



## **DEMOCRATIC REPUBLIC OF TIMOR-LESTE**

### **Decree-Law on Employment in the Extractive Activities**

**Decree-Law No. \_\_\_/\_\_\_, of ...**

Extractive Activities, notably petroleum and mining, the importance of which has increased in Timor-Leste in recent years, require mobilization of manpower and the establishment of measures that allow for the effective control and adequate regulation of workers carrying out their activities in these sectors, in the country.

Considering that Petroleum Operations, and Mineral Operations frequently require manpower to provide work in conditions that are not equivalent to those of employees from other sectors of the economy, namely in terms of work schedule, benefits, entitlements, recruitment and training, and Law No. 4/2012, of 21 February, which approved the Labor Law, does not adequately address the specificities of the employees working in these economic sectors, being thus necessary to approve such specific rules.

Now therefore, under the terms of Articles 115.1(j) and 116(d) of the Constitution of the Democratic Republic of Timor-Leste, the Government hereby enacts into law, the following:

## CHAPTER I

### OBJECT, SCOPE OF APPLICATION AND DEFINITIONS

#### Article 1

##### Object

This Decree-Law sets forth the rules applicable to Employer engaged in Extractive Activities, including the requirements to be complied with in the recruitment and hiring of the respective employees, and the specific labor rules applicable to the performance of work in the oil and gas and mining sectors by Timor-Leste nationals and foreigners.

#### Article 2

##### Scope of Application

This Decree-Law shall apply to:

- (a) Employees, irrespective of their nationality, recruited by Employer to engage in Extractive Activities conducted in the Territory of Timor-Leste, including its territorial sea, exclusive economic zone, and continental shelf;
- (b) Employees, who are nationals or permanent residents of the Democratic Republic of Timor-Leste, recruited by Employer incorporated or registered under Timor-Leste Law to engage in Extractive Activities conducted in special zones of shared international jurisdiction, including joint petroleum development area, international unitization areas, and any other similar zones or areas, subject to any applicable principles of international law and/or agreements entered into with foreign states; and
- (c) Foreign employers who engage nationals or permanent residents of the Democratic Republic of Timor-Leste to engage in Extractive Activities conducted in special zones of shared international jurisdiction, including joint development areas, international unitization areas, and any other similar zones or areas, subject to any applicable principles of international law and/or agreements entered into with foreign states.

#### Article 3

##### Definitions

For the purposes of this Decree-Law, the words and expressions used herein shall have the following meanings, with the definitions in the singular also applying in the plural, and *vice versa*:

- (a) *Employer* : as define under Labor Law No. 4/2012, of 21 February;
- (b) *Employee*: who are nationals or permanent residents of the Democratic Republic of Timor-Leste, performs a job under the authority and supervisions of an Employer, in return for remuneration;
- (c) *Extractive Activities*: means work in Petroleum Operations and Mineral Operations;

- (d) *Performance Review Bonus*: means additional compensation beyond an Employee's normal salary and, that may be awarded after performance review conducted by the Employer to assess an Employee's quality of work in a given assignment or during a specified period of time;
- (e) *Job Competence or Competency*: means the capability of each individual, including but not limited to, qualifications, knowledge, skills and work attitude which accords with prescribed standards;
- (f) *Fixed Term Employment contract*: means an employment relationship entered into between an Employer and a worker to last for a specified period of time agreed by the parties, which therefore ends automatically when it reaches the agreed end date;
- (g) *Day*: means a consecutive period of twenty-four hours;
- (h) *Rest Day*: means a non-working period of twenty-four hours;
- (i) *Employment Agencies*: means those Employer described in Article 29;
- (j) *Job Training*: means the complete set of activities of providing workers or potential workers with, and paving the way for them to acquire, enhance and develop job competence, productivity, discipline, work attitude and ethics until a desired level of skills and expertise that match the grade and qualifications required for a specific position or a job is reached;
- (k) *Rotational Work Schedule*: means the special work schedule under which an Employee is required to perform regular work consecutively for a given number of days or weeks followed by an equal period of rest;
- (l) *Modular Work Schedule*: means the special work schedule consisting in a variable distribution of the working hours by several weeks, the average duration of the regular weekly working period being computed with reference to a given period of time;
- (m) *Regular Work Schedule*: means the period of time during which an Employee is required to carry out his/her activity as provided for in the employment contract or as determined by the Employer;
- (n) *Bullying* means a discriminatory practice whereby a person or group of people repeatedly act unreasonably towards another Employee or a group of employees, or deliberate behavior that otherwise creates a risk to health and safety of such other Employee or group of employees. Such unreasonable behavior shall include but not be limited to:
  - (i) victimizing, humiliating, intimidating or threatening another Employee or group of employees;
  - (ii) behaving aggressively;

(iii) teasing or making practical jokes;

(iv) pressuring someone to behave inappropriately; or

(v) excluding someone from work-related activities,

that is deemed unreasonable by an average person witnessing the same in normal circumstances.

- (o) *Mining Legislation*: means the legislation applicable to Mineral Operations from time to time, and any amendments, regulations and ancillary statutes thereto;
- (p) *Petroleum Activities Law*: means Law No. 13/2005, of 2 September, and its amendments, regulations and ancillary statutes;
- (q) *Labor Law*: means Law No. 4/2012, of 21 February, and its amendments, regulations and ancillary statutes;
- (r) *Supervising Ministry*: means the relevant government ministries responsible for the Petroleum, Mineral Resources, Labor Affairs, and any other body of the State of Timor-Leste responsible for enforcing this statute;
- (s) *Mineral Operations*: means activities and operations aimed at Reconnaissance, Exploring, evaluating, developing, Mining, processing and refining, transporting and Marketing of Minerals, as well as Mine Closure Activities;
- (t) *Petroleum Operations*: means any activities aimed at prospecting, exploration, appraisal, development and production of petroleum, as defined in the Petroleum Activities Law, with the exception of activities performed by onshore office staff and on offshore support vessels, which is subject to the Labor Law;
- (u) *Discriminatory Practices*: means any behavior by an Employer or any of its staff or contractors or anyone else employed in Extractive Activities that discriminates against, offends, abuses, physically, verbally or psychologically or in any other way harms or harasses an Employee, on the basis of the latter's nationality, race, appearance, sex, religion, sexual preference, or any other subjective or objective characteristic;
- (v) *Week*: means any period of seven consecutive days;
- (w) *Territory of Timor-Leste*: means the area defined in Article 4 of the Constitution of the Democratic Republic of Timor-Leste and in Territory Maritime Boundaries Law 7/2002, of 20 September, as amended from time to time; and
- (x) *Over cycle*: means an additional period of work added to an Employee's regular shift as per request from Employer.

## **CHAPTER II SPECIAL LABOUR RULES FOR EXTRACTIVE ACTIVITIES**

### **SECTION I GENERAL PROVISIONS**

#### **Article 4 Prohibition of Discriminatory Practices**

1. So as to avoid Discriminatory Practices towards their employees, employers of workers engaged in Extractive Activities and the Employer that use third party employees in their operations shall:
  - (a) Put in place adequate safeguards and policies to ensure that no Discriminatory Practices occur at a work place, including by affixing clear warnings and policies at workplaces;
  - (b) Implement a zero tolerance policy in respect of Discriminatory Practices, and ensure that all individuals employed in Extractive Activities receive the necessary training, advice and information to ensure that no such practices take place;
  - (c) Establish and effectively implement mechanisms that allow employees that are targeted by or witness Discriminatory Practices to anonymously denounce the same practices, and provide adequate protection against whistleblowers and witnesses; and
  - (d) Institute disciplinary procedures against any Employee, contractor or any other person that engage in Discriminatory Practices and effectively replace any Employee found guilty of doing so.
2. Employer engaged in Extractive Activities shall ensure that any contractors or Employer sub-contracted to assist in the Extractive Activities comply with the requirements of this Article 4 in respect of their own employees and subcontractors.

#### **Article 5 Prohibition on any types of harassment**

1. Any types of harassment of job candidates and employees as foreseen in the Labor Law and Decree- Law No.19/2009, 08 April, which approved the Penal Code, shall be prohibited;
2. The Employer shall take all reasonable steps to prevent any types of harassment in the workplace; and
3. Any acts in breach of the provisions of the Labor Law and Decree- Law No.19/2009, 08 April, which approved the Penal Code, shall be punished pursuant to the same statutes.

**Article 6**  
**Prohibition of any types of Bullying**

1. Any types of Bullying of job candidates and employees, irrespective of the underlying hierarchical relationship, shall be strictly prohibited;
2. Employers shall take all reasonable steps to prevent any types of Bullying in the workplace; and
3. Any acts allegedly in breach of the Bullying prohibition foreseen in this Decree-Law shall be investigated by the appropriate committee established by the Employer which shall take any necessary and reasonable steps to settle the issues.

**Article 7**  
**Employer Registration, Headquarters or Office**

1. Before recruiting employees, Employer engaged in Extractive Activities shall mandatorily register themselves pursuant to applicable law in Timor-Leste; and
2. The application for registration purposes shall include the applicant's name or corporate name, business or corporate purpose, and registered seat and work centers all in Timor-Leste. Whenever the applicant is a legal person it shall also indicate in the application the date and number of its corporate registration in Timor-Leste, and the respective directors' names and addresses pursuant to applicable law

**Article 8**  
**Principles for recruitment and training**

1. Employer carrying out recruitment and training of employees for Extractive Activities in Timor-Leste shall comply with the rules foreseen in this Decree-Law and other applicable law in Timor-Leste; and
2. Notwithstanding the provisions of Article 8.1, the Employer carrying out Extractive Activities in Timor-Leste shall use local manpower and services, and enable the creation of employment, the acquisition and development of local skills and knowledge and technology transfer.

**Article 9**  
**Functional Mobility**

1. Employees shall perform the functions corresponding to the tasks that comprise their job position as set out in the employment contract or defined in Employer's internal regulations, and for which the employees shall have the necessary skills, professional certifications or experience;
2. The functions that comprise an Employee's job position shall include other ancillary or functionally related tasks, if they pertain to the same professional

group or career and as long as the Employee has suitable skills, professional certifications or experience for such purpose; and

3. The performance of tasks that are ancillary or functionally related to the Employee's position shall not imply the substantial variation of Employee's functions, and Employee shall perform those tasks whenever expressly required by Employer.

#### **Article 10 Workplace Mobility**

1. Employees whose functions are directly connected to Employer's operations and that render work at a workplace located offshore or at an onshore operational back-up and support workplace, may be temporarily or permanently mobilized by the Employer to another workplace located offshore or onshore so as to answer to relevant operational needs at such new location, without such mobilization being deemed a cause of serious damage to the employees; and
2. Employees mobilized under Article 10.1 shall be entitled to benefit from the economic assistance as foreseen in Article 17.4 of the Labor Law.

#### **Article 11 Rotational Work Schedule**

1. Employees engaged in Extractive Activities may be subject to a rotational work schedule consisting of a maximum and consecutive period of work of four (4) weeks of effective work followed by an equal amount of rest weeks;
2. The system of work referred in Article 11.1 above shall comply with the following rules:
  - (a) The period of rest shall include the time spent with travel home and return to the work center;
  - (b) Weekly rest days, complementary weekly rest days and public holidays comprised within the period of work shall be regular working days, and employees will have the following choice as to how they wish to enjoy weekly rest days, complementary weekly rest days and public holidays by reference to one of the following options:
    - (i) an Employee can receive the right to observe the weekly rest day, complementary weekly rest day or public holiday as additional paid leave which can be taken at a time mutually agreed between the Employer and the Employee; or
    - (ii) employees can forgo the right to additional paid leave as set out in Article 11(2) (b) (i), and instead be paid an additional two hundred per cent (200%) of an Employee's normal hourly salary rate as full compensation for work performed on the weekly rest day, complementary weekly rest day or public holiday.

- (c) The annual vacation period shall be counted within the periods of rest, and Employee shall not be entitled to any additional rest on account thereof.
3. Employer and Employee may agree on the applicability of combined regular and rotational work schedules depending on the Employee's workplace at a given time. In this case, should the Employee work on a rotational work schedule, the subsequent applicability of a regular work schedule shall only be possible after the Employee has enjoyed his/her rotation cycle of rest;
4. Employees may be required to work overtime in excess of their regular work hours as directed by their Employer. In such circumstances the following compensation shall apply:
  - (a) an additional fifty percent (50%) of an Employee's normal hourly salary rate shall be provided in first two (2) hours of overtime; and
  - (b) an additional one hundred percent (100%) of an Employee's normal hourly salary rate shall be provided for additional hour of overtime thereafter.
5. An Employee recalled to work overtime after ceasing a day's scheduled work will be paid a minimum of two (2) hours at the appropriate overtime rate for each time recalled;
6. In scheduling overtime, an Employer must ensure that Employee receive a minimum period of rest of ten (10) hours between consecutive working days;
7. The number of working hours during Employee's rotation cycle of rest cannot exceed twelve (12) hours per day during a maximum period of two (2) consecutive weeks, being always qualified as over cycle work;
8. Over cycle work is compensated with an additional two hundred percent (200%) of employee's normal hourly salary rate, and the Employee shall be entitled to additional days of rest corresponding to the days of over cycle work rendered; and
9. The provision of overtime or over cycle work due to cases of force majeure or to prevent or repair serious damage to the natural or legal persons or the sustainability of operations for long term gain is not subject to the limits provided in Article 11.6 Article 11.7 above.

## **Article 12**

### **Restrictions on employment of pregnant and breastfeeding women**

1. Pregnant and breastfeeding women shall not be employed in the field in Extractive Activities;
2. During pregnancy and breastfeeding, any women employed in the field in Extractive Activities shall be offered temporary office positions by their employers, without any reduction of benefits attributed to the Employee;

3. The employment relationship during the time referred in Article 12.2 shall be governed by the applicable law in Timor-Leste;
4. If the employee refuses to accept the temporary position offered by the Employer under Article 12.2, the employment contract shall be suspended under the terms foreseen in Article 15 of the Labor Law, duly adapted; and
5. For the avoidance of doubt, nothing in this Article prevents the employment of pregnant and breastfeeding women in office positions.

### **Article 13** **Mandatory Insurance**

1. Employers engaged in Extractive Activities shall mandatorily take out insurance policies against any work related accidents, health insurance, life insurance and occupational diseases of their employees, providing for liability coverage for compensation to employees or to their dependents for bodily injury or death caused due to accidents and occupational diseases in the course of or arising out of their employment, including, at least, compensation for past and future loss of wages, payment or reimbursement of medical and like expenses, as well as benefits payable to the respective dependents in case of Employee's death;
2. The Employer may take insurance policies as required under Article 13.1 to cover employees during off time and rest time; and
3. Employers shall take reasonable steps to inform their employees on the different types of insurance policies available and chosen and to what extent such policies cover any risks and damages resulting directly out of the performance of Extractive Activities.

### **Article 14** **Employment Contract**

1. The Employer shall communicate in writing and explain verbally in one of the Timor-Leste's official languages and/or other national languages consider as working languages that the Employee understands the terms and conditions including the respective benefits entitlement in a reasonable manner and in good faith;
2. The Employee shall provide written confirmation of his or her acceptance to the terms and conditions of the employment offer made by the Employer;
3. If the Employee is illiterate or is unable to communicate in an official language, the Employer shall give a suitable deadline of at least one (1) week to allow the Employee to seek external support from legal practitioners, public defenders, relevant unions, or the Supervising Ministry responsible for Labor Affairs; in this latter case the support shall be limited to legal matters;
4. The Employer is obliged to prepare its employment contract in one of the Timor-

Leste's official languages and /or other national languages and shall be signed by both parties prior to the performance of any Extractive Activities by the Employee;

5. English and Indonesian shall be working languages within civil service side by side with official languages as long as deemed necessary;
6. The employment contract shall consist of at least the following information as foreseen in the Labor Law:
  - (a) Employer and Employee identification;
  - (b) Post and tasks to be carried out by the Employee;
  - (c) Work location;
  - (d) Normal working hours and break time;
  - (e) The amount, made and frequency of remuneration;
  - (f) Employee professional category;
  - (g) Contract starting date and signing date in case this is different;
  - (h) Probationary period duration;
  - (i) Contract duration and respective justification, in the case of fixed-term employment contract;
  - (j) The applicable collective employment contract, if it exists;
  - (k) Termination, notification and redundancy pay, and
  - (l) Applicable law.
7. Upon termination of an employment contract entered into under this statute, irrespective of its cause and including in situations of mutual consent, the Employee is entitled to compensation for the length of service in an amount corresponding to three months' salary per each period of 5 years of work at the Employer's service.

### **Article 15** **Bonus for Employment in Extractive Activities**

1. Employees engaged in Extractive Activities shall be entitled to receive payment of the following categories of bonuses:
  - (a) Annual Allowance as foreseen in Labor Law No. 4/2012, of 21 February; and

- (b) Annual Performance Review Bonus of not less than one month salary, if applicable depending on each Employee's yearly performance review and subject to the Employer's discretion, having regard to the Employer's business performance over the year in review which the Annual Performance Review Bonus is being assessed.
2. All bonuses due to employees, including non-mandatory bonuses set forth in the natural and legal person's internal policies and guidelines shall be paid in a non-discriminatory manner, according to the principle of equal pay for equal work.

### **Article 16 Retirement Fund**

Employers shall establish a mechanism of retirement pension fund subject to the applicable laws of Timor-Leste.

## **SECTION II SPECIAL RULES FOR MINERAL OPERATIONS**

### **Article 17 Employment of Workers in the Mineral Operations**

1. The Employer shall not allow any worker to work in any of the Mineral Operations unless the Employee's medical fitness to work therein is confirmed after a medical examination. Such medical examination shall be in accordance with the circumstances and conditions to be determined by Employer that allow any worker to work below the ground or in puncturing works, the decision shall provide that the medical examination of the worker shall be carried out periodically, at least once a year; and
2. The medical examination of the worker shall also be carried out in the event of termination of the contract in order to ascertain the worker's health condition and to obtain information of whether Employee has contracted or suffers from an occupational disease.

### **Article 18 Regular Working Hours**

The weekly regular working hours for employees engaged in Mineral Operations may be extended up to fifty four (54) hours per week, corresponding to nine (9) hours of work per day, without additional compensation in case the Employer adopts the regimes of shift work or when the Employee's mere presence is required.

## **Article 19 Night Time Work**

Night time work, as defined in the Labor Law, confers the right to an additional compensation of twenty-five percent (25%) of the base salary due for identical work performed in daytime.

## **Article 20 Special Working Conditions**

1. The maximum regular hours of work on or under the surface of the earth shall not exceed eight (8) hours per day or such other periods as determined by Article 18. Such period shall include the time spent by the worker to reach the work place under ground as well as the time he/she spends to return to the surface of the earth. For the avoidance of doubt, this provision does not limit the ability to schedule overtime which extends the period of work on or under the surface of the earth;
2. Employees may be required to work overtime in excess of their regular work hours as directed by their Employer. In such circumstances the following compensation shall apply:
  - (a) an additional fifty per cent (50%) of an Employee's normal hourly salary rate shall be provided in first two (2) hours of overtime; and
  - (b) an additional one hundred per cent (100%) of an Employee's normal hourly salary rate shall be provided for additional hour of overtime thereafter.
3. An Employee recalled to work overtime after ceasing a day's scheduled work will be paid a minimum of two (2) hours at the appropriate overtime rate for each time recalled;
4. Employers must ensure that employees receive a minimum ten (10) hour break between the end of one working day and the commencement of the next working day;
5. The provision of overtime or over cycle work due to cases of force majeure or to prevent or repair serious damage to the natural or legal persons or the sustainability of operations for long term gain is not subject to the limits provided in Article 20.4 of this Decree-Law;
6. The working hours shall be separated by one or more intervals for taking food which shall not be less than one hour altogether;
7. The provisions of Article 20.1 may exceptionally be not complied with if the work is intended to prevent or otherwise deal with the occurrence of an accident or for the avoidance of danger or to repair any damage resulting therefrom, or for the purpose of preparations or maintenance in accordance with the following conditions:

- (a) The relevant regulatory authority is notified within twenty four (24) hours of the information relating to the emergency and the period needed for completion of the work and the number of workers required to execute it; and
- (b) The workers involved are granted an additional compensation for the overtime as foreseen in this statute.

### **SECTION III**

#### **SPECIAL RULES FOR PETROLEUM OPERATIONS**

##### **Article 21**

##### **Regular Working Hours for Onshore Petroleum Operations**

1. Employees that render work at workplaces located onshore or at the office may be subject to a modular work schedule with an uneven performance of the working hours during various weeks, which shall be subject to the following rules:
  - (a) The regular working hours cannot exceed the maximum limits of sixty (60) hours per week and twelve (12) hours per day, and on an average basis cannot exceed the general limits of forty (40) hours per week and 8 hours per day, which shall include two rest periods of thirty (30) minutes each, considered as working time;
  - (b) The average duration of the regular working hours shall be estimated pursuant to a reference period of six (6) months;
  - (c) The working hours rendered in excess to the limits of forty (40) hours per week and 8 hours per day shall be agreed, by the Employer and the Employee, to be compensated by one of the following methods:
    - (i) with the corresponding reduction in the working hours in the following weeks during the reference period; or
    - (ii) with the granting of paid periods of compensatory rest to employees, such period of rest being calculated on a one (1) hour worked in excess of the forty (40) hours per week and eight (8) hours per day average equating to one (1) hour of paid compensatory rest, to be taken at a time mutually agreed between the Employer and the Employee; or
    - (iii) no additional paid time off or reduction in working hours but employees receive an additional payment of one hundred per cent (100%) of their normal hourly salary rate as full and final compensation for each hour worked in excess of the limits of the average working time limits of forty (40) hours per week and eight (8) hours per day.

- (d) The normal hourly salary rate shall remain the same during all the reference period of six (6) months.
2. An Employee recalled to work overtime after ceasing a day's scheduled work will be paid a minimum of two (2) hours at the appropriate overtime rate for each time recalled;
3. The Employer shall prepare a specific work schedule chart with the identification of the employees subject to the modular work schedule;
4. Nothing in this Article prevents an Employer engaging employees on a rotational work schedule, in which case Article 11 shall apply;
5. Employers must ensure that employees receive a minimum ten (10) hour break between the end of one working day and the commencement of the next working day; and
6. The provision of overtime or over cycle work due to cases of force majeure or to prevent or repair serious damage to the natural or legal persons or the sustainability of operations for long term gain is not subject to the limits provided in Article 21.5 of this Decree-Law.

## **Article 22**

### **Regular Working Hours for Offshore Petroleum Operations**

1. Employees that render work at workplaces located offshore may be subject to a rotational work schedule as set out in Article 11, which shall be subject to the following rules:
  - (a) The regular working hours cannot exceed the maximum limits of eighty four (84) hours per week and twelve (12) hours per day, and on an average basis cannot exceed the general limits of forty two (42) hours per week over a reference period of six (6) months;
  - (b) The working hours rendered in excess to the limits of eighty four (84) hours per week and twelve (12) hours per day shall be compensated with the corresponding reduction in the working hours in the following weeks during the reference period or with the granting of paid periods of compensatory rest to employees;
  - (c) The normal hourly salary rate shall remain the same during all the reference period of six (6) months;
  - (d) In the month following the end of a reference period, time that exceeds the average working time limit of forty two (42) hours per week shall be paid as overtime work as set out in Article 11.4; and
  - (e) The Employee shall be entitled to full payment of their normal hourly salary rate for their rest weeks.

2. The Employer shall prepare a specific work schedule chart with the identification of the employees subject to the rotational work schedule.

**Article 23**  
**Night Work in Rotational Work Schedules**

1. Should Employer apply a system of two shifts of 12 hours under a rotational work schedule, the shift comprising working hours between 06:00 p.m. of a given day and 6:00 a.m. of the following day shall be deemed night shift; and
2. Night shift employees are entitled to an additional allowance of 25% of Employee's normal hourly salary rate per each hour of night work, which shall also include all compensation due for shift work.

**Article 24**  
**Leave Entitlement for employment in Extractive Activities**

Workers engaged in Extractive Activities shall be entitled to the same leave as foreseen in the Labor Law, with the exceptions foreseen in this Decree-Law.

**CHAPTER III**

**RULES FOR RECRUITMENT, TRAINING AND EMPLOYMENT AGENCIES**

**SECTION I**

**RECRUITMENT AND TRAINING OF WORKERS**

**Article 25**  
**Recruitment of Timorese Citizens**

1. Employer carrying out Extractive Activities in Timor-Leste shall employ Timorese Citizens;
2. In the event that Timorese Citizens that apply for specialized positions do not meet the required level of competence as per industry standards, the natural and legal person engaged in Extractive Activities shall be temporarily allowed to employ persons of other nationalities until such time that Timorese Citizens are qualified; and
3. During the employment of persons of other nationalities as referred to in Article 25.2, Employer engaged in Extractive Activities shall present a succession plan for approval by the Supervising Ministry responsible for Labor Affairs with a view to gradually replacing the foreign nationals by Timor-Leste nationals.

**Article 26**  
**Training of Timorese Citizens in Extractive Activities**

1. Employer engaged in Extractive Activities shall:
  - (a) Carry out training for the purposes of employment and competency development; and
  - (b) Establish a blue print, which shall be provided to the Supervising Ministry for approval, outlining a strategy for the recruitment, positions and trainings required during Extractive Activities in accordance with industry standards.
2. In carrying out Extractive Activities, Employer shall ensure that transfer of technology and knowledge to Timor-Leste employees and job candidates is foreseen in all contracts associated with their operations.

**Article 27**  
**Job Training**

1. Job Training is provided and directed to instill, enhance, and develop job competence in order to improve ability, productivity and welfare;
2. Job Training shall be carried out by taking into account the need of the job market and the need of the business community, either within or outside the scope of employment relations; and
3. Job Training shall be provided on the basis of training programs that refer to job competence standards and administered through proper procedures, to be established and shall be regulated by the Supervising Ministry responsible for Petroleum and Minerals.

**Article 28**  
**Employer Responsibility**

1. Employer who are employers are responsible for improving and or developing their workers' competence through on-Job Training or off-Job Training provided by international institutions or by national public or private training providers accredited or certified by relevant Supervising Ministry; and
2. Subject to operational needs, every Employee shall have equal opportunity to take part in a Job Training that is relevant to their field of

## SECTION II

### BUSINESS SERVICES

#### Article 29

#### Employment Agencies

1. Employer that identify and recruit workers in their own name with the purpose of supplying them to other Employer engaged in Extractive Activities that will directly use their services, determine their tasks, and supervise the performance of those tasks are deemed as Employment Agencies;
2. Employment Agencies are subject to authorization and registration with the Supervisory Ministry responsible for Labor Affairs, under the terms and conditions provided in specific regulations to be approved to this effect;
3. Subject to paragraph 4 below, Employment Agencies may enter into manpower supply agreements in respect of individual workers or groups of workers with their clients. However, regardless of the number of employees covered by the agreements entered into with their clients, Employment Agencies are required to execute an individual employment contract in writing with each worker;
4. The employment contract executed between the Employment Agencies and the worker is limited to a non-renewable term of twelve (12) months and may only be entered into in the following cases:
  - (a) Replacement of a worker who is absent or temporarily unable to render services;
  - (b) Occasional needs for workers to provide direct family support, of a social nature, during the day or parts of a day;
  - (c) Need arising from vacant work posts while the recruitment processes to fill them are already underway;
  - (d) The performance of specific work or services precisely defined and temporary by nature with an indication of the foreseeable completion date for the project; and
  - (e) Unexpected needs of workforce increases to carry out temporary projects or to meet unforeseeable market needs, overload, or backlogs, including but not limited to the construction, installation and restructuring of facilities and repairs.
5. If the worker continues to render services to the client upon expiry of the agreed term of twelve (12) months from the date of execution of the contract between the Employment Agencies and the worker, the contract between the Employment Agencies and the worker is automatically transferred to the natural or legal person who is the client and converted into an unlimited term employment contract with

effects as of the date of execution of the worker's contract with the Employment Agencies;

6. Having the same work post successively filled by more than one temporary Employee is forbidden whenever the maximum term for using a temporary Employee is exceeded;
7. The client is required to provide the same treatment and benefits to the workers furnished by the Employment Agencies that it provides to its own workers. Any type of discrimination between the workers placed by the Employment Agencies and the client's workforce is forbidden, particularly as to their salary and fringe benefits and insurance;
8. The workers furnished by Employment Agencies are subject to the internal policies of the natural or legal person who is the client including its health, safety and hygiene requirements;
9. Without prejudice to the provisions of any specific law or regulations governing Employment Agencies, users of their services shall be liable on a subsidiary basis for all wages and social security contributions due to and on behalf of the worker during the term of the original employment contract with the Employment Agencies; and
10. The workers placed by an Employment Agency are not included in the client's workforce headcount.

## **CHAPTER IV**

### **ENFORCEMENT, SUPERVISION AND SANCTIONS**

#### **Article 30**

##### **Enforcement and Supervision**

The enforcement of the rules set forth in this Decree-Law and supervision of the individuals and legal persons subject to its provisions shall be made by the Supervising Ministry responsible for Labor Affairs and the Supervising Ministry responsible for Petroleum and Minerals.

#### **Article 31**

##### **Classification of offences**

1. Breach of the rules set forth in this Decree-Law shall be classified as very serious, serious and light and are punishable under the terms of Articles 30 and Article 31;
2. Penalty Levels are set out in the attached Schedule and may be amended annually by special legislation, with such amendments to take effect from the commencement of the fiscal year following the amendment;
3. The following acts are deemed light offences, subject to a level one (1) penalty:

- (a) Breach of the rules on Discriminatory Practices, foreseen in article 4;
  - (b) Breach of the obligation to adopt measures aimed at avoiding harassment, set forth in article 5.2;
  - (c) The practice by any Employee of Bullying, as foreseen in article 6;
  - (d) Non-compliance by the Employer with the duty to adopt reasonable measures to avoid bullying, provided for in article 6.2; and
  - (e) Breach of the registration obligations foreseen in article 7.
4. The following acts are deemed a serious offence and subject to a level two (2) penalty:
- (a) Breach of the principles on recruitment and training, foreseen in article 8, and the rules thereon set forth in CHAPTER III, Section I, of this Decree-Law;
  - (b) Breach by the Employer of the rules on compensation and compensatory rest, foreseen in this Decree-Law for cases of overtime and over cycle work;
  - (c) Breach of the rules on employment contract, foreseen in article 14;
  - (d) Breach of the rules on employment in Mineral Operations, foreseen in article 17, when the same does not cause hazard or damages to the health of the Employee;
  - (e) Non-compliance with the rules on special employment conditions set forth in article 20;
  - (f) Lack of payment of any additional compensation due under this Decree-Law;
  - (g) Breach of the rules on Employment Agencies and the use of employees placed by such agencies, foreseen in article 29; and
  - (h) Failure to consult regarding workplace changes as set out in article 36.
5. The following acts are deemed very serious offences subject to a level three (3) penalty:
- (a) Non-compliance by the Employer with the restrictions on rendering of work by pregnant and breastfeeding women, foreseen in article 12;
  - (b) Breach of the insurance obligations set forth in article 13;
  - (c) Lack of constitution of the pension fund foreseen in article 16;

- (d) Breach of the rules on employment in Mineral Operations, foreseen in article 17, when the same causes hazard or damages to the health of the Employee; and
  - (e) Breach of the maximum work schedule limits established in this Decree-Law.
5. The offender who commits an offence under this Decree-Law may also be subject to additional sanctions as provided for in Article 32;
  6. Any penalty imposed under Article 31 shall be payable to the Timor-Leste Ministry of Finance; and
  7. In assessing the appropriate penalty to be imposed, regard shall be had to the economic and financial circumstances of the offender.

### **Article 32 Additional sanctions**

The offender who commits an offence foreseen in this Decree-Law and ancillary regulations may also be sanctioned with the following additional sanctions if it is a repeat offender or if the seriousness of the offense so justify:

- (a) Seizure and forfeiture of goods belonging to the offender and produced as a result of the offence;
- (b) Closure, for up to two years, of the facilities where Extractive Activities are conducted, in case of very serious offences that are capable of creating a serious hazard to the health and safety of the employees;
- (c) Termination or suspension, for up to two years, of authorizations, licenses and permits related to the performance of the respective Extractive Activity, in case of serious or very serious offences;
- (d) Sealing of production equipment;
- (e) Imposition of any measures deemed adequate to prevent any hazard or harm to employees until the situation that gave rise to such hazard is removed or corrected;
- (f) Publicizing of the conviction.

### **Article 33 Employee Claims**

1. In the event of a claim for breach of any of the Articles of this Decree Law which causes loss, damage or harm to an Employer or Employee, the provisions of CHAPTER IV of the Labor Law shall apply to deal with the dispute between the parties;

2. To avoid doubt, the fact that enforcement proceedings for an offence has occurred, or is occurring, under Articles 30, 31 and 32 of this Decree-Law shall not prevent a party bringing a claim pursuant to CHAPTER IV of the Labor Law.

## **CHAPTER V**

### **FINAL PROVISIONS**

#### **Article 34**

##### **Minimum Wages for the Extractive Activities**

1. The national labor council shall be responsible for the establishment of the minimum wages for employment in Extractive Activities pursuant to the Labor Law;
2. The establishment of the minimum wages by the national labor council for employment in Extractive Activities shall take into consideration the following conditions:
  - (a) the nature of risk of each extractive activity, performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth;
  - (b) the skills, duties, roles, tasks and location of the employees engaged in Extractive Activities;
  - (c) promoting social inclusion through increased workforce participation;
  - (d) the principle of equal remuneration for work of equal or comparable value; and
  - (e) providing a comprehensive range of fair minimum wages to junior employees, employees to whom training arrangements apply and employees with a disability.

#### **Article 35**

##### **Transfer of Business, Rights and Obligations**

1. The provisions of this Article 35 shall apply to the transfer of rights and obligations under employment contract and certain other instruments if there is a transfer of business from a prior Employer to a new Employer;
2. A transfer of business from a prior Employer to a new Employer under Article 35.1 shall occur when the following conditions are met:
  - (a) the employment of an Employee with the prior Employer has terminated;

- (b) within three (3) months after the termination, the Employee becomes employed by the new Employer;
  - (c) the work or the transferring work the Employee performs for the new Employer is the same, or substantially the same, as the work the Employee performed for the prior Employer;
  - (d) the new Employer continues on the exact same activity as the prior Employer, at the same facilities;
3. An Employee in relation to whom the requirements foreseen in Article 35.2(a), (b), (c) and (d) are satisfied is a transferring Employee in relation to the transfer of business; and
  4. In the event of a dispute or uncertainty as to whether a transfer of business has occurred, the matter shall be dealt with under CHAPTER IV of the Labor Law.

### **Article 36 Consultation**

1. Where an Employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the Employer must notify the employees who may be affected by the proposed changes and their representatives, if any;
2. Significant effects include termination of employment are major changes in the composition, operation or size of the Employer's workforce or in the skills required and the alteration of hours of work or rosters;
3. The Employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in Article 36.1 and the effects the changes are likely to have on employees;
4. The discussions must commence as early as practicable after a definite decision has been made by the Employer to make the changes referred to in Article 36.1 of this Decree-Law;
5. In the event of a dispute between an Employer and employees as to whether the obligations of this clause have been satisfied, such matters shall be determined pursuant to CHAPTER IV of the Labor Law.

### **Article 37 Redundancy**

1. An Employee is entitled to be paid redundancy pay by the Employer if the Employee's employment is terminated at the Employer's initiative because the Employer no longer requires the job done by the Employee to be done by anyone;
2. The amount of redundancy pay equals the total amount payable to the Employee for the redundancy pay period working out using the following table at the Employee normal hourly salary rate for his or her normal hours of work:

<b>Employee's years of service</b>	<b>Redundancy pay period</b>
At least 1 year by less than 2 years	4 weeks
At least 2 years but less than 3 years	5 weeks
At least 3 years but less than 4 years	6 weeks
At least 4 years but less than 5 years	7 weeks
At least 5 years but less than 6 years	8 weeks
At least 6 years but less than 7 years	9 weeks
At least 7 years but less than 8 years	10 weeks
At least 8 years but less than 9 years	11 weeks
At least 9 years but less than 10 years	12 weeks
At least 10 years	13 weeks

3. In the event of a dispute regarding whether the Employee's job was genuinely no longer required to be performed by anyone, such claims shall be determined pursuant to CHAPTER IV of the Labor Law; and
4. For the avoidance of doubt, the entitlements in this clause are in addition to those set out in Article 55 of the Labor Law and Article 14.6 of this Decree-Law.

### **Article 38**

#### **The National Agency for Employment in Extractive Activities**

1. The national agency for employment in Extractive Activities shall consist of representative of government, chamber of commerce, employers engaged in Extractive Activities and workers organizations with core business related to labor issues;
2. The national agency for employment in Extractive Activities shall be created under the Supervising Ministry responsible for Labor Affairs;
3. The national agency shall have the following main functions:
  - (a) offering people accurate and timely information about Timor-Leste's workplace relations system in Extractive Activities;
  - (b) educating timorese people about fair work practices pertaining to Extractive Activities, rights and obligations;
  - (c) working together with other institutions established by the government of Timor-Leste to:
    - (i) establish appropriate complaint handling mechanisms for labor issues in Extractive Activities;
    - (ii) investigate complaints or suspected breaches of applicable law in Timor-Leste and industry standards; and

- (iii) provide maximum effort in advocating and litigating to enforce workplace laws and prevent both Employer from committing breaches of applicable laws and regulations in any phase of Extractive Activities.
- (d) Building strong and effective relationships with industry, government institutions, workers organizations and other stakeholders.

**Article 39**  
**Subsidiary Law**

Unless otherwise provided in this Decree-Law, the Labor Law shall apply on a subsidiary basis, duly adapted. In the event of an inconsistency between the terms of this Decree-Law and the terms of the Labor Law, the terms of this Decree-Law shall prevail.

**Article 40**  
**Effective Date**

This Decree-Law is effective on the day following its publication in the *Jornal da República*.

Approved at the Council of Ministers on [...].

The Prime Minister,

\_\_\_\_\_  
Dr. Rui Maria de Araujo

The Minister of Petroleum and Mineral Resources

\_\_\_\_\_  
Alfredo Pires

The Minister of State, Coordinator of Economic Affairs

\_\_\_\_\_  
Estanislau da Silva

Promulgated on \_\_\_\_\_

Be it published.

The President of the Republic,

\_\_\_\_\_  
Taur Matan Ruak

## **ANNEX A – PENALTY LEVELS DEFINED**

1. Where a person is liable to a level 1 Penalty for a light offence against this Decree-Law the person is liable:
  - (a) if the offence was committed by a natural person, to a penalty ranging from USD \$10 to USD \$1,000; and
  - (b) if the offence was committed by a legal person, to a penalty ranging from USD \$100 to USD \$10,000.
2. Where a person is liable to a level 2 Penalty for a serious offence against this Decree-Law the person is liable:
  - (a) if the offence was committed by a natural person, to a penalty ranging from USD \$20 to USD \$2,000; and
  - (b) if the offence was committed by a legal person, to a penalty ranging from USD \$100 to USD \$10,000.
3. Where a person is liable to a level 3 Penalty for a very serious offence against this Decree-Law the person is liable:
  - (a) if the offence was committed by a natural person, to a penalty ranging from USD \$30 to USD \$5,000; and
  - (b) if the offence was committed by a legal person, to a penalty ranging from USD \$300 to USD \$50,000.
4. The penalty level amounts as set out in this Attachment A may be amended annually by special legislation issue by the Supervising Ministry, with such amendments to take effect from the commencement of the fiscal year following the amendment.