

LAW No. 05/2005

Foreign Investment Law

The policies set down in the National Development Plan for economic growth and the promotion of the private sector are fundamental vehicles for creating jobs and reducing poverty.

Timor-Leste (East Timor) faces enormous challenges arising from its historical process to gain independence that have affected the majority of its infrastructures and, more importantly, its most valuable assets – such as human resources – thereby drastically reducing the technical and professional capability of the Timorese to independently promote private economic activities to generate wealth and create jobs.

The State must establish the policy conditions needed to improve the country's economic performance by promoting and encouraging foreign investment, which is vital for rebuilding the economic and entrepreneurial sector and for reducing unemployment, deriving the benefits that such investment brings in several areas: technical assistance and vocational training for citizens, industrial development and increased productivity, rehabilitation of economic infrastructures and general progress in the quality of people's lives.

The establishment of a legal framework that attracts and promotes foreign investment in the country is of paramount importance to leverage natural and human resources, create jobs and contribute towards the economic and social development of Timor-Leste.

This law establishes a set of guarantees and incentives for foreign investors, in line with the legislative policies for the sector being followed by many countries, particularly in the Southeast Asian region.

This law aims to play a promoter role while simultaneously serving as a guarantor for foreign investments, whether by citizens or foreign companies, or by the Timorese Diaspora wishing to contribute with their resources from abroad, namely their capital, savings, knowledge or technology to build the national economy and create better living conditions in the Timorese nation.

In this context, the adoption of this system also presumes the need to adjust public administration and its procedures to the law's implementation, with a view to empowering the rights and obligations of investors and foreign investment in the country.

Pursuant to Article 92, Paragraph 1 of the Constitution, the National Parliament hereby decrees the following, which shall have the force of law:

CHAPTER I

General provisions

Article 1

Purpose

This law establishes the general bases of the legal system for foreign investment in Timor-Leste.

Article 2

Scope of application

1. This law shall apply to foreign investments made in Timor-Leste by foreign individuals or collective persons, or by non-resident Timorese nationals.
2. This law shall not apply to foreign investments already made or to be made in the areas of exploration, research and production of gas and petroleum, or to the area of extractive industry for mineral resources, which shall both be governed by specific legislation.

Article 3

Definitions

For the purposes of this law:

- a) "Economic activity" shall mean the production and trading of goods or the provision of services, regardless of their nature, in the country's economy;
- b) "Foreign Investor's Certificate" shall mean a document issued to a foreign investor by the competent authority, certifying the investor's foreign status;
- c) "Undertaking" shall mean the making of a foreign investment in any activity of an economic nature;

- d) “Undertaking primarily focused on export” shall mean the making of a foreign investment in any activity of an economic nature where at least 85% of the production of goods or services is meant for export;
- e) “Economic infrastructure” shall mean any physical structure or set of physical structures, including equipment, buildings and constructions, involved in structuring economic activities;
- f) “Foreign investor” shall mean any foreign individual or collective person, or non-resident Timorese national, that holds a foreign investor’s certificate;
- g) “Foreign investment” shall mean any direct investment made with financial resources, or subject to pecuniary assessment, originating from abroad at the risk and expense of a foreign investor;
- h) “Foreign reinvestment” shall mean an investment made in the same undertaking using dividends from a foreign investor’s economic activity;
- i) “Minister” shall mean the minister who oversees the area of foreign investment;
- j) “Non-resident Timorese national” shall mean an individual of Timorese nationality who, on the date of applying for foreign investor status, has resided abroad on a continuous basis for at least five years;
- k) “Permanent Timorese worker” shall mean a worker of Timorese nationality who is permanently employed on a full-time basis;
- l) “Business” shall mean any kind of commercial company, or any other type of structure or organization of a legal nature, established under the terms of applicable Timorese legislation.

Article 4

International agreements

The rights, guarantees, incentives and benefits granted to foreign investors under the terms of this law shall not restrict or supersede the systems resulting from international agreements or treaties to which Timor-Leste is a party.

Article 5

Agreements with foreign investors

Agreements of an economic nature concluded between the government and foreign investors before this law’s entry into force shall remain valid and effective.

CHAPTER II

Foreign investment

Article 6 Composition of foreign investment

Any of the following transactions, applied in isolation or cumulatively to an undertaking, shall be considered as foreign investment, provided that such transactions are subject to pecuniary assessment:

- a) The direct transfer from abroad of freely exchangeable currencies by a foreigner or non-resident Timorese national, and the depositing of such currencies in financial institutions legally established in Timor-Leste;
- b) The import of goods, services and titles with financial resources originating from abroad;
- c) The generation of dividends by foreign investment and the reinvestment of such dividends under the terms of this law;
- d) The granting, in specific cases and according to terms agreed with or endorsed by regulatory authorities, of rights to use patented technologies and foreign trademarks.

Article 7 Forms of foreign investment

Foreign investment may entail the following forms:

- a) The establishment in the country of a business, under the terms of applicable legislation;
- b) The acquisition of existing national assets;
- c) The acquisition of part of the share capital of a business, or participation in the increase of its capital;
- d) An agreement entailing the ownership or operation of companies, establishments, real property or other facilities or equipment for the pursuit of economic activities;
- e) The transfer of capital equipment through leasing or equivalent systems, or any other system requiring the maintenance of such equipment in a foreign investor's possession;
- f) Loans or supplementary capital contributions made directly by a foreign investor into a business in which the investor is a shareholder, or any loans tied to the reinvestment, into the business, of dividends not distributed to the foreign investor.

Article 8
Areas of foreign investment

1. Foreign investment shall be permitted in any sector of economic activity, provided that such investment is not specifically prohibited or restricted to ownership or operation by the State or by national investors.
2. The government shall define, in supplementary legislation:
 - a) The sectors of economic activity for which foreign investment is prohibited;
 - b) The sectors of economic activity that are specifically restricted to the State;
 - c) The sectors of economic activity that are not included in the system of incentives and benefits provided for in this law;
 - d) The conditions of certification and access, procedures and other practical aspects related to the foreign investment referred to in Paragraph 1 above.
3. Areas or sectors of economic activity restricted to the State may be subject to participation by foreign investors, under the terms of special legislation.

Article 9
Minimum amount of foreign investment

The minimum foreign investment amount for entitlement to the rights, guarantees, incentives and benefits established by this law shall be \$100,000 (USD).

CHAPTER III
Principles, rights, and guarantees

Article 10
Equal treatment

Treatment to be given to foreign investors shall not be less favourable than that established for national investors.

Article 11
Private ownership

1. The State shall guarantee the right to private ownership, especially over goods and titles comprising the assets of a business, which cannot be nationalized.
2. Expropriation of the property, goods or titles referred to in Paragraph 1 above shall always entitle a foreign investor to fair and prompt compensation,

under the terms of the law, assessed on the basis of the real current value of the property on the date of expropriation.

3. The amount of the compensation referred to in Paragraph 2 above shall be established by agreement between the government and the investor or, in the absence thereof, by arbitration, under the terms of Article 23 of this law.

4. The compensation amount established under the terms of Paragraph 3 above shall only be freely transferable abroad in proportion to the foreign investment made in a business.

Article 12

Transfer of funds abroad

All foreign investors shall be guaranteed the right to transfer abroad the returns from foreign investments made in Timor-Leste, once all obligations to the State have been fulfilled under the terms of the law.

Article 13

Foreign workers

1. A business involving foreign investment may employ foreign workers, under the terms of applicable legislation.

2. Foreign workers employed under the terms of Paragraph 1 above shall be entitled to transfer abroad the net income earned as a result of their employment.

3. The provisions of Paragraph 2 above shall also apply to Timorese workers who, on their recruitment date, have continuously lived abroad for at least five years.

CHAPTER IV

Incentives and benefits

Article 14

Tax incentives

1. A business involving foreign investment shall, during the first five years of its economic activities, be entitled to a tax credit over taxable profits in the amount of \$300 (USD) per permanent Timorese worker.

2. Where a business involving foreign investment is located:

- a) In rural zones of the country, except for the District of Oecussi-Ambeno or the Sub-district of Atauro, the period for tax credit shall be 7 years;
 - b) In the District of Oecussi-Ambeno and the Sub-district of Atauro, the period for tax credit shall be 10 years.
3. Where foreign investment is made in an economic infrastructure aimed primarily at the provision of services to third parties, the period for tax credit shall be:
- a) 10 years in cases provided for in Paragraph 1 above;
 - b) 12 years in cases provided for in Paragraph 2 a) above;
 - c) 15 years in cases provided for in Paragraph 2 b) above.
4. Where foreign investment is primarily focused on export, the period for tax credit shall be:
- a) 7 years in cases provided for in Paragraph 1 above;
 - b) 9 years in cases provided for in Paragraph 2 a) above;
 - c) 12 years in cases provided for in Paragraph 2 b) above.
5. The tax credits referred to in Paragraphs 3 and 4 above shall not be accruable.
6. In cases of foreign reinvestment, foreign investors shall be entitled to total exemption from any taxes on reinvested dividends related to the periods of tax credit established in the preceding paragraphs.
7. Tax credits shall be irrevocable during the periods established in the preceding paragraphs, provided that the grounds for the entitlement to such credits remain unchanged.
8. The right to tax credits shall be forfeited if not exercised during the periods referred to in the preceding paragraphs.

Article 15

Customs incentives

1. A business involving foreign investment shall be entitled to the following customs incentives:
- a) Exemption from customs duties and taxes on the import of capital goods, building materials for the construction of industrial facilities, hotels or economic infrastructures, raw materials for manufacturing, semi-manufactured goods, components and spare parts for incorporation or use in the production of goods and services;
 - b) Exemption from customs duties and taxes on fuel used to produce electrical power used by a business, except for petrol, provided that there is no public supply of such power.

2. The customs incentives referred to in Paragraph 1 above shall be granted in accordance with the periods established in Paragraphs 1 to 4 of Article 14.

Article 16
Limits on incentives

The customs incentives established by this law shall not preclude the payment of taxes and fees due for services provided and compliance with the formalities of customs clearance.

Article 17
Exemption from rent payment

A business involving foreign investment shall be exempt from paying rent under leasing contracts for State buildings located in rural zones of the country during the periods referred to in Paragraphs 2 to 4 of Article 14.

CHAPTER V
Special conditions

Article 18
Special investment agreements

1. The government may establish special investment agreements with potential foreign investors defining special legal systems applicable to economic activities that, by their scale or nature, or by their economic, social, environmental or technological impact, prove to be of great interest to the country under the national development strategy, thereby justifying the adoption of special treatment or conditions beyond the general foreign investment system established by this law.

2. The conclusion of the special investment agreements referred to in Paragraph 1 above shall be authorized by resolution of the Council of Ministers, clearly specifying the special conditions justifying the agreement, together with the special system applicable to the agreement.

CHAPTER VI
Authorization, registration and promotion agency

Article 19
Authorization of foreign investments

1. Foreign investments to be made in the country under the terms of this law shall be subject to authorization and approval by the competent government authorities, under the terms of applicable legislation.
2. The authorization referred to in Paragraph 1 above shall be granted so long as the applicant meets the legally required conditions and the proposed investment complies with the objectives of the National Development Plan.

Article 20
Registration of foreign investments

1. Once a request has been granted under the terms of Article 19, a foreign investment shall be registered with the competent authority, under the terms of this law and applicable regulations.
2. The registration referred to in Paragraph 1 above shall be separate from the commercial registration of a business, under the terms of applicable commercial legislation.

Article 21
Promotion and registration agency

The government shall create, through a specific legal instrument, an agency for the promotion and registration of foreign investments and the promotion of exports; this agency shall be responsible for promoting, coordinating, facilitating and monitoring foreign investments and exports, and for centralizing the administrative procedures needed to authorize applications for foreign investment.

CHAPTER VII
Obligations

Article 22
Obligations of foreign investors

Foreign investors shall have the following obligations:

- a) To comply with the laws and other regulatory provisions of the Democratic Republic of Timor-Leste;

- b) To employ Timorese workers and promote their vocational training and technical skills as required performing managerial or supervisory functions;
- c) To implement rules and procedures to protect the environment, health and occupational safety, under the terms of applicable legislation;
- d) To comply with the rules and procedures of applicable legislation concerning transfers of funds;
- e) To regularly provide the agency responsible for foreign investment and export promotion with information and data related to their investments, under the terms of applicable regulations.

CHAPTER VIII

Settlement of disputes

Article 23

Conciliation and arbitration

1. Disputes between the State and foreign investors arising from the interpretation and application of this law and its regulations shall be settled by conciliation, in accordance with Timorese legislation, unless otherwise established in international agreements to which the Democratic Republic of Timor-Leste is a party, or in agreements between Timor-Leste and the foreign investor in question.
2. Disputes between the State and foreign investors of foreign nationality that cannot be resolved under the terms of Paragraph 1 above shall be settled by way of arbitration in accordance with the rules of the International Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID), unless there is an agreement to the contrary.
3. The provisions of Paragraphs 1 and 2 above shall not prejudice the right to appeal to the competent courts of the Democratic Republic of Timor-Leste whenever both parties decide to do so.

CHAPTER IX

Transitional and final provisions

Article 24

Previous investments

1. Those who have invested in businesses in Timor-Leste before the entry into force of this law may benefit from the system established herein, provided that they meet the requirements to qualify as a foreign investor and their investment equals at least half of the minimum amount referred to in Article 9.
2. For the purposes of Paragraph 1 above, interested investors should apply to the competent authority within 180 days of the date of entry into force of supplementary legislation required for the execution of this law.
3. Notwithstanding the provisions of Paragraph 1 above, the incentives and benefits referred to in Chapter IV of this law shall not apply retroactively.

Article 25
Supplementary legislation

The government shall approve supplementary legislation as required for the execution of this law within 90 days of the date of its entry into force.

Article 26
Derogation of legislation

The special foreign investment system established by this law shall prevail over the provisions of applicable legislation that contradict the application of this law.

Article 27
Entry into force

This law shall enter into force on the day following its publication.

Approved on 2 May 2005.

The President of the National Parliament

Francisco Guterres "Lu-Olo"

Proclamada em
27 Maio 2005.
Publique-se.