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República Democrática de Timor-Leste

National Parliament

Law No. 3/2003
of 1 July

TIMOR SEA PETROLEUM DEVELOPMENT (TAX STABILITY) ACT

This Law permits the Government to enter into agreements with investors in the Joint Petroleum Development Area (established by the Timor Sea Treaty) to stabilize the tax regime for a long-term petroleum project.

The Taxation of Bayu-Undan Contractors Act, which accompanies this Law, establishes the tax regime for the development of the Bayu-Undan field. At present, the only tax stability agreement being contemplated by the Government is for the Bayu-Undan project.

This Law has the effect of protecting investors from increases in general tax rates that occur after the Government and the investor have agreed a tax regime for the investor's petroleum project. This Law also denies the investor the benefit of decreases in general tax rates that occur after the Government and the investor have agreed a tax regime.

This Law encourages development of petroleum resources in the JPDA because it provides assurance to investors that their tax obligations to Timor-Leste will not change over the life of a long project. It also enables Timor-Leste to predict the revenue it will receive from long-term petroleum projects.

The National Parliament decrees, in accordance with article 92, part b) of paragraph 2 of article 95, and paragraphs 1 and 2 of article 139 of the Constitution of the Republic, with the weight of the law, the following:

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Article 1

Definitions

For the purpose of this Act:

"Change in Taxes" means a change in the Taxes applicable to or related to the petroleum activities in the Joint Petroleum Development Area or in respect of the rates at which such Taxes are charged or the manner in which liability in respect thereof is calculated or payments or refunds are made;

"Constitution" means the Constitution of the Republic;

"Contractor" means the holder of a production sharing contract with the Designated Authority relating to the conduct of petroleum activities in the Joint Petroleum Development Area;

"Enforcement Court" means the Court of Appeals established pursuant to Section 4 of UNTAET Regulation No. 2000/11, as amended by UNTAET Regulation No. 2001/25, as adopted by the Constitution, or its equivalent as may be established by legislation pursuant to the Constitution;

"Designated Authority" means the Designated Authority established under Article 6 of the Timor Sea Treaty;

"Designated Minister" means the Minister responsible for finance;

"Government" means the Government of the Republic;

"Joint Petroleum Development Area" means the Joint Petroleum Development Area established under Article 3 of the Timor Sea Treaty;

"New York Convention" means the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958;

"Procedural Legislation" means legislation of the Republic enacted upon its accession to the New York Convention setting out procedures for the recognition and enforcement of arbitral awards by the courts of the Republic;

"Republic" means República Democrática de TimorLeste;

"Tax" or "Taxes" means any assessment, tax, charge, duty, fee, levy, impost, excise, withholding or other payment imposed by or under any law of the Republic including any local jurisdiction of the Republic;

"Tax Stability Agreement" means an agreement described in Section 1 of Article 1 of this Act;

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"Timor Sea Treaty" means the Timor Sea Treaty of 20 May 2002 between the Government and the government of Australia.

Article 2

Tax Stability Agreement

1. In the case of any long term project (being a project of more than fifteen (15) years' expected duration and production from which commences after entry into force of the Timor Sea Treaty) relating to the conduct of petroleum activities in the Joint Petroleum Development Area, the Government may enter into an agreement with a Contractor which guarantees the tax stability of the project by reference to the laws of the Republic in force on the effective date of the agreement in respect of:

a) Taxes applicable to or related to the petroleum activities in the Joint Petroleum Development Area in accordance with Article 5(b) of the Timor Sea Treaty; and

b) the rates at which such Taxes are charged, and the manner in which liability in respect thereof is calculated and payments and refunds are made.

2. A Tax Stability Agreement may be made by the Prime Minister of the Republic or the Designated Minister and may provide for disputes thereunder to be settled in any manner (including by international arbitration) and for that purpose, the laws of such place as shall be agreed by the parties thereto shall apply.

Article 3

Indemnity or Exemption

1. For the purposes of giving effect to a guarantee of tax stability set out in a Tax Stability Agreement, the agreement may provide that if, at any time commencing on the effective date of the agreement (which may be earlier than the date on which it is signed) and continuing for a period not exceeding the life of the project, there is a change in the Taxes applicable to or related to the petroleum activities in the Joint Petroleum Development Area or in respect of the rates at which such Taxes are charged or the manner in which liability in respect thereof is calculated or payments or refunds are made, the Government undertakes to:

a) exempt the Contractor or its shareholders from the effect of the Change in Taxes; or

b) indemnify the Contractor or its shareholders for the effect of the Change in Taxes.

2. Where, under a Tax Stability Agreement, the Government has become liable to grant to the Contractor or its shareholders an exemption or indemnify the Contractor or its shareholders, the Designated Minister shall discharge that liability by executing, in appropriate form, an instrument under his hand which, in the case of an exemption, relieves the Contractor or its shareholders of the effect of the Change in Taxes or, in the case of an indemnity, authorizes payment or equivalent consideration that results in the reimbursement of the Contractor or its shareholders for the effect of the Change in Taxes, together with interest, if any.

3. Such payment or equivalent consideration shall not be included in the taxable income of the Contractor.

Article 4

Exercise of Discretion

Nothing in this Act or in any Tax Stability Agreement shall restrict (a) the way in which any Tax is administered or (b) the proper exercise of any discretion authorized under any law of the Republic, where there is no Change in Taxes.

Article 5

Enforcement of Arbitral Awards

1. The courts of the Republic shall recognise as final and binding arbitral awards pursuant to arbitration as provided for in a Tax Stability Agreement and shall enforce them, subject to the provisions of this Article.

2. The tribunal of the Republic authorized to deal with matters of recognition and enforcement of an award of the arbitral tribunal by the Republic shall be the Enforcement Court.

3. The Enforcement Court shall recognise and enforce an arbitral award pursuant to arbitration under a Tax Stability Agreement in all instances unless the party against whom the award is invoked furnishes to the Enforcement Court proof that:

(a) The parties to the arbitration agreement were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced; or

(d) The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

4. The Enforcement Court shall recognise and enforce an arbitral award pursuant to arbitration under a Tax Stability Agreement in all instances unless it finds that the recognition or enforcement of the award would be contrary to the public policy of the Republic.

5. If (a) the Enforcement Court has not recognised and enforced an award granted by an arbitral tribunal pursuant to arbitration under a Tax Stability Agreement within 60 days of the application of the prevailing party to the Enforcement Court and (b) the reasons for non-recognition or non-enforcement are other than the reasons set forth in Sections 3 and 4 of this Article, the prevailing party may set off the amount of the award against other monies payable by the prevailing party to the other party.

6. Nothing in this Act and no decision made by the Enforcement Court prevents or in any way restricts any party to the award from having the award recognised and enforced in any country other than the Republic.

7. Upon (a) accession to the New York Convention by the Republic in a manner such that a Tax Stability Agreement would be subject to the New York Convention and (b) the enactment of Procedural Legislation, the provisions of this Act regarding the enforcement of arbitral awards (including the right of set-off established in Section 5 of this Article) shall cease to apply.

Article 6

Entry into Force

This Act shall be deemed to have entered into force as of 20 May 2002.

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Approved on 5 June 2003

The President of the National Parliament

Francisco Guterres “Lu-Olo”