

DEMOCRATIC REPUBLIC OF TIMOR-LESTE

Parliamentary Law

12/2011

First amendment to Law no. 9/2005, of 3rd August, Petroleum Fund Law

Preamble

The Petroleum Fund was established in 2005, the aim of which was to contribute towards the efficient management of petroleum resources and a sustainable fiscal policy. Law no. 9/2005, of 3rd August proceeded to regulate the operational management and investments policy of the Petroleum fund, including the deposit and management of oil revenues, transfers to the General State Budget, as well as the supervisory and accountability regime.

The aim of the present diploma is to alter investment rules and principles, thus allowing for greater flexibility in terms of diversification of portfolio of applications to, in the future, increase the return on investment, within the framework of a clear definition of the risk exposure limits

The present Law also incorporates “Generally Accepted Principles and Practices” also known as the “Santiago Principles”, proposed by the International Work Group on “Sovereign Wealth Funds” and which represent the effort made by international cooperation to identify best governance and investment policy practices, aimed at guaranteeing that Timor-Leste will continue to be an example as far as the management of this type of funds is concerned.

Thus, National Parliament hereby decrees that the following shall be considered law under the terms of paragraph no. 1 of article 95 of the Constitution:

Article 1

Amendment to Law no. 9/2005 of 3rd August

Articles 2, 5, 9, 11, 12, 13, 14, 15, 16, 17, 20, 24 and 33 of Law no. 9/2005, of 3rd August shall read as follows:

"Article 2

Definitions

1. For the purposes of this Law, unless the context requires otherwise:

a) “Exchange of Notes Agreement” means:

(i) Exchange of Notes Constituting an Agreement between the Government of Australia and the United Nations Transitional Administration (UNTAET) in Timor-Leste, of 10th February 2000; or

(ii) Exchange of Notes Constituting an Agreement between the Government of Timor-Leste and the Government of Australia, of 20th May 2002.

b) “Fiscal Year” means the period of twelve (12) months from 1st January to 31st December of each year.

c) “Independent Auditor” means an internationally recognised accounting firm appointed for the purpose of auditing the Government accounts as set out in the Timor-Leste law until the administrative, tax and audit courts are established, or thereafter an internationally recognised accounting firm appointed pursuant to Article 34;

d) “Petroleum Authorisation” means:

(i) 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 Activities Law; or

(ii) 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;

e) “Central Bank” means the authority to be established under Article 143 of the Constitution of the Republic;

f) “Code” means the Provisional Petroleum Mining Code adopted under Article 7 of the Treaty, including amendments, modifications, derogations and repeals it may be the object of, and regulations made and directions given under it;

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

h) “Investment Manager” means the Operational Manager and any person appointed as Investment Manager under Article 12;

i) Operational Manager means the Central Bank or any other public entity created by law of the National Parliament whose responsibility is the operational management of the Petroleum Fund;

j) Petroleum Activities Law means Law no. 13/2005, of 2nd September – Petroleum Activities Law, including amendments, modifications, derogations and repeals it may be the object of, and regulations made and directions given under it;

k) “Minister” means the Minister in charge of finances;

l) “Petroleum Operations” means authorised activities under a Petroleum Authorisation;

m) “State Budget” means the State Budget referred to under Article 145 of the Constitution of the Republic;

n) “Payer/Contributor” means any entity on which there is an obligation to make a payment into the Petroleum Fund;

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

p) “Petroleum” has the same meaning given to it in Law no 13/2005 of 2nd September - the Petroleum Activities Law;

q) “Investment Policy” means a public declaration on the principles to which investment is subject, the desired risk profile, the allocation of assets, the universe of applications, portfolios and reference standards or other questions related to the general investment policy.

- r) “Petroleum Fund Receipts” has the meaning given to it in Article 6;
- s) “Tax Revenue” means any tax, rates or duty imposed under Timor-Leste law;
- t) “Estimated Sustainable Income” for a Fiscal Year means the amount determined in accordance with the formula set out in Annex 1;
- u) “Timor-Leste” means the Democratic Republic of Timor-Leste; and
- v) “Treaty” means the Timor Sea Treaty between the Government of Timor-Leste and the Government of Australia signed on 20th May 2002, including the amendments, modifications, derogations and repeals it may be the object of.

2. All terms in the present Law that are defined in the Timor-Leste law on Budget and Financial Management have the same meaning given to it in that law.

Article 5

Petroleum Fund for Timor-Leste

1. There is hereby established a fund known as the Petroleum Fund for Timor-Leste.
2. The Petroleum Fund, including investments made pursuant to the present law and any other accounts related to revenues legally allocated to the Petroleum Fund and under the custody of any entities of a financial nature, including external investment managers, shall always be held in the name of the operational manager and consistent with the commercial mandate, operated on its behalf, in strict compliance with the provisions set out in article 115, the petroleum receipts being credited pursuant to article 6.
3. The Petroleum Fund has no legal personality.
4. Transfers from the Petroleum Fund shall be made only in accordance with Articles 7 to 10.
5. The information and details concerning the State Budget account referred to in Article 7.1 and the accounts referred to in paragraph 2 of this article shall obligatorily be made public by way of the publication of the operation management contract of the Petroleum fund to which Article 11.3 refers.

Article 9

Transfers exceeding the Estimated Sustainable Income

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 paragraphs 8. (a) and 8. (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;
- (c) a report from the Independent Auditor certifying the estimates of the reduction in Estimated Sustainable Income in paragraph (b) above; 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.

Article 11

Management of the Petroleum Fund

1. The Government is responsible for the overall management of the Petroleum Fund.
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 16.
3. The Minister shall enter into an agreement with the Operational Manager for the operational management of the Petroleum Fund and such Operational Manager shall be accountable to the Government for the operational management of the Petroleum Fund.
4. The Petroleum Fund shall be managed prudently in accordance with the principle of good governance for the benefit of current and future generations.

Article 12

External Investment Managers

1. The Operational Manager may propose to the Minister, either of its own motion or at the request of the Minister, the appointment of one or more external Investment Managers to be responsible for managing the external financial applications from the Petroleum Fund.
2. The Operational Manager may select and appoint one or more external Investment Managers pursuant to the provisions set out in Article 12 and in compliance with the following paragraph, only if the Minister is satisfied that:
 - (a) the external Investment Manager is a legal person with sufficient equity capital and adequate guarantees and insurances against operational risks;
 - (b) the external Investment Manager has a sound record of operational and financial performance; and
 - (c) the commercial references and international reputation of the external Investment Manager in the field of fund management are of the highest standard.
3. In the case the external Investment Manager is a national legal person, the requirements referred to in sub-paragraphs b) and c) of the above paragraph may be ignored, as long as the Manager proves that the risks inherent to the non-compliance of these criteria are duly safeguarded, the Minister shall confirm and submit for approval in Council of Ministers
4. Pursuant to paragraph 1 of this article, the Operational Manager shall be responsible for the international tendering procedures required for any type and value of contract in accordance with the substantive provisions of the law of Timor-Leste, as well as and under the same terms, for the contracting of any other professional services under the operational management agreement referred to in Paragraph 11.3.
5. The operational management contract referred to in paragraph 11.3, entered into with the external Investment Manager, shall establish the clauses and procedures by which it shall be terminated.
6. 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 Articles 14 and 15, any subsidiary legislation under this Law, any instructions issued by the Minister and the operational management agreement referred to in Paragraph 11.3.

Article 13
Quarterly Reports on the Petroleum Fund

1. The Operational Manager shall present to the Minister quarterly reports on the performance and activities of the Petroleum Fund, in relation to the reference standards of the performance of the overall investment, no later than twenty (20) days after the end of each quarter.
2. The Operational Manager shall provide for the publication of its reports no later than forty (40) days after the end of the quarter.
3. The Operational Manager shall ensure that in releasing, or allowing access to, such reports measures are taken to prevent the disclosure of confidential information.

Article 14
Investment Policy

1. The Minister shall lay out the investment policy of the Petroleum Fund by applying the principles of portfolio diversification, with the purpose of maximising the financial return of the Petroleum Fund in relation to the assumed risk threshold, by taking into account the purpose of the Fund, the conditioning factors under which it operates and Timor-Leste's risk bearing capacity.
2. The investment policy which underpins the portfolio allocation shall always incorporate sufficient amounts to be able to immediately respond to transfers requested by the State Budget or to adjust the applications profile in relation to the tolerated risk level.
3. The Minister and the Operational Manager shall develop and maintain policies, systems and procedures which guarantee the identification, monitoring and management of risks associated with the implementation of the investment strategy.
4. The management of the Petroleum Fund shall comply with regulated obligations, including mandatory publications, which are in force on the market and in the country where the application is made.
5. The Minister shall submit to the National Parliament a summary of its investment policy proposal of the Petroleum Fund, together with the Petroleum Fund Annual Report or before any decisions are taken implying alterations to the allocation of the principal assets.
6. The annual report shall also include a public declaration on the way the provisions set out in this and the following articles were complied with during the past year.

Article 15
Investment Rules

1. Under the terms of the criteria in this article, in order to qualify as eligible investment the qualifying instrument shall be issued or, in the case the investment takes place abroad, in internationally recognised jurisdiction.
2. Not less than fifty per cent (50%) of the amounts in the Petroleum Fund shall be invested in qualifying instruments under the form of fixed and floating rate debt securities, or other fixed income assets, equivalent to interest and provided that:
 - a) it has been determined that the debt instruments are of a quality at least equal to the degree of investment or
 - b) The deposits are held in financial institutions with a risk rating, at least, corresponding to their classification as degree of investment

3. Not more than fifty per cent (50%) of the amounts in the Petroleum Fund may be invested in qualifying instruments under the form of applications in variable income securities, namely listed stock and provided that:

- a) The variable income securities are traded in a regulated financial market, and
- b) The participation does not exceed five percent (5%) of the capital issued by the issuing body.

4. No more than five percent (5%) of the amounts in the Petroleum Fund shall be applied in other qualifying investments and provided that:

- a) The Minister has included that other class of assets, of which the investment is part, in the proposed portfolio distribution submitted to National Parliament, in compliance with paragraph 5 of article 14, and
- b) The rules and criteria underling the selection, management and assessment of each individual financial instrument, with a certain class of assets, have been approved by the Minister and published.

5. The exposure of the Petroleum Fund:

- a) to each company or issuing body by way of qualifying instruments, with the exception of sovereign States, may not exceed three percent (3%) of the total value of the Petroleum Fund;
- b) to each class of assets shall in liquid terms be positive.

6. Notwithstanding paragraphs 1 and 2 of article 20, the costs related to any transaction of securities on the market made by the Fund or, the participation in short-term loan operations of any instruments, provided they are carried out in accordance with prudent asset management principles, they shall not be considered as an encumbrance or cost for the Petroleum Fund.

7. A derivative shall only be considered a qualifying instrument when:

- a) it used to reduce the risk for the Fund resulting from the use of the instrument or instruments underlying the derivative, or to help the desired exposure of an asset be efficiently accomplished; and
- b) The risk resulting from its use is not higher than that which would result from the direct exposure to the assets which are underlying and typified in the present law; and
- c) The Minister has established conditions in relation to the legitimacy of its operational use.

8. The Minister shall determine the period during which the Investment Managers must dispose of the derivative, when this is no longer a qualifying instrument, due to the alteration in its risk rating or alteration in the risk rating of its issuer.

Article 16

Investment Advisory Board

16.1 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 external Investment Managers of the Petroleum Fund appointed pursuant to Article 12;

(c) advising the Minister on the performance of the external Investment Managers and making recommendations to the Minister on the approval or termination of the corresponding contracts; and

(d) advising the Minister on the need for changes in the investment policy or management of the Petroleum Fund.

2. Subject to Article 18, 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.

3. Any advice given by the Investment Advisory Board on the investment policy 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 Operational Manager 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.

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

Article 17

Structure of the Investment Advisory Board

1. The Investment Advisory Board shall consist of five (5) or more members, appointed by the Prime Minister, advised by the Minister, three (3) of them at least must have considerable experience in the area of investment management.

2. The Director of Treasury and a representative of the Operational Manager shall be entitled to participate with no voting rights in the meetings of the Investment Advisory Board.

3. The Operational Manager shall provide all the necessary support that the Investment Advisory Board shall need to fully perform its duties, the Minister indicating who the representative of the Ministry in that body shall be. ;

4. Under the terms of paragraph 1 of this article, the order appointing the Members of the Investment Advisory Board shall under the terms of the applicable law, determine the remuneration they shall be subject to.

5. Before taking office, the members of the Investment Advisory Board shall submit a written declaration explaining how their appointment presents no conflict with other personal or family interests and such declaration shall also explain where their patrimony is located upon their taking office.

Article 20

No Encumbrance on the assets of the Petroleum Fund

1. Any amount that is invested pursuant to Articles 14 and 15 shall, at all times, remain the property of Timor-Leste.

2. Any contract or agreement may constitute an encumbrance, under any of its forms, on the assets of the Petroleum Fund, up to a limit of 10% of the total amount in the Petroleum Fund up to the value date of the constitution of such encumbrance, provided that the principles set

out in the general regime of constitution, issuance or management of public debt are respected.

Article 24
Information contained in the annual report

1. The Annual Report for the Petroleum Fund shall be prepared in a manner that makes it readily adaptable for public information, and shall contain in particular the following information for the Fiscal Year:

(a) audited financial statements certified by the Independent Auditor, comprising:

i an income, investment and expenditure statement;

ii a balance sheet with the results of the applications, including a note listing the qualifying instruments of the Petroleum Fund, valued at market value;

iii details of all appropriations and transfers to the State Budget from the Petroleum Fund; and

iv notes to the financial statements, as appropriate;

(b) a report signed by the Minister describing the financial activities of the Petroleum Fund in the past year, including all advice provided by the Investment Advisory Board, any reports prepared by the Independent Auditor under Article 35 and specific issues and matters that in the opinion of the Minister may be of concern or interest to Parliament;

(c) A report on the investment policy in accordance with the provisions set out in paragraph 5 of article 14.

d) A statement by the Director of Treasury drawing attention to any accounting issues or practices arising from the Report that may materially affect the interpretation of amounts or financial activities shown within it;

e) the income derived from the investment of Petroleum Fund assets during the Fiscal Year compared with the income of the previous three Fiscal Years;

f) a comparison of the nominal income on the investment of Petroleum Fund assets with the real return after adjusting for inflation;

g) a comparison of the nominal income derived from the investment of Petroleum Fund assets with the benchmark performance indices provided to the Minister pursuant to Paragraph 16.1;

h) a comparison of the Estimated Sustainable Income for the Fiscal Year with the sum of transfers from the Petroleum Fund for the year;

f) in the event of Government borrowings with the corresponding State debt guaranteed by the Fund, , 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 of sovereign wealth; 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 external Investment Managers;

(v) the Head of the body known as the Operational Manager;

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

2. The sources of the information described in the paragraph above, whatever their form, and including all reports and statements, shall be annexed to the Annual Report in its original unedited form.

Article 33

Payments into the Petroleum Fund Account

1. For all purposes of Timor-Leste law, an obligation to make a payment into the Petroleum Fund shall not be treated as discharged until the amounts have been deposited, integrally and unconditionally, into the Petroleum Fund earmarked receipts account.

2. Without prejudice to the provisions set out in the previous paragraph and in paragraph 2 of article 5, the obligation to unconditionally deposit the amounts obtained from the investments of the assets of the Petroleum Fund shall be considered fully complied with when these amounts are credited into the bank account held by the Operational Manager, the sole purpose of which is to manage the Petroleum Fund.

Article 2

Operational Manager

Reference to the Central Bank in articles 6, 7, 26, 31, and 32 shall be replaced by Operational Manager.

Article 3

Republication

The Petroleum Fund Law, approved by Law no. 9/2005 of 3rd August, with the introductions introduced herein, shall be republished as an integral part of the present diploma

Article 4

Entry into force

The present diploma shall come into force on the day immediately following its publication.

Approved on 23rd August 2011.

The President of the National Parliament

Fernando La Sama de Araújo

Promulgated on 19/9/2011

To be published

The President of the Republic,

José Ramos – Horta

ANNEX I

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 paragraphs II and III below.

II. Estimated Sustainable Income for a Fiscal Year is calculated according to the following formula:

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

where:

r is the real interest rate estimated on Petroleum Fund investments in the future and, for the purposes of these calculations, shall be 3.0%.

III. In this Annex, "Petroleum wealth" is calculated according to the following formula:

where:

V is the estimated value of the Petroleum Fund at the end of the prior Fiscal Year **R0, R1, etc.** are the published budget projections for expected annual Petroleum Fund Receipts minus investment returns for that Fiscal Year (R0) and future Fiscal Years (R1, etc.)

i is the estimated long-term nominal yield for the current investment portfolio of the Petroleum Fund, established under the terms of the mandate

n is the estimated number of years until Petroleum mining ends and until no further Petroleum Fund Receipts are projected to be received.

Petroleum Wealth shall be calculated at the beginning of the fiscal year, assuming that the receipts will be received in the middle of the year.

IV. All assumptions upon which the calculations made pursuant to paragraphs II and III above are based shall be clearly identified and explained, and any changes made in these assumptions in subsequent calculations shall be clearly pointed out.

V. All assumptions made, with no exceptions, shall be prudent, reflect international best practice and be based upon internationally recognized standards.

VI. The amount determined in accordance with the formula in paragraphs II and III above shall be certified by the Independent Auditor.

REPUBLICATION OF LAW No. 9/2005
Petroleum Fund Law

Preamble

This Law establishes a Petroleum Fund which seeks to meet with the constitutional requirement laid down in Article 139 in the Constitution of the Republic. Pursuant to this provision, petroleum resources shall be owned by the State, be used in a fair and equitable manner in accordance with national interests, and the income derived therefrom 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 Law lays down the key parameters for the operation and management of the Petroleum Fund. The Law 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,

Pursuant to Article 92 of the Constitution of the Republic, the National Parliament considers the following to be law:

Chapter I

General Provisions

Article 1

Citation

This Law may be cited as the Petroleum Fund Law.

Article 2

Definitions

1. In this Law, unless the context requires otherwise:

a) "Exchange of Notes Agreement" means:

(i) Exchange of Notes Constituting an Agreement between the Government of Australia and the United Nations Transitional Administration (UNTAET) in Timor-Leste, of 10th February 2000; or

(ii) Exchange of Notes Constituting an Agreement between the Government of Timor-Leste and the Government of Australia, of 20th May 2002.

b) “Fiscal Year” means the period of twelve (12) months from 1st January to 31st December of each year.

c) “Independent Auditor” means an internationally recognised accounting firm appointed for the purpose of auditing the Government accounts as set out in the Timor-Leste law until the administrative, tax and audit courts are established, or thereafter an internationally recognised accounting firm appointed pursuant to Article 34;

d) “Petroleum Authorisation” means:

(i) 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 Activities Law; or

(ii) 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;

e) “Central Bank” means the authority to be established under Article 143 of the Constitution of the Republic;

f) “Code” means the Provisional Petroleum Mining Code adopted under Article 7 of the Treaty, including amendments, modifications, derogations and repeals it may be the object of, and regulations made and directions given under it;

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

h) “Investment Manager” means the Operational Manager and any person appointed as Investment Manager under Article 12;

i) “Operational Manager” means the Central Bank or any other public entity created by law of the National Parliament whose responsibility is the operational management of the Petroleum Fund;

j) Petroleum Activities Law means Law no. 13/2005, of 2nd September – Petroleum Activities Law, including amendments, modifications, derogations and repeals it may be the object of, and regulations made and directions given under it;

k) “Minister” means the Minister in charge of finances;

l) “Petroleum Operations” means authorised activities under a Petroleum Authorisation;

m) “State Budget” means the State Budget referred to under Article 145 of the Constitution of the Republic;

n) “Payer/Contributor” means any entity on which there is an obligation to make a payment into the Petroleum Fund;

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

p) “Petroleum” has the same meaning given to it in Law no 13/2005 of 2nd September - the Petroleum Activities Law;

q) “Investment Policy” means a public declaration on the principles to which investment is subject, the desired risk profile, the allocation of assets, the universe of applications, portfolios and reference standards or other questions related to the general investment policy.

- r) “Petroleum Fund Receipts” has the meaning given to it in Article 6;
 - s) “Tax Revenue” means any tax, rates or duty imposed under Timor-Leste law;
 - t) “Estimated Sustainable Income” for a Fiscal Year means the amount determined in accordance with the formula set out in Annex 1;
 - u) “Timor-Leste” means the Democratic Republic of Timor-Leste; and
 - v) “Treaty” means the Timor Sea Treaty between the Government of Timor-Leste and the Government of Australia signed on 20th May 2002, including the amendments, modifications, derogations and repeals it may be the object of.
2. All terms in the present Law 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

Material Scope of the Act

This Law 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 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, or between the provisions of the Law and the terms of a Petroleum Authorization, the provisions of the present Law shall prevail.

Chapter II

The Petroleum Fund for Timor-Leste

Article 5

Petroleum Fund for Timor-Leste

1. There is hereby established a fund known as the Petroleum Fund for Timor-Leste.
2. The Petroleum Fund, including investments made pursuant to the present law and any other accounts related to revenues legally allocated to the Petroleum Fund and under the custody of any entities of a financial nature, including external investment managers, shall always be held in the name of the operational manager and consistent with the commercial mandate, operated on its behalf, in strict compliance with the provisions set out in article 115, the petroleum receipts being credited pursuant to article 6.
3. The Petroleum Fund has no legal personality.
4. Transfers from the Petroleum Fund shall be made only in accordance with Articles 7 to 10.
5. The information and details concerning the State Budget account referred to in Article 7.1 and the accounts referred to in paragraph 2 of this article shall obligatorily be made public by way of the publication of the operation management contract of the Petroleum fund to which Article 11.3 refers.

Article 6

Petroleum Fund Receipts

1. The following amounts are Petroleum Fund gross 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;
- (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 to petroleum resources not covered in paragraphs (a) to (d) above.

2. In the event that Timor-Leste participates in Petroleum Operations indirectly, as provided for in paragraph 6.1(d), through a national oil company, the receipts of the Petroleum Fund shall include the following:

- (a) any amount payable by the national oil company as tax, royalty or any other due in accordance with Timor-Leste law; and
- (b) any amount paid by the national oil company as dividend.

3. From the amount received in accordance with Paragraph 6.1, the Operational Manager shall be entitled to deduct, by direct debit of the Petroleum Fund account, any reasonable management expenses, as provided for in the operational management agreement referred to in Paragraph 11.3.

Article 7

Transfers

7.1 Subject to Paragraph 6.3, the only debits permitted to the Petroleum Fund are electronic transfers made in accordance with this present article, as well as Articles 8 to 10, to the credit of a single State Budget account.

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.

3. Subject to Article 8 to 10, transfers from the Petroleum Fund by the Operational Manager 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.

Article 8

Requirements for Transfers

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) above.

Article 9

Transfers Exceeding the Estimated Sustainable Income

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 paragraphs 8. (a) and 8. (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;
- (c) a report from the Independent Auditor certifying the estimates of the reduction in Estimated Sustainable Income in paragraph (b) above; 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.

Article 10

Transfers for Purposes of Refund of Tax

If required under the law of Timor-Leste, transfers from the Petroleum Fund are exceptionally permitted for purposes of refund of tax, in the event of overpayment of tax under paragraphs 6.1(a) and 6.2(a). This amount represents a reduction of the Petroleum Fund Receipts, and shall not be considered as part of the appropriation approved under Paragraph 7.2.

Chapter III

Petroleum Fund Investment and Protection

Article 11

Management of the Petroleum Fund

1. The Government is responsible for the overall management of the Petroleum Fund.
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 16.
3. The Minister shall enter into an agreement with the Operational Manager for the operational management of the Petroleum Fund and such Operational Manager shall be accountable to the Government for the operational management of the Petroleum Fund.
4. The Petroleum Fund shall be managed prudently in accordance with the principle of good governance for the benefit of current and future generations.

Article 12

External Investment Managers

1. The Operational Manager may propose to the Minister, either of its own motion or at the request of the Minister, the appointment of one or more external Investment Managers to be responsible for managing the external financial applications from the Petroleum Fund.

2. The Operational Manager may select and appoint one or more external Investment Managers pursuant to the provisions set out in Article 12 and in compliance with the following paragraph, only if the Minister is satisfied that:

(a) the external Investment Manager is a legal person with sufficient equity capital and adequate guarantees and insurances against operational risks;

(b) the external Investment Manager has a sound record of operational and financial performance; and

(c) the commercial references and international reputation of the external Investment Manager in the field of fund management are of the highest standard.

3. In the case the external Investment Manager is a national legal person, the requirements referred to in sub-paragraphs b) and c) of the above paragraph may be ignored, as long as the Manager proves that the risks inherent to the non-compliance of these criteria are duly safeguarded, the Minister shall confirm and submit for approval in Council of Ministers

4. Pursuant to paragraph 1 of this article, the Operational Manager shall be responsible for the international tendering procedures required for any type and value of contract in accordance with the substantive provisions of the law of Timor-Leste, as well as and under the same terms, for the contracting of any other professional services under the operational management agreement referred to in Paragraph 11.3.

5. The operational management contract referred to in paragraph 11.3, entered into with the external Investment Manager, shall establish the clauses and procedures by which it shall be terminated.

6. 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 Articles 14 and 15, any subsidiary legislation under this Law, any instructions issued by the Minister and the operational management agreement referred to in Paragraph 11.3.

Article 13

Quarterly Reports on the Petroleum Fund

1. The Operational Manager shall present to the Minister quarterly reports on the performance and activities of the Petroleum Fund, in relation to the reference standards of the performance of the overall investment, no later than twenty (20) days after the end of each quarter.

2. The Operational Manager shall provide for the publication of its reports no later than forty (40) days after the end of the quarter.

3. The Operational Manager shall ensure that in releasing, or allowing access to, such reports measures are taken to prevent the disclosure of confidential information.

Article 14

Investment Policy

1. The Minister shall lay out the investment policy of the Petroleum Fund by applying the principles of portfolio diversification, with the purpose of maximising the financial return of the Petroleum Fund in relation to the assumed risk threshold, by taking into account the purpose of the Fund, the conditioning factors under which it operates and Timor-Leste's risk bearing capacity.

2. The investment policy which underpins the portfolio allocation shall always incorporate sufficient amounts to be able to immediately respond to transfers requested by the State Budget or to adjust the applications profile in relation to the tolerated risk level.
3. The Minister and the Operational Manager shall develop and maintain policies, systems and procedures which guarantee the identification, monitoring and management of risks associated with the implementation of the investment strategy.
4. The management of the Petroleum Fund shall comply with regulated obligations, including mandatory publications, which are in force on the market and in the country where the application is made.
5. The Minister shall submit to the National Parliament a summary of its investment policy proposal of the Petroleum Fund, together with the Petroleum Fund Annual Report or before any decisions are taken implying alterations to the allocation of the principal assets.
6. The annual report shall also include a public declaration on the way the provisions set out in this and the following articles were complied with during the past year.

Article 15 **Investment Rules**

1. Under the terms of the criteria in this article, in order to qualify as eligible investment the qualifying instrument shall be issued or, in the case the investment takes place abroad, in internationally recognised jurisdiction.
2. Not less than fifty per cent (50%) of the amounts in the Petroleum Fund shall be invested in qualifying instruments under the form of fixed and floating rate debt securities, or other fixed income assets, equivalent to interest and provided that:
 - a) it has been determined that the debt instruments are of a quality at least equal to the degree of investment or
 - b) The deposits are held in financial institutions with a risk rating, at least, corresponding to their classification as degree of investment
3. Not more than fifty per cent (50%) of the amounts in the Petroleum Fund may be invested in qualifying instruments under the form of applications in variable income securities, namely listed stock and provided that:
 - a) The variable income securities are traded in a regulated financial market, and
 - b) The participation does not exceed five percent (5%) of the capital issued by the issuing body.
4. No more than five percent (5%) of the amounts in the Petroleum Fund shall be applied in other qualifying investments and provided that:
 - a) The Minister has included that other class of assets, of which the investment is part, in the proposed portfolio distribution submitted to National Parliament, in compliance with paragraph 5 of article 14, and
 - b) The rules and criteria underling the selection, management and assessment of each individual financial instrument, with a certain class of assets, have been approved by the Minister and published.
5. The exposure of the Petroleum Fund:

- a) to each company or issuing body by way of qualifying instruments, with the exception of sovereign States, may not exceed three percent (3%) of the total value of the Petroleum Fund;
- b) to each class of assets shall in liquid terms be positive.

6. Notwithstanding paragraphs 1 and 2 of article 20, the costs related to any transaction of securities on the market made by the Fund or, the participation in short-term loan operations of any instruments, provided they are carried out in accordance with prudent asset management principles, they shall not be considered as an encumbrance or cost for the Petroleum Fund.

7. A derivative shall only be considered a qualifying instrument when:

- a) it used to reduce the risk for the Fund resulting from the use of the instrument or instruments underlying the derivative, or to help the desired exposure of an asset be efficiently accomplished; and
- b) The risk resulting from its use is not higher than that which would result from the direct exposure to the assets which are underlying and typified in the present law; and
- c) The Minister has established conditions in relation to the legitimacy of its operational use.

8. The Minister shall determine the period during which the Investment Managers must dispose of the derivative, when this is no longer a qualifying instrument, due to the alteration in its risk rating or alteration in the risk rating of its issuer.

Article 16

Investment Advisory Board

16.1 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 external Investment Managers of the Petroleum Fund appointed pursuant to Article 12;
- (c) advising the Minister on the performance of the external Investment Managers and making recommendations to the Minister on the approval or termination of the corresponding contracts; and
- (d) advising the Minister on the need for changes in the investment policy or management of the Petroleum Fund.

2. Subject to Article 18, 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.

3. Any advice given by the Investment Advisory Board on the investment policy 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 Operational Manager 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.

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

Article 17

Structure of the Investment Advisory Board

1. The Investment Advisory Board shall consist of five (5) or more members, appointed by the Prime Minister, advised by the Minister, three (3) of them at least must have considerable experience in the area of investment management.
2. The Director of Treasury and a representative of the Operational Manager shall be entitled to participate with no voting rights in the meetings of the Investment Advisory Board.
3. The Operational Manager shall provide all the necessary support that the Investment Advisory Board shall need to fully perform its duties, the Minister indicating who the representative of the Ministry in that body shall be. ;
4. Under the terms of paragraph 1 of this article, the order appointing the Members of the Investment Advisory Board shall under the terms of the applicable law, determine the remuneration they shall be subject to.
5. Before taking office, the members of the Investment Advisory Board shall submit a written declaration explaining how their appointment presents no conflict with other personal or family interests and such declaration shall also explain where their patrimony is located upon their taking office.

Article 18

Absence of Advice from the Investment Advisory Board

1. The non-provision of advice by the Investment Advisory Board, within fifteen (15) days of the request, or within such longer time period as may be determined by the Minister having regard to the nature of the advice sought, shall not constitute an impediment for the Minister to make a decision.
2. If, having regard to the nature and urgency of the decision to be taken, 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.
3. If the Minister makes a decision under Paragraph 18.1 or 18.2, the Minister shall immediately report the making of the decision to the Investment Advisory Board.
4. The Minister shall reexamine the decision having regard to any subsequent advice provided by the Investment Advisory Board.

Article 19

Release of Advices of the Investment Advisory Board

1. When required by Parliament, the Government shall without delay provide Parliament with all advices given thereto by the Investment Advisory Board.
2. 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 20

No Encumbrances on the Assets of the Petroleum Fund

1. Any amount that is invested pursuant to Articles 14 and 15 shall, at all times, remain the property of Timor-Leste.
2. Any contract or agreement may constitute an encumbrance, under any of its forms, on the assets of the Petroleum Fund, up to a limit of 10% of the total amount in the Petroleum Fund up to the value date of the constitution of such encumbrance, provided that the principles set out in the general regime of constitution, issuance or management of public debt are respected.

Chapter IV

Supervision of the Petroleum Fund

Article 21

Maintenance of Petroleum Fund Accounts and Records

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.
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.
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 22

Internal Audit

The accounts, records and other documents relating to the Petroleum Fund shall be audited every six months by the bodies responsible for internal audits of each of the entities involved.

Article 23

Annual Report

1. The 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.
2. The Annual Report referred to in Paragraph 23.1 above shall be published by Government within fifteen (15) days of its submission to Parliament.

Article 24

Information Contained in the Annual Report

1. The Annual Report for the Petroleum Fund shall be prepared in a manner that makes it readily adaptable for public information, and shall contain in particular the following information for the Fiscal Year:
 - (a) audited financial statements certified by the Independent Auditor, comprising:
 - i an income, investment and expenditure statement;
 - ii a balance sheet with the results of the applications, including a note listing the qualifying instruments of the Petroleum Fund, valued at market value;
 - iii details of all appropriations and transfers to the State Budget from the Petroleum Fund;
- and

iv notes to the financial statements, as appropriate;

(b) a report signed by the Minister describing the financial activities of the Petroleum Fund in the past year, including all advice provided by the Investment Advisory Board, any reports prepared by the Independent Auditor under Article 35 and specific issues and matters that in the opinion of the Minister may be of concern or interest to Parliament;

(c) A report on the investment policy in accordance with the provisions set out in paragraph 5 of article 14.

d) A statement by the Director of Treasury drawing attention to any accounting issues or practices arising from the Report that may materially affect the interpretation of amounts or financial activities shown within it;

e) the income derived from the investment of Petroleum Fund assets during the Fiscal Year compared with the income of the previous three Fiscal Years;

f) a comparison of the nominal income on the investment of Petroleum Fund assets with the real return after adjusting for inflation;

g) a comparison of the nominal income derived from the investment of Petroleum Fund assets with the benchmark performance indices provided to the Minister pursuant to Paragraph 16.1;

h) a comparison of the Estimated Sustainable Income for the Fiscal Year with the sum of transfers from the Petroleum Fund for the year;

i) in the event of Government borrowings with the corresponding State debt guaranteed by the Fund, 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 of sovereign wealth; and

j) 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 external Investment Managers;

(v) the Head of the body known as the Operational Manager;

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

2. The sources of the information described in the paragraph above, whatever their form, and including all reports and statements, shall be annexed to the Annual Report in its original unedited form.

Chapter V

Petroleum Fund Consultative Council

Article 25

Petroleum Fund Consultative Council

1. There is hereby established a Petroleum Fund Consultative Council.

2. The Petroleum Fund Consultative Council shall, of its own motion or at the request of Parliament:

- (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 Paragraph 30.2; 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 26

Composition of the Petroleum Fund Consultative Council

The Petroleum Fund Consultative Council shall comprise the following members, all of whom are nationals of Timor-Leste:

- (a) former Presidents of the Republic;
- (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 directors of the Operational Managers who have effectively been in office for at least (3) years;
- (f) two members appointed by Parliament, elected in accordance with the rules laid down by Parliament;
- (g) two members appointed to represent civil society non-profit organisations;
- (h) a member appointed to represent the private business sector; and
- (i) a member appointed to represent religious organisations.

Article 27

Appointment and Tenure of Members

1. The term of office of the members of the Petroleum Fund Consultative Council is five (5) years, and it is not renewable.
2. The term of office of the members mentioned in paragraphs 26.(a) to 26.(e) shall be served from the end of their office, in accordance with procedures to be laid down by Parliament.
3. The members of the Petroleum Fund Consultative Council referred to in paragraphs 26.(g) to 26.(i) shall be freely appointed by the concerned organisations, duly registered in accordance with Timor-Leste law, under procedures to be laid down by Parliament.
4. If no appointment can be made to the Petroleum Fund Consultative Council pursuant to paragraphs 26 a), 26 b) or 26 c), the President of the Republic, the President of Parliament, and the Prime Minister, respectively, shall appoint one member to fill such a vacancy. Any member of the Consultative Council appointed under this paragraph shall cease his or her functions as soon as the appointment of the member in question becomes possible under paragraphs 26 a), 26 b) or 26 c).
5. Members of Parliament or of Government may not be appointed under paragraph 26.(f).

6. The members of the Petroleum Fund Consultative Council shall, on occasion of taking and vacating office, submit a declaration concerning their assets and income from property and capital, including information relating to their bank accounts.

Article 28

Limitations

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

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

2. 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.

3. 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.

4. Until such time as specific procedures for the removal of a member under paragraph 28.3(c) are established under the general law, the procedures applicable for the removal of judges shall apply.

Article 29

Economic Advisor to the Petroleum Fund Consultative Council

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.

Article 30

Functioning of the Petroleum Fund Consultative Council

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 Law.

2. When the Government introduces legislation to Parliament to appropriate an amount from the Petroleum Fund, and when 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, as decided by Parliament on a case by case basis, an advice to Parliament on the Government's proposed appropriation.

3. The non-provision of advice by the Petroleum Fund Consultative Council, within the time period decided by Parliament, shall not constitute an impediment for Parliament to make a decision.

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.

5. The Petroleum Fund Consultative Council shall determine the rules of procedure under which it will operate, and its decisions shall only be valid if taken by majority, with a quórum of six (6) members.

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.

Article 31

Release of Information

1. Parliament shall provide for the publication of the advices of the Petroleum Fund Consultative Council, including minority opinions, within thirty (30) days of having been provided.

2. 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.

3. The Minister and/or the director of the Operational Manager 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.

4. In dealing with the information furnished under Paragraph 31.3, the Petroleum Fund Consultative Council shall ensure that measures are taken to prevent the disclosure of confidential information.

Chapter VI – Transparency

Article 32

Transparency as a Fundamental Principle

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.

32.2 Information or data whose disclosure to the public could, in particular:

- (a) prejudice significantly the performance of the Petroleum Fund;
- (b) be misleading, as it relates to:
 - (i) incomplete analysis, research or statistics;
 - (ii) to frankness and candour of internal discussion;
 - (iii) the exchange of views for the purposes of deliberation; or
 - (iv) the provision of confidential advice;
- (c) significantly affect the functioning of the Government;
- (d) amount to the disclosure of confidential communications;
- (e) substantially prejudice the management of the economy;
- (f) substantially prejudice the conduct of official market operations; or

(g) result in or lead to improper gains or advantages may be declared as confidential. The declaration of confidentiality shall, taking into account the principle of transparency and the right of the public as regards to access to information, provide a clear reasoning on the motives for treating such information or data as confidential.

3. Any information that is kept confidential at the time at which it could have been published, as well as the reasoning for having been treated as confidential, shall be made available to the public, upon request, when the reasons for confidentiality are no longer valid, and in any case after five (5) years from the date at which it could have been published.

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

5. The Minister shall ensure that this Act, any subsidiary legislation made thereunder, any instructions relating to the Petroleum Fund, the operational management agreement referred to in Paragraph 11.3 and the reports referred to in Articles 8 and 9 are readily available to the public within thirty (30) days of having been finalised.

Article 33

Payments into the Petroleum Fund Account

1. For all purposes of Timor-Leste law, an obligation to make a payment into the Petroleum Fund shall not be treated as discharged until the amounts have been deposited, integrally and unconditionally, into the Petroleum Fund earmarked receipts account.

2. Without prejudice to the provisions set out in the previous paragraph and in paragraph 2 of article 5, the obligation to unconditionally deposit the amounts obtained from the investments of the assets of the Petroleum Fund shall be considered fully complied with when these amounts are credited into the bank account held by the Operational Manager, the sole purpose of which is to manage the Petroleum Fund.

Article 34

Independent Auditor

1. Without prejudice to the jurisdiction of any court, there shall at all times be appointed an Independent Auditor, which shall be an internationally recognised accounting firm, selected and appointed by the Government.

2. The selection and appointment of the Independent Auditor shall be made in accordance with the procurement procedures established under Timor-Leste law.

3. The Independent Auditor appointed under this Law shall remain in function for the contracted period, unless the contract is terminated for serious misconduct or serious breach of contract, or if the Independent Auditor's conduct otherwise prejudices the performance of the Petroleum Fund.

Article 35

Payments made as Petroleum Fund Receipts

1. The Independent Auditor shall prepare a report for the Minister of all payments made, or that should under this Law have been made, as Petroleum Fund Receipts for each Fiscal Year.

2. The Independent Auditor may require any Payer to provide any information, and to deliver proof of any facts which may be necessary for the full discharge and performance of the Independent Auditor's duties under this Law.

3. The Independent Auditor's report shall state the aggregate amounts of payments made as Petroleum Fund Receipts for each Payer for the Fiscal Year.

4. If the Independent Auditor concludes that there is a discrepancy between payments made and those which should have been made, and which cannot be explained, 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.

Article 36

Reports of the Independent Auditor

36.1 The Minister shall provide for the publication of the Independent Auditor's report, in particular through the Annual Report.

36.2 The Independent Auditor shall ensure that in preparing the report measures are taken to prevent the disclosure of confidential information.

Chapter VII

Penalties

Article 37

Scope of the Chapter

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

Article 38

Non-Compliance with an Obligation to Publicise Information

Whoever fails to comply with any obligation to publicise information, provided for in this Law, or leads someone else to fail to comply with, or in any manner hinders or leads someone else to hinder the compliance with, such an obligation, shall be punished by imprisonment for a period up to two (2) years or fine of not less than fifty (50) days.

Article 39

Misleading Information

1. Whoever gives information that is materially false or misleading, or knowingly includes or permits to be included, in any report or document, information that is materially false or misleading, shall be punished by imprisonment for a period up to three (3) years or fine of not less than seventy five (75) days.

2. An attempt is punishable.

Article 40

Hindering the Exercise of Powers by an Auditor

1. Whoever, directly or indirectly, in any measure or by any means, hinders or leads someone else to hinder the exercise of powers by an auditor under this Act, shall be punished by imprisonment for a period from three (3) months to four (4) years or fine of not less than one hundred (100) days.

2. An attempt is punishable.

Article 41

Accessory Penalties

In relation to the crimes provided for in this Law, the following accessory penalties may be applied:

- (a) Termination of contracts;
- (b) Publication of the conviction and sentence; and/or
- (c) Other injunctive relief as may be necessary taking into account the circumstances of the case in question.

Article 42

Liability of Legal Persons, Corporations and Other Legal Entities

1. Legal persons, corporations or any other legal entities, including those without juridical personality, are liable for contraventions provided for in this Chapter when committed by its organs or representatives in its name and in the collective interest.
2. The liability is excluded where the agent has acted against express orders or instructions properly issued.
3. The liability of the entities mentioned in Paragraph 42.1 does not exclude the individual liability of the respective agents.
4. The entities mentioned in Paragraph 42.1 are jointly and severally liable, as provided for in civil law, for the payment of any fines or compensations, or for the fulfillment of any obligations, derived from the facts or with incidence on matters covered by the scope of this Law.

Article 43

Fines to Legal Persons, Corporations and Other Legal Entities

1. In the case of legal persons, corporations or any other legal entities, including those without juridical personality, the daily rate for fines corresponds to an amount between one United States Dollar (USD \$1.00) and two thousand United States Dollars (USD \$2,000.00), as determined by the court, taking into account the economic and financial circumstances of the legal person, corporation or other legal entity.
2. If the fine is applied to an entity without legal personality, its payment will be guaranteed by the entity's assets and, in the event of non-existence of such assets or undercapitalisation, jointly and severally, the assets of each of the partners or shareholders of the entity.

Article 44

Subsidiary Legislation

General criminal law, both substantive and adjective, as well as the relevant administrative legislation, are applicable in a subsidiary manner, with the required adaptations, to the extent necessary to give effect to the provisions of this Chapter.

Chapter VIII

Ombudsman for Human Rights and Justice

Article 45

Complaints to the Ombudsman for Human Rights and Justice

1. Any person, legal and natural, may lodge a complaint with the Ombudsman for Human Rights and Justice, on any matters covered by the scope of this Law, in accordance with general law.

44.2 Any recommendations forwarded by the Ombudsman for Human Rights and Justice to the competent authorities, on any matters covered by the scope of this Act, shall be treated as a matter of urgency.

Chapter IX

Transitional and Final Provisions

Article 46

Implementation of Organizational Structure

46.1 All appointments necessary for the effective functioning of the Investment Advisory Board shall be made within three (3) months of the entry into force of this Law.

46.2 All appointments necessary for the effective functioning of the Petroleum Fund Consultative Council shall be made within six (6) months of the entry into force of this Law.

Article 47

Subsidiary Laws and Regulations

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

Article 48

Opening Balance of the Petroleum Fund

1. 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.

2. A report on the determination of the opening balance of the Petroleum Fund shall be provided with the first quarterly report presented under Article 13.

Article 49

Entry into force and application

1. This Law enters into force on the day following its publication in the Official Journal.

2. This Law applies to Fiscal Years commencing on or after 1 July 2005.

3. Until the implementation of the organizational structure under this Law is fully completed, and in no case for a period of more than six (6) months starting from the date of entry into force of this Act, only the provisions that do not require the intervention of the organic structure to be constituted shall apply.

Approved on 20 June 2005.

The President of Parliament,

Francisco Guterres “Lu-Olo”

ANNEX 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 paragraphs II and III below.

II. Estimated Sustainable Income for a Fiscal Year is calculated according to the following formula:

$$r \times \text{Petroleum wealth}$$

where:

r is the estimated real rate of return on Petroleum Fund investments and, for the purposes of these calculations, shall be 3.0%.

III. In this Schedule, "Petroleum wealth" is calculated according to the following formula:

where:

V is the estimated value of the Petroleum Fund at the end of the prior Fiscal Year **R_0, R_1 , etc.** are the published budget projections for expected annual Petroleum Fund Receipts minus investment returns for that Fiscal Year (R_0) and future Fiscal Years (R_1 , 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 estimated until petroleum production ceases and until no further Petroleum Fund Receipts are projected to be received.

IV. All assumptions upon which the calculations made pursuant to paragraphs II and III above are based shall be clearly identified and explained, and any changes made in these assumptions in subsequent calculations shall be clearly pointed out.

V. All assumptions made shall be prudent, reflect international best practice and be based upon internationally recognized standards.

VI. The amount determined in accordance with the formula in paragraphs II and III above shall be certified by the Independent Auditor.