

DEMOCRATIC REPUBLIC OF TIMOR-LESTE

NATIONAL PARLIAMENT

LAW No. 4/2003

of 1 July

**ON THE PETROLEUM DEVELOPMENT
OF TIMOR SEA (TAX STABILITY)**

The present law authorises the Government to enter into agreements with investors in the Joint Petroleum Development Area (as established by the Timor Sea Treaty), with the aim to stabilise the tax regime on long-term petroleum projects.

The law on the Taxation of Bayu-Undan Contractors, to which this law is a complement, establishes the tax regime for the development of the Bayu-Undan field. To date, the only tax stability agreement that is being envisaged by the Government is related to the Bayu-Undan project.

The purpose of this law is to protect investors against rises in tax rates, which might occur after the Government and the investor have agreed upon the tax regime applicable to the investor's petroleum project. Concomitantly, the law also provides that investors shall not benefit from reductions in tax rates that might occur after they and the Government have agreed upon the tax regime.

The law fosters petroleum development in the Joint Petroleum Development Area, as it assures investors that their tax obligations towards Timor-Leste shall remain unchanged, during the lifetime of long-term projects. Furthermore, the law allows Timor-Leste to forecast revenue derived from these petroleum projects.

Pursuant to section 92 and subsections 95.2(b), 139. 1 and 139.2 of the Constitution of the Republic, the National Parliament enacts the following that shall have the force of law:

**Section 1
Definitions**

For the purposes of the present law:

“Tax Stability Agreement” means any agreement covered by subsection 1.1 of this law;

“Tax Change” means any modification to taxes on petroleum activities carried on by a contractor in the Joint Petroleum Development Area or related thereto, or to the rates of those taxes, or even to the manner in which a tax obligation stemming from those taxes is calculated, or to the manner in which payments and refunds are made;

“Joint Petroleum Development Area” means the Joint Petroleum Development Area as established under section 3 of the Timor Sea Treaty.

“Designated Authority” means the Designated Authority as established under section 6 of the Timor Sea Treaty;

“Constitution” means the Constitution of the Republic;

“Contractor” means a party to a production-sharing contract entered into with the Designated Authority, concerning the carrying on of petroleum activities in the Joint Petroleum Development Area;

“New York Convention” means the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed on 10 June 1958;

“Government” means the Government of the Republic;

“Tax or “Taxes” means any tax, due, fee, contribution, duty, charge, selective tax, withholding tax or other payment due under the terms of any law of the Republic, including any local jurisdiction in the Republic;

“Procedural Legislation” means any law of the Republic issued upon and by virtue of Timor-Leste’s adhesion to the New York Convention, establishing procedures for the recognition and enforcement of arbitral awards by the courts of the Republic;

“Designated Minister” means the Minister responsible for Finance;

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

“Timor Sea Treaty” means the Timor Sea Treaty signed on 20 May 2002 between the Government of East Timor and the Government of Australia;

“ Court of Recognition and Enforcement” means the Court of Appeal established under section 4 of UNTAET 2000/11, as amended by UNTAET Regulation 2001/25 and adopted by the Constitution, or an equivalent court as may be established by law under the terms of the Constitution.

Section 2

Tax Stability Agreement

1- With respect to any long-term projects (projects that are expected to last over 15 years and the production of which starts after the entry into force of the Timor Sea Treaty), for the carrying on of petroleum activities in the Joint Petroleum Development Area, the Government is authorised to enter into agreements with contractors to ensure the tax stability of the project, with reference to the laws of the Republic in force on the date of signing of the agreement, in regard to:

- (a) the taxes on petroleum activities carried on by the contractor in the Joint Petroleum Development Area, or on activities related thereto, under the terms of article 5(b) of the Timor Sea Treaty; and
- (b) the rates of those taxes, the calculation of tax obligation and the manner in which payments and refunds shall be made.

2- Tax Stability Agreements may be entered into by the Prime Minister of the Republic or by the Designated Minister. Such Agreements may establish that disputes that are likely to arise out of their application be settled in a fashion deemed appropriate (including by way of international arbitration), and, to this effect, the law of the jurisdiction agreed upon by the parties shall apply.

Section 3 Compensation or Exemption

1. In order to render the tax stability guarantee established in a tax stability agreement effective, the agreement may determine that, should there be, at any time, as from the date on which the agreement becomes binding (which may be prior to the date of its signing), and within a time limit not exceeding the duration of the project, a change to the taxes applicable to petroleum activities or activities related thereto, or in the manner in which a tax obligation is calculated or payments or refunds are made, the Government undertakes:

- (a) to exempt the Contractor or his or her shareholders from the effects caused by the tax change;
- (b) to compensate the Contractor or his or her shareholders for the effects caused by the tax change.

2. Where the Government has to grant exemption or compensation to the contractor or his or her shareholders, by operation of a tax stability agreement, the Designated Minister shall discharge his or her obligation by affixing his or her own signature to an instrument, thereby, in case of exemption, exonerating the contractor or his or her shareholders from the effects caused by the tax change, or, in case of compensation, authorising the payment, or equivalent consideration, which shall be translated into the refund to the contractor or his or her shareholders of the additional charge resulting from the tax change, accrued by interests, if any.

3. The payment or equivalent consideration, referred to in the preceding subsection, shall not be included in the contractor's taxable income.

Section 4 Exercise of discretionary power

Nothing in this law or in any other Tax Stability Agreement shall limit (a) the manner in which any Tax is administered or (b) the adequate discretionary power as granted by a law of the Republic, insofar as there is no tax change.

Section 5 Enforcement of Arbitral Awards

1. The courts of the Republic shall recognise the final and binding nature of arbitral awards made under the terms of the arbitration contemplated in tax stability agreements, and shall enforce them under the provisions of this section.

2. The court of the Republic authorised to handle issues relating to the recognition and enforcement of an award made by the court of arbitration, on the part of the Republic, shall be the Court of Enforcement.

3. The Court of Enforcement shall recognise and enforce, in all instances, arbitral awards made under the terms of the arbitration contemplated in tax stability agreements, except where the party against whom the award is invoked furnishes the Court of Enforcement with proof:

- (a) of incapacity of the parties to the arbitration agreement, under the terms of the applicable law, or of non-validity of the agreement under the law to which the parties have subjected themselves, or, in case of omission regarding the applicable law, under the law of the country where the award was made; or
- (b) that 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 or her case; or
- (c) that the award deals with a dispute that has not been the subject of any arbitration or does not fall within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, except, however, if the decisions on matters submitted to arbitration can be separated from those not so submitted, the part of the award pertaining to matters submitted to arbitration may be recognised and enforced; or
- (d) that the composition of the court of arbitration 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) that the award has not yet become binding on the parties, or has been repealed or suspended by a competent authority of the country in which, or under the law of which, that award was made.

4. The Court of Enforcement shall recognise and enforce, in all instances, arbitral awards made under the terms of the arbitration contemplated in tax stability agreements, except if the recognition and enforcement of the award would be contrary to the public order of the Republic.

5. Where (a) the Court of Enforcement has not recognised or enforced an award made by a court of arbitration, under the terms of the arbitration contemplated in a tax stability agreement, within 60 days of submission of the application by the winning party to the Court of Enforcement, and (b) the reasons for failure to recognise or enforce an award are not the same as those set forth in subsections 3 and 4 of this section, the winning party may offset the credit determined by the arbitral award against debts with the losing party.

6. Nothing in this law, and no decision made by the Court of Enforcement, shall impede or restrict the possibility of any of the parties getting the recognition and enforcement of the award in a State other than the Republic.

7. The provisions of the present law in respect of the recognition and enforcement of arbitral awards (including the right to compensation established under subsection 5 of this section) shall no longer be applicable as from the date on which (a) the Republic accedes to the New York Convention in such a way that the tax stability agreements become subject to the provisions of the Convention and (b) Procedural Legislation is issued.

Section 6
Entry into Force

The present law shall take effect as from 20 May 2002.

Approved on 5 June 2003

The Speaker of the National Parliament,

[Signed]

Francisco Guterres 'Lu-Olo'

Promulgated on 6 June 2003

To be published.

The President of the Republic

[Signed]

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