

BILL No. ____/2021
from.....of

EXPORT PROMOTION LAW

Explanatory Memorandum

The political option for the promotion of exports, as one of the main paths towards the objective of building a modern and diversified economy with an emerging private sector and opportunities for all the people, is embodied in the main guiding instruments of action of the State of Timor-Leste and in its ordinary legislation.

Today, in the globalized world, there is no country that, to a greater or lesser extent, does not want to export: even countries of territorial and human dimensions whose internal market could enable their development at a relatively high level do.

And because they want to, they all seek to facilitate the production and export of tradable goods in foreign markets, creating a favorable environment for their trade.

Therefore, export promotion is a set of policies, strategies and measures of various kinds and across different sectors of activity of a state, which are integrated and combined to enable, facilitate and encourage the export and re-export of goods and services.

In a democratic State with the rule of law, such as Timor-Leste, the general legal and regulatory framework for the promotion of exports must conform to the constitutional framework and the programmatic instruments that guide the actions of the State of Timor-Leste and the international conventions to which it is or intends to be a party.

It should also be articulated, in a coherent but flexible manner, with the guidance of the legislation, in force or in advanced preparation or reform, on matters and sectors with which the promotion of exports is closely related, namely the legislation on private investment and particularly foreign direct investment, tax and customs legislation and legislation on foreign trade.

Last but not least, it must take into account the economic reality, human resources, infrastructure and administrative organization and practice of the country, as well as other factors that may condition its proper implementation and application.

The fundamental core of a legal and regulatory framework for export promotion refers, as a rule, essentially to: (i) the principles on the basis of which it is intended to orient the economy towards exports and attract investors to do so; (ii) the facilities and incentives to be granted to export-oriented enterprises; (iii) the Administration specifically geared towards it; and (iv) the efficient procedures to enable and facilitate it.

Since all countries want to export, the way they position themselves with regard to the four items mentioned differs according to the stage of development of each one.

Open economy countries favor liberal principles, while less open economy countries opt for control principles;

Global countries, with a strong private sector and modern infrastructure, that live off international trade in a competitive and competitive environment, are more sparse and selective in the allocation of facilities and incentives for exports, reserved for highly qualified and high value-added investments in cutting-edge sectors that make a difference in the global market; while less expressive and underdeveloped domestic market countries offer a panoply of such facilities and incentives, as a rule without many selection criteria; and

The more advanced countries, with a well-structured and integrated Administration, competent and efficient, do not place in the forefront the issues of organization and administrative procedure, which, however, are constraining factors in less developed countries.

Timor-Leste is a small country, with good economic potential and relevant natural resources in oil and gas that provide it with large but finite resources.

It is one of the most dynamic and competitive regional spaces in the world today in terms of growth and exports.

However, it is still at the beginning of the road to development and has a poorly structured and consolidated administration, in terms of human, organizational or technological resources.

And its private sector is incipient, around a small number of sectors (retail trade, agriculture, cattle breeding, fishing and small-scale tourism).

It has adopted the US dollar as its currency, which gave a clear sign of assurance and monetary stability.

Timor-Leste does not want to depend only on oil and gas, and therefore needs to diversify its economy by modernizing agriculture, activating industries, and developing tourism.

Given the incipient private sector and the small domestic market, these programmatic objectives can only be achieved by attracting foreign investment that wants to produce in Timor-Leste for export.

Currently and outside of the oil and gas sector, the only relevant agricultural export product is organic coffee. But potential exists for production and export of several other agricultural products; for more developed tourism; and for the establishment of export-oriented manufacturing industry; as well as for more extensive production and export of land and sea products.

Timor-Leste cannot close itself off, given its expressed intention to join the Association of Southeast Asian Nations (ASEAN), when it is located in one of the most dynamic and competitive open regional markets in the world.

Export promotion legislation should, therefore, privilege principles of export and import freedom, without neglecting the need to protect the ecosystem, which is an asset of the country, and to comply with international conventions and common international law, which prohibit or condition foreign trade in certain goods.

On the other hand, Timor-Leste is obliged to promote exports in a regional context where some neighboring countries, also developing, in need of productive investment and competitors in the same market, do it intensely, offering a wide range of facilities and fiscal, tax, customs, financial and other incentives.

Timor-Leste has, today, one of the most favorable and competitive tax regimes in the world for economic operators, but does not have other competitive advantages of the greatest relevance in exports (e.g. modern infrastructures, production developed in quantity and quality, competitive tariffs, qualified human resources, administrative efficiency, which are other challenges that Timor-Leste must and will face and overcome).

Therefore, the promotion of exports must be based essentially on the creation of a stable institutional and legal environment, of responsibility and efficiency, which gives confidence to the exporter, and on the offer of facilities and incentives capable of competing with its competitors and competing for the same foreign market.

As other experiences show, special economic zones, namely free trade or industrial processing zones and warehouses, with an exceptional regime of tax and customs incentives and the provision of a high level of key facilities and services, have been in several places a crucial asset in the successful promotion of exports.

Therefore, the complete development of the Special Social Economy Market Zone of Oe-Cusso Ambeno and Ataúro, with its free trade zone and industrial processing infrastructure, as well as new industrial and processing zones for exports planned for other parts of the country, assume a strategic character in the promotion of exports from Timor-Leste.

It is in this context that the present initiative arises, which aims to create a legal environment of freedom, trust, stability, incentive and responsibility for the exporter.

To that end,

The diploma starts by: (i) defining itself as regulating the legal bases of the activity of exporting and re-exporting goods and services from Timor-Leste; (ii) limiting its scope of application to exports and re-exports in sectors not regulated by special law, namely not covering the oil and gas sector; and (iii) defining some operational concepts used throughout the text.

In the second chapter, the freedoms, guarantees and incentives to exporting companies are defined, in addition to those already arising from their status as private investors. It specifically establishes:

- a) The freedom to export and re-export, relativized by the existence of activities and exports prohibited, conditioned or restricted by law, by international agreement and by the norms of general and common international law, which are inherently part of the national legal systems;
- b) The freedom of subsidiary importation, that is, linked to exportation or re-exportation, for supplying inputs in raw materials, semi-finished or finished products;
- c) The guarantee of non-discrimination, notably on the basis of nationality, domicile or (honest) origin of capital;
- d) The guarantee of protection against nationalization or expropriation, defining the conditioning framework of such measures;
- e) The guarantee of effective judicial protection of the rights and legitimate interests of exporting companies, going beyond the simple enunciation of the right of access to the courts, listing instead, as an example, a set of claims (declaratory, condemnatory, injunctive or executive) that may be formulated and obtained in court by the individual against the Administration;

- f) The right of exporting companies to resolve conflicts with the Administration through arbitration, national or international, as is common today in most countries, even in administrative and tax matters;
- g) The qualification of exporting companies to establish themselves in special economic zones;
- h) The qualification of exporting companies to benefit from long-term leasing of state property, namely land and storage facilities, warehousing or industrial;
- i) The right of the exporting company to taxation by the actual profit evidenced by its duly organized accounting;
- j) The right for exporting companies to sell part of their production to the domestic market, regardless of any import taxes;
- k) The guarantee of freedom to transfer abroad income obtained from investment in the export activity;
- l) The right to hire qualified foreign workers and employees, within certain limits and with the guarantee of a work visa, and freedom to transfer a substantial part of the income from their work or service;
- m) The opening of the possibility for the Government to establish credit, guarantee, and insurance mechanisms for exports;
- n) The principle of granting the exporting company all other rights recognized by law to the private investor; and
- o) The principle that the rights conferred to the exporting company by the Law do not prejudice or restrict rights recognized by an international agreement to which Timor-Leste is a party.

Some of the specified rights, guarantees and freedoms already exist in the Private Investment Law and other laws (e.g. non-discrimination, protection, long-term leasing, establishment in special economic zones, transfer of funds or hiring of foreign workers).

In some cases the specification is accompanied by developments that reinforce them; but even when this is not the case, the reiteration in the present law aims to strengthen such freedoms, guarantees and rights held by exporting companies, ensuring from the outset that the mere revocation of these for the ordinary private investor does not in itself imply its withdrawal from the exporter's status.

In contrast, with regard to tax and customs incentives, it was opted to simply refer to the tax and customs legislation.

The reason is that:

- (i) there is structuring and comprehensive legislation in the two areas (Tax Law and Customs Code);
- (ii) these are matters where Timor-Leste has a manifest competitive advantage;
- (iii) they are specialized themes that interpenetrate with the ASEAN and World Trade Organization (WTO) rules that the country intends to join; and
- (iv) the need to maintain the coherence of the entire tax system recommends it.

The purpose of the list of freedoms, guarantees and rights is, in all cases, to create a legal environment of predictability, stability, good faith and respect for rights and legitimate interests, which generates confidence in the country and the state and encourages investment for exporting.

In the third chapter, the conditions of access to the benefits of the Law, the obligations of exporting companies and the entities that oversee their compliance are set out.

The conditions for access essentially translate into the regularity of the company's situation with regard to the fulfillment of its tax and social security obligations and the rules that regulate its economic activity. In order that, in administrative practice, these conditions do not translate into obstacles and hindrances to the exporting company, the principle of presumption of regularity of its situation is established, conferring on the Administration the burden of proof to the contrary.

The obligations of the exporting company refer to the compliance with the general and specific legality of its activity and foreign trade, the onus of registration in a special registry, the onus of organized writing and accounting, the duty to cooperate with and inform the Administration, the submission to general and specific administrative supervision, the compliance with other obligations of the private investor and, last but not least, the duty of professional training of Timorese workers and technical staff, especially for qualified, technical and management functions.

Supervision is assigned to the Foreign Trade Administration, with the assistance of other administrative authorities and the public force, if necessary.

The fourth chapter regulates the regime of administrative offenses to this Law and its regulations or development diplomas or to the rules applicable to the activity of exporting companies, excluding tax and customs offenses (which must be regulated by tax and customs legislation), as well as others expressly regulated by special law.

The specific rules for the export sector are established, referring the essential substantive, procedural and enforcement rules to a general legal regime for administrative offenses, to be established soon, avoiding as much as possible gaps that could jeopardize the effectiveness of the application of the rules of this Law and the export sector.

The fifth and last chapter, the miscellaneous and final provisions, includes an injunction to the Government to regulate the administrative procedure for export operations in accordance with certain principles and guidelines (exhaustive nature and legality of the administrative requirements to be met by the exporter; deadlines set by regulation; tacit approval in the event of silence on the part of the Administration; rejection linked to causes expressly provided for by law or regulation; liability of the State for acts and omissions of public agents who cause losses to the exporter; one-stop shop for exporters; computerization of the Export Administration system, in a network accessible self online, to be implemented within a fixed period of time).

It is explicit as special duties of the Government for the promotion of exports, the establishment of (i) rules of origin and the issuing of the respective certificate, for products whose export is not subject to specific international regulations; (ii) standardization rules; (iii) a special registry of exporting companies, computerized in a network accessible online; and (iv) a single one-stop-shop for export operations, created ex novo or by enlargement of the existing one, also computerized in a network accessible online. These are measures to make the relationship between the Administration and exporting companies fluid and swift, preventing the high losses that excessive delays in the operation cause to private operators.

The obligation of the State to organize, support and provide training for Timorese exporters and the possibility of, by agreement or convention, delegating functions and administrative tasks related to export to business associations is also made more explicit.

In addition, the penalties for crimes committed by officials in the exercise of duties in the administrative processing of exports are increased.

Finally, the entry into force of the Law is made to coincide with that of the general regulation of the administrative procedure of the export operation, preventing its letter and spirit from being defrauded and the export from being hindered by obstacles raised by the administrative practice.

This is to accommodate the widely shared opinion of export stakeholders (foreign trade administration and private investors), who thus wish to substantially increase the effectiveness and efficiency of the administrative export procedure.

The proposal regulates several matters falling under the legislative reserve, absolute or relative, of the National Parliament, established in articles 95 and 96 of the Constitution of the Republic (rights, freedoms and guarantees, tax policy, definition of penalties, the general regime of State responsibility, expropriation and nationalization), which justify its treatment in the form of a Parliamentary Law.

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EXPORT PROMOTION LAW

The Government presents to the National Parliament, under paragraph c) of article 97 and paragraph a) of no. 2 of article 115 of the Constitution of the Republic, with a request for priority and urgency, the following law proposal:

CHAPTER I GENERAL PROVISIONS

Article 1

Object

The present Law defines the bases for the legal regime of the economic activity of exporting and reexporting goods from East Timor.

Article 2

Scope of Application

1. The present Law applies to the economic activity of companies that export goods in sectors that are not subject, by law, to a special regime.
2. This Law does not apply, namely, to the oil and gas sector.

Article 3

Definitions

For the purposes of this Law:

- a) Economic activity means the production, distribution and commercialization of goods, regardless of their nature, carried out in Timor-Leste;
- b) Competent administrative authority is the competent administrative authority to promote the instruction of the procedures for administrative offences foreseen in the present Law and to apply the corresponding fines and accessory sanctions;
- c) Exporter Certificate is the document issued by the State entity with competence conferred by law, which qualifies and recognizes in a differentiated manner the company as a certified exporter;
- d) Investor Certificate is the document issued by a State entity with competency conferred by law, which qualifies an economic agent as a private investor in Timor-Leste;
- e) Foreign trade is trade between the territory of East Timor and the territory of another State;
- f) Customs clearance is the completion of customs formalities required to export goods, to release them for consumption or to submit them to another customs regime, under the terms of the customs legislation;
- g) Auxiliary export company means any individual or collective person fiscally resident in Timor-Leste, in a free zone or not, that legally provides goods and services to certified exporting companies fiscally resident in Timor-Leste.

- h) Exporting company means any natural or legal person that, authorized under the law to carry out economic activities, perform export or re-export operations;
- i) Certified exporting company means the private investor holding an Exporter Certificate;
- j) Free exporting company means a company resident for tax purposes in a free trade zone or set up exclusively for the trading of goods intended for export or for sale to other companies resident for tax purposes in East Timor
- k) Export is the exit from the customs territory of Timor-Leste, by any means, of national goods or services. Sales of national goods or services to tax free companies resident in East Timor and to other exporting entities are also considered exports whenever they are handled for export, incorporated or used in the production of other goods and services for export;
- l) Import is the introduction, into the customs territory of Timor-Leste, of foreign goods or services;
- m) Investor or private investor is any individual or legal person under private law, national or foreign, resident or non-resident, holder of an investor certificate
- n) Foreign direct investor or foreign investor is the investor that is a natural person that is a national of another State or a legal entity in which at least ten percent of the shares with voting rights are held by natural persons that are nationals of another State or by legal entities headquartered in another State
- o) National investor is an investor that is a natural person that is a national of Timor-Leste or a legal person in which more than ninety percent of the corporate holdings with voting rights are held by natural persons that are nationals of Timor-Leste or by legal persons headquartered in Timor-Leste
- p) Merchandise is any good susceptible of being traded abroad;
- q) Foreign goods are those that are not considered national or nationalized goods;
- r) National goods are those originating from the territory of East Timor;
- s) Nationalized merchandise is the foreign merchandise that is in the territory of Timor-Leste, freed from customs action;
- t) Prohibited goods are those whose transit, import or export is prohibited in Timor-Leste, under the terms of the law, of an international agreement to which Timor-Leste is a party or of general or common international law;
- u) Goods subject to restrictions or of restricted export are those whose export or import is subject to special conditions or restrictions, under the terms of the law, of an international agreement to which Timor-Leste is a party or of general or common international law;
- v) Re-exportation is the exit from the customs territory of Timor-Leste of goods that had been imported to it. Re-exports are also considered to be the sales of imported goods to free companies established in Timor-Leste and also to other exporting entities whenever they are handled for export, incorporated or used in the production of other goods and services for export;
- w) Rules of origin are the legislative and regulatory provisions and administrative decisions of general nature applied to determine the country of origin of the goods;
- x) National service is the service provided by a provider domiciled or headquartered in Timor-Leste
- y) Foreign service is the service that is not considered a national service;

- z) National customs territory comprises the land surface, the maritime zone and the air space delimited by the national borders of East Timor that historically comprise the eastern part of the island of Timor, the enclave of Oe-Cusse Ambeno, the island of Ataúro and the islet of Jaco, under the terms of the Constitution of the Republic and Law No. 7/2002, of September 20, including the other islands and natural and artificial formations and platforms for prospecting and exploitation of resources, where customs legislation is uniformly applied;
- aa) Timor-Leste means the Democratic Republic of Timor-Leste or the land, maritime and air territory of the Republic of East Timor; and
- bb) Free zone means a part of the national territory or a place situated therein, separate from the remaining part: (i) in which goods of foreign origin are considered, for the purposes of import duties and import trade policy measures and under certain conditions established by law, as not having entered the national customs territory; and (ii) in which goods of national origin, subject to specific measures, may benefit, due to the fact that they are located there, from measures usually associated with the export of goods.

CHAPTER II

FREEDOMS, GUARANTEES AND BENEFITS

Article 4

Freedom of export and reexport

1. Export and re-export are free, not requiring any prior administrative authorization.
2. The principle established in number 1 does not exempt the exporting companies from complying with the formalities intended for the control of the conformity of the exported or re-exported goods and services with the norms of sanity, quality and presentation, the rules of origin or others required by force of law or regulation or of an international agreement entered into by East Timor, and their customs clearance under the terms of the customs legislation.
3. The exportation or re-exportation of prohibited, restricted or export restricted goods are excepted from the freedom established in the present article.

Article 5

Freedom of importation

The importation of the following is performed without the need for any prior authorization, subject only to the declaration of a regulatory model in the customs clearance process

- a) Goods destined for re-export;
- b) Raw or subsidiary materials, semi-finished or finished products, and other materials to be incorporated or used in the production of goods and services destined for export.

Article 6

Non-discrimination

1. All exporting companies enjoy the same rights, are subject to the same obligations and shall be treated equally, under the terms of the Constitution and the law, and may not be discriminated against, namely on the basis of nationality, headquarters or domicile, or the origin of the capital invested in them.

2. The provisions set forth in the preceding number do not compromise the possibility of granting, within the scope of Special Investment Agreements, a special regime to exporting companies that develop investment or reinvestment projects classified as of great interest to the country within the framework of the Strategic Development Plan, due to their scale, nature or economic, social, environmental or technological impact.
3. The provisions of number 1 do not prejudice, also, the possibility of certified exporting companies being given personalized service in the administrative export procedure.
4. The provisions of this article are without prejudice to the land ownership and use regime.

Article 7

Protection

The exporting company cannot be nationalized and its assets cannot be expropriated or be the object of administrative measures of similar effect without just cause and without prior and fair compensation, agreed between the parties or fixed through arbitration, paid in full, without delay and, in the case of a foreign company, freely transferable to the country of its headquarters or domicile.

Article 8

Effective judicial protection

The exporting company has the right to request the courts with administrative jurisdiction to effectively protect its legally protected rights and interests, for which purpose it may obtain, namely

- a) The annulment or declaration of nullity or ineffectiveness of any administrative act or regulation, regardless of the form assumed, which injures or may injure them;
- b) The adoption of urgent or precautionary measures adequate for their preventive protection;
- c) Their judicial recognition;
- d) Compensation for damages resulting from its violation, by action or omission of public agents, practiced in the exercise of their functions and because of them;
- e) The condemnation of the Administration to practice an administrative act that is legally due, in the event of its refusal or silence; or
- f) The performance of legal and material acts necessary for the effective execution of administrative court decisions.

Article 9

Conflict resolution with the Administration

1. In conflicts between an exporting company and the Administration, including those related to administrative or tax matters but excluding those related to criminal and misdemeanor matters, the parties shall endeavor to reach an amicable negotiated solution within thirty days.
2. After the period referred to in number 1 has passed and no agreement has been reached, either party may, by written communication to the other, promote arbitration for the resolution of the conflict, under the terms of the arbitration law in force.
3. In the case of a foreign investor, arbitration may be regulated alternatively by

- a) Rules of the Washington Convention of March 15, 1965, on the Settlement of Disputes Relating to Investments between States and Nationals of Other States, as well as of the respective International Centre for Settlement of Disputes;
 - b) Rules established in the Rules of the Supplementary Mechanism approved on September 27, 1978, by the Board of the said International Centre for Dispute Settlement, if the foreign company does not meet the nationality requirements provided for in Article 25 of the said Washington Convention;
 - c) The Rules of the Singapore International Arbitration Center; or
 - d) Arbitration Rules of the International Chamber of Commerce, headquartered in Paris.
4. The option for arbitration under the terms of this article implies the renunciation by the parties of their right of access to the judicial courts on the issues which are the object of the dispute.
 5. The waiver shall not preclude the institution of interim proceedings, either before or during the arbitral proceedings, provided that the relief sought is not incompatible with such proceedings.
 6. In the event of an option for arbitration, the court seized of the matter in dispute shall, as soon as it becomes aware of the document by which the option was formalized, dismiss the defendant from the proceedings and refer the parties to arbitration, unless it considers the option null and void.

Article 10

Right of establishment in special economic zones

The exporting company may establish itself in special economic zones, namely in export processing zones or warehouses and in free zones, especially in the Special Social Market Economy Zone of Oe-Cusse Ambeno and Ataúro, provided the other requirements required by law are met.

Article 11

Right to long-term leasing of State-owned real estate

The exporting company has the right to lease state-owned real estate or facilities, namely warehouses and industrial premises, for fifty years, extendable to one hundred years.

Article 12

Taxation by the actual profit

Exporting companies are taxed by the profit actually earned, evidenced by the respective accounting regularly organized under the terms of the law.

Article 13

Sales in the domestic market

1. Exporting companies may sell in the domestic market up to twenty percent of the total production of the previous year.
2. By means of a Resolution of the Council of Ministers, upon a proposal by the minister responsible for the trade sector, free export companies may be authorized, temporarily and with regard to determined products and quantities, to sell in the domestic market a percentage higher than that indicated in number 1, whenever it is deemed of interest to the country.
3. The products sold under the terms of this article shall be subject to the indirect taxes applicable, under the terms of the legislation in force on the date of the sale.

Article 14

Transfer of funds abroad

1. The owners of an exporting company who are foreign investors have the right, in compliance with the obligations to which they are subject by law or final and unappealable court decision, to transfer abroad all income deriving from their investment, namely
 - a) Net operating profits distributed, including dividends and capital interest;
 - b) Royalties and commissions for services related to the investment;
 - c) Income from the alienation, amortization or liquidation of participations or assets;
 - d) Principal and interest on loans and loans made to the company; or
 - e) Compensation for nationalization or expropriation of the company's assets;
2. The transfer shall be authorized by the central bank within thirty calendar days of the respective request, after which time the amount to be transferred shall begin to bear interest at the thirty-day LIBOR rate, transferable at the same time as the principal.
3. Where the amount to be transferred is likely to cause serious disturbances to the balance of payments, the central bank may, exceptionally, determine that it shall be paid in quarterly, equal and successive instalments over a period not exceeding two years.

Article 15

Right to hire foreign workers or employees

1. The exporting company has the right to hire qualified workers or collaborators for supervisory or management functions, recruited abroad, without the need for prior administrative authorization, but subject to notification to the Labor Administration, at least thirty days in advance and under the terms of the regulations.
2. The Government may limit the number of workers and employees whose recruitment is permitted under the previous paragraph, in accordance with the evolution of the national labour market.
3. The exporting company shall be guaranteed five work visas for workers recruited under the terms of number 1.
4. Workers and employees recruited under the terms of subsection 1 above shall be entitled to a work visa for Timor-Leste within ten days of the notification referred to in that subsection, provided that their entry into national territory is not expressly refused on legal grounds.
5. Workers hired under the terms of subsection 1 above shall have the right to freely transfer abroad up to eighty per cent of the income derived from the work or services rendered, after complying with the obligations to which they are subject by law or final court decision, and the provisions of subsection 15.2 shall apply, with the necessary adaptations.

Article 16

Export credit, guarantees and insurance

The government may institute credit lines or other mechanisms for financing, guarantee and insurance of export operation risks.

Article 17

Tax and customs incentives

Exporting companies shall enjoy the tax and customs benefits established in the tax and customs legislation.

Article 18

Other rights

The certified exporting company enjoys all the rights and benefits granted by law or regulation to the private investor.

Article 19

International agreements

The provisions of this Law do not restrict the guarantees, advantages or obligations established in international conventions to which East Timor is a signatory.

Article 20

Extension

The provisions of this Chapter apply, with the necessary adaptations, to auxiliary export companies

CHAPTER III

CONDITIONS AND OBLIGATIONS

Article 21

Access conditions

1. Only exporting companies that are in good standing with regards to the applicable legal and regulatory obligations, namely with regards to tax and social security obligations and the compliance with the norms that regulate the access to and the exercise of economic activities in the sectors in which they operate can benefit from the regime foreseen in this Law.
2. The regularity of the situation of the exporting company under the terms of the previous number shall be presumed until proven otherwise, which is the responsibility of the Administration.

Article 22

Obligations of exporting companies

1. Exporting companies are subject to the following obligations
 - a) Respect and comply with the laws and regulations in force, in particular those regulating the sectors of economic activity in which they are inserted, environmental protection and sustainability, foreign trade, private investment, the customs regime of warehousing, storage and transfer of goods and the special economic zone or free zone regime;
 - b) To have, and keep in due order and up-to-date, organized accounting, books and records in accordance with the law;
 - c) To collaborate with the Administration, namely with the foreign trade, tax, customs, port, airport, road, and labor administrations;
 - d) To submit to administrative, economic, tax, customs, labor, technical or other public inspection of its activities and installations;

- e) To provide the Administration with the information and documentation required by law or regulation;
 - f) Comply with all other private investor obligations; and
 - g) Do whatever else is imposed on it by law or regulation.
2. The provisions of this article shall apply, with the necessary adaptations, to auxiliary export companies.

Article 23

Special obligations of certified exporting companies

Certified exporting companies are also subject to the following specific obligations

- a) To register in the special registry of exporting companies with the government department responsible for the area of foreign trade; and
- b) Organize, promote and support continuous and accelerated professional training for Timorese workers and technical staff in articulation with the State and the business associations, especially for qualified functions of a technical and management nature;

Article 24

Supervision

- 1. Supervision of compliance with the obligations established in the previous article and, in general, with the provisions of this law and its regulations or development diplomas and with the norms that govern the activities of exporting companies shall fall under the jurisdiction of the Foreign Trade Administration, without prejudice to the competency legally attributed to other services and entities in their specific areas.
- 2. For the purposes of the provisions of the previous paragraph, the Foreign Trade Administration may, at any time, require exporting companies to supply information and elements deemed necessary for statistical purposes or for studies and the preparation of reports.
- 3. The administrative and police authorities shall provide all the necessary assistance for the inspection and enforcement, when permitted by law, of the norms that regulate the activities of exporting companies.

CHAPTER IV

ADMINISTRATIVE OFFENSES

Article 25

Infraction

- 1. Except when typified as a crime by law, the violation, by action or omission, maliciously or negligently, of the provisions of this Law and its development regulations or diplomas or of the rules applicable to the activity of exporting companies shall constitute an administrative infraction.
- 2. The provisions of this chapter shall not apply to tax and customs administrative offences, as well as others expressly regulated by special law.

Article 26

Fines

1. The misdemeanors provided for in this Law shall be punishable by a fine of _____ to _____ for natural persons and of _____ to _____ for legal persons.
2. Negligence shall be punishable by a fine not exceeding half of the maximums provided for in the preceding paragraph.
3. 3. The minimum and maximum limits of the fines provided for in the preceding numbers shall be doubled in case of recidivism.
4. The actual amount of the fine shall be determined according to the nature of the infraction, the damage or risk derived from it, the seriousness of the illicit act and the degree of culpability, the offender's background and economic capacity.
5. The fine may be freely mitigated:
 - a) In commission by omission;
 - b) In the event of a reprehensible error regarding the illicit nature of the fact; and
 - c) In case of an attempt.

Article 27

Additional Penalties

1. One or more of the following accessory sanctions shall apply, in addition to the fine, to the administrative offences provided for in this law
 - a) Seizure of assets or values directly obtained or acquired by means of the administrative offence;
 - b) Suspension for up to three years of the right to the benefits set out in this Law or in legal norms to which it refers, or of the right to a subsidy or other benefit granted by any public entity or service;
 - c) Suspension for up to three years of the right to participate in fairs and markets or to enter restricted access areas or precincts;
 - d) Suspension up to three years of the right to participate in public bidding and procurement contests promoted by public entities or services;
 - e) Cancellation of the license to exercise an economic activity and closure of the establishment; or
 - f) Publication of the punishment for an administrative infraction.
2. The provisions of paragraph 4 of the previous article apply, with the necessary adaptations, to accessory sanctions.

Article 28

Apprehension

1. The apprehension of goods, as outlined in sub-paragraph a), number 1 of the previous article, is always subsidiary, and is only permitted when
 - a) The goods represent a danger to the community or favor the commission of a crime or misdemeanor; or
 - b) They belong to the offender or have been sold or encumbered to a third party who knew or reasonably should have known of the circumstances that led to their seizure.

2. Unless in the case of goods that represent danger to the community, there is no place for seizure if the measure is manifestly disproportionate to the gravity of the illicit act and the culpability of the offender or the third party.
3. Seizure shall not be determined or executed whenever its purposes can be duly achieved through measures that are less burdensome for the exporting companies affected.
4. When possible, the seizure shall be limited to part of the infringer's or third party's property.
5. Total or partial seizure of goods may be ordered when no proceedings or fines can be imposed for the administrative offence, provided the respective preconditions have been met.
6. The final and unappealable judgment of the seizure decision determines the transfer of ownership of the seized goods or assets to the state.
7. When the seizure on the basis of paragraph a) of number 1 falls upon objects belonging to a third party, the latter shall be entitled to compensation from the State, under the terms of civil law, unless he acquired them in bad faith.

Article 29

Competence

1. The competent administrative authority is the minister responsible for the foreign trade sector.
2. The competence for the instruction of the administrative offence procedure may be delegated by the minister, in whole or in part and under the general terms, to a vice-minister or secretary of state that assists him/her or to any of the directors of the services that are hierarchically subordinated to him/her.
3. The imposition of fines, with or without an accessory penalty, may only be delegated to a member of the Government which concurs with the competent administrative authority.

Article 30

Subsidiary law

The general legal regime for administrative offences provided for in this law is subsidiarily applicable to the administrative offences provided for in this law.

CHAPTER V

MISCELLANEOUS AND FINAL PROVISIONS

Article 31

Administrative export procedure

1. The Government shall regulate the administrative procedure of the export operation, respecting the following principles
 - a) No act, document, obligation, proof or procedure that is not expressly provided for in the laws regulating the formalities and controls proper to such administrative procedure or in the general regulation of this Law may be required of the exporting company;
 - b) The interventions of the public services and agents have fixed terms, at the end of which the Administration's silence shall be considered, for all purposes, as tacit approval;

- c) The illegal actions or omissions of the public agents intervening in the procedure that cause damages to the exporting company determine the civil liability of the State and, through the right of recourse, of those agents
 - d) The refusal or rejection of a declaration, application or request from an exporting company must always be justified in an express and accessible way, based on a cause explicitly provided by law or regulation; and
 - e) Relations between the certified exporting companies and the various services involved in the procedure are coordinated, in a centralized manner, in a one-stop-shop supported, as soon as possible, by a computer platform that connects it to the aforementioned services and that is directly accessible to the exporter or their customs agent or representative.
2. The Government is also responsible for
- a) Establish rules of origin for products exported or re-exported from Timor-Leste and regulate the issuance of the respective certificate, regarding the export of products not subject to specific international regulation;
 - b) Establish standardization rules, including notably the quality, presentation, packaging and labeling of goods to be exported or re-exported from Timor-Leste
 - c) Establish a special registry of certified exporting companies at the government department responsible for the area of foreign trade but accessible online to all public or delegated institutions intervening in the administrative export procedure, to economic operators and to the public
 - d) Establish a one-stop-shop for export operations, creating it or extending an existing one, supported by an IT platform that coherently interconnects all public institutions or delegated institutions involved in the administrative export procedure and guarantees the exporting company or its representative direct online access to obtain forms, information and permits legally due, to make declarations and submit documentation, and to enter into dialogue with the Foreign Trade Administration.

Article 32

Capacity building of exporters

The Government promotes, supports or organizes the capacity-building and updating of Timor-Leste's exporting companies or companies with exporting potential, in particular, small and medium-sized companies.

Article 33

Delegation of administrative functions to business associations

The Government may, by Decree, delegate to business associations that agree to this through an agreement, the exercise of specific functions within the scope of administration of foreign trade related to exports.

Article 34

Crimes of public officials within the scope of the export procedure

The penalties for crimes committed by public servants during the exercise of their functions within the administrative export procedure shall be aggravated, in their minimum and maximum limits, by half of their maximum duration.

Article 35

Derogation

This Law derogates from all legal and regulatory norms that contradict it.

Article 36

Entry into force

This Law shall enter into force on the date of the entry into force of the Government Decree regulating the administrative procedure for export.

Approved in the Council of Ministers on _____ of _____ 2015.

The Prime Minister,

Taur Matan Ruak

The Coordinating Minister for Economic Affairs,

Joaquim Amaral

The Minister of Tourism, Commerce, Industry,

José Lucas do Carmo da Silva
