

# **TIMOR-LESTE PETROLEUM FUND**

## **DRAFT ACT**



## **PUBLIC CONSULTATION**

**MINISTRY OF PLANNING AND FINANCE  
AND  
PETROLEUM FUND STEERING GROUP**

**February 2005**

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This draft Act on the Petroleum Fund has been prepared by the Petroleum Fund Steering Group. Participants in the Steering Group are: Finance Minister Ms Boavida, Secretary of State Mr Texeira, Vice Finance Minister Ms Bassarewan, Mr Vasconcelos (BPA), Mr Antunes (PM office), Mr de Lemos (Timor Sea Office), Mr Freitas (MoPF Budget), Mr Almeida (MoPF Revenue Service), Mr Maitra (MoPF Treasury), Mr Gusmao (MoPF Macroeconomics Unit), Mr Ekeli (MoPF Petroleum Fund Adviser).

## Executive Summary

This purpose of this Act is to establish a Petroleum Fund for Timor-Leste. The provisions in the Act reflect the discussion paper on the key policy issues that was released on 18 October 2004, as well as submissions received during the ensuing period of broad public consultations. (These documents are available on [www.mopf.gov.tp](http://www.mopf.gov.tp).)

The objective of the public consultation is to get comments from civil society and the public at large on this draft Act by 1 March 2005. After considering the submissions the Government will submit the Act establishing the Petroleum Fund to Parliament. Subject to the approval by Parliament and promulgation by the President, the Petroleum Fund can be operational from 1 July 2005 (the start of the 2005-2006 fiscal year).

The design of the Petroleum Fund is based on the following key principles:

- **The Petroleum Fund shall be a tool that can contribute to the wise management of Timor-Leste's petroleum resources**, for the benefit of both current and future generations.
- **The Petroleum Fund builds on international best practice and reflects the circumstances of Timor-Leste.** It is based on the petroleum fund used in Norway, one of the few models internationally that are generally seen to function well and contributing to a wise management of the petroleum wealth. The proposed model for Timor-Leste is currently referred to as the "Norway Plus" model, reflecting additional accountability, transparency and information features that are judged appropriate for Timor-Leste's circumstances.
- **The Petroleum Fund builds on the Constitution.** The Petroleum Fund Act lays down the key parameters for the operation and management of the Fund in accordance with article 139 in the Constitution, which states that the petroleum resources shall be owned by the State, shall be used in a fair and equitable manner in accordance with national interests, and that the petroleum extraction should lead to the establishment of mandatory financial reserves. The proposed Petroleum Fund builds on the constitutional framework, giving to the Parliament and the Government the powers that correspond to their competencies.
- **The Petroleum Fund allows for a strengthening of the responsibilities, powers and capacity of key public sector institutions**, such as Parliament, the Government, the Ministry of Planning and Finance and the Central Bank. There will be an Investment Advisory Board advising the Minister of Planning and Finance to enhance the quality of advice preceding decision-making. There will also be an independent Consultative Council to advise Parliament on the operations of the Fund, acting as a "watchdog" and contributing to an informed public debate and a sound management of the petroleum wealth.
- **The Petroleum Fund is to be a tool that contributes to sound fiscal policy**, and thereby help deliver on a sustainable basis strong economic growth and improved public services. The design of the Petroleum Fund acknowledges that good planning and execution of public sector budgets are key to avoiding the resource curse found in so many petroleum producing countries. The Petroleum Fund is to be coherently

integrated into the budget process, supporting a fiscal policy framework that strikes the right balance between current consumption, investing in physical assets (infrastructure and human development) and investing in financial assets.

- **The Petroleum Fund is to be prudently managed**, invested securely in low-risk financial assets abroad.
- **The management of the Petroleum Fund shall be carried out with the highest standard of transparency and accountability.** This is a key element in building public confidence and support for a wise strategy of managing the petroleum resources. This can allow Timor-Leste to avoid the negative experiences found in so many petroleum producing countries, where petroleum has proved to be a curse instead of a blessing.

The draft Petroleum Fund Act has the following key features:

- **The Petroleum Fund's income:** all revenues emanating directly or indirectly from Timor-Leste's petroleum resources will flow into the Fund, as well as the return on the Fund's investments (net of management expenses). All the income of the Fund shall flow into an 'earmarked receipts account'. The Fund's opening balance on 1 July 2005 will be the accumulated First Tranche Petroleum payments, plus an amount to be determined by the Government to take into account the large petroleum revenues during the current fiscal year. [Articles 5 and 6]
- **The Petroleum Fund's expenditure:** transfers from the Fund can only be made to a designated State Budget account, and the sum of all transfers in a fiscal year can not exceed a ceiling set by Parliament when approving the State Budget. This ceiling will as a general rule correspond to the amount necessary to finance the deficit on the State Budget excluding petroleum revenues. The Budget approved by Parliament decides the level of domestic tax revenues and spending – be it on current public consumption or on investment in infrastructure and human capital. Since it is the Budget's financing need that determines the outflow from the Petroleum Fund, the Budget also decides the net allocation to the Petroleum Fund that gets invested in financial assets. This creates a direct link between the Budget approved by Parliament and the development of the Fund, and the Petroleum Fund will give a good representation of the Government's rate of savings and net financial asset position. [Article 7]
- The Government has separately adopted a savings/expenditure policy of maintaining the real value of the petroleum wealth, which will serve as a reference to determine the amount of money that should flow out of the Fund. This policy translates to spending the estimated sustainable income from petroleum, which is the amount that can be spent each year forever and therefore can be said to strike a good balance between the interests of current and future generations. On current calculations, this policy allows for a significant increase in Government spending in the medium term.
- The Act has specific reporting requirements imposed on the Government and the Consultative Council if the State Budget proposes to withdraw from the Petroleum Fund more than the **estimated sustainable income from petroleum**. While there at times may be good reasons to spend more than the estimated sustainable income, the

provisions in the Act should contribute to making sure that such decisions are transparent and well informed. [Articles 7 and 17]

- **The management of the Petroleum Fund:** The Government has responsibility for the overall management of the Fund, and the Minister of Planning and Finance will exercise key functions and competences. The operational management will be delegated to the Central Bank in accordance with a management agreement, and it is envisaged that other investment managers will be appointed. [Article 8]
- **The Investment Advisory Board** is an expert body that shall advise the Minister on any matter relating to the management of the Petroleum Fund. Members of the Board will include the Director of the Treasury, the Head of the Central Bank, two persons with significant experience in investment management and one other person. [Article 10]
- **The investment of the Petroleum Fund:** The Fund's savings will from the beginning be invested securely in low risk financial assets abroad. The Act stipulates that investments must be USD denominated debt instruments with a low credit risk (a minimum credit rating of Aa3 by Moody's or AA- by S&P). This will in practice mean investments mostly in government bonds, which means that the financial risk is seen to be limited and the expected investment return moderate. The investment strategy shall be reviewed within five years, when a larger Fund and improved institutional capacity may suggest a different asset allocation. [Article 9]
- **There will be independent, external audits** carried out by an internationally recognized accounting firm to bolster confidence that money going to, from or remaining in the Petroleum Fund are not misappropriated. The external auditor will also certify the calculation of the estimated sustainable income, and prepare a report on payments made by companies as Petroleum Fund receipts. [Articles 1, 7, 14, 20 and 23]
- **There will be an independent Consultative Council.** The Council is to advise Parliament on the operations of the Fund, acting as a "watchdog" and contributing to an informed public debate and a sound management of the petroleum wealth. Members of the Council will be appointed by the President, Parliament, Government and civil society, and there will in addition be seats for former Presidents, Speakers of Parliament, Prime Ministers, Ministers of finance and Heads of the Central Bank. [Articles 15, 16 and 17]
- **There are accountability, transparency and information features** to contribute to a wise management of the petroleum wealth. There will be a high degree of transparency of operations, including comprehensive and accessible reporting requirements – both on the management of the Fund and on whether the spending of petroleum revenues is consistent with long-term considerations. There are also information requirements on payments made by companies as Petroleum Fund receipts, which is a core element of the *Extractive Industries Transparency Initiative*. [Articles 7, 10, 14, 17, 18 and 20]

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**Law No. .../2005**  
**of .... ..... 2005**

This Act establishes a Petroleum Fund which seeks to meet with the constitutional requirement laid down in Article 139 in the Constitution of the Republic. This provision states that the petroleum resources shall be owned by the State, shall be used in a fair and equitable manner in accordance with national interests, and that the petroleum extraction should lead to the establishment of mandatory financial reserves.

The Petroleum Fund shall contribute to a wise management of the petroleum resources for the benefit of both current and future generations. The Petroleum Fund shall be a tool that contributes to sound fiscal policy, where appropriate consideration and weight is given to the long-term interests of Timor-Leste's citizens.

Efficient planning and proper execution of public sector budgets are key components of a sound management of the petroleum wealth. The Petroleum Fund is to be coherently integrated into the State Budget, and shall give a good representation of the development of public finances. The Petroleum Fund shall be prudently managed and shall operate in an open and transparent fashion, within the constitutional framework.

This Act lays down the key parameters for the operation and management of the Petroleum Fund. The Act governs the collection of and management of receipts associated with the petroleum wealth, regulates transfers to the State Budget, and provides for Government accountability and oversight of these activities.

Therefore, pursuant to Article 139 of the Constitution and for the purpose of establishing a fund of income from the exploitation of non-renewable petroleum resources for the needs of both current and future generations,

The Government presents to the National Parliament, pursuant to paragraph c), item 1, Article 97, and paragraph a), item 2, Article 115, of the Constitution of the Republic, the following draft law:

**Chapter I – General Provisions**

**Article 1**

**Citation**

This Act may be cited as the Petroleum Fund Act.

**Article 2**

**Definitions**

1.1 In this Act, unless the context requires otherwise:

“Central Bank” means the authority to be established under Section 143 of the Constitution of the Republic or, until such authority is established, the *Banking and Payments Authority*;

“Code” means the Petroleum Mining Code agreed and adopted by Timor-Leste and Australia under Article 7 of the Treaty, as amended, varied, modified or replaced from time to time, and regulations made and directions given under it;

“estimated sustainable income” for a fiscal year means the amount determined in accordance with the formula set out in Schedule 1;

“Exchange of Notes” means:

- (a) Exchange of Notes Constituting an Agreement between the Government of Australia and the United Nations Transitional Administration in East Timor, of 10 February 2000; or
- (b) Exchange of Notes Constituting an Agreement between the Government of Timor-Leste and the Government of Australia, of 20 May 2002.

“fiscal year” means the period of twelve (12) months from 1<sup>st</sup> July to 30<sup>th</sup> June;

“independent auditor” means the auditor appointed, from time to time, for the purpose of auditing the Government accounts as set out in the Timor-Leste law, or an internationally recognised accounting firm appointed pursuant to Article 23;

“investment manager” means the Central Bank and any person appointed as investment manager under Article 8;

“Minister” means the Minister in charge of finances;

“Parliament” means the National Parliament of Timor-Leste;

“petroleum” has the same meaning given to it in the Petroleum Act;

“Petroleum Act” means the Petroleum Act, 2005, as amended, varied, modified or replaced from time to time, and regulations made and directions given under it;

“petroleum authorisation” means:

- (a) an access authorisation, a petroleum contract, a prospecting authorisation or a seepage use authorisation, or any agreement made in respect of such an authorisation or contract, granted or entered into under the Petroleum Act; or
- (b) an authorisation or production sharing contract, or any agreement made in respect of such an authorisation or contract, granted or entered into under the Code;

“Petroleum Fund” means the Petroleum Fund for Timor-Leste established under Article 5;

“Petroleum Fund receipts” has the meaning given to it in Article 6;

“petroleum operations” means authorised activities under a petroleum authorisation;

“State Budget” means the State Budget referred to under Section 145 of the Constitution of the Republic;

“tax revenue” means any tax or duty imposed under Timor-Leste law;

“Timor-Leste” means the Democratic Republic of Timor-Leste; and

“Treaty” means the Timor Sea Treaty between the Government of Timor-Leste and the Government of Australia signed on 20th May 2002, as amended, varied, modified or replaced from time to time.

2.2 All terms in the present Act that are defined in the Timor-Leste law on budget and financial management have the same meaning given to it in that law.

### Article 3

#### Scope of the Act

This Act shall provide for the establishment and management of the Petroleum Fund, and the procedural rules relating thereto.

### Article 4

#### Inconsistencies

For the purposes of this present Act, in the event of any inconsistency between the provisions of the Act and the provisions in the law of Timor-Leste on budget and financial management, the provisions of the present Act shall prevail.

## **Chapter II – The Petroleum Fund for Timor-Leste**

### Article 5

#### Petroleum Fund for Timor-Leste

5.1 There is hereby established a Fund known as the Petroleum Fund for Timor-Leste.

5.2 The Petroleum Fund shall have an earmarked receipts account into which the Petroleum Fund receipts set out in Article 6 are credited. Transfers from the Petroleum Fund shall be made only in accordance with Article 7.

### Article 6

#### Petroleum Fund Receipts

6.1 The following amounts are Petroleum Fund receipts:

- (a) the gross revenue, including tax revenue, of Timor-Leste from any petroleum operations, including prospecting or exploration for, and development, exploitation, transportation, sale or export of petroleum, and other activities relating thereto;
- (b) any amount received by Timor-Leste from the Designated Authority pursuant to the Treaty;
- (c) any amount received by Timor-Leste from the investment of Petroleum Fund receipts, net of management expenses including that paid to the Central Bank pursuant to the management agreement referred to in Article 8.3;
- (d) any amount received from direct or indirect participation of Timor-Leste in petroleum operations; and
- (e) any amount received by Timor-Leste relating, directly or indirectly, to petroleum resources not covered in subparagraphs (a) to (d).

6.2 The opening balance of the Petroleum Fund is the total amount of the payments received by Timor-Leste, up to the commencement of the present Act, as *First Tranche Petroleum*, from the Joint Authority pursuant to the terms of the Exchange of Notes, or from the Designated Authority pursuant to the terms of the Treaty, increased by such amount, if any, as determined by the Government.

Article 7  
Transfers

7.1 The only debits permitted to the Petroleum Fund are electronic transfers made in accordance with this article to the credit of a single State Budget account.

7.2 The total amount transferred from the Petroleum Fund for a fiscal year shall not exceed the appropriation amount approved by Parliament for the fiscal year. Subject to Article 7.3, transfers from the Petroleum Fund by the Central Bank in the fiscal year, shall only take place after publication of the budget law, or any subsequent changes thereto, in the *Jornal da República*, confirming the appropriation amount approved by Parliament for that fiscal year.

7.3 Subject to Article 7.4, no transfer shall be made from the Petroleum Fund in the fiscal year unless the Government has first provided Parliament with reports:

- (a) specifying the estimated sustainable income for the fiscal year for which the transfer is made;
- (b) specifying the estimated sustainable income for the preceding fiscal year; and
- (c) from the independent auditor certifying the amount of the estimated sustainable income in paragraphs (a) and (b).

7.4 No transfer shall be made from the Petroleum Fund in a fiscal year in excess of the estimated sustainable income for the fiscal year unless the Government has first provided Parliament with:

- (a) the reports described in Article 7.3(a) and (b);
- (b) a report estimating the amount by which the estimated sustainable income for fiscal years commencing after the fiscal year for which the transfer is made will be reduced as a result of the transfer from the Petroleum Fund of an amount in excess of the estimated sustainable income of the fiscal year for which the transfer is made;
- (c) a report from the independent auditor certifying the estimates of the reduction in estimated sustainable income in paragraph (b); and
- (d) a detailed explanation of why it is in the long-term interests of Timor-Leste to transfer from the Petroleum Fund an amount in excess of the estimated sustainable income.

7.5 Transfers from the Petroleum Fund are exceptionally permitted for purposes of refund of tax, in the event of overpayment of tax under Article 6.1(a). This amount represents a reduction of the Petroleum Fund receipts, and shall not be considered as part of the appropriation approved under Article 7.2.

**Chapter III – Investment and Protection Rules**

Article 8  
Management of the Petroleum Fund

8.1 The Government is responsible for the overall management of the Petroleum Fund. In the exercise of any management functions and competences entrusted thereto, the Minister shall be accountable before the Prime Minister, and they both shall be accountable before the Council of Ministers and before Parliament.

8.2 The Minister shall not make any decisions in relation to the investment strategy or management of the Petroleum Fund without first seeking the advice of the Investment Advisory Board in accordance with Article 10.



8.3 The Minister shall enter into an agreement with the Central Bank for the operational management of the Petroleum Fund and the Central Bank shall be responsible for the operational management of the Petroleum Fund.

8.4 The Central Bank may propose to the Minister, either of its own motion or at the request of the Minister, the appointment of one or more investment managers to be responsible for managing the investment of amounts in the Petroleum Fund.

8.5. The Central Bank may appoint an investment manager proposed under Article 8.4 only if the Minister is satisfied that:

- (a) the investment manager is a legal person with sufficient equity capital and adequate guarantees and insurances against operational risks;
- (b) the investment manager has a sound record of operational and financial performance; and
- (c) the references and reputation of the investment manager in the field of fund management are of the highest standard.

8.6 The Government tendering procedures shall be followed for any appointment made pursuant to Article 8.5.

8.7 The Petroleum Fund shall be managed prudently in accordance with the principle of good governance for the benefit of current and future generations. The duty of the investment manager is to maximise the return on the Petroleum Fund investments having regard to appropriate risk as indicated by the investments permitted under Article 9, any subsidiary legislation under this Act, any instructions by the Minister and the management agreement referred to in Article 8.3.

8.8 The Central Bank shall present to the Minister quarterly reports on the performance and activities of the Petroleum Fund no later than twenty (20) days after the end of each quarter. The Central Bank shall provide for the publication of its reports in such form and manner as may be adapted for public information no later than forty (40) days after the end of the quarter. The Central Bank shall ensure that in releasing, or allowing access to, such reports measures are taken to prevent the disclosure of confidential information.

## Article 9 Investment Rules

9.1 Amounts in the Petroleum Fund shall be invested only in qualifying instruments described in Article 9.2.

9.2 Subject to Article 9.3, a qualifying instrument is:

- (a) a debt instrument denominated in United States Dollars that bears interest or a fixed amount equivalent to interest, that is:
  - (i) rated Aa3 or higher by the Moody's rating agency or rated AA- or higher by Standard & Poor's rating agency; and
  - (ii) issued by or guaranteed by the World Bank or by a sovereign State, other than Timor-Leste, provided the issuer or guarantor is rated Aa3 or higher by the Moody's rating agency or rated AA- or higher by Standard & Poor's rating agency; or
- (b) a United States Dollars deposit with, or a debt instrument denominated in United States Dollars that bears interest or a fixed amount equivalent to interest issued by:
  - (i) the Bank for International Settlements;
  - (ii) the Federal Reserve Bank of the United States; or

(iii) the Central Bank of a sovereign State, other than Timor-Leste, with a long-term foreign currency rating of Aa3 or higher by the Moody's rating agency or AA- or higher by the Standard & Poor's rating agency.

9.3 The investment manager shall dispose of an instrument if it ceases to be a qualifying instrument because of a change in the rating of the instrument or the issuer of the instrument within one month of the instrument ceasing to be a qualifying instrument.

9.4 The average interest rate duration of Petroleum Fund qualifying instruments under Article 9.2 shall be less than six (6) years.

9.5 A derivative instrument that satisfies Article 9.2 is a qualifying instrument only if the financial exposure does not exceed the exposure that would have resulted from investing directly in the underlying instrument.

9.6 The range of instruments included as qualifying instruments in Article 9.2 shall be reviewed by the Minister at the end of the first five (5) years of the Petroleum Fund existence, having regard to the size of the Petroleum Fund.

#### Article 10 Investment Advisory Board

10.1 There is hereby established an Investment Advisory Board that is responsible for:

- (a) developing for the Minister performance benchmarks of desired returns from, and appropriate risks of, the investments of the Petroleum Fund;
- (b) advising the Minister on the investment instructions that the Minister shall provide to the investment managers of the Petroleum Fund appointed pursuant to Article 8;
- (c) advising the Minister on the performance of the investment manager or managers and making recommendations to the Minister on the appointment or removal of investment managers; and
- (d) advising the Minister on the need for changes in the overall investment strategy or management of the Petroleum Fund, including the making of recommendations as to such changes.

10.2 Subject to Article 10.3, the Minister shall seek the advice of the Investment Advisory Board before making a decision on any matter relating to the investment strategy or management of the Petroleum Fund. If the Investment Advisory Board does not provide the advice requested in a timely manner, having regard to the nature of the advice sought, the Minister shall make the decision.

10.3 If, having regard to the nature of the decision, there is insufficient time to seek the advice of the Investment Advisory Board in relation to a particular decision, the Minister shall make a decision without first seeking the advice of the Investment Advisory Board.

10.4 If the Minister makes a decision under Article 10.2 or 10.3, the Minister shall immediately report the making of the decision to the Investment Advisory Board. The Minister shall reexamine the decision having regard to any subsequent advice provided by the Investment Advisory Board.

10.5 Any advice given by the Investment Advisory Board on investment strategy or management of the Petroleum Fund shall take into account:

- (a) the overall objective that the Petroleum Fund be a fund of income from the exploitation of non-renewable petroleum resources for the benefit of current and future generations;

- (b) the current conditions, opportunities and constraints in investment markets, and the constraints under which the Central Bank and other key institutions in Timor-Leste operate; and
- (c) the need to ensure that sufficient amounts are available when needed for transfers referred to in Article 7.

10.6 The members of the Investment Advisory Board shall be:

- (a) the Director of Treasury;
- (b) the Head of the Central Bank;
- (c) two persons appointed by the Minister with significant experience in investment management; and
- (d) one other person appointed by the Minister.

10.7 The Central Bank shall provide the secretariat for the Investment Advisory Board and any support required by the board to carry out its functions.

10.8 The Minister shall provide, in accordance with Timor-Leste law:

- (a) a person to sit on the secretariat of the Investment Advisory Board; and
- (b) appropriate remuneration for the members of the Investment Advisory Board appointed under Article 10.6(c) and 10.6(d).

10.9 The Investment Advisory Board shall determine the rules of procedure under which it operates.

10.10 When required by Parliament, the Government shall provide Parliament with all advices given thereto by the Investment Advisory Board. The Minister shall ensure that in releasing, or allowing access to, advices given thereto, measures are taken to prevent the disclosure of confidential information.

#### Article 11

#### No Encumbrances on the Assets of the Petroleum Fund

11.1 Any amount that is invested pursuant to Article 9 shall, at all times, remain the property of Timor-Leste.

11.2 Any contract, agreement or arrangement, to the extent that it purports to encumber the assets of the Petroleum Fund, whether by way of guarantee, security, mortgage or any other form of encumbrance, is null and void.

### **Chapter IV – Supervision of the Petroleum Fund**

#### Article 12

#### Maintenance of Petroleum Fund Accounts and Records

12.1 The Director of Treasury is responsible for maintaining the Petroleum Fund accounts and records in accordance with the International Accounting Standards in force, to reflect the operations and financial condition of the Petroleum Fund.

12.2 The Director of Treasury shall submit to the Minister quarterly management information reports and analyses on the performance and activities of the Petroleum Fund no later than twenty (20) days after the end of each quarter.

12.3 The Director of Treasury is responsible for reporting on the performance and activities of the Petroleum Fund for the purpose of the annual financial statements of Timor-Leste.

Article 13  
Internal Audit

The accounts, records, and financial statements of the Petroleum Fund shall be audited every six months by the Government bodies responsible for the internal audit of the concerned Government departments.

Article 14  
Annual Report

14.1 The Minister/Government shall submit an Annual Report for the Petroleum Fund for a fiscal year to Parliament, at the same time as the annual financial statements of that year are submitted to Parliament.

14.2. The Annual Report for the Petroleum Fund shall be prepared in a manner that makes it readily adaptable for public information, and shall contain the following information for the fiscal year for which the Report is prepared:

- (a) audited financial statements conducted by the independent auditor, comprising:
  - (i) an income and expenditure statement;
  - (ii) a balance sheet, including a note listing the qualifying instruments of the Petroleum Fund;
  - (iii) details of all appropriations and transfers from the Petroleum Fund; and
  - (iv) notes to the financial statements, as appropriate;
- (b) a report signed by the Minister describing the activities of the Petroleum Fund in the year, including all advice provided by the Investment Advisory Board, any reports prepared by the independent auditor under Article 20 and drawing attention to particular issues or matters that may be of concern or interest to Parliament;
- (c) a statement by the Treasurer drawing attention to any accounting issues or practices arising from the Report that may materially affect the interpretation of amounts or activities shown within it;
- (d) the income derived from the investment of Petroleum Fund assets during the fiscal year compared with the income of the previous three fiscal years;
- (e) a comparison of the nominal income realized on the investment of Petroleum Fund assets with the real return after adjusting for inflation;
- (f) a comparison of the income derived from the investment of Petroleum Fund assets with the benchmark performance indices provided to the Minister pursuant to Article 10.1;
- (g) a comparison of the estimated sustainable income for the fiscal year with the sum of transfers from the Petroleum Fund for the year;
- (h) in the event of Government borrowings, the liabilities shall be reflected in the presentation of Petroleum Fund accounts so as to give a true representation of the past and expected future development of the Government's net financial assets and rate of savings; and
- (i) a list of persons holding positions relevant for the operation and performance of the Petroleum Fund, including:
  - (i) the Minister;
  - (ii) the Director of Treasury;
  - (iii) the members of the Investment Advisory Board;
  - (iv) the investment manager or managers;
  - (v) the Head of the Central Bank; and

(vi) the members of the Petroleum Fund Consultative Council.

## **Chapter V – Petroleum Fund Consultative Council**

### Article 15

#### Petroleum Fund Consultative Council

15.1 There is hereby established a Petroleum Fund Consultative Council.

15.2 The Petroleum Fund Consultative Council shall:

- (a) advise Parliament on matters relating to the performance and operation of the Petroleum Fund;
- (b) advise Parliament on appropriations from the Petroleum Fund as set out in Article 17.2; and
- (c) in the context of the budgetary process, advise Parliament on whether the appropriations of the Petroleum Fund are being used effectively to the benefit of current and future generations.

### Article 16

#### Composition

16.1 The Petroleum Fund Consultative Council shall comprise the following members, who are to be appointed in accordance with procedures laid down by Parliament:

- (a) former Presidents of the Republic who were not removed from office;
- (b) former Speakers of the Parliament who have effectively been in office for at least three (3) years;
- (c) former Prime Ministers who have effectively been in office for at least three (3) years;
- (d) former Ministers in charge of finances who have effectively been in office for at least three (3) years;
- (e) former Heads of the Central Bank who have effectively been in office for at least three (3) years;
- (f) a member appointed by the President of the Republic;
- (g) a member appointed by Parliament;
- (h) a member appointed by the Government;
- (i) a member appointed to represent civil society non-profit organisations;
- (j) a member appointed to represent the private business sector; and
- (k) a member appointed to represent religious organisations.

16.2 The members of the Petroleum Fund Consultative Council referred to in paragraphs (a), (b) and (c) of Article 16.1 are appointed from the end of their term in office for a period of ten (10) years. These members are not eligible for reappointment.

16.3 The members of the Petroleum Fund Consultative Council referred to in paragraphs (d) and (e) of Article 16.1 are appointed from the end of their term in office for a period of five (5) years. These members are not eligible for reappointment.

16.4 The members of the Petroleum Fund Consultative Council referred to in paragraphs (f), (g), (h), (i), (j) and (k) of Article 16.1 are appointed for a period of three (3) years. These members are eligible for reappointment for a second term.

16.5 The members of the Petroleum Fund Consultative Council referred to in paragraphs (i), (j) and (k) of Article 16.1 shall be appointed according to procedures laid down by Parliament.

16.6 Subject to approval by Parliament, the Petroleum Fund Consultative Council may select and appoint as its international adviser for economic and financial matters, for a period of two (2) years, an academic or professional of the highest reputation and competence.

16.7 A person shall not be appointed as a member of the Petroleum Fund Consultative Council if the person:

- (a) has been declared bankrupt or insolvent; or
- (b) has been convicted of a criminal offence.

16.8 Members of the Petroleum Fund Consultative Council have security of tenure and, unless otherwise provided for by law, may not be suspended, retired or removed from office.

16.9 The appointment of a member of the Petroleum Fund Consultative Council ceases if the member:

- (a) is declared bankrupt or insolvent;
- (b) is convicted of a criminal offence; or
- (c) is unfit for office.

[16.10 Until such time as specific procedures for the removal of a member under paragraph (c) of Article 16.9 are established by law, the procedures applicable for the removal of judges shall apply.]

#### Article 17

##### Working Principles and Powers of the Petroleum Fund Consultative Council

17.1 In conducting its activities, the Petroleum Fund Consultative Council shall take into account:

- (a) the overall objective that the Petroleum Fund be a fund of income from the exploitation of non-renewable petroleum resources for the benefit of current and future generations; and
- (b) the principles for the operation of the Petroleum Fund as outlined in this present Act.

17.2 When:

- (a) the Government introduces legislation to Parliament to appropriate an amount from the Petroleum Fund, and
- (b) the amount the legislation would appropriate in the fiscal year is greater than the estimated sustainable income of the Petroleum Fund for the fiscal year,

the Petroleum Fund Consultative Council shall submit, in a timely manner, an opinion to the Parliament on the Government's proposed appropriation. If the Petroleum Fund Consultative Council does not provide its opinion in a timely manner, Parliament shall make the decision.

17.3 Parliament shall provide for the publication of the advices of the Petroleum Fund Consultative Council, including minority opinions, in such form and manner as may be adapted for public information. Parliament shall ensure that in releasing, or allowing access to, advices of the Petroleum Fund Consultative Council measures are taken to prevent the disclosure of confidential information.

17.4 For purposes of advising Parliament, the Petroleum Fund Consultative Council shall consult widely in the community and, to this end, shall hold an annual forum on issues relating to the Petroleum Fund.

17.5 The Petroleum Fund Consultative Council shall determine the rules of procedure under which it will operate.

17.6 Parliament shall provide adequate funding for the operations of the Petroleum Fund Consultative Council, including appropriate remuneration for members of the Petroleum Fund Consultative Council, through the budgetary appropriation for the operation of Parliament.

17.7 The Minister and/or the Head of the Central Bank shall furnish the Petroleum Fund Consultative Council with information it requests on any aspect of the operation or performance of the Petroleum Fund for the purpose of its monitoring of the Petroleum Fund. The Petroleum Fund Consultative Council shall ensure that measures are taken to prevent the disclosure of confidential information.

## **Chapter VI – Transparency**

### **Article 18**

#### **Transparency as a Fundamental Principle**

18.1 The management of the Petroleum Fund shall always be carried out, and the related duties of all relevant parties shall be discharged, with the highest standard of transparency. Unless it is demonstrated that certain information should be treated as confidential, it shall be deemed susceptible of public release.

18.2 In the exercise of its functions and competences, and as provided for in this present Act, Parliament, the Government, the Minister, Central Bank, Investment Advisory Board and the Petroleum Fund Consultative Council shall take all necessary measures to ensure transparency mechanisms and free access to public information.

18.3 The Minister shall ensure that this present Act, any subsidiary legislation made thereunder, any instructions relating to the Petroleum Fund, the management agreement referred to in Article 8.3 and the reports referred to in Article 7.3 and 7.4 are readily available to the public.

### **Article 19**

#### **Payments into the Petroleum Fund Account**

For all purposes of Timor-Leste law, a payment made as a Petroleum Fund receipt shall not be treated as paid unless it has been deposited, fully and effectively, in the Petroleum Fund earmarked receipts account.

### **Article 20**

#### **Payments made as Petroleum Fund Receipts**

20.1 The independent auditor shall prepare a report for the Minister of all payments made as Petroleum Fund receipts for each fiscal year.

20.2 The independent auditor's report shall state the aggregate amounts of payments made as Petroleum Fund receipts for each payer for the fiscal year.

20.3 If there are reasonable grounds for the independent auditor to believe that there is a discrepancy between the Petroleum Fund receipts and the payments made as Petroleum Fund receipts, the independent auditor may require any payer to provide any information and to make proof of facts necessary for the clarification of such discrepancy.

20.4 If the independent auditor concludes that there is a discrepancy that cannot be accounted for, the independent auditor shall refer the matter to the Minister. In referring the matter to the Minister, the independent auditor shall provide all information that the independent auditor possesses regarding the discrepancy in question.

20.5 The Minister shall provide for the publication of the independent auditor's report in such form and manner as may be adapted for public information. The independent auditor shall ensure that in preparing the report measures are taken to prevent the disclosure of confidential information.

## **Chapter VII – Penalties**

### Article 21-A

#### Scope

The provisions included in this Chapter are without prejudice of criminal and civil liability under general law.

### Article 21-B to “n”

[To be drafted at a later stage, taking into account the developments in the general penal regime which are expected to take place in the near future.]

## **Chapter VIII – Transitional and Final Provisions**

### Article 22

#### Appointment of Investment Managers

The requirement of Article 8.6 enters into force six (6) months after the date of entry into force of this present Act, and shall apply to all appointments of investment managers made thereafter. Any appointment of investment managers made during the six (6) months after the date of entry into force of this present Act shall lapse after the five (5) year period referred to in Article 9.6.

### Article 23

#### Independent Auditor

Once the hierarchy of the administrative, tax and audit courts is established, and without prejudice of the powers and competences of such courts, there shall be appointed an independent auditor, which will be an internationally recognized accounting firm selected by the Government.

### Article 24

#### Subsidiary Laws and Regulations

The Government and the Minister may make regulations for the effective carrying out of the provisions of this present Act including regulations of a transitional nature consequent upon the making of this present Act.

### Article 25

#### Entry into force and application

25.1 This present Act enters into force on the day following its publication in the *Jornal da República*.



25.2 This present Act applies to fiscal years commencing on or after 1 July 2005.

Schedule 1  
Calculating estimated sustainable income for a fiscal year

I. Estimated sustainable income for a fiscal year is the maximum amount that can be appropriated from the Petroleum Fund in that fiscal year and leave sufficient resources in the Petroleum Fund for an amount of the equal real value to be appropriated in all later fiscal years as determined in accordance with the formula in paragraph II below. The amount determined in accordance with the formula in paragraph II below shall be certified by the independent auditor.

II. Estimated sustainable income for a fiscal year is calculated according to the following formula:

$$r \times \textit{petroleum wealth}$$

where:

**r** is the estimated average real rate of return, or real interest rate, on Petroleum Fund investments in the future and, at the commencement of this present Act, is 3.0%.

III. In this Schedule, “petroleum wealth” is calculated according to the following formula:

$$V + \textit{present value} (R_1, R_2, \dots, R_n) = V + \sum_{t=1}^n \frac{R_t}{(1+i)^t}$$

where:

**V** is the estimated value of the Petroleum Fund at the end of the prior fiscal year

**R<sub>1</sub>, R<sub>2</sub>, etc.** are the published budget projections for expected annual Petroleum Fund receipts for that fiscal year (R<sub>1</sub>) and future fiscal years (R<sub>2</sub>, etc.)

**i** is the estimated nominal yield on a U.S. government security, averaged over the years in which Petroleum Fund receipts are expected

**n** is the number of years until no further Petroleum Fund receipts are projected to be received.

Approved in Council of Ministers, on ..... 2005  
The Prime Minister

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Mari Alkatiri

The Minister of Planning and Finance

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Madalena Boavida