

Draft submission to the Republica Democratica De Timor-Leste (RDTL)

Government Decree xx / 2007

Policy and Guidelines for the Administration and Monitoring of Timor-Leste Content
("Policy and Guidelines")

The following sets out a number of comments relating to the above draft Decree currently published for public comment.

The Decree seeks to give effect to the Law of 13/2005, of 2 September (Petroleum Act) Article 13 3 (a) (iii) and (iv) which requires that an application for an Authorisation shall include proposals for training of, and giving preference in employment in the Petroleum Operations to, nationals of Timor-Leste, and the procurement of goods and services from persons based in Timor-Leste.

The Law of 13/2005 also allows the RDTL to make regulations relating to the reporting by Authorised Persons (in this case Eni) on compliance with obligations, including those relating to the above.

The RDTL has termed this "Timor-Leste Content (TLC)" and has drafted the subject Decree to "...formalise the procedures for handling issues relating to Timor-Leste Content ...".

The draft Decree has a number of concerning and contradictory statements which need to be discussed and addressed, given Eni has made the largest commitment to TLC in the PSCs signed with Timor-Leste (USD\$9.5M out of USD\$10.5M over three years).

Eni comments on the draft Decree:

Article 2

Provides a definition:

"Timor-Leste Content ("TLC") is the money and resources provided by Authorised Persons in the petroleum sector to Timor-Leste for sustainable development, or money spent by Authorised Persons on Timorese goods and services".

"Authorised Persons has the meaning given to it in the Petroleum Act"

1. The definition seems to contemplate that money and resources will be provided (given) to Timor-Leste for sustainable development. This needs to be amended to read "... money and resources expended...". Eni cannot provide money to the Timor-Leste for such purposes as these would be petroleum receipts and would have to be deposited in the Petroleum Fund in accordance with the Timor-Leste Petroleum Fund Act.

2. The definition includes “money spent by Authorised Persons on Timorese Goods and Services.” This is contradictory to the above and has further ramifications as explained below in terms of both a) the right and responsibility of Eni to manage procurement on a competitive basis and with Article 12 of the PSC.

Article 3

This Article states that Timor-Leste Content shall be “administered” by an Administrative Body known as the Timor-Leste Content Committee (TLCC).

Given the definition of TLC it seems that the intention of the Regulation is for Authorised Persons to give money and resources to the TLCC for the sustainable development projects. This is contradictory to the remaining sections of the draft Regulation and is also contradictory to the understanding that Eni has had to date with the Direzione Nazionale de Petroleo e Gas (DNPG).

Given that the definition of TLC also includes “...money spent on goods and services by Authorised Persons on Timorese Goods and Services”, Article 3 seems to have the effect of replacing the regulatory role of the DNPG in relation to Article 12 of the PSCs. This is contradictory to the understanding that Eni has had to date with the Direzione Nazionale de Petroleo e Gas (DNPG).

Article 4

Article 4 contemplates the Presentation of Projects (proposals) to the TLCC by any person, as long as they fall within five particular categories and address a number of particular matters in their proposals.

There is no definition of “Projects” and without clarification amendments to the Regulation concerning the matters raised above, this Article has the effect of allowing any person to make submissions to control the manner in which Authorised Persons acquit their responsibilities and commitments for Local Content under the PSCs.

Article 7

This article states that the Ministry of Natural Resources, Minerals and Energy Policy is responsible for approving TLC Projects, in accordance with the recommendation from the TLCC.

If the Ministry must approve projects *in accordance with* the TLCC recommendations then it has no right to generally approve projects nor to require sensible amendments to the recommendations of the TLCC.

The Article is silent on the ability of the Ministry not to approve projects.

Article 9

Article 9 gives the responsibility for executing projects to Authorised Persons. Given the ability contained in Article 4 for any person to propose projects to the TLCC an

unintended effect of these Articles combined would be that any person who successfully proposes a project to the TLCC and which is approved by the Ministry, has successfully directed an Authorised Person how to acquit its Local Content commitments under the PSC. It takes away the control of the Authorised Person in acquitting its responsibilities.

Article 10

Article 10 allows for the TLCC to specifically direct Authorised Persons to report on projects. Reporting on projects should be agreed at the approval stage and then revisions made if necessary after periodic review. Reporting should be on an agreed basis to prevent either the imposition of onerous reporting processes or a lack of reporting.

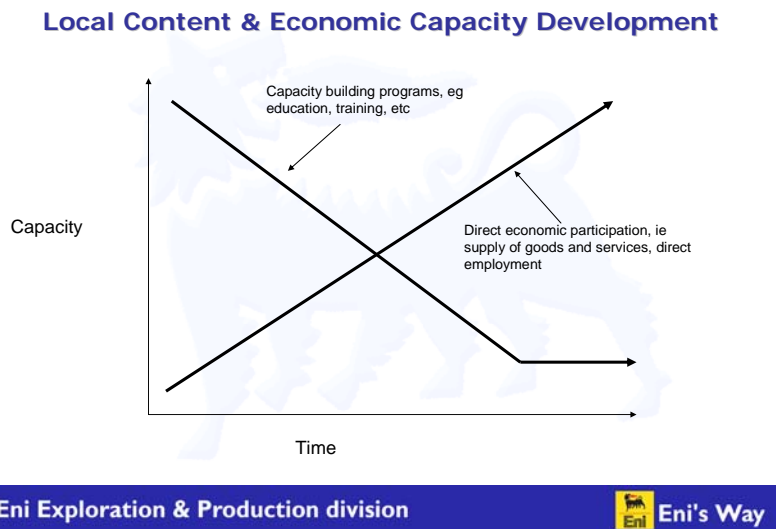
Paragraph two incorrectly refers to the TILCC.

Additional Comments:

Eni supports the aim of the Government to ensure that the petroleum sector benefits the Timorese people in a sustainable way. Eni's understanding is that the intent of the Policy and Guidelines is to achieve this by:

- a) direct economic participation through the supply of goods and services to the petroleum activities, or direct employment within the petroleum sector; and
- b) where the above is not possible due to capacity constraints, require investment in capacity building by Authorised Persons through 'sustainable development projects'.

The concept therefore is to increase capacity for direct economic participation over time and lessen the need for investing the country's resources in capacity building programs as it becomes socially and economically sustainable in its own right. The following figure attempts to portray this objective.



Eni understands that in order to provide transparency in the selection and implementation of sustainable development projects it is practical to establish such a body as the TLCC. Notwithstanding, Eni foresees the proper role of the TLCC is to serve as an independent and representative (cross society) body established to:

- a) assess the merits of proposed sustainable development projects as they relate to the country's development aspirations;
- b) make recommendations to the Ministry regarding the approval of such projects; and
- c) provide a monitoring and review role of such projects.

As currently drafted the Policy and Guidelines are problematic and imprecise.

Accordingly, Eni submits the following proposed amendments to the Policy and Guidelines for the consideration of the Ministry.