

[Unofficial translation from Portuguese by La'ó Hamutuk]

PROPOSED LAW No. ___ / 2019 of _____

Special labor and migration regime applicable to the Bayu-Undan Project

[as approved by the Council of Ministers on 8 July 2019]

Considering that Timor-Leste and Australia have concluded the final delimitation of the maritime borders between the two States under the Treaty between the Democratic Republic of Timor-Leste and Australia Establishing the Maritime Borders in the Timor Sea, signed in New York in the March 6, 2018, hereinafter referred to as “the Treaty”;

Whereas this delimitation had implications for the ownership, jurisdiction and management of the Timor Sea petroleum resources;

Recognizing that certain commercial companies are already engaged in petroleum activities in areas that will transition to the exclusive jurisdiction of Timor-Leste, notably in the Bayu-Undan field, and that these activities are crucial to Timor-Leste’s economy;

Considering that Article 22 of the Timor Sea Treaty, signed on 20 May 2002 and ratified by National Parliament Resolution No. 2/2003, of April 1, published in *Jornal da República*, Series I, no. 9 of 30 July 2003, determined that the petroleum activities of limited liability companies or other limited liability entities initiated under the Treaty should be continued under conditions equivalent to those defined in the Timor Sea Treaty, although Treaty of the Timor Sea is no longer in force;

Recognizing further that in order to implement the transition from the Bayu-Undan field to the exclusive jurisdiction of Timor-Leste under the terms of the Treaty, it is necessary to make certain changes to the Timor-Leste Labor Law and to migration rules and procedures, in order to enable the State to honor its international obligations resulting from the Treaty and in particular to fully achieve national sovereignty, to guarantee the territorial integrity of the Nation and to comply fully with international law, as required by Article 9 of the Constitution of the Republic;

The Government hereby submits to the National Parliament, pursuant to Article 97.1(c) and Article 115.2(a) of the Constitution of the Republic, the following proposed law:

Article 1

Scope and object

This law establishes the special labor and migration regime applicable to the Bayu-Undan project in order to ensure equivalent conditions as required by the Treaty between the Democratic Republic of Timor-Leste and Australia Establishing their Maritime Borders in the Timor Sea, and should be interpreted and applied in conjunction with the other normative instruments aimed at effecting the transition from the Bayu-Undan Field to the exclusive jurisdiction of Timor-Leste.

Article 2

Labor regulations

1. Timorese workers who work offshore in Petroleum Activities at the Bayu-Undan Field are subject to the Timor-Leste Labor Law, with the specifics provided for in this law.
2. Foreign workers who work offshore at Petroleum Activities in the Contract Area shall be subject to the labor laws of their country of origin or to the labor legal regime agreed in writing between the parties.
3. Any workers engaged in activities to support Bayu-Undan operations from the land territory of Timor-Leste are subject to the Timor-Leste Labor Law regardless of their nationality.

4. The Bayu-Undan Contractor shall have a period of 12 months from the date of entry into force of this law to adapt the respective operations to the labor regime provided for in this law, and may not impose any sanctioning procedures or impose any fines or other penalties for breach of the rules set forth herein during that period.
5. Any written or oral instructions, as well as any internal policies, guides or manuals relating to the performance of offshore work in the Petroleum Activities or relating to Bayu-Undan Field operations shall be provided in English, except in cases where the worker concerned is not fluent in that language.
6. The supervision of labor relations under this law and the investigation of any infractions related to them shall always be conducted by a joint team composed of representatives of the ANPM and their labor authorities.

Article 3
Health and safety of workers

1. The ANPM shall develop and the Bayu-Undan Contractor shall apply occupational health and safety standards and procedures for persons working in structures located in the Contract Area, which are in accordance with international petroleum industry standards and which are no less effective than the standards and procedures that are applicable to persons working in similar structures in Australia and Timor-Leste.
2. For the purposes of this Article, the ANPM may adopt international best practices and procedures.

Article 4
Employment contract

1. All Timorese workers working in Petroleum Activities shall have written employment contracts in one of the official languages and one of the working languages of the country, signed by both parties, and shall contain at least the following clauses:
 - a) The identification of the employer and the employee;
 - b) The position and, if necessary to clarify the duties to be performed, a summary of the activity to be performed by the employee;
 - c) The workplace;
 - d) Normal working hours and rest period;
 - e) The value, form and periodicity of the remuneration;
 - f) The occupational category of the worker, if different from the position referred to in point (b);
 - g) The date of conclusion of the contract and the date of commencement of performance, if different;
 - h) The duration of the period of probation, where this is not ruled out by agreement between the parties;
 - i) The duration of the contract and its justification in the case of a fixed-term employment contract;
 - j) The collective labor agreement, if any.
2. The lack of written form does not affect the validity of the employment contract or the rights and duties of the employer and the employee under it.
3. If nothing is said as to the date of commencement of performance of the contract, it is presumed that the employment contract has been in force since the date of its conclusion.
4. Employment contracts are entered into for a fixed period, when there are grounds for doing so, or for an indefinite period, under the terms of the Labor Law.

5. Apprenticeship contracts entered into with participants in training or professional qualification programs may not exceed 18 months, except in duly justified cases, namely situations of formal certification of workers that require a longer period of training.

Article 5
Working hours rotation system

1. Timorese workers working in Petroleum Activities at sea may be subject to a rotational work period, consisting of a maximum consecutive work period of 4 (four) weeks of actual work followed by an identical rest period.
2. The work regime referred to in the previous paragraph is subject to the following rules:
 - a) The rest period shall include the time spent travelling to and from the place of work;
 - b) Regular working hours shall not exceed the maximum limit of 84 hours per week and 12 hours per day and, on average, the general limit of 44 hours per week over a reference period of 6 months;
 - c) In the month following the end of a reference period, any time exceeding the limit of the average working period of 44 hours per week shall be paid as overtime as determined in paragraph 5;
 - d) Weekly rest days, additional weekly rest days and holidays included in a period of work shall be regarded as normal working days and shall be taken by workers as part of the subsequent period of rest;
 - e) If, as a result of the arrangements laid down in this Article, the annual working time calculated at 44 hours per week is exceeded and after deduction of the period of annual leave and public holidays, the excess time shall be regarded as overtime and as paid work;
 - f) The annual leave period shall be counted against the rest periods and workers shall not be entitled to any additional rest period.
3. Working hours are agreed between the parties in accordance with the operational needs of the Bayu-Undan Contractor and may be changed to take account of the sea operations of the Bayu-Undan Contractor upon prior notification to the employee.
4. The Bayu-Undan Contractor and the Employee may agree to apply a time combination between a normal working hours and rotating working hours, depending on the Employee's place of work at a given time, provided that in this case, if the Employee works a rotating working hours, the subsequent application of normal working hours shall only be possible after the Employee has taken his cycle of rotation rest.
5. Employees may be required to perform overtime work beyond their regular working hours as instructed by the Bayu-Undan Contractor, in which case the following remuneration shall apply:
 - a) An additional 50% (fifty percent) of the employee's normal hourly wage for the first 2 (two) hours of overtime;
 - b) An additional amount of 100% (one hundred percent) of the employee's normal hourly earnings for each hour of work exceeding the above-mentioned hours.
6. Workers who are called upon to perform overtime work after the end of normal working hours shall receive at least 2 (two) hours' remuneration at the appropriate rate of overtime, each time they perform overtime work.
7. When scheduling overtime, the Bayu-Undan Contractor shall ensure that the worker has a minimum rest period of 10 (ten) hours between consecutive working days.
8. The duration of work during the worker's cycle of rotation and rest may not exceed 12 (twelve) hours per day, for a maximum period of 2 (two) consecutive weeks, and is always considered as work beyond the normal cycle of rotation.

9. Work beyond the normal rotation cycle is remunerated with an additional value of 100% (one hundred per cent) of the value of the worker's normal hourly remuneration, with the worker having the right to take additional rest days corresponding to the days of work provided beyond the normal rotation cycle.
10. The provision of overtime or work beyond the normal rotation cycle, due to cases of force majeure or to avoid or repair serious damage to the Bayu-Undan Contractor or aimed at the sustainability of operations in view of long-term gains, is not subject to the limits provided for in paragraphs 7 and 8.
11. Article 28 of the Timor-Leste Labor Law, contained in Law no. 4/2012, of 21 February, shall not apply to working hours in rotation provided for in this article.
12. The probationary period of workers subject to rotational working hours shall be counted only during the workers' actual working period and shall be suspended during the respective rest periods.

Article 6

Compensation and protection of workers

1. The rules on remuneration provided for in the Timor Leste Labor Law shall apply to workers covered by this law.
2. During their rest periods, workers who are nationals of Timor-Leste shall be entitled to full payment of their monthly basic remuneration and any additional allowances or allowances not specifically related to the actual performance of work at sea.
3. The - Bayu-Undan Contractor and its subcontractors shall underwrite and maintain in force insurance coverage for their Timorese workers in accordance with the best international techniques and practices in the petroleum industry.
4. The health and safety committee of Bayu-Undan existing on the date of entry into force of this law assumes the powers and functions of the joint committee provided for in Article 37 of the Timor-Leste Labor Law, Law No. 4/2012, of 21 February.

Article 7

Absences and licenses

1. Workers are entitled to 3 days of justified absences per year in the event of death of a first and second degree relative of the straight or collateral line.
2. Workers have the right to sick leave as provided for in the Timor Leste Labor Law.
3. Any other faults shall be considered unjustified unless authorized by the Employer of Bayu-Undan.

Article 8

Suspension of employment contract for reasons of force majeure

1. The Bayu-Undan Contractor may temporarily suspend an employment contract or reduce the normal working hours for reasons of force majeure which seriously affect the normal activity in the Bayu-Undan Field, where such measures taken by the Bayu-Undan Contractor are indispensable to ensure the viability of the operations in accordance with the best international techniques and practices of the petroleum industry.
2. For the purposes of the preceding paragraph, "force majeure" means a situation beyond the reasonable control of the Bayu-Undan Contractor which prevents the Contractor from fulfilling any of its obligations, including but not limited to:
 - a) Fires, chemical contamination, earthquakes, lightning, cyclones, hurricanes, floods or other extreme weather or environmental conditions, unforeseen geological or soil conditions, epidemics or other disasters or natural disasters;

- b) Explosion, accident, breakdown of an installation or equipment, structural collapse or chemical contamination not resulting from an act of war, terrorism or sabotage;
 - c) Acts of war, whether declared or not, invasion, acts of terrorism, blockade, embargo, riot, public disorder, violent demonstrations, insurrection, rebellion, civil commotion and sabotage;
 - d) Blockades, lockouts, labor litigation and other industrial actions by workers.
3. The suspension of any employment contract due to force majeure must be communicated to ANPM within 24 hours.
 4. Notwithstanding paragraphs 1 and 2, the suspension of employment contracts may not exceed 6 months, except for justified exceptional reasons related to the normal activity of the Bayu-Undan Contractor, in accordance with the best international techniques and practices of the petroleum industry and subject to the approval of ANPM when this period exceeds the initial 6 months.

Article 9

Disciplinary action, termination and compensation for termination

1. The Bayu-Undan Contractor may suspend employees who are nationals of Timor-Leste, without loss of pay, from the time when disciplinary proceedings are initiated, in which case the Bayu-Undan Contractor shall take all appropriate measures to transfer the employee to land for the duration of the suspension.
2. The rules on disciplinary proceedings set out in the Timor Leste Labor Law shall apply to disciplinary measures and termination.
3. In cases of termination with just cause, employees of Timor-Leste shall not be entitled to compensation for seniority.

Article 10

Employment agencies

All employment agencies that hire Timor-Leste national workers for petroleum activities in the Bayu-Undan Field must register in Timor-Leste in accordance with commercial law.

Article 11

Hiring of foreigners

1. Whenever the performance of Petroleum Activities requires the hiring of foreign workers, the Government, through the ANPM, shall assist the employer in obtaining all visas, licenses or other authorizations necessary for the performance of work and the entry into the territory of Timor-Leste of such expatriate personnel.
2. If necessary, the Government may approve a special migration regime for the employment of foreigners.

Article 12

Right to strike

The maritime facilities of Bayu-Undan are considered as a port and an airport for the purposes of Article 7 of Act No 5/2012 of 29 February 2012.

Article 13

Visas

1. The foreign workers of the Bayu-Undan Contractor and any other companies involved in Petroleum Activities in the Contract Area are required to obtain the applicable visa to work in offshore Petroleum Activities.
2. The provisions of Chapters VII and X of the Migration and Asylum Law shall apply subsidiarily.

3. Persons working in the Bayu-Undan Field or carrying out work or visits related to Petroleum Activities in the Bayu-Undan Field may be granted the following types of visas:
 - a) *Work Visa*, which is a multiple-entry visa valid for 1 year, renewable, for personnel performing offshore work on a regular basis, including on offshore installations and vessels;
 - b) *Temporary Stay Visa*, which applies to technical, management and specialized personnel associated with the activities of Bayu-Undan traveling to the Contract Area or the territory of Timor-Leste several times a year, but not on a regular basis, to provide highly qualified activities, granted for an initial period corresponding to the respective function and for a maximum period of 1 year, renewable, and which, when justified, allows multiple entries; and
 - c) Short-stay Bayu-Undan Visa, which may be used to support emergency or unplanned activities in the Contract Area, allowing a single visit to staff who need to travel quickly to the field, being valid for the period and under the terms of Article 35.2 of the Migration and Asylum Law, Law No. 11/2017, of 24 May.
4. In exceptional situations, including, in particular, medical emergencies, the staff working for the Bayu-Undan Contractor may be authorized to enter the national territory by means of a written request submitted to the Migration Service with a copy to the ANPM, not requiring the entry into the national territory in these cases a formal response from the migration authorities or the ANPM.
5. The request referred to in the previous paragraph shall indicate the purpose of the visit, the exceptional circumstances and other requirements as approved by the Government.
6. The entry into Timor-Leste of workers holding an international seafarer's identity document is subject to notification to the ANPM and the migration authorities, as approved by the Government.

Article 14

Processing of visa applications and migration procedures

1. Applications for work visas shall be processed under the terms of the Migration and Asylum Law, with the specifics provided for in this Article.
2. The ANPM acts as a contact point for work visa applications from the Employer of Bayu-Undan, as approved by the Government.
3. Applicants for work visas must enter the national territory under a tourist visa and submit the required application to the ANPM, in accordance with the rules approved by the Government.
4. The issuance of a work visa does not require an interview with the applicant, nor the use of the standard work contract approved by the labor authorities.
5. The competent migration authorities shall review and decide on the issuance of any work visa applied for under this law within 30 days of the submission of the application, in accordance with the rules approved by the Government.
6. Workers holding a work visa shall enter Timor-Leste under the respective work visa within 60 days of its issuance.
7. The ANPM and the migration and labor authorities shall institute any special additional necessary mechanisms to expedite and facilitate the issuance of work visas and the migration control of workers involved in Petroleum Activities in the Contract Area.
8. Applications for Working Visas shall be accompanied by the following documents:
 - a) Application form;
 - b) Letter of support;
 - c) Copy of the worker's passport;

- d) Color passport photo;
 - e) Copy of the employment contract;
 - f) Proof of skills or qualifications;
 - g) Certificate of physical and psychic robustness or other equivalent health certificate; and
 - h) Criminal record issued by the competent authorities of the country of origin or of the country where the worker has resided for more than one year.
9. Applications for Temporary Stay Visas shall be processed in accordance with the provisions of the Migration and Asylum Law, as adapted by the rules approved by the Government.
10. Bayu-Undan Short-stay Visas are processed in accordance with the rules and subject to the documentation requirements for Tourism Visas set out in the Migration and Asylum Act, as adapted by the rules approved by the Government.
11. A visa application must be submitted by each applicant.

Article 15
Exemption from payment of tax

The issuance of any visa for the person involved in offshore Petroleum Activities in the Bayu-Undan Field is exempt from the payment of any tax.

Article 16
Entry into force

The present Law enters into force on the date of entry into force of the Treaty between the Democratic Republic of Timor-Leste and Australia establishing the respective Maritime Boundaries in the Sea of Timor.

Approved by the Council of Ministers on 8 July 2019.

The Prime Minister,

Taur Matan Ruak

The acting Coordinating Minister for Economic Affairs

Agio Pereira

The acting Minister of the Interior

Filomeno da Paixão de Jesus