



Presidente da República

His Excellency
Dr. Adérito Hugo da Costa
President of the National Parliament

Subject: VETO - National Parliament Decree No. 45/III - Private Investment Law

In compliance with the provisions of art. 88.1 of the Constitution, I hereby refer to Your Excellency, for the due effects, the basis for the presidential veto of National Parliament Decree No. 45/III - Private Investment Law, requesting a review of it.

I would like you to accept, Sir, the assurance of my highest consideration.

Dr. Francisco Guterres Lú Olo
President



Presidente da República

**MESSAGE TO THE NATIONAL PARLIAMENT FROM THE
PRESIDENT OF THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE
FRANCISCO GUTERRES LÚ OLO**

(ON THE VETO OF NATIONAL PARLIAMENT DECREE No. 45/III - PRIVATE INVESTMENT LAW)

**Mr. President of the National Parliament
Adérito Hugo da Costa**

**Distinguished Heads of the Benches,
Distinguished Members,**

Your Excellencies,

Today, I solemnly address this Great Assembly, which bears the responsibility of being the mirror of our democracy, so that through you, I address the entire People of Timor-Leste to explain why the President of the Republic is obliged to use his powers and exercise the right to political **VETO** regarding **National Parliament Decree No. 45/III - which approved the Private Investment Law**.

I have sworn to be the President of all and to defend social and economic inclusion, through state policies that allow the eradication of poverty, and development programs that guarantee political stability, peace and social harmony.

In the preamble to National Parliament Decree No. 45/III, which approved the Private Investment Law, it is stated as justification for the new law, the need to modernize the legal regime for private investment currently in force in the country, which is contained in the Law No 14/2011, of 28 September, in force for less than 6 years.

Although that law is recent, the new law advocates the urgent need for its amendment.

According to the Preamble, it is necessary to amend the foreign investment law, the law that regulates national investors to ensure compliance with the rules of the Global Investment Agreement ASEAN-ACIA¹, to enable and facilitate the accession of Timor-Leste to ASEAN.

Our desire to join ASEAN has not come about recently. Therefore, Law No. 14/2011 of 28 September, which is to be repealed, already contains, among other things, provisions facilitating and encouraging private investment, together with a set of rights and guarantees for the inves-

¹ Association of Southeast Asian Nations-Comprehensive Investment Agreement.

tor, in particular in Articles 14 on land ownership, Article 15 on the right to import and export, Article 16 on the use of internal and external credit, Article 17 on the transfer of funds abroad, Article 18 on the hiring of foreign workers, Article 19 on the protection of intellectual property, Article 20 on the guarantee of professional, banking and commercial secrecy. In addition, Article 21 establishes fiscal benefits, Article 22 allocates customs incentives, Article 29 allows for special investment agreements and Article 34 provides for conciliation and arbitration as dispute settlement mechanisms in accordance with internationally accepted standards which may arise.

In fact, to avoid any doubt, the law in force already provides that investors can enjoy:

1. An exemption from **income tax** in the amount of **100%**;
2. A deduction **in the taxable amount of all expenses up to 100%**, even when not associated with the exercise of business activities, from workers' benefits and the population in the area;
3. An exemption from **sales tax** in the amount of **100%**;
4. An exemption from **services tax** in the amount of **100%**;
5. An exemption from **customs duties tax** in the amount of **100%**.

And, after all, what differentiates the new law from the previous law and gives it the character of modernity that is claimed?

Does the approval of National Parliament Decree No. 45/III allow and facilitate Timor-Leste's accession to ASEAN by itself?

In order to respond to these concerns, we have consulted the ACIA-ASEAN Comprehensive Investment Agreement and found, with due respect to the contrary opinion, that it does not.

The ACIA is of the utmost importance for the establishment of the common market, in order to facilitate the economic integration of ASEAN member countries and to enable the free movement of people and capital within an integrated regional economy.

Accordingly, it provides a set of standards guaranteeing equal treatment and fair treatment among all members of ASEAN (Article 5 and Article 6), protection and security of investments from *[Realizados por' in original]* social instability, state of emergency or armed conflict (Article 12), prohibition of illegal expropriation and – in case of expropriation for public utility – the payment of fair compensation.

It also provides for the transfer of funds abroad, limited only to certain exceptional circumstances (Article 13), **that the laws of the member countries can foresee** (Article 13.3) particularly in the event of bankruptcy or insolvency, recovery of assets ordered after a criminal process, debts to workers among others and safeguards the rights and obligations of the State, where the investment takes place, with respect to the International Monetary Fund (IMF), to safeguard the balance of payments or where the transfer of capital abroad may cause serious economic or financial instability in the country authorizing the transfer.

As we can see from the statement of some provisions of the ACIA, the current law contemplates these aspects to exactly the same extent as National Parliament Decree No. 45/III - which approved the Private Investment Law.

Meanwhile, the ACIA also guarantees the right of return to the country where the investment

was made, in case of default on the part of the investor, who insured the investment. And, on this last point neither the current law, nor National Parliament Decree No. 45/III include any provisions.

But then what is different in the current law and National Parliament Decree No. 45/III?

The difference is that the current law excludes certain areas of activity from private investment.

The law that is being amended prohibits private investment in certain areas **reserved for the State of Timor-Leste, e.g. oil exploitation, hydrocarbons, heavy metals, and others**², in compliance with which it could not fail to be in accordance with article 139 of the RDTL Constitution, which with the permission of Your Excellencies, I quote:

*Article 139
(Natural resources)*

1. *The resources of the soil, the subsoil, the territorial waters, the continental shelf and the exclusive economic zone, which are essential to the economy, shall be owned by the State and **shall be used in a fair and equitable manner in accordance with national interests.***
2. *The conditions for the exploitation of the natural resources referred to in item 1 above should lend themselves **to the establishment of mandatory financial reserves, in accordance with the law.***
3. *The exploitation of the natural resources shall preserve the ecological balance and prevent destruction of ecosystems.”* End of citation

On the other hand, instead of spreading statements of principle without legal consequences³, the law that you want to revoke states very clearly what is excluded from free private initiative⁴:

All activities that by their location; may interfere adversely – in purpose or goals – defined as protected areas, as defined by current environmental legislation.” End of citation.

I cannot agree to the removal of these provisions by National Parliament Decree No. 45/III, because they do not conflict with the ACIA.

On the other hand, National Parliament Decree No. 45/III also removes the concession of benefits that the previous law consecrated for the Rural Areas, with which the President of the Republic cannot agree.

I cannot agree, in obedience to the Constitution of the Democratic Republic of Timor-Leste, which as President of the Republic I swore to defend.

Finally, it is important to remember that Tax Reform is in progress, which will define what types

² Art. 8.3 of Law No. 14/2011.

³ National Parliament Decree No. 45/III, in art. 4, under the heading General Principles line b) provides:
“Promoting sustained, inclusive and sustainable economic growth through and with respect for natural ecosystems;”

⁴ Fl.° 2, line b of Law no. 14/2011

of taxes, fees, tariffs should exist in our country.

When National Parliament Decree No. 45/III is **VETOed**, private investments will be eligible for exemption on 100% of the sales tax; 100% exemption from income tax; 100% exemption from services tax; tax deductible up to 100% of expenses, even if they are not directly linked to the investment, not for one, but for 5, 8 or 10 years depending on the investment location.

I cannot understand why the Tax Reform is delayed and we do not yet have a National Parliament Decree on Tax Reform that was already started, I am told, more than two years ago with the hiring of international and national experts.

The VI Constitutional Government Program 2015-2017 expressly provides in section 4.2.1 **Reform of Tax System** that:

*“As the economy develops, the Strategic Development Plan for 2011-2030 provides that the **tax base** no longer depends only on customs and trade and **pass and also becomes** based on **taxes and capital gains**. To improve the fiscal balance of the country, there is an ongoing reform of the tax system targeting (aiming?) also at larger collection of domestic state revenues.*

The Government will consider a range of possible tax changes, including the possibility of introducing a Value Added Tax; any decision will only be taken, after extensive consultation with Timorese citizens, business leaders and other stakeholders, in order to ensure that any changes will benefit the Timorese.”

It seems to us to be premature and even counterproductive that the National Parliament should legislate on this matter at the very end of its term.

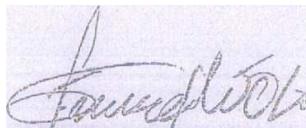
We are at the end of the legislature, in the last month, and the campaign for legislative elections has already begun.

The approval of National Parliament Decree No. 45/III is manifestly ill-timed for these reasons briefly explained, **VETO**.

And, even though I know that the Decree was approved by consensus, I appeal to the serenity of the Honorable Members as representatives of the People, in order to consider the issues I have raised.

The President cannot fail to exercise his right to **VETO** fulfilling the oath he made, to be the President of everyone, to defend social and economic inclusion through state policies that may be a factor of political stability, ensuring peace and social harmony.

With high Consideration,



Francisco Guterres Lú Olo
Presidente da República

Nicolau Lobato Presidential Palace, July 3, 2017