



PROPOSAL

LAW NO. /2021

of

EXPORT PROMOTION

(PREAMBLE)

(...),

Based on paragraph c) of Article 97 and paragraph a) of paragraph 2 of Article 115 of the Constitution of the Republic, the Government presents to the National Parliament, with a request for priority and urgency about the following draft law:

CHAPTER I GENERAL PROVISIONS

Article 1 Object

The present Law defines the bases of the legal regime about the economic activity of export and re-export of goods from Timor-Leste.

Article 2 Scope of application

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

Article 3

Definitions

For the purposes of the present Law:

- a) Economic activity means the production, distribution and commercialisation of goods, regardless of their nature, carried out in Timor-Leste;
- b) Competent administrative authority means the competent administrative authority to promote the instruction of the procedures for administrative offences set forth 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 competencies 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 Timor-Leste 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 trade zone or not, who legally supplies goods and services to certified exporting companies fiscally resident in Timor-Leste;
- h) Exporting company means any individual or collective person that, authorized under the terms of the law to exercise economic activities, carries out export or re-export operations;
- i) Certified exporting company means a private investor holding an Exporter Certificate;
- j) Free exporting company means the company resident for tax purposes in the free trade zone or exclusively constituted for the commercialization of goods intended for export or for sale to other companies resident for tax purposes in Timor-Leste;
- 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 Timor-Leste 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 natural or legal person under private law, national or foreign, resident or non-resident, holder of an investor certificate;
- n) Foreign direct investor or external investor is an investor that is a natural person who is a national of another State or a legal entity in which at least ten percent of the shareholdings with voting rights are held by natural persons who are nationals of another State or by legal entities headquartered in another State;
- o) National investor is an investor that is an individual national of Timor-Leste or a legal person in which more than ninety percent of the shareholdings with voting rights are held by individuals who are nationals of Timor-Leste or by legal persons with their head office in Timor-Leste;
- p) Commodity is any good susceptible of being traded abroad;
- q) Foreign goods are those that are not considered national or nationalized goods;
- r) National merchandise is the one originated in the territory of Timor-Leste;
- 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 of which Timor-Leste is a party or of general or common international law;
- u) Restricted or restricted export goods 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-export 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 companies established in Timor-Leste and to other exporting entities whenever they are handled for export, incorporated or used in the production of other goods and services intended 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 integrate 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 exploration 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 Timor-Leste; and
- bb) Free zone is a part of the national territory or place therein, separated 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 re-export

1. Export and re-export are free and do not require any prior administrative authorisation.
2. The principle established in number 1 does not exempt exporting companies from complying with formalities aimed at controlling the conformity of 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 by an international agreement entered into by Timor-Leste, and their customs clearance under the terms of the customs legislation.
3. The export or re-export of prohibited, restricted or export restricted goods shall be exempted from the freedom established in the present article.

Article 5 Freedom of importation

The importation of the following is carried out 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 for export.

Article 6

Non-discrimination

1. All exporting companies shall enjoy the same rights, shall be subject to the same obligations and shall be treated equally, under the terms of the Constitution and the law, and shall not be discriminated against, namely on the grounds of nationality, registered office or domicile, or the origin of the capital invested in them.
2. The provisions of the preceding paragraph do not preclude 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 strategy of the Strategic Development Plan, due to their scale, nature or economic, social, environmental or technological impact.
3. The provision contained in point 1 is also without prejudice to the possibility of certified exporting companies being given personalised assistance during the administrative exportation procedure.
4. The provisions of this article do not prejudice the land tenure and land use regime.

Article 7

Protection

The exporting company may not be nationalised and its assets may not be expropriated or subjected to 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 registered office or domicile.

Article 8

Effective judicial protection

The exporting company has the right to request before the courts with administrative jurisdiction the effective judicial protection of 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 the damages resulting from their 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 legally due, in case of refusal or silence on the part of the Administration; or
- f) the performance of legal and material acts necessary for the effective execution of administrative judicial decisions.

Article 9

Dispute resolution with the Administration

1. In disputes between an exporting company and the Administration, including those relating to administrative or tax matters but excluding those relating to criminal and counter-order matters, the parties shall endeavour to reach an amicable negotiated solution within thirty days.
2. After the period referred to in paragraph 1 has elapsed and no agreement has been reached, either party may, by written communication to the other, initiate arbitration for the resolution of the dispute, 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 15 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States and its International Centre for Dispute Settlement;
 - b) the Rules laid down in the Rules of the Supplementary Mechanism approved on 27 September 1978 by the Board of Governors of the said International Centre for Settlement of Disputes, if the foreign enterprise does not satisfy the nationality requirements of Article 25 of the said Washington Convention;
 - c) The Rules of the Singapore International Arbitration Center; or
 - d) the Arbitration Rules of the International Chamber of Commerce, Paris.

4. The option for arbitration under the terms of this Article shall mean that the parties renounce the right of access to the courts of law in respect of the matters in dispute.
5. The waiver shall not preclude the institution of interim relief proceedings, either before or during arbitral proceedings, provided that the relief sought is not incompatible with such proceedings.
6. In the case of an option for arbitration, the court seised of the dispute shall, as soon as it is aware of the document by which the option was formalised, 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 Atauro, provided the other requirements required by law are met.

ARTICLE 11

Right to long term leasing of State-owned property

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

ARTICLE 12

Taxation by the actual profit

Exporting companies shall be taxed on the profit actually earned, as evidenced by their accounting regularly organised under the terms of the law.

ARTICLE 13

Sale in the domestic market

1. Free export companies may sell in the domestic market up to twenty per cent of the total production of the previous year.
2. By way of Resolution of the Council of Ministers, upon a proposal by the minister responsible for the trade sector, free export companies may be authorised, on a temporary basis and with regard to certain products and quantities, to sell in the domestic market a percentage higher than that indicated in number 1, whenever such is deemed of interest to the country.

3. 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 disposal.

Article 14 **Transfer of funds abroad**

1. The owners of exporting companies 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 derived from their investment, namely:
 - a) Distributed net operating profits, 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 shareholder loans made to the company; or
 - e) Compensation for nationalization or expropriation of the company's assets;
2. The transfer shall be authorised by the central bank within thirty calendar days of the respective request, after which time the amount to be transferred shall bear interest at thirty-day LIBOR, 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 be paid in quarterly, equal and successive instalments over a period not exceeding two years.

Article 15 **Right to Hiring 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 authorisation, but subject to notification to the Labour 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 preceding paragraph, in accordance with the evolution of the national labour market.
3. Exporting companies shall be guaranteed five work visas for workers recruited under the terms of subsection 1 above.
4. Workers and collaborators recruited under the terms of subsection 1 above shall have the right 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 the basis of the law.

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 provided, provided that they comply with the obligations to which they are subject by law or by final judicial decision, and the provisions of subsection 15.2 shall apply, with the necessary adaptations.

Article 16

Export credit, guarantee and insurance

The Government may establish credit lines or other mechanisms for financing, guarantee and insurance risks for export operations.

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 enterprise shall enjoy all 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 Timor-Leste is a signatory

Article 20

Extension

The provisions of this Chapter shall apply, with the necessary adaptations, to ancillary export companies.

CHAPTER III

CONDITIONS AND OBLIGATIONS

Article 21

Access conditions

1. Only exporting companies that are in a regular situation as regards the applicable legal and regulatory obligations, namely as regards tax and social security obligations and compliance with the rules governing the access to and exercise of economic activities in the sectors where 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 shall be incumbent on 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 governing 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 trade zone regime;
 - b) To have, and keep in due order and up-to-date, organized accounts, 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 labour administrations;
 - d) To submit to public administrative, economic, tax, customs, labour, technical or other supervision of their activities and facilities;
 - e) To provide the Administration with the information and documentation required under the law or regulations;
 - f) Comply with all other private investor obligations; and
 - g) do anything else 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) Register in the special registry of exporting companies with the government department responsible for the area of foreign trade; and
- b) Organise, 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 set out in the previous article and, in general, with the provisions of this law and its regulations or development diplomas and with the regulations governing the activity of exporting companies shall be incumbent especially upon the Administration of Foreign Trade, without prejudice to the competence attributed by law to other services and entities in their specific fields.
2. For the purposes of the provisions of the preceding paragraph, the Administration of Foreign Trade may, at all times, require exporting companies to provide 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 assistance necessary for the supervision and enforcement, where permitted by law, of the norms regulating the activities of exporting companies.

CHAPTER IV

ADMINISTRATIVE OFFENCES

Article 25

Administrative Offence

1. Unless criminally typified by law, the violation, by action or omission, with intent or negligence, 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 25

(Fines)

1. The administrative offences provided for in this Law are punishable by a fine of to..... for natural persons and of a for legal persons.
2. Negligence shall be punishable by a fine not exceeding half of the maxima provided for in the preceding paragraph.
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 in accordance with the nature of the infraction, the damage or risk derived therefrom, the gravity of the illicit act and the degree of culpability, the offender's background and economic capacity.
5. The fine may be freely attenuated:
 - a) In commission by omission;
 - b) in cases of reprehensible error as regards the illegality of the fact; and
 - c) In case of an attempt.

Article 26 **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 goods or assets directly obtained or acquired by way of the administrative offence;
 - b) Suspension for up to three years of the right to the benefits provided for 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 enclosures or areas with reserved access;
 - d) Suspension for 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 carry out a business activity and closure of the establishment; or
 - f) publication of the punishment for an administrative offence.
2. The provisions laid down in sub-paragraph 4 of the previous Article shall apply, with the necessary adaptations, to ancillary sanctions.

Article 27

Seizure

1. The apprehension of goods, as referred to in subparagraph a) of paragraph 1 of the previous Article, shall always be subsidiary, and shall only be permitted when:
 - a) the goods represent a danger to the community or favour the commission of a crime or administrative offence; or
 - b) They belong to the offender or have been disposed of or encumbered to a third party who knew or reasonably should have known of the circumstances determining their apprehension.
2. Unless in the case of goods representing danger to the community, there shall be no cause for apprehension 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 where its purposes can be duly achieved through measures that are less burdensome for the exporting companies affected.
4. Where possible, seizure shall be limited to part of the infringer's or third party's property.
5. Total or partial apprehension of assets may be ordered where there can be no proceedings or fine imposed for the administrative offence, provided that the respective prerequisites have been met.
6. The transit in res judicata of the seizure decision determines the transfer of ownership of the seized goods or assets to the State.
7. Where the apprehension based on paragraph a) of subsection 1 falls upon objects belonging to a third party, the third party shall have the right to compensation from the State, in accordance with the civil law, unless the third party acquired the objects in bad faith.

Article 28 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 who assists him or her or to any of the directors of the services hierarchically subordinated to him or her.

3. The enforcement of fines, with or without accessory sanctions, may only be delegated to a member of the Government concurring with the competent administrative authority.

Article 29 **Subsidiary law**

The general legal framework 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 30 **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 silence of the Administration 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 losses to the exporting company shall 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 manner, based on a cause explicitly provided for in law or regulation; and
 - e) The relationships between the certified exporting companies and the various services intervening 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 in a network with the referred services and that is directly accessible to the exporter or his customs broker or representative.
2. It is also incumbent upon the Government:
 - a) Establish rules of origin for products exported or re-exported from Timor-Leste and regulate the issuance of the respective certificate, in relation to the export of products not subject to specific international regulation;

- b) Establishing standardisation rules, namely including the quality, presentation, packaging and labelling 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 or delegated institutions intervening in the administrative export procedure and guarantees the exporting company or its agent direct online access to obtain forms, information and legally required permissions, to make declarations and present documentation and to enter into dialogue with the Foreign Trade Administration.

Article 31

Training of exporters

The Government shall promote, support or organize the capacity building and updating of Timor-Leste's exporting companies or companies with export potential, in particular small and medium-sized companies.

Article 32

Delegation of administrative functions to business associations

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

Article 33

Crimes of public officials within the scope of the export procedure

The penalties for crimes committed by public officials 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 34

Derogation

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

Article 35
Entry into force

This Law enters into force on the date of entry into force of the Government Decree that regulates the export administrative procedure.

Approved by the Council of Ministers on ____, ____ 2022.

The Prime Minister

Taur Matan Ruak

The Coordinating Minister for Economic Affairs

Joaquim Amaral

Promulgated on ____ of ____ of ____

To be published.

The President of the Republic,

Dr. José Ramos Horta