



GOVERNMENT DECREE

No. 4 / 2019 of May 29

APPROVES THE 1st AMENDMENT TO GOVERNMENT DECREE No. 2 /2018, OF FEBRUARY 21, WHICH APPROVED THE REGULATION ON PRIVATE INVESTMENT PROCEDURES

Through Law No. 15/2017, of August 23, a new legal framework was approved for carrying out private investment in the Democratic Republic of Timor-Leste, with Law No. 14/2011, of August 28, having been revoked. September.

The legal regime inaugurated by the aforementioned diploma introduced a set of quite significant changes, in relation to the previous legal framework, namely in terms of the eligibility of private investments that can effectively benefit from a set of State incentives, namely those of a fiscal nature.

However, despite being published on August 23, 2017, Law No. 15/2017, of August 23, only came into force on January 1, 2018, without, however, being included in that legal diploma any norms that temporarily regulate, namely, the admission, processing and decision of the procedures for issuing investor certificates, provided for in Law No. 14/2011, of September 28, and which are no longer provided for in new private investment law.

Given that between the date of publication and the date of entry into force of Law No. 15/2017, of August 23, the submission, processing and decision of applications for the issue of investor certificates continued to be legally admissible, the Specialized Agency for Investment, which by virtue of Decree-Law No. 45/2015, of December 30, is the Investment and Export Promotion Agency of Timor-Leste, I.P., designated as TradeInvest Timor-Leste, continued to receive and process requests for the issue of investor certificates, provided for in Law No. 14/2011, of 28 September.

It was found, however, that on the date of entry into force of Law No. 15/2017, of the 23rd of August, a decision was pending on various administrative processes relating to requests for the issue of investor certificates and whose issuance was no longer possible. foresee in the new law.

Recognizing the need to decide on the administrative procedures relating to requests for the issue of investor certificates that were still pending after the entry into force of Law No. 15/2017, of 23 August, Government Decree No. 2/2018, of February 21, which approved the regulation of private investment procedures, provided for in paragraphs 2 and 3 of its article 28, the respective application to all requests for investor certificates that were pending of decision on December 31, 2017, unless they had obtained a favorable opinion from the Private Investment and Export Assessment Committee (CAIPE) by that date, in which case Law No. 14/ 2011, of 28 September, as well as the Regulation of Procedures, approved by Government Decree n.º 6/2005 of 27 July.

The administrative option reflected in paragraphs 2 and 3 of article 28. Government Decree no. 2/2018, of February 21, seems somewhat incomprehensible given the nature of the said rules, which are of an administrative nature and having , for this reason, that they conform to the general principles of administrative activity, to which the Council of Ministers, in the exercise of the State's administrative function, is bound, pursuant to the provisions of paragraph 3 of article 2 of the Decree-Law No. 32/2008, of 27 August.

Among the general principles of administrative activity that it is important to consider, in this case, the principles of equality and trust, enshrined, respectively, in paragraph 1 of article 3 and in paragraph 2 of article 6, all of which Decree-Law No. 32/2008, of August 27, are particularly relevant.

The principle of equality, as enshrined both in the Constitution of the Republic and in paragraph 1 of article 3 of Decree-Law no. 32/2008, of 27 August, has two aspects, namely: the positive side and the negative side. Now, with regard to the first, the principle of equality requires that equal situations deserve equal treatment and requires that legally or materially different situations be treated differently.

From reading the norms set out in paragraphs 2 and 3 of article 28 of Government Decree no. 2/2018, of February 21, it is not possible to understand how they comply with the principle of equality, since determine that administrative processes for the issuance of investor certificates, entered and instructed, but not decided, even during the validity of Law No. 14/2011, of September 28, will be decided according to different legal regimes, depending on whether they have managed to obtain (or not), until December 31, 2017, the favorable opinion given by the Private Investment and Export Assessment Commission (CAIPE) to the investment authorization requests.

Although Law No. 14/2001, of September 28, does not condition the issuance of investor certificates to the prior opinion of any other body, establishing only that their issuance is the responsibility of the Specialized Agency for the Investment, the continued application of Government Decree No. 6/2005, of July 27, namely No. 1 of Article 12 thereof, associated the positive opinion of the Private Investment and Export Assessment Commission (CAIPE) to carry out external investment to the issue of an investor certificate.

This resulted from the fact that CAIPE's opinion, regarding requests for foreign investment authorization, is mandatory and binding for the Government body with competence to issue a decision on them, foreseeing, moreover, the formation of tacit authorization or of tacit rejection of the requests, depending on the meaning of the report-opinion produced, if an express decision was not issued regarding them, within a maximum period of five days from the date of presentation of the referred opinion.

According to the rules approved by Government Decree No. 6/2005, of July 27th, applied during the validity of Law No. 14/2001, of September 28th, the issue of an investor certificate is associated with the granting of an investment authorization, provided by the Government, based on the favorable opinion of CAIPE, which should meet, for this purpose, within a maximum period of ten days, counted from the date of submission, to TradelInvest Timor-Leste, of the application for internal investment authorization, upon call by its President.

Notwithstanding the existence of deadlines established in administrative regulation for the processing of foreign investment authorization requests and for the issuance of investor certificates, the provisions of paragraphs 2 and 3 of article 28 of Government Decree no. 2/2018, of February 21, provided as the sole criterion for the application of Law No. 14/2001, of September 28, the existence or not of a CAIPE opinion dated before December 31, 2017, without taking care to safeguard the situations in which the said opinion was not issued for reasons attributable to the public administration, namely the inertia of its bodies to convene the CAIPE meeting.

In accordance with the legal framework relating to the authorization to carry out foreign investment, individuals had the legitimate expectation of having their requests for authorization for foreign investment examined by CAIPE within a maximum period of ten days from the respective presentation and, if the requirements laws and regulations in force.

Disregarding the situations in which investment authorization requests were submitted during 2017, but CAIPE's opinions regarding them were not issued for reasons attributable to public administration services, with prejudice to the interests of individuals, cannot fail to undermine the principle of trust.

On the other hand, the wording of paragraphs 2 and 3 of article 28 of Government Decree no. 2/2018, of February 21, also did not safeguard the situations in which the Executive had already given its authorization to carry out of foreign investment, namely in the form of a legal diploma, without the need for a prior, mandatory and binding opinion from CAIPE, and despite the fact that the individual had requested, even during the validity of Law No. 14/2001, of September 28, the issuance of an investor certificate, which was not issued before January 1, 2018.

It is therefore necessary for the Government to intervene in order to unblock the administrative deadlock generated by the lack of transitional rules in Law No. 15/2017, of August 23, which,

while respecting the will of the legislator, simultaneously safeguard respect for the general principles administrative activity and the legally protected rights and interests of individuals.

Thus,

the Government decrees, under the terms of article 50 of Law no. 15/2017, of 23 August, to be valid as a regulation, the following:

Article 1.

Object

This diploma approves the first amendment to Government Decree No. 2/2018, of February 21st.

Article 2.

Change

Article 28 of Government Decree No. 2/2018, of February 21, which approves the Regulation of Private Investment Procedures, is replaced by the following wording:

“Article 28

Implementation

1. (...).
2. Administrative procedures relating to applications for authorization of foreign investment or the issue of investor certificates submitted during the term of Law No. 14/2011, of 28 September and still pending, are decided by the Coordinating Minister of Economic Affairs of in accordance with that same Law, except those that have not been the subject of a CAIPES opinion-report, for reasons attributable to the investor.
3. The Executive Director of TradeInveste Timor-Leste presents to the Coordinating Minister of Economic Affairs, the administrative processes relating to requests for foreign investment authorization or the issue of investor certificates referred to in the previous number, duly informed.”

Article 3.

Implementation

This Government Decree comes into force on the day following its publication. Approved by the Council of Ministers, on March 5, 2019.

Unofficial Translation

Publique-se.

O Primeiro-Ministro,

Taur Matan Ruak

O Ministro Coordenador dos Assuntos Económicos, em exercício

Agio Pereira