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DEMOCRATIC REPUBLIC OF TIMOR-LESTE

GOVERNMENT

Decree-Law no. ____ / 08
_____ of _____ 2008

NATIONAL PETROLEUM AUTHORITY

Under Timor-Leste's Constitution the State is entitled to all natural resources that are vital to the economy that exist in the soil and subsoil of Timor-Leste, including petroleum. These resources are to be efficiently managed for the benefit of the people of Timor-Leste as a whole. In order to manage and supervise the exploration, development and production of these resources, Timor-Leste has enacted the Petroleum Activities Law for the areas under Timor-Leste's exclusive jurisdictional area and the Petroleum Mining Code in the Joint Petroleum Development Area.

Considering that the petroleum resources owned by Timor-Leste are a strategic component of its economy, and have a high value potential that if managed properly will generate significant revenues and direct benefits to the economy of the country.

Noting the importance of regulating this sector prudently and supervise the activities in such a way that all petroleum exploration, development and production contribute to maximise the overall benefit to the country and its people.

The Government now creates the National Petroleum Authority (NPA) in order to establish and supervise compliance with the enacted rules and regulations covering the exploration, development, production, transportation and distribution of petroleum and natural gas resources. Once it is fully operational, the NPA will be able to ensure the petroleum and gas security of the country by managing the country's minimum strategic fuel stock requirements and ensure minimum quality standards for petroleum products available in the domestic market and minimum standards of compliance with consumers security.

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The Government accordingly decrees as follows, in accordance with paragraph “e” of no. 1 and no. 3 of article 115^o of the Constitution of the Democratic Republic of Timor-Leste:

**CHAPTER I
GENERAL PROVISIONS**

**Article 1
Nature**

1. The National Petroleum Authority is a public institute vested with administrative and financial autonomy and property rights of its own, the object of which is to act as the regulatory authority for the petroleum and gas and related products industry, in accordance with the provisions of the Petroleum Activities Law, Petroleum Mining Code and Timor Sea Treaty, and this Decree-Law.
2. In matters relating to the Joint Petroleum Development Area (JPDA) this Decree Law shall be interpreted and applied consistently with the Timor Sea Treaty.

**Article 2
Control and Tutelage**

Without prejudice to its administrative and financial autonomy, the NPA shall operate under the tutelage of the Secretary of State for Natural Resources (SERN), and the following shall be submitted for ministerial approval:

- a) The annual activities plan and budget;
- b) The activities report and the budgetary implementation report.

**CHAPTER II
POWERS AND FUNCTIONS**

**Article 3
Powers and Functions**

1. The NPA shall be responsible for the regulation, contracting, supervision and control of the activities of the petroleum operations in the upstream, midstream and downstream areas, and shall:
 - (a) implement the national policy in the petroleum sector, within the exclusive jurisdictional areas of Timor-Leste, with emphasis upon guaranteeing the supply of petroleum, natural gas and their products throughout the country and upon the protection of the interests and security of the consumers in relation to the price, quality and supply of products;
 - (b) promote and enact regulations and administrative measures that require the entities in the petroleum industry to create a greater participation of Timor-Leste nationals in the industry, and the use of goods and services from Timor-Leste;
 - (c) promote studies with a view to create blocks for the purpose of the award of exploration, development and production agreements, within the exclusive jurisdictional areas of Timor-Leste and in the Joint Petroleum Development Area (JPDA), in accordance with the Timor Sea Treaty;
 - (d) regulate the execution of geological, geochemical and geophysical services applied to petroleum exploration, with a view of collecting technical data within the exclusive jurisdictional areas of Timor-Leste and in the JPDA;
 - (e) draft notices and conduct the auctioning of the award of exploration, development and production contracts and to sign the corresponding contracts and supervise the performance thereof both within the exclusive jurisdictional areas of Timor-Leste and in the JPDA;
 - (f) authorise refining, processing, transport, import and export, stocking, distribution, resale and commercialisation, in accordance with this Decree-Law and its regulations, within the exclusive jurisdictional areas of Timor-Leste;
 - (g) establish criteria for the calculation of tariffs for transport by oil pipeline within the exclusive jurisdictional areas of Timor-Leste and to fix the level thereof, in the event that an arbitration opinion is requested by the parties interested in this economic activity;
 - (h) supervise the activities carried on by the petroleum and natural gas industry and impose the administrative and pecuniary sanctions provided in the law, regulations or contracts;

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- (i) delimit and expropriate areas required for exploration, development and production of petroleum and natural gas, and the construction of processing plants, pipelines and terminals within the exclusive jurisdictional areas of Timor-Leste;
 - (j) ensure good practices in the conservation and rational use of petroleum, natural gas and their products and the preservation of the environment;
 - (k) stimulate research and the use of new technologies in development, production, transport, refining and processing;
 - (l) organize and keep all of the information and technical data regarding the regulated activities of the petroleum industry;
 - (m) annually, consolidate the information regarding the national petroleum reserves provided by the undertakings and to be responsible for the dissemination thereof;
 - (n) establish and supervise the proper working of a national fuel stocks system and an annual strategic fuel stocks plan;
 - (o) collaborate with other regulatory authorities in the energy sector with regard to matters of common interest;
 - (p) regulate and authorise activities related to the national fuel supply and supervise them directly or in collaboration with other Government agencies;
 - (q) require regulated agents to submit information regarding production, import, export, refining, improvement, treatment, processing, transport, transfer, storage, stocking, distribution, resale, allotment and commercialisation of the products subject to its control;
 - (r) specify and certify the quality of petroleum and natural gas products;
2. In matters relating to the Joint Petroleum Development Area established by the Timor Sea Treaty, the NPA, as Designated Authority, shall be responsible to the Joint Commission and shall carry out day-to-day regulations and management of petroleum activities.
3. The powers and functions of the NPA, in its capacity as Designated Authority for the purpose of the Treaty, shall include:
- (a) day-to-day management and regulation of petroleum activities in accordance with the Treaty and any instruments made or entered into under the Treaty;
 - (b) the preparation of the annual estimates of income and expenditure of the NPA regarding activities connected with the Joint Petroleum Development Area for submission to the Joint Commission;
 - (c) the preparation of annual reports to be submitted to the Joint Commission;

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- (d) requesting the assistance of the appropriate Australian and Timorese authorities, consistent with the Timor Sea Treaty
 - i. for search and rescue operations in the JPDA;
 - ii. in the event of a terrorist threat to the ships and structures involved in the petroleum operations in the JPDA; and
 - iii. for air traffic services in the JPDA;
- (e) requesting the assistance of the appropriate Australian and Timorese authorities, or other bodies or persons, in connection with anti-pollution preventive measures, equipment and procedures;
- (f) establishment of safety zones and restricted access zones, consistent with international law, in order to ensure the safety of navigation and petroleum operations;
- (g) controlling movements into within and out of the JPDA of vessels, aircraft and structures and other equipment employed in exploration for and exploitation of petroleum resources in a manner consistent with international law;
- (h) subject to the customs, quarantine and migration provisions of the Timor Sea Treaty, authorise access to the JPDA by employees of concessionary companies and companies to which contracts have been awarded and by their subcontractors, and other persons;
- (i) issuing regulations and giving directions, in accordance with the Timor Sea Treaty, on all matters related to the supervision and control of petroleum activities, including on health, safety, environmental protection and assessments and work practices, pursuant to the Petroleum Mining Code applicable to the JPDA;
- (j) exercising such other powers and functions as may be identified in Annexes to the Timor Sea Treaty.

Article 4 Powers and Prerogatives

1. The NPA shall be vested and exercise State powers and prerogatives in order to comply with its regulatory and supervisory functions, which are limited to:
 - a) Supervision of facilities, equipment and documents of entities operating in the petroleum and natural gas industry and its derivatives;
 - b) Collection of the tariffs due as a consequence of its regulatory and supervisory activity;

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- c) Within the limits of general law, coercive enforcement of its decisions regarding the petroleum and natural gas industry by requesting the intervention of other administrative authorities including police if necessary;
 - d) Imposition of sector regulated fines whenever a breach of normative or contractual obligations occurs.
2. The NPA shall issue, in the exercise of its regulatory powers, regulations which establish the administrative procedures and obligations to be complied with by entities in the petroleum and natural gas industry and its derivatives, operating in the regulated sector.
 3. The NPA shall apply the principle of due process in enforcement proceedings and in so doing shall ensure that the offender is entitled to make representations in their own defence.

Article 5 Resolution of Disputes

The regulations approved by the NPA shall make provisions regarding the procedures to be adopted in order to resolve disputes between the parties involved, with an emphasis on conciliation and arbitration.

CHAPTER III STRUCTURE OF THE NPA

Article 6 Organs

1. The NPA shall have the following organs:
 - a) Board of Directors;
 - b) President of the NPA/Chairman of the Board of Directors;
 - c) Single Auditor.

Article 7 Board of Directors

1. The Board of Directors, is the collective organ in the organisation responsible for the defining of the general direction of the organisation in accordance with sector related policies issued by the Government of Timor-Leste; approving regulations and directives; approving the NPA's Consolidated Work Program and Budget.

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2. For avoidance of doubt, the Board of Directors, will pass the Budget for JPDA operations after it has been approved by the Joint Commission. Notwithstanding that any delay in the external approval of that subcomponent of the national consolidated budget will not interfere with the national process of approving the NPA's budget without the JPDA's component.
3. Following approval by the Joint Commission, budgetary items referred to in the preceding paragraph shall be included in the consolidated budget.
4. The Board of Directors is comprised by its Chairman (the President of the NPA) and four other directors.
5. The President of the NPA will automatically chair the Board of Directors.
6. The President of the NPA and two other directors will sit on this Board following their designation by the Government and the other two will be *exofficio* members of the Board because of positions held as NPA's executive directors responsible for the upstream and downstream divisions.
7. The Government designated members shall be nominated and appointed by the member of the government cabinet in charge of petroleum resources for a renewable 4-year term of office, upon approval of their designation by the Council of Ministers.
8. The two *exofficio* members of the board will have their term of office set according with the duration of their employment contract as executive directors for the upstream and downstream divisions/departments, but under no circumstances, can the duration of their mandate as board members ever exceed a 3-year term, renewable.
9. The members of the Board of Directors shall not have any financial interests or holdings in undertakings in the regulated sector while they are in office and for the period of 1 (one) year after they cease to be board members.
10. Any board member might be dismissed under the following circumstances:
 - a) adjudication of judicial decision;
 - b) exoneration of government appointees by government decision on grounds of serious misconduct, gross negligence or merit evaluation of his/her performance;
 - c) forced termination of contract (dismissal) as executive director of upstream or downstream following due disciplinary process.

**Article 8
Powers and Functions of the Board of Directors**

1. The Board of Directors shall:
 - a) Define the mission and general orientation and direction of the NPA, within the limits of the public nature of the Institution;
 - b) Approve strategic and business plans and ensure compliance therewith;
 - c) Approve the internal regulations of the NPA and external regulations necessary for the Authority's supervisory and regulatory activity notwithstanding number 2, paragraph i), of article 3;
 - d) Approve for submission the annual work plan and budget.
2. Whenever consensus is unattainable the Board of Directors shall deliberate by using the simple majority rule and the chairman will have the power to exercise his/her casting vote.

**Article 9
Proceedings of the Board of Directors**

The Board of Directors shall meet ordinarily once a month and extraordinarily whenever convened by its Chairman or at the request of its other members or the Single Auditor.

**Article 10
President of the NPA/Chairman of the Board of Directors**

1. The President of the NPA is the executive organ of the NPA in charge of day-to-day management and administration of the organisation.
2. The President of the NPA will be assisted by several directors to help him/her in carrying out his/her duties.
3. The President of the NPA shall establish a Management Committee which will consist of all executive directors.
4. The position of President of the NPA is entrusted by the government under the contract of mandate; in that capacity, the President, public manager of the NPA, can have his/her mandate revoked by Government.
5. For the purpose of the paragraph 10.4 above, the Government can only revoke the mandate on grounds of serious misconduct, gross negligence or merit evaluation of his/her management performance.

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Article 11

Powers and Functions of the President of the NPA/Chairman of the Board of Directors

The President of the NPA/Chairman of the Board of Directors shall:

- a) Represent the NPA in court or other legal proceedings;
- b) After seeking the views of the Joint Commission, appoint an executive director with exclusive responsibility for the JPDA matters;
- c) After competitive procurement of positions of Director, appoint the executive Directors of the NPA, notwithstanding the transitional one year provision under article 31 of this Decree-Law;
- d) Head and supervise the day-to-day operations of the NPA;
- e) Chair all meetings of the Board of Directors and Management Committee and assure proper implementation of all deliberations and decisions;
- f) Coordinate the activities of the Board and the Executive Directors, including allocation of responsibilities to its members, and ensure hierarchical compliance with decisions taken;
- g) The President of NPA/Chairman of the Board of Directors has a casting vote privilege in the Board of Directors deliberation process.

Article 12

Single Auditor

The Single Auditor is the organ responsible for monitoring legality, regularity and proper financial and patrimonial management of the NPA.

Article 13

Appointment and Term of Office

The Single Auditor shall be appointed by a joint order of the Secretary of State for Natural Resources and the Minister of Finance for a renewable 3 (three) year term of office, and can only be removed from office on grounds of serious misconduct or gross negligence.

Article 14
Functions of the Single Auditor

1. The Single Auditor shall:
 - a) Audit and control the economic, financial and patrimonial management of the NPA;
 - b) Periodically inspect the books and accounting records of the NPA;
 - c) Issue recommendations prior to the acquisition and disposal of immovable assets;
 - d) Produce technical opinion on the NPA's budget and budgetary execution and draw technical recommendations to be submitted to the board of directors;
 - e) Issue recommendations on procedures in place regarding internal control.

2. The functions of the Single Auditor are without prejudice to the appointment of auditors under the *Timor Sea Treaty* for the purposes of that treaty.

CHAPTER IV
CONDITIONS OF EMPLOYMENT,
PATRIMONY AND FINANCE

Article 15
Employment of Staff

1. The NPA's staff, other than statutory appointed board members and auditor, are subjected to competitive procurement in their recruitment process in accordance with best practice in the sector without prejudice of their contractual conditions being ruled by agreement of parties within the limits of the labour law of the country and the administrative and financial autonomy of the NPA, notwithstanding the transitional one year provision under article 31 of this Decree-Law.

2. Contracts of employment shall be primarily governed and interpreted by the rules of the contract and complemented by the Timor-Leste labour law.

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3. The current employees of the Designated Authority may become employees of the NPA upon the cessation of the TSDA, subject to agreement between the NPA and each individual employee on the terms and conditions of their employment.
4. Notwithstanding with the paragraph 3 above, the NPA shall not be the TSDA's successor as employer.

Article 16 Patrimony

1. The official patrimony of the NPA shall comprise the assets and all of the technical data of the Designated Authority together with transfers by State Institutions and agencies, including the Secretariat of State for Natural Resources.
2. Parties to the *Timor Sea Treaty* shall have access to the technical data referred to in paragraph 1.

Article 17 Revenues

The following are NPA's revenue:

- a) The sums in respect to the tariffs payable for the provision of services within the ambit of its powers and functions;
- b) The sums with regard to authorisations, certificates, approvals and other licences granted in the exercise of the NPA's powers;
- c) The proceeds of fines imposed for breaches of the laws, regulations and technical requirements applicable to the regulated sector;
- d) Budgetary allocations by the Government;
- e) Grants, inheritances or legacies;
- f) Income and proceeds from its own assets and the disposal thereof or from the establishment of rights over such assets;
- g) Any other income arising from its activity, or which belongs to it by law, internal regulation or contract.

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**Article 18
Expenditures**

1. The NPA's expenditures shall be all expenditure which the Board of Directors internally approves as necessary for the performance of its functions and the exercise of its powers, the operation of its services, and the management of publicly owned assets.
2. All fees paid by contractors in relation to the JPDA shall be expended in accordance with the budget for the JPDA, approved by the Joint Commission.

CHAPTER V

**DEVELOPMENT AND PRODUCTION OF PETROLEUM, NATURAL GAS AND
THEIR DERIVATIVES**

**Article 19
Legal Entitlement to Rights**

1. Timor Leste's petroleum exploration, development and production rights in the exclusive jurisdictional areas of Timor-Leste shall be administered by the NPA.
2. The petroleum exploration, development and production rights in the JPDA are shared between Timor-Leste and Australia and shall be administered by the NPA in accordance with the Timor Sea Treaty.

**Article 20
Nature of the Technical Assets**

The technical assets, which comprise the data and information regarding the sedimentary basins of Timor-Leste are also considered to be an integral part of the national petroleum resources, shall be collected, maintained and administered by the NPA.

**Article 21
Petroleum Contracts/Agreements**

The NPA will enter into the Contracts/Agreements for exploration, development and production of petroleum and natural gas in accordance with the Petroleum Activities Law and its subsidiary regulations in the Timor-Leste's exclusive jurisdictional areas, and the Petroleum Mining Code for the areas in the JPDA;

CHAPTER VI
REFINING OF PETROLEUM AND PROCESSING OF NATURAL GAS

Article 22
Submission of Bids

1. Any undertaking or consortium, which complies with the legal requirements and regulations may submit bids to the NPA for the construction and operation of petroleum refinery or its products, oil and natural gas processing and stocking units, and to expand the capacity thereof.
2. The NPA shall establish technical, commercial and socio-economic requirements, such as level of employment creation or use of local goods and services, to be complied with by bidders; and requirements of Projects in terms of environmental quality, industrial safety and the safety of the public at large.
3. The provisions of the preceding number having been complied with, the NPA shall grant the authorisation.
4. Authorisations may be transferred to other persons with prior express approval of the NPA, provided that the new holder of the authorisation complies with the requirements given.

CHAPTER VII
TRANSPORT OF PETROLEUM, NATURAL GAS AND THEIR DERIVATIVES

Article 23
Transport Authorisations

1. Provided that the provisions of the relevant laws are complied with, any undertakings or consortium of undertakings, which comply with the legal requirements and regulations may be granted permission by the NPA to construct facilities and effect any form of transport of petroleum, petroleum products or natural gas, whether for domestic supply or import-export.
2. The NPA shall approve the rules regarding qualification and approval of interested parties and conditions for the grant of authorisation and for the transfer thereof, in accordance with environmental protection and traffic safety requirements.

Article 24
Use of Pipelines

1. The NPA may permit any interested party to use the excess capacity of pipelines and sea terminals, which exist now or are to be constructed in the future, in exchange for the payment of an appropriate sum to the owner of the facilities.
2. In the event that there is no agreement between the parties, the NPA shall fix the appropriate amount and payment method and shall confirm that the referred amount is compatible with the market.
3. The NPA shall regulate the preference to be given to the proprietor of the facilities with regard to the handling of its own products, in order to, under paragraph 1, promote the maximisation of the use of transport capacity by the means available.

CHAPTER VIII
IMPORT/EXPORT AND COMMERCIALISATION OF PETROLEUM, NATURAL GAS AND THEIR DERIVATIVES

Article 25
Grant of Authorisation

The NPA may grant to any undertakings or consortium of undertakings, which comply with the legal requirements and regulations, an authorisation to import, export and commercialise, petroleum and its derivative products and/or natural and condensed gas.

CHAPTER IX
FINAL PROVISIONS

Article 26
Transfer of Powers and Functions

1. Powers and functions of a regulatory nature, and rights and obligations related to petroleum and gas and related products industry, which were originally granted to the Ministry in charge of Petroleum sector shall vest in the NPA, including but not limited to, Articles. 9 to 14, except paragraph b and c of article 13, 18 to 21, 23, 24, 27 to 32 and 38 of the Petroleum Activities Law;

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2. All powers, functions, rights and obligations of the Designated Authority pursuant to the Timor Sea Treaty shall vest in the NPA on July, 1, 2008.
3. The assets and technical data of the TSDA become the assets and technical data of the NPA on July 1, 2008 .
4. Consistent with the Timor Sea Treaty and the agreements between the Governments of Timor-Leste and Australia on the postponement of the TSDA cessation, the TSDA will cease to exist on June 30, 2008.

Article 27 Legislative Changes

Proposed new legislation or amendments, which affect the rights of economic agents or of consumers and users of goods and services of the petroleum industry shall be preceded by a public hearing convened and conducted by the NPA.

Article 28 Transposition of JPDA Regulations and Publication

1. Upon approval by the Joint Commission, the JPDA regulations binding to private legal entities and third parties, will be transposed to the Timor-Leste legal system by decree-laws.
2. The JPDA regulations approved before June 30, 2008, by the Joint Commission, binding to private legal entities and third parties are to be maintained in force and being of the responsibility of the National Regulatory Authority (NPA) during the execution of activities in its capacity as Designated Authority, to act in conformity to these regulations.
3. All regulations issued by the National Petroleum Authority (NPA) within its scope of normative power are to be published in the official gazette.

Article 29 Transition of Regimes

Undertakings, which are, on a lawful basis, already operating in Timor-Leste any of the activities described in articles 23 and 25 when this Decree enters into force, shall register with the NPA within the next 120 days.

**Article 30
Preservation of Rights**

The provisions of this Decree shall not affect prior third party rights acquired pursuant to contracts made with the Designated Authority in accordance with the laws in force, and shall not invalidate, the acts of the Member of Government in charge of Petroleum/Secretary of State for Natural Resources, within the ambit of the exclusive areas contracted.

**Article 31
The Initial Staffing of the NPA**

1. The initial staffing of the NPA for a transitional period of 1 year, will be formed by former TSDA staff under new or revised contractual conditions upon the cessation of this organisation, and other staff from the Secretariat of Natural Resources assigned by the Secretary of State under the public service mobility regime after consideration of their technical and professional skills.
2. Except for the above initial 1 year, competitive recruitment procedures will be used at all times when employing staff to work in the NPA.

**Article 32
Entry into force**

This Decree-Law shall come into force on the day following the day on which it is published in the official gazette, without prejudice of the effects referred to in article 26, paragraph 2, 3 and 4 of this Decree-Law.

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Confirmed and approved in Council of Ministers, on the ____ day of ____ 2008

The Prime Minister

Kay Rala Xanana Gusmão

The Minister of Finance

Emilia Pires

The Secretary of State for Natural Resources

Alfredo Pires

Promulgated on _____

To be published.

The President of the Democratic Republic of Timor-Leste

Jose Ramos Horta