

PETROLEUM FUND LAW

No 9/2005

(Consolidated with 2011 amendments)

UNOFFICIAL TRANSLATION

*This English translation has not been officially reviewed or approved.
For all purposes requiring a definitive legislative source, reference should be made to the
original version of the law in the Portuguese language*

REPUBLICATION OF LAW 9/2005

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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 enacts the following to have the force of law:

Chapter I – General Provisions

Article 1 Citation

This Law may be cited as the Petroleum Fund Law.

Article 2 Definitions

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

- (a) “Exchange of Notes” means
 - i. Exchange of Notes between the Government of Australia and the United Nations Transitional Administration in East Timor (UNTAET), of 10 February 2000; or
 - ii. Exchange of Notes between the Government of Timor-Leste and the Government of Australia, of 20 May 2002.
- (b) “Financial Year” means the financial exercise corresponding to the budget exercise of twelve months, from 1 January to 31 December of each year.
- (c) “Independent Auditor” means an internationally recognised auditing firm appointed for the purpose of carrying out an external audit of the State accounts as set out in the Timorese law until the hierarchy of the administrative, tax and audit courts is established in Timor-Leste, or thereafter an internationally recognised auditing 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 Law; or
 - ii. An authorisation or production sharing contract, or any contract signed in respect of such an authorisation or contract, granted or entered into under the Code;
- (e) “Central Bank” means the authority created under Article 143 of the Constitution of the Republic;
- (f) “Code” means the Interim Petroleum Mining Code adopted under Article 7 of the Treaty, as amended, varied, modified or replaced from time to time, as well as regulations made under it;
- (g) “Petroleum Fund” means the Petroleum Fund of Timor-Leste established under Article 5.
- (h) “Investment Manager” means the Operational Manager or any other person designated as investment manager under Article 12;
- (i) “Operational Manager” means the Central Bank or any other public entity set by Parliament to manage and operate the Petroleum Fund;
- (j) “Petroleum Law” means Law no. 13/2005 of 2 September (Petroleum Law), as amended, varied, modified or replaced from time to time, as well as regulations made under it;
- (k) “Minister” means the Minister in charge of finances;
- (l) “Petroleum Operations” means petroleum activities authorised under a Petroleum Authorisation;
- (m) “State Budget” means the State General Budget referred to under Article 145 of the Constitution of the Republic;
- (n) “Payer / taxpayer” means any entity on whom there is an obligation to make a payment to the Petroleum Fund;

- (o) “Parliament” means the National Parliament of Timor-Leste;
- (p) “Petroleum” has the meaning given to it by Law no. 13/2005 of 2 September (Petroleum Law);
- (q) “Investment Policy” means a public statement on the principles that will apply to the desired risk profile, the allocation and list of assets, portfolios and benchmarks and other issues related with the general investment policy;
- (r) “Petroleum Fund Receipts” has the meaning given to it in Article 6;
- (s) “Tax Revenue” means any tax, fee or duty imposed under Timor-Leste law;
- (t) “Estimated Sustainable Income” for a Financial Year means the amount determined in accordance with the formula set out in Schedule I;
- (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 20 May 2002, as amended, varied, modified or replaced from time to time.

2.2 Other terms in the present law that are defined in the national law on budget and financial management have the same meaning given to them by that law.

Article 3 Material Scope of the Law

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 Law, in the event of any inconsistency between the provisions of the Law 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 of Timor-Leste

Article 5 Petroleum Fund of Timor-Leste

- 5.1 The present Law creates a fund called the Petroleum Fund of Timor-Leste.
- 5.2 The Petroleum Fund, including investments made under the present Law and any accounts concerning revenue legally consigned to the Petroleum Fund and under the custody of financial entities, including external investment managers, must be in the name of the operational manager and, according to the trade mandate, must be moved in its name, in strict compliance with Article 15. Petroleum revenues are also to be credited to these accounts, as described in Article 6.
- 5.3 The Petroleum Fund shall have no legal personality.
- 5.4 Transfers from the Petroleum Fund must comply with the provisions of Articles 7-10.
- 5.5 The information and details identifying the single State Budget account indicated in

Article 7.1 and the accounts indicated in paragraph 2 of the present Article must be disclosed through the publication of the Petroleum Fund operational management agreement indicated in Article 11.3.

Article 6 Petroleum Fund Receipts

- 6.1 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.
- 6.2 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.
- 6.3 From the amount received in accordance with Article 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 Article 11.3.

Article 7 Transfers

- 7.1 Subject to Article 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.
- 7.2 The total amount transferred from the Petroleum Fund for a Fiscal Year shall not exceed the appropriation amount approved by Parliament for the Fiscal Year.
- 7.3 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 exceeding the Estimated Sustainable Income shall be made from the Petroleum Fund in a Financial Year unless the Government has first provided Parliament with:

- (a) The reports indicated in paragraphs (a) and (b) above;
- (b) A report estimating the amount by which the Estimated Sustainable Income for the following Financial Years will be reduced as a result of transferring from the Petroleum Fund an amount exceeding the Estimated Sustainable Income.
- (c) A report from the Independent Auditor certifying the estimated reductions in the Estimated Sustainable Income indicated in Article 9 (b);
- (d) Justification as to the reasons why it is in the long term interest of Timor-Leste to transfer an amount exceeding 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 Article 7.2.

Chapter III – Petroleum Fund Investment and Protection

Article 11 Management of the Petroleum Fund

- 11.1 The Government is responsible for the overall management of the Petroleum Fund.
- 11.2 The Minister cannot make any decisions in relation to the investment strategy and to the management of the Petroleum Fund without first seeking the advice of the Investment Advisory Board, in accordance with Article 16.
- 11.3 In relation to the operational management of the Petroleum Fund, the Minister shall enter into an agreement with the Operational Manager, which shall be accountable to the Government for that management.
- 11.4 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

- 12.1 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 made from the Petroleum Fund.
- 12.2 The Operational Manager may select and appoint one or more external investment managers under Article 12.1 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 the implied operational risks;
 - (b) The external Investment Manager has a sound record of operational and financial performance; and
 - (c) The business references and the international reputation of the external Investment Manager in the field of fund management are of the highest standard.
- 12.3 Should the external Investment Manager be a national legal person, the requirements of Articles 12.2 (a) and 12.2 (b) may be waived, provided that the Manager gives evidence that the risks inherent to non-compliance with those criteria are duly safeguarded and that the Minister confirms it and sends it to the approval of the Council of Ministers.
- 12.4 Under Article 12.1, the Operational Manager shall be responsible for the international tendering procedures required in view of the type and value of the contract, in accordance with the provisions of the Timor-Leste law, as well as for any additional services acquired under the operational management contract indicated in Article 11.3.
- 12.5 The procedures for terminating a contract with an external Investment Manager shall be laid down in the operational management agreement referred to in Article 11.3.
- 12.6 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 by the Minister and the operational management agreement referred to in Article 11.3.

Article 13 Quarterly Reports on the Petroleum Fund

- 13.1 The Operational Manager shall provide to the Minister quarterly reports on the activities and performance of the Petroleum Fund, according to the global investment benchmarks, within 20 working days after the end of every quarter.
- 13.2 The Operational Manager shall ensure the publication of its reports within 40 days after the end of every quarter.
- 13.3 The Operational Manager shall ensure that no classified information is disclosed when it makes the said reports available or allows them to be consulted.

Article 14 Investment Rules

- 14.1 The Minister shall establish the investment policy for the Petroleum Fund that shall apply the principles of diversification with the objective of maximising the risk-adjusted financial returns of the Petroleum Fund after taking into account the purposes

for which the Fund is established, the constraints under which it operates, and Timor-Leste's ability to bear risk.

- 14.2 The investment policy that governs the allocation of the portfolio must at all times include assets with sufficient liquidity to ensure that funding is available whenever required for transfers to the State Budget or for rebalancing investments depending on the required level of risk.
- 14.3 The Minister and the Operational Manager shall develop and maintain policies, systems and procedures to ensure that the risks associated with the implementation of the investment strategy are identified, monitored and managed.
- 14.4 The management of the Petroleum Fund shall comply with regulatory requirements, including mandatory disclosures, which are in force in the market and country where the investment is made.
- 14.5 The Minister shall present to the National Parliament a summary of the proposed investment policy of the Petroleum Fund with the Annual Report of the Petroleum Fund or prior to making any decisions involving changes to the principal asset allocation.
- 14.6 The Annual Report shall also include a public statement on the manner in which the provisions of this Article and the following Article were complied with during the past year.

Article 15 Qualifying Instruments

- 15.1 In order to qualify as an eligible investment under this Article an investment must be issued or situated abroad in an internationally recognised jurisdiction.
- 15.2 No less than 50% of the Petroleum Fund shall be invested in eligible investments in the form of deposits or debt instruments that bear interest, namely fixed and variable rate bonds and fixed income securities, or other assets with a fixed return equivalent to interest, provided that:
 - (a) Debt instruments are determined to have a quality at least equal to investment grade; or
 - (b) Deposits are held with financial institutions with a rating classified as at least investment grade.
- 15.3 No more than 50% of the Petroleum Fund shall be invested in eligible investments in the form of variable income investments, namely listed equities, provided that:
 - (a) The variable income investments are traded in a regulated financial market; and
 - (b) No holding shall exceed 5% of the issued capital of the issuing company.
- 15.4 No more than 5% of the Petroleum Fund may be invested in other eligible investments, provided that:
 - (a) The Minister has included the asset class to which the eligible investments belong in the proposed asset allocation presented to Parliament in accordance with Article 14.5; and
 - (b) The rules and criteria for selecting, managing and valuing individual financial instruments within the asset class have been approved by the Minister and published.

- 15.5 The exposure of the Petroleum Fund:
- (a) To any one company or issuer, except for a sovereign state, in the form of eligible investments, shall not exceed 3% of the total value of the Petroleum Fund;
 - (b) To any one asset class shall, on a net basis, be positive.
- 15.6 Subject to Article 20.1 and Article 20.2, charges related to any transactions of investments in the market or to the participation in short-term lending of any instruments, made in accordance with the principles of prudent asset management, shall not be considered as burdens or charges on the Petroleum Fund
- 15.7 A derivative instrument shall qualify as an eligible investment only if:
- (a) It is used for the purpose of reducing the risk to the Fund from the underlying instrument or instruments or to facilitate the efficient implementation of asset exposure; and
 - (b) The risk from the derivative instrument is not larger than that which could be had by direct exposure to the underlying assets in accordance with this law; and
 - (c) The Minister has established conditions with respect to the legitimacy of its operational use.
- 15.8 The Minister shall determine the period within which Investment Managers shall dispose of a derivative instrument if it ceases to be an eligible investment because of a change in the credit rating of the financial instrument or its issuer.

Article 16 Investment Advisory Board

- 16.1 An Investment Advisory Board is hereby created, to be responsible for:
- (a) Preparing benchmarks for the Minister so as to assess the behaviour and return of investments made from the Petroleum Fund, as well as the adequacy of risks;
 - (b) Advising the Minister on the investment instructions to be given to the Petroleum Fund investment managers appointed under Article 12;
 - (c) Advising the Minister in what concerns the performance assessment of the external investment managers and make recommendations regarding the approval or termination of their respective contracts; and
 - (d) Advising the Minister on the need for changes in the investment policy or the management of the Petroleum Fund;
- 16.2 Subject to Article 18, the Minister shall seek the advice of the Investment Advisory Board prior to making a decision on any matter relating to the investment strategy or the management of the Petroleum Fund.
- 16.3 Any advice given by the Investment Advisory Board on the investment policy or the Petroleum Fund management shall take into account:
- (a) The overall objective of the Petroleum Fund, consisting of revenues obtained from the exploitation of non-renewable petroleum resources, to benefit current and future generations;
 - (b) The current conditions, opportunities and constraints in investment markets and the constraints under which the Operational Manager and other relevant agencies in Timor-Leste operate; and

- (c) The need to ensure the adequacy of liquid assets to enable the transfers indicated in Article 7, when required.

16.4 The Investment Advisory Board shall approve its own operational regulations.

Article 17 Organisation of the Investment Advisory Board

- 17.1 The Investment Advisory Board shall consist of 5 or more members, appointed by the Prime Minister on the advice of the Minister, at least 3 of who shall possess significant experience in investment management.
- 17.2 The Director of Treasury and a representative of the Operational Manager shall be entitled to participate in meetings of the Investment Advisory Board, without the right to vote.
- 17.3 The Operational Manager shall provide the secretariat for the Investment Advisory Board and any support required by the board to carry out its functions, with the Minister indicating the representative of the Ministry in that body.
- 17.4 Under Article 17.1, the dispatch appointing the Members of the Investment Advisory Board shall determine their remuneration, in conformity with the applicable legislation.
- 17.5 Before taking office, the Members of the Investment Advisory Board shall submit a written declaration that their appointment has no conflicts with any other personal or family interests, and in the same document, provide a written statement declaring their assets on the date of investiture.

Article 18 Absence of Advice from the Investment Advisory Board

- 18.1 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.
- 18.2 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.
- 18.3 If the Minister makes a decision under Article 18.1 or 18.2, the Minister shall immediately report the making of the decision to the Investment Advisory Board.
- 18.4 The Minister shall re-examine the decision having regard to any subsequent advice provided by the Investment Advisory Board.

Article 19 Release of Advices of the Investment Advisory Board

- 19.1 When required by Parliament, the Government shall without delay provide Parliament with all advices given thereto by the Investment Advisory Board.
- 19.2 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

- 20.1 The capital invested under Articles 14 and 15, independently of the form in which it is invested, shall be the property of the State of Timor-Leste.
- 20.2 It shall be possible to place encumbrances of any type on the assets of the Petroleum Fund by contract or agreement, up to a limit of 10% of the total value of the Petroleum Fund on the date the encumbrance is placed, provided that this respects the principles of the general system for creating, issuing and managing public debt.

Chapter IV – Supervision of the Petroleum Fund

Article 21 Maintenance of Petroleum Fund Accounts and Records

- 21.1 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.
- 21.2 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.
- 21.3 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

- 23.1 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.
- 23.2 The Annual Report referred to in Article 23.1 shall be published by Government within fifteen (15) days of its submission to Parliament.

Article 24 Information Contained in the Annual Report

- 24.1 The Annual Report on the Petroleum Fund shall be prepared in a suitable form for prompt public disclosure, and in particular shall contain the following information for the Financial Year:
- (a) Audited financial statements certified by the Independent Auditor, comprising:
- i. Documented accountability for expenditure, including investment and revenues;

- ii. A chart with financial balances and the investment result, including a list of the qualifying instruments of the Petroleum Fund valued at market value;
 - iii. Details of all appropriations from the Petroleum Fund, including those related to transfers to the State General Budget; and
 - iv. Notes to the financial statements, as appropriate.
- (b) A report by the Minister describing the financial activities of the Petroleum Fund during the past year, including all advice provided by the Investment Advisory Board, any reports prepared by the Independent Auditor appointed under Article 35, and specific issues or matters that the Minister believes should deserve the interest or attention of Parliament;
 - (c) A report on the investment policy in accordance with the provisions of Article 14.5;
 - (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 activities contained therein;
 - (e) The income derived from the investment of Petroleum Fund assets during the Financial Year compared with the income of the previous three Financial Years;
 - (f) A comparison between the nominal income obtained and the application of Petroleum Fund assets regarding its real return, after adjusting for inflation;
 - (g) A comparison between the nominal income derived from the application of Petroleum Fund assets and the benchmark performance indices provided to the Minister pursuant to Article 16.1;
 - (h) A comparison of the Estimated Sustainable Income for the financial year with the total transfers from the Petroleum Fund in that year;
 - (i) In the event of borrowing by the Government with the corresponding debt being guaranteed by the Fund, the contingent liability shall be reflected in the report and accounts of the Petroleum Fund so as to present an accurate and true financial picture of the expected financial situation regarding the net assets and the rate of saving sovereign wealth; and
 - (j) A list of persons holding positions relevant for the efficient operation and performance of the Petroleum Fund, namely:
 - 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 entity appointed as the Operational Manager; and
 - vi. The members of the Petroleum Fund Consultative Council.

24.2 The sources of the information indicated in the preceding paragraph, including all reports and statements, in whatever form, shall be annexed to the Annual Report in the original unedited version.

Chapter V – Petroleum Fund Consultative Council

Article 25 Petroleum Fund Consultative Council

- 25.1 There is hereby established a Petroleum Fund Consultative Council.
- 25.2 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 Article 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 Heads of the Operational Manager who have effectively been in office for at least three (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

- 27.1 The term of office of the members of the Petroleum Fund Consultative Council is five (5) years, and it is not renewable.
- 27.2 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.
- 27.3 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.

- 27.4 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).
- 27.5 Members of Parliament or of Government may not be appointed under paragraph 26.(f).
- 27.6 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

- 28.1 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.
- 28.2 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.
- 28.3 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.
- 28.4 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

- 30.1 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.

30.2 When:

- (a) the Government introduces legislation to Parliament to appropriate an amount from the Petroleum Fund, and
- (b) the amount the legislation would appropriate in the Fiscal Year is greater than the Estimated Sustainable Income of the Petroleum Fund for the Fiscal Year,
- (c) 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.

30.3 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.

30.4 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.

30.5 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 quorum of six (6) members.

30.6 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

31.1 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.

31.2 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.

31.3 The Minister and/or the Head 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.

31.4 In dealing with the information furnished under Article 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

- 32.1 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.
- 32.3 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.
- 32.4 In the exercise of its functions and competences, and as provided for in this Law, Parliament, the Government, the Minister, 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.
- 32.5 The Minister shall ensure that this Law, any subsidiary legislation made thereunder, any instructions relating to the Petroleum Fund, the operational management agreement referred to in Article 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

- 33.1 For all purposes of the law, an obligation to pay into the Petroleum Fund will only be considered as fully discharged when the amount owed has been deposited, free from any conditions, into the single designated receipts account of the Petroleum Fund.
- 33.2 Subject to the preceding paragraph and Article 5.2, the obligation to deposit, free from

any conditions, revenue obtained from the investment of Petroleum Fund assets, shall be considered fully complied with when the revenue is credited to a bank account held by the Operational Manager solely for the purpose of managing the Petroleum Fund.

Article 34 Independent Auditor

- 34.1 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.
- 34.2 The selection and appointment of the Independent Auditor shall be made in accordance with the procurement procedures established under Timor-Leste law.
- 34.3 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

- 35.1 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.
- 35.2 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.
- 35.3 The Independent Auditor's report shall state the aggregate amounts of payments made as Petroleum Fund Receipts for each Payer for the Fiscal Year.
- 35.4 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

39.1 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.

39.2 An attempt is punishable.

Article 40 Hindering the Exercise of Powers by an Auditor

40.1 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 Law, 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.

40.2 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

42.1 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.

42.2 The liability is excluded where the agent has acted against express orders or instructions properly issued.

42.3 The liability of the entities mentioned in Article 42.1 does not exclude the individual liability of the respective agents.

42.4 The entities mentioned in Article 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

43.1 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.

43.2 If the fine is applied to an entity without juridical personality, its payment will be guaranteed by the entity's assets and, in the event of non-existence of such assets or under-capitalisation, 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

44.1 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 Law, 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

- 48.1 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 Law, 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.
- 48.2 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

- 49.1 This Law enters into force on the day following its publication in the Jornal da República.
- 49.2 This Law applies to Fiscal Years commencing on or after 1 July 2005.
- 49.3 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 Law, only the provisions that do not require the intervention of the organic structure to be constituted shall apply.

Approved on 20 June 2005.

President of Parliament,

Francisco Guterres “Lu-Olo”

Promulgated on 13 July 2005

President of the Republic

Kay Rala Xanana Gusmão

SCHEDULE 1

CALCULATING ESTIMATED SUSTAINABLE INCOME FOR A FISCAL YEAR

I. The Estimated Sustainable Income for a financial year is the maximum amount that can be appropriated from the Petroleum Fund in that financial year leaving sufficient resources in the Petroleum Fund for an amount of equal real value to be appropriated in all subsequent financial years, as determined in accordance with the formula in paragraphs II and III below.

II. The Estimated Sustainable Income for a financial year is calculated according to the following formula: $r \times \text{petroleum wealth}$ where:

r is the real rate of return estimated from Petroleum Fund investments, considered to be 3.0% for the purposes of this calculation.

In this Schedule, "petroleum wealth" is calculated according to the following formula:

$$V + \text{updated value } (R_0, R_1, \dots, R_n) = V + \sum_{t=0}^n \frac{R_t}{(1+i)^{t+0.5}}$$

where:

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

R_0, R_1 , etc. are the official projections regarding the expected annual revenue of the Petroleum Fund, minus investment returns for that financial year (R_0) and future financial years (R_1 , etc.)

i is the long term estimated nominal yield for the current portfolio of the Petroleum Fund according to the terms of the mandate.

n is the estimated number of years until the sovereign petroleum resources run out and that Petroleum Fund source is depleted.

Petroleum Wealth is to be calculated from the start of the financial year, assuming that receipts are received in the middle of the year.

III. 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 pointed out in a clear manner.

IV. Each and every assumption made shall be prudent, reflecting the international best practice and being based upon internationally recognized standards.

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