

Regulation of Petroleum Activity

Draft Decree-law

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Ministry of Natural Resources, Minerals and Energy Policy
12 February 2007



DEMOCRATIC REPUBLIC OF TIMOR-LESTE
GOVERNMENT

Decree-law ___ /07 of ____, 2007

Regulation of Petroleum Activity

The Law 13 of 2 September 2005 (13/2005), dealing with Petroleum Activities, established the principles to be applied to oil-production operations in Timor-Leste and the regime to which the development of oil-production activities are subject. The law was discussed in depth and approved unanimously by the National Parliament. It provides the principal guidelines to be followed in what are called upstream activities in the exploitation (use) of Timor-Leste's petroleum resources.

To carry out properly the assigned jurisdictional powers (*competências atribuídas*) and for compliance with Article 45.2 of the same law, the Government is now regulating its powers in order to guarantee good management of the national energy policy and the activities relating to the regulations of the oil, natural gas and biofuels' industry.

The government's experience to date has shown that to better execute the determinations of the Law on Petroleum Activities and commence development of the *downstream* sector of the industry by heeding the principles set forth under the Law on Petroleum Activities, it is necessary to redistribute the powers and functions of the Ministry of Natural Resources, Minerals and Energy Policy among entities created especially for that purpose under the prerogatives of the Council of Ministers and the Ministry.

The redirecting of activities presently carried out by the Ministry, that are different from its specific powers, and that come under the regulatory area of business activity and business development must be repositioned under specific bodies.

Thus, the Government enacts, under the terms of Article 139 and paragraph e of Number 1 and 3 of Article 115, all from the Constitution of the Democratic Republic of Timor-Leste, in conjunction with the provision of Article 45.2 of Law 13 of 2 September 2005 (13/2005), Article 33 of Decree-law 13 of 9 August 2006 (13/2006) and Article 10 of Decree-law 17 of 26 July 2006 (17/2006), the following law:

Chapter I

General Provisions

Article 1 Scope

The purpose of this Decree-law is to regulate petroleum activity, create the National Energy Policy Council, the National Regulatory Authority for Petroleum, Natural Gas and Biofuels and the National Petroleum Company.

Article 2 Guiding Principles

The guiding principles of the regulations of the Petroleum sector of industry, while taking into account a rational use of the sources of energy, are to:

- (a) preserve the national interest;
- (b) promote economic and social development, broaden the labor market and confer value on energy resources;
- (c) protect the consumer interests in terms of price, quality and the supply of products;
- (d) protect the environment and promote energy conservation;
- (e) guarantee products derived from petroleum are supplied to all the national territory;
- (f) set up, on an efficient basis, the utilization of natural gas reserves;
- (g) identify the most suitable solutions for supplying electrical power in East-Timor;
- (h) use alternative sources of energy by the efficient use of available inputs (supplies) and applicable technologies;
- (i) foster competition;
- (j) promote a transparent, efficient regulatory environment;
- (k) attract investments for energy production;
- (l) broaden the competitiveness of the country on the international market;
- (m) increase, in economic, social and environmental terms, the share of biofuels in the national energy matrix.

Article 3 Ownership of Petroleum and Natural Gas

1. The State has legal ownership of the petroleum, natural gas and other hydrocarbon fluids that exist in the national territory, including those on land, under territorial waters, on the continental shelf and in the exclusive economic zone pursuant to the terms of the Constitution of the Democratic Republic of Timor-Leste.
2. Under the terms of Article 5.2 of the Law on Petroleum Activities, business activities involving exploration and exploitation of petroleum and natural gas deposits and other hydrocarbon fluids through to recovery and transfer of ownership are activities reserved to the State.

Article 4 Business Activities

1. The business activities described under the foregoing article are regulated and monitored by the National Regulatory Authority for Petroleum, Natural Gas and Biofuels (*Autoridade Reguladora Nacional do Petróleo, Gás Natural e Biocombustíveis: "ARNP"*), created under the terms of this law and are conducted on the basis of a concession regime pursuant to the Authorization modalities or those in the Production-Sharing Agreement by companies created under the laws of Timor-Leste according to the legal forms set forth under the Law on Petroleum Activities.
2. The business activities in the petroleum industry value chain engaged in upstream from the point of transfer of ownership of the oil, natural gas and other hydrocarbons, shall also be conducted according to the Authorization regime pursuant to the terms of the Law on Petroleum Activities and are regulated by the National Regulatory Authority for Petroleum, Natural Gas and Biofuels (*ARNP*).
3. These business activities are governed by the system of authorizations enacted by the Law on Petroleum Activities.

Chapter II

The Bodies

Section I National Energy Policy Council

Article 5 Enactment

1. The National Energy Policy Council (*CNPE: Conselho Nacional de Política Energética*) is hereby enacted, bound to the Prime Minister and presided over by the Minister of Natural Resources, Minerals and Energy Policy. It has the power to propose to the Council of Ministers national policies and specific measures to:
 - (a) promote the rational use of the Country's energy resources according to the principles set forth in the preceding chapter in addition to provisions of applicable law;
 - (b) ensure the supply of energy inputs to the country's more remote areas or those that are difficult to access through submission of specific measures to the Council of Ministers when they imply creating subsidies;
 - (c) periodically review the country's energy matrix by considering conventional and alternative sources of energy and available technologies;
 - (d) establish guidelines for specific programs such as the ones for use of natural gas, coal, biofuels, solar energy, wind power and energy from other alternative sources;
 - (e) establish import and export guidelines to meet consumption needs for petroleum and its derivatives, natural gas and condensates, and to ensure the creation and adequate operation of a national system of fuel stocks and formulation and fulfillment of an annual strategic fuel stock plan.

- (f) suggest adoption of measures needed to guarantee meeting national electricity demand in light of short-, medium- and long-term planning considerations, it being possible to indicate undertakings that must be bid on and set up on a priority basis keeping in mind their strategic and public interest nature such that these projects do ensure optimization of binomial tariff accessibility and the reliability of the electrical power system.
- (g) provide guidelines to regulatory agents in the energy area in exercising their capacities and their functions;
- (h) recommend approval of the annual financial report and budget (revenues and spending) of the regulatory agents of the energy area;
- (i) provide specific guidance (guidelines) to Timor-Leste representatives on the Joint Commission with Australia for regulation of oil activities in the Joint Petroleum Development Area.

2. The CNPE shall also discuss and approve its Internal Regulations and other matters inherent to its maintenance, proposed by the President.

Article 6 Structure and Membership of the CNPE

1. The council is presided over by the Minister of Natural Resources, Minerals and Energy Policy and has the following members:

- I – Minister of Planning and Finance
- II – Minister of Agriculture, Forests and Fisheries;
- III – Minister of Development;
- IV – Minister of Transportation and Communication;
- V – a civil society representative, known for his expertise in energy matters;
- VI – a representative of Timor university, an energy expert (specialist);
- VII – a representative of the private sector of the economy;
- VIII- a representative of the Petroleum Fund Consultative Council;
- IX – and the President of the Board of the National Regulatory Authority for Petroleum, Natural Gas and Biofuels - ARNP.

2. In the absence of any Ministers, they shall be represented by their respective Vice-Minister or Permanent Secretaries.

3 The members referred to under V, VI and VII shall be appointed by the Minister of Natural Resources, Minerals and Energy Policy for a two-year term that is renewable for a like term.

Article 7 Powers of the CNPE President

1. The CNPE President has powers to:

- I – call and preside over meetings of the collegiate body;
- II – cast a vote and a tie-breaking vote, in the event of a tie, in deliberations brought before the Council of Ministers;
- III – and bring before the Council of Ministers public policy proposals that have been approved by the CNPE.

2. At the discretion and direction of the President, leaders of Public Institutes and Publicly Owned Undertakings (*Empresas Públicas*) in the energy area and the heads of other bodies or entities or representatives of sovereign bodies may participate in CNPE meetings on a non-voting basis.

Article 8
Working Groups and Technical Committees

The CNPE, pursuant to its internal regulations, may set up working groups and technical committees to analyze and provide opinions on specific matters brought before it and may do so with the participation of representatives of civil society, agents and consumers, when the matter under analysis might be related to them.

Article 9
Executive Secretariat of the CNPE

1. The Executive Secretariat of the CNPE is carried out by the Permanent Secretary of the Ministry of Natural Resources, Minerals and Energy Policy, who shall:

- I – organize meeting rules;
- II – coordinate and track the implementation of proposals approved by the Council of Ministers;
- III – coordinate the work of the technical committees;
- IV – plan/arrange for the CNPE allowance (funding) to be included in the budget proposal of the Ministry of Natural Resources, Minerals and Energy Policy
- V – carry out other assignments given to him.

2. The regulatory and planning bodies of the energy sectors of industry provide technical support to the CNPE, including its Executive Secretariat.

Article 10
Meetings of the CNPE

1. The CNPE holds ordinary meetings every six months, and extraordinary ones when called by its President.

2. The manner in which it provides opinions and deliberates on matters is governed by the Internal Regulations.

3. During the last two months of every year, the CNPE shall assess the activities carried out in the various energy sectors of the Country during that current year, and their prospects for the coming year, drawing up a report and making any suggestion on the outlook of the National Energy Policy to be brought before the Council of Ministers.

4. Operation expenses of the CNPE, including its technical committees, shall be borne by the budget allowances (funding) of the Ministry of Natural Resources, Minerals and Energy Policy.

Section II

Minister of Natural Resources, Minerals and Energy Policy

Article 11

Jurisdiction

1. The Minister of Natural Resources, Minerals and Energy Policy shall:
 - I- Exercise the prerogatives of the Ministry and its independent agencies;
 - II- Propose, to the Council of Ministers, policy for the areas of energy, minerals and natural resources and the activities of the electricity, mining, oil and petrochemical industries;
 - III- Preside over the National Energy Policy Council and appoints members thereto pursuant to the law;
 - IV- Appoint the Timor-Leste representatives to the Joint Commission instituted by Timor Sea Treaty.
2. The Minister of Natural Resources, Minerals and Energy Policy represents Timor-Leste on the Ministerial Council set up by the Timor Sea Treaty.

Section III

Joint Commission

Article 12

Powers

The Joint Commission, enacted under Article 6 of the Timor Sea Treaty, as the joint Timor-Leste-Australia administrative body for the Joint Petroleum Development Area, continues to have the same members, powers and functions as defined under the treaty, and its current amendments and modifications.

Section IV

The National Regulatory Authority for Petroleum, Natural Gas and Biofuels

Article 13

Creation

1. The National Regulatory Authority for Petroleum, Natural Gas and Biofuels (*ARNP*), a public law legal entity is hereby created as the regulatory body of the petroleum, natural gas, its derivatives and biofuels industry and is the successor to the Designated Authority referred to in Article 6 in the Timor Sea Treaty, for Timor-Leste and Australia to share administration of the Joint Petroleum Development Area.
2. The nature, structure, jurisdiction, direction (leadership) and operation of the ARNP is set forth in a separate decree-law.

Chapter III National Petroleum Company

Article 14 Creation

1. PETROTIL – Petróleo, Gás e Energia do Timor-Leste E.P., a publicly owned undertaking (*empresa pública*) under the guidance of the Ministry of Natural Resources, Minerals and Energy Policy is hereby created. Its purpose is explore, exploit, refine, process, trade and transport petroleum, natural gas and other fluid hydrocarbons and any other activities relating thereto or arising therefrom, namely, the process of industrializing petroleum-derived products as defined in self-contained legislation.

2. The business activities referred under this article are developed by PETROTIL E.P. on the basis of free competition with other companies based on market conditions and in observance of the other principles and guidelines of this Decree-law and the Law on Petroleum Activities.

3. PETROTIL E.P. receives, as an equity contribution, all its operational assets tied to the oil sector of industry from those owned by the State of Timor-Leste, including those assets provided for under Article 22 of the Law on Petroleum Activities, and it shall manage them pursuant to the principles of transparency and good corporate governance.

4. PETROTIL E.P. may engage any activities that are part of its corporate purpose outside the national territory either directly or on the basis of partnerships with third parties or on its own.

Article 15 Formation of Subsidiaries

To carry out the activities of its corporate purpose that are part of the petroleum industry, PETROTIL E.P. is authorized to set up subsidiaries in partnership with other companies on a minority- or majority-ownership basis.

Article 16 Consortium of Companies

PETROTIL E.P. and its subsidiaries are authorized to form consortiums with national or foreign companies, on the basis of lead company or not, for the purpose of expanding its activities, bringing together technologies and broadening the scope of its investments in the petroleum industry.

Article 17 Equity and Financial Management

1. The equity of PETROTIL E.P. is comprised of assets and rights received or acquired in performing its activity.

2. PETROTIL E.P. administers and freely disposes of its equity assets without being subject to the laws on the private domain of the State.

3. Contracts entered into by PETROTIL E.P. for the acquisition of goods and services shall be preceded by a simplified procurement procedure to be defined in its by-laws.

Chapter IV Final and Temporary Provisions

Article 18 Institution

1. The Council of Ministers shall set up ARNP and PETROTIL E.P. by approval of the various organic structures and by-laws within 120 days after the date of publication of this decree-law.

2. The Ministry of Natural Resources, Minerals and Energy Policy shall work to set up the CNPE within ninety days of publication of this decree-law.

3. As long as the ARNP is not yet instituted, its jurisdictional powers under this Decree-law shall be exercised by the Ministry of Natural Resources, Minerals and Energy Policy.

Article 19 Succession of the Designated Authority

1. Once the ARNP is set up, the Designated Authority of the Timor Sea shall be extinguished and the provision under Article 6(b)ii of the Timor Sea Treaty shall have been fulfilled.

2. The ARNP is qualified to succeed the Designated Authority referred to in the Timor Sea Treaty, replacing it as the party to contracts and other obligations signed by the Designated Authority.

3. The technical and equity assets, the obligations, the rights and revenues of the Designated Authority are transferred to the ARNP as are all the set of regulations and directives in force on the date the ARNP is set up.

Article 20 Institutional Expenses

Expenses arising from setting up the ARNP shall be borne by the budget allowances of Ministry of Natural Resources, Minerals and Energy Policy and the available resources of the Designated Authority.

Article 21 Preservation of Rights

The provisions of this Decree do not affect prior third-party rights acquired under contracts executed by the Designated Authority according to current law, and do not invalidate acts of the Ministry of Natural Resources, Minerals and Energy Policy within the scope of exclusive contract areas.

Article 22 Entry in Force

This Decree-law shall enter into force on the date it is published.

Verified and approved in meetings of the Council of Ministers on ____ of ____, 2007.

Prime Minister

José Ramos Horta

Minister of Planning and Finance

Madalena Boavida

Minister of Natural Resources, Minerals and Energy Policy

José Teixeira

Promulgated in

May It Be Published.

President of the Republic

“Kay Rala” Xanana Gusmão