#### Decree-Law No. 2/2015

#### 14 January

### On the establishment of a Council for the Definitive Delimitation of **Maritime Boundaries**

Whereas, since the country's independence, Timor-Leste has always had the aspiration to exercise full sovereign powers over the national territory and the maritime area which, under international law, is under its jurisdiction;

Whereas, due to circumstances and history related to the Indonesian occupation period and with the position taken by the Commonwealth of Australia on the demarcation of maritime boundaries of Timor-Leste Under international law, Timor-Leste was forced to conclude, during the process of negotiating the definitive delimitation of maritime boundaries, temporary arrangements for the exploitation of natural resources in the seabed located between the two countries, delaying thus the negotiating process of the definitive delimitation of maritime boundaries;

Whereas the treaties however concluded with the Commonwealth of Australia (the Timor Sea Treaty and the Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS)) do not allow the full exercise of powers rulers of Timor-Leste, as recognized by international law;

Whereas Timor-Leste and Australia agreed to suspend the arbitration proceedings for a period of six months to try to resolve the dispute through an amicable settlement;

Whereas Timor-Leste believes that the definitive delimitation of maritime boundaries between the two countries is the only acceptable solution, in that it meets the aspirations of its people and is the only solution that will permit the full economic development of the nation;

Whereas, with the definitive delimitation of maritime boundaries, Timor-Leste can offer more confidence and certainty to investors.

Whereas, according to the Constitution of the Democratic Republic of Timor-Leste, the powers to prepare and negotiate international treaties are the responsibility of the Government;

Whereas, according to the Constitution of the Democratic Republic of Timor-Leste, the power of ratification of international treaties related to boundary demarcation and boundary limits of the country is with the National Parliament;

Considering that, 12 years after the restoration of independence of the nation, it is necessary, once and for all, national maritime boundaries in the light of the inherent huge social, political and economic impact;

Considering National Parliament Resolution No. 12/2014 of 24 October, which supports and agrees with the immediate commencement of negotiations with the Commonwealth of Australia, in order to establish the definitive delimitation of the maritime boundary between the Democratic Republic of Timor Leste and the Commonwealth of Australia;

Whereas, according to the provisions of Article 6.2 of Law No. 6/2010 of 12 May on international treaties, the Government may specifically delegate responsibilities to other departments or government agencies to negotiate international treaties;

Recognizing that the negotiation of an agreement for definitive delimitation of maritime boundaries with the Commonwealth of Australia requires the mobilization not only of representatives and government officials, but also of certain citizens of Timor-Leste and/or international experts who, due to their experience, expertise, and recognition, should play an active role in providing guidance at the highest level to the negotiating team;

Recognizing that it is essential to ensure the legal conditions necessary for the creation of a special negotiating body, in particular in order to define the powers and duties of its members, and to establish a special procurement procedure that will allow the hiring of national and international experts to collaborate in the negotiations with the Commonwealth of Australia, in accordance with Article 2.3(e) of the Public Procurement Regime Law, approved by Decree-Law 10/2005, of 8 November, as amended;

Thus, the Government decrees, under Articles 115.1(a) and (f), 115.3 and 116(d) of the Constitution of the Democratic Republic of Timor-Leste, Article 6.2 of Law No. 6/2010 of 12 May, on International Treaties, Article 2.3(e) of Decree-Law 10/2005, of 8 November, as amended, with the force of law, the following:

### CHAPTER I GENERAL PROVISIONS

### Article 1 Object

This Decree-Law approves the creation of a Permanent Council to the Definitive Delimitation of Maritime Boundaries and establishes its operation, composition and powers.

### CHAPTER II STRUCTURE AND ORGANIZATION OF THE COUNCIL FOR THE DEFINITIVE LIMITATION OF MARITIME BOUNDARIES

## Article 2 Creation of a Council for the Delimitation of Maritime Boundaries Definitive

It is created by this law, a Council for the Delimitation of Definitive Maritime Boundaries within the Prime Minister's Office, for the negotiation of a treaty on the definitive delimitation of maritime boundaries with the Commonwealth of Australia, hereinafter also referred to as "CPDDFM".

## Article 3 Nature of the Council for the Delimitation of Maritime Boundaries Definitive

The CPDDFM is created for the purposes foreseen in Article 6.2 of Law No. 6/2010 of 12 May, on International Treaties.

### Article 4 Duration

The CPDDFM is created for an indefinite period.

# Article 5 Funding for the Council for Definitive Delimitation of Maritime Boundaries

- 1. The financing of CPDDFM will involve the transfer of funds by the Government, which is subsequently responsible for approving the budget.
- 2. CPDDFM will have total autonomy to manage and move the funds as may be assigned, and should, however, produce an annual report on the administration of such funds to submit it to the Prime Minister by the end of March of the year following the year to which the report relates.

### Article 6 Powers and functions

- 1. CPDDFM has the following tasks:
- a). Define the key terms of the negotiation of a treaty for the definitive delimitation of maritime boundaries with the Commonwealth of Australia, acting as supervisory committee controlling the overall direction of the negotiation process and deciding the intended goals;
- b). To define the respective powers and responsibilities of the negotiating team, the Head of which will be appointed by the President;
- c). Function as supervisory body for the Negotiations Team and provide them with instructions and guidelines on relevant decisions and strategic guidelines;
- d). Approve the steps, processes and the proposed resolutions and submit the results thereof to the Government;
- e). Meet regularly with the Negotiating Team to be informed of progress of the negotiation process;
- f). Ensure that the Government allocates all resources and provides full support to the Negotiating Team:
- g). Interact with the team of lawyers responsible for arbitrations taking place at the International Court of Justice and the Timor Sea Treaty and the CMATS in order to ensure uniform strategies; and
- h). Any other powers granted to it by the Government.
- 2. The Negotiating Team shall be responsible for, among others, the implementation of a management structure of the negotiations, collection of information and other relevant materials, development of negotiating strategies and definition of negotiating positions that best serve the interests of Timor-Leste, as established by CPDDFM.
- 3. The Head of the Negotiations Team shall be responsible for, among others, the organization of the Negotiations Team and appoint and remove its members, development of a management plan and sharing information with the CPDDFM and the government, leadership of the negotiations, setting the structure of the negotiations, implementation of the approved budget, evaluation of negotiating interests, preparation of the proposed CPDDFM budget, hiring experts, consultants and necessary support staff and approval of all required expenses.

- 4. The Head of the Negotiations Team will also act as a plenipotentiary, under Article 5.1 of Law No. 6/2010 of 12 May.
- 5. The proposed CPDDFM budget, which will be managed by the Head of Negotiating Team, should provide the funds necessary to cover, among others, the costs to access and hire the Negotiating Team, legal, technical, economic and negotiation experts, costs relating to the field of work and consultations, travel costs, accommodation, meeting room rental, information management and dissemination (printing and distribution of key documents), per diems, research fees, analysis, translation and transcription and any other costs necessary to prepare the participation in the negotiations.

### Article 7 Members of the Council for the Definitive Delimitation of Maritime Boundaries

- 1. CPDDFM will consist of the following members:
- a). The Prime Minister of the Democratic Republic of Timor-Leste and, also, the Government Ministers whose participation it considers relevant to the negotiation of the agreement with the Commonwealth of Australia for the definitive delimitation of maritime boundaries; and
- b). Eminent personalities of the nation, including former Presidents of the Republic, former Prime Ministers, former Presidents of the National Parliament and any other person who may be designated by the Government in light of their reputation, experience, wisdom, history and public recognition, to play an active role in the direction and guidance of the team that will negotiate the agreement with the Commonwealth of Australia.
- 2. CPDDFM is chaired by the Prime Minister of the Democratic Republic of Timor-Leste.
- 3. CPDDFM may invite public or private persons for meetings, whose presence is deemed important and recognized specialists.

## Article 8 General duty of confidentiality

- 1. Members of CPDDFM, Negotiations Team and any independent members, including experts who could cooperate with or participate in those meetings, are subject to a general duty of confidentiality and must commit not to disclose, comment, broadcast, advertise, or otherwise disseminate any question, matter, agreement or settlement of the matters under discussion or over which they have become aware, except when duly authorized by the Prime Minister.
- 2. Non-compliance with the preceding paragraph, entails disciplinary, civil and criminal liability as provided in the applicable law, including Article 200 of the Criminal Code (Violation of State Secrets), which provides for imprisonment up to 15 years .

## Article 9 Meetings, operation and secretariat

1. The rules on the organization, operation and the role and activities of each CPDDFM member should be adopted by this at its first meeting.

2. CPDDFM can be supported by a Secretariat which is responsible for the logistical and administrative aspects of the Council's work. The Secretariat is managed by the Administrative Services Manager, appointed by the head of the negotiating team.

### **CHAPTER III** SPECIAL PROCUREMENT REGIME

### Article 10 Special procurement regime

- 1. Expenses incurred on the CPDDFM, hiring Negotiations Team and any experts to join or provide support to this and, in addition, the acquisition of any goods, services and equipment related to the negotiations to be held, are subject to the special procurement arrangements provided in this law.
- 2. For the purposes of the preceding paragraph, the "expenses incurred in the CPDDFM, hiring Negotiations Team and any experts" include, among others, all fees, per diems, travel costs, payments or other forms of compensation payable to experts from the fields of law, technical, economic and trading, intellectuals, academics, geologists, or any other natural or legal person, whose involvement in the negotiation process or advice regarding the same are necessary depending on their expertise, specialized competence and knowledge.
- 3. For the purposes of paragraph 1 of this Article, "goods, services and equipment" include, among others, all expenses related to the organization travel, accommodation, room rental, computer equipment, printing and distribution services, telecommunications and, also, the use of any property other equipment or services necessary for the preparation and participation in negotiations.

### **Article 11 General Principles**

- 1. Contracting the Negotiations Team and any experts and the purchase of any goods, services and facilities must ensure they observe the general principles of competition and value for money, including through public tender and any other forms of public procurement under the law.
- 2. Notwithstanding the preceding paragraph, can always be adopted a direct award procedure when this is strictly necessary for reasons of extreme urgency and to ensure confidentiality, due to the nature of the work, goods or services to be provided by technical adequacy of reasons or because of the confidential nature of the matters in question.

### Article 12 **Decision on the choice of procedure**

The decision on the choice of specific award procedure to be adopted and the execution of any contracts related to it is up to the Head of the Negotiating Team.

### Article 13 **Authorization of expenditure**

1. All expenses related to the hiring of Negotiating Team and experts and the purchase of any goods, services or equipment must be made through the approved CPDDFM budget.

2. In the event that in any fiscal year, the funds available are insufficient to cover the necessary or planned expenses, the Head of the Negotiating Team may submit a request for additional funding for the CPDDFM.

### **CHAPTER IV Final Provisions**

### Article 14 **Questions and omissions**

Questions which arise in the application and interpretation of this Decree-Law are resolved by the Prime Minister or the Council of Ministers.

### **Article 15 Implementation**

This Decree-Law shall enter into force on the day following its publication in the Official Gazette.

Approved by the Council of Ministers on 24 October 2014.

The Prime Minister, Kay Rala Xanana Gusmão

Promulgated on 8 January 2015

To be published.

The President of the Republic,

**Taur Matan Ruak**