that the indication of a minimum number of visas (3.5 or other) is counterproductive and may lead to misinterpretations of the law

because it leaves room for discretion by the bureaucratic decision-maker who can Causes a good progress in investment - not forgetting that each investment is different from its needs for this type of staff and should be considered on a case-by-case basis so that a standard of this kind does not pose unnecessary investment difficulties. Therefore, it should be

- totally abandoned any provision with quantitative limits (albeit minimal) to the number of visas to be granted; or
- found a wording that is UNEQUIVOCALLY clear as to the need not to introduce unnecessary barriers to investments; And / or
- refer this matter to the Law that regulates immigration and the granting of visas, especially for work.

Interestingly - and inexplicably (?) --- the relative rigidity assumed in point 1 of this article turns out to be recognized by the PPL itself when accepting in point 3 that

> "The provisions of number 1 shall not prejudice the right of the investor to request, at any time, the granting of work visas for other foreign workers or employees that may be necessary to install and operate the enterprise, pursuant to of law."

As is easily understood, this point ends up removing almost all possible effectiveness from the one defined in point 1 above, reinforcing the idea that the final wording of this article should be substantially improved by the spirit of great freedom of investment that PPL intends to enshrine - But that from time to time he seems to "forget", as if "repenting" of the liberal spirit of the PPL.

> Article 22 deals with the possibility of "leasing of the State" - should read, except for a better opinion, "leasing of state land or real estate" - to address the difficulty of foreign investors having access to land in Timor- Leste by constitutional imperatives.

It is open to discussion **what is the most advisable term for such lease** to "any holder of a declaration of benefits or special investment agreement" - to these and only to these and not to any investor. Some argue that the term of 100 years --- in fact 50 + 50 years --- proposed and exaggerated, should be fixed a shorter term.

In some legislation in other countries the term for depreciation of fixed assets (buildings) and 50 years and therefore it is suggested that this period be maintained on condition that the investment can continue to operate, ceasing six months (for example) after the end of Effective operation.

This term and in this PPL "renewable for an equal period only once", making the lease term is either 50 or 100 years. Interestingly, this solution differs, without understanding why, from the one adopted in PPL on "export promotion", where the most advisable solution is adopted and the initial 50-year contract is "renewable" to 100 years ":

> "The exporting company has the right to lease real estate or state facilities, namely warehouses and industrial pavilions, for a period of 50 years, renewable for up to 1 year." (Article 11)

This alternative leaves open the possibility that the contracts after the first, for 50 years, are, at the limit, annual, and are advised to be for periods of ten (10) years.

However, we must take into account what is stated in point 2 of the article that we have been analyzing and which says that

> "In the case of investment subject to a special investment agreement, the State may negotiate with the investor **more favorable conditions** in order to boost investment."

It is doubtful whether these "more favorable conditions" include the lease term which, in an interpretation of the letter of the text of the PPL, opens the door to leases of more than 100 years. This rule, because it allows potentially "eternal" leases, would eventually be unconstitutional, so **it is suggested that its wording be altered or even eliminated.**

Good legal practice teaches that usufruct (including lease) should not last longer than the life of the beneficiary (tenant). In the case of companies this is not immediately identifiable, but the principle dictates that the life span of a person from the majority until the end of the productive period should not be included in the same period and not, on average, more than 40 years. Therefore, the question seems to be legitimate: can (or should) the Tenant (State) limit the full right over property to future generations through a (very) long term lease?

Most Private Investment Plans point to the recovery of the amount invested within 10 years (in East Timor, due to higher risk margins, most medium-sized investments point to 5 years as maturation time).

This means that after 20 years the investor has surely already recovered his investment and obtained the fruits of his work. This may raise the question of whether the lease term by the State should significantly exceed this period and offer another 30 to 80 years of lease. The situation in East Timor, however, is not completely encompassed by this reasoning since what is at issue is the fact that foreign (individual or collective) persons do not have access to land as a result of constitutional dictates.

But if it is true that these may point to extended periods of rental, it is also true that this should be done at market prices and not at "imaginary" prices defined by rules of ill-known contours.

Thus, **the "D" Committee suggests that in the course of discussion in the whole subject this issue should be duly considered in order to find, with the proposer, a wording that defends both the interest of the investor in disposing of land for a period of time than of stability / viability But also to the interest of the State in obtaining revenues from such lease "at market price" and not at a price that objectively constitutes "disguised" financial support for the investment.**

The investment and, in particular, the "special benefits" in "Special Areas" are discussed in Article 23.

The "rationale" of the corresponding provision in the Law currently in force is not well understood and has created three more balanced levels: Dili, District Capitals and rural areas. In fact, the present Law, by placing Baucau in parallel with the development of Dili, is, in fact, detrimental to this city / municipality, because its development level is clearly inferior to that of the capital city of the country, which has apparently widened rather than diminished.

It is therefore suggested that, for these purposes, the division of the country should be maintained at the levels currently in force: Dili, District capitals and rural areas.

Chapter VI of the PPL on private investment is entitled "concession of special benefits".

Now what happens in relation to these themes illustrates well what sometimes happens in many other Laws: they are important both by what they approach, regulate, and by what they omit; What they are talking about and what they are not talking about.

The best example is the almost total silence on possible tax benefits, present in the existing legislation up to now and that here and referred to the tax law to be appreciated in a timely manner by the National Parliament.

The granting of tax benefits was practiced almost everywhere in all the countries which, in East Asia, began their process of accelerated economic growth in the 1960s of the last century. Its disappearance (?) From East Timorese legislation needs to be fully explained by the proponent, the

Government. It should be noted that this is the kind of benefits that, while not determining for investors, help to compose a set of attractive conditions for investors. The possible argument that the country needs to increase its household incomes and cannot dispense with any (potential) tax revenue seems to be a prospect that forgets that future investments may yield "tomorrow" much more as tax revenues, Than the "forgiveness" of revenues granted today.

It should be noted that there will be arguments stating that the granting of these benefits was, in the PAST, little relevant to the decision to invest. Even if this argument were accepted - was the inquiry only made to the investors who actually invested or also those who gave up investing? , It should be recalled that investor decisions were taken in an extremely favorable fiscal environment but that the announced tax reform is expected to change through a substantial increase in the average tax burden. Thus, what may have been less relevant in the past may become relevant in the future as the fiscal environment will change.

This was pointed out by some participants in the hearings carried out by Committee "D", particularly those that operate more closely with the corporate fabric of our country. Their disagreement regarding the elimination of the reference in the PPL to the tax incentives and its announced transfer to the tax legislation without knowing its limits, even led them to consider that the now proposed PPL turns out to be --- or to run The risk of coming to be --- a worse law for private investment than the one currently in force.

It is suggested, therefore, that, AT MINIMUM, in the review of the PPL in the discussion in the specialty, serious consideration should be given to (re) introducing (P) these EFFECTIVE fiscal benefits, especially considering the three levels of regional areas identified above.

As formulated by PPL, the granting of special benefits is dependent on minimum limits on the value of the investment to be set by the Government. However, this matter is not simply "accounting" ... Setting too high (?) Limits can in practice mean the "death" of the policy of granting these special subsidies. It is suggested, therefore, that the fixation of these limits be seriously considered in this PPL, but left to the government for its revision after an "experimental" period of 4-5 years, after which the revision of these limits will be left to the Government, At this stage, will already have a "guide to action" that will condition the limits to be set. Such thresholds may, of course, be different depending on the type of benefits to be granted but for the simplicity of the system we believe that a one-off regime would be advisable --- at least initially.

That is: the degree of uncertainty currently existing in this area of tax benefits should be greatly reduced in the Act to be approved by the National Parliament.

From Article 27 to the end of the PPL --- "Article 44 - Entry into force" --- Committee "D" has no suggestion of alteration to be proposed. The latter article reads as follows:

"Article 44
Implementation

This Law shall enter into force on the day of entry into force of the Taxation that determines the profits attributed to investors. "

The Committee on Economy and Development considers this rule very important because of its consequences: that of the entry into force of the Law at a future moment still uncertain. As will be seen later, this will significantly condition the final opinion of this Committee on the future procedure of this National Parliament in relation to this PPL.

IV – Conclusions

From the study of the proposed law in question it is concluded that this proposal corresponds to an important need of the legal system of our country. However, the Committee of Economy and Development of the National Parliament also considers that:

A) Private investment depends on many factors, including a legal regime similar to that proposed in the PPL. It is believed, however, that it is only an aspect of the panoply of factors influencing investors' decisions, namely

a) The **general economic and social environment**, including the lines of economic policy;

b) The **legal environment**, including the "ways" and "deadlines" of the **administration of justice;**

c) The existence of **transparency and rationality in the administrative decisions** concerning it, including

d) The inexistence of excessive uncertainty in the functioning of institutions.

b) If the present legislation will certainly **NOT** be "**THE"** main determinant of the decision to invest it, especially after the changes suggested, it may be an important document in the capture of investments in quantity and quality for our country.

c) The possible approval of this PPL **BEFORE** the publication of the Law that will provide for the tax incentives may force its eventual alteration to take into account what is stated in this last Law, being preferable to wait for the publication of this AND THEN to discuss and approve this PPL.

d) The PPL itself recognizes in its Article that there is no urgency in its approval since this Act determines that it should wait for the approval and publication of the Law that will provide for the tax benefits to be granted to private investment, before entering into force.

V – Opinion

Considering what has been said in all the previous points, the Committee of Economy and Development is of the **opinion that Proposed Law no. 44 / III (IV) on Private Investment should NOT be discussed and generally APPROVED at this time, and it is hoped that the Law in which the tax benefits for the investment are foreseen will be published, so that the process of discussing and approving this PPL will continue.**

This proposal also has as a bottom-line the fact that the agenda of the National Parliament is greatly overloaded until at least the approval of the General State Budget for 2017.

VI – Voting

This report and opinion were discussed and voted on at a meeting of the Committee on Economy and Development (Committee "D") of the National Parliament held on 19 October 2016 at 9.30 am at the seat of the Committee.

Result of the vote: 8 (eight) votes in favor, 0 (zero) abstentions and 0 (zero) votes against.

Dili and National Parliament, October 19, 2016

The President of the Committee "D"	The Rapporteur
Jacinta Abucau Pereira	Josefa A. P. Soares

Attachments

1- Notes on the outcome of the hearing carried out with the Ministry of Commerce, Industry and Environment

2 - Copy of the written document delivered by BNU at the hearing held on 13 Oct 16

3 - Copy of the written document delivered by the National Bank of Commerce of East Timor on October 18, 2016

NOTE: Two of the remaining hearings foreseen and enumerated at the beginning of this document **were not made for non-appearance of the invited entities:** Chamber of Commerce and Industry and Ministry of Justice

i In these two houses it is important to note that the legislator intends truly to transfer these two bridges to the exclusive legislative sphere of the Government through the publication of Decree-law or regulation. The Government can thus easily adjust these two aspects according to market policies and trends.

Public Hearing with MCIA

Business Law

- ✓ This law does not have urgency because it already exists, and the government only makes some changes and does not have a huge difference between the law exists with the new law. Just to fit our current development model of the world economy and to adapt when East Timor joins ASEAN
- ✓ What is urgency is the financial requirement for the citizen / Foreign investors investing in Timor
- ✓ On Anonymous Companies (bearer shares), Timor-Leste still has no stock market or law regulating banking activity
- ✓ On control of Chinese traders, the Ministry cannot make the maximum control because the Foreign Investment Law does not allow and also Timor-Leste has adapted the free market
- ✓ Need to do a comparative study to improve the law (on the minimum value of investment capital)

Export promotion law

- ✓ According to the legal advisor, this law is not urgent because it already has the law of private investment. The state has only to make a regulation on exports to complement private investment law.
- ✓ The law of exports cannot contradict the law of immigration to not hinder the services of technicians in their execution.

Law of private investment

- ✓ Politically, we need investment activities as a machine for developing the nation and this law facilitates this type of activities
- ✓ In technical terms, the new private investment law does not have huge changes the previous law
- ✓ This new Private Investment Law is a paradigm shift because it focuses on facilitating the promotion of investment instead of the fiscal benefit
- ✓ In terms of sociopolitics and economics this law is not urgent.