

**GOVERNMENT RESOLUTION No. 41/2016**

**of 23 November 2016**

**APPROVES THE PARTICIPATION OF THE STATE IN THE  
COMMERCIAL COMPANY TL CEMENT AND THE DRAFT CONTRACT PROMISING  
TO INCREASE SHARE CAPITAL AND TRANSFORM THE COMPANY**

TL Cement, Ltd. is a recently incorporated company under Timorese law that intends to continue the activity of production and sale of cement, through the implementation of an investment project in the Municipality of Baucau, which involves the construction of a limestone extraction and cement production unit, with a total projected investment amount of about USD \$400,000,000.00 (four hundred million US dollars).

Under the terms of Government Resolution No. 43/2015, of November 25, the Council of Ministers, instructed the Minister of State, Coordinator of Economic Affairs and Minister of Agriculture and Fisheries to prepare, in coordination with the Ministers responsible for the sectors targeted by the investment project, the actions necessary for the conclusion of a Special Investment Agreement (SIA).

In compliance with this wish, the Council of Ministers approved, through Government Resolution No. 14/2016 of May 6, the draft SIA between the State and TL Cement, Ltd., which was effectively signed on May 17, 2016.

Under the terms of Government Resolution no. 43/2015, of 25 November, the Council of Ministers, determined the constitution of a technical team, led by the Ministry of Finance, with the support of technicians appointed by the members of the Government responsible for the areas of finance, mineral resources and economy, which submitted a report with the conclusions and recommendations to the Council of Ministers, in which a cost and benefit analysis of State participation in the investment project is made. The Council of Ministers received a favorable opinion from the Ministry of Finance for participation in the investment.

Under the terms of paragraphs 4 and 5 of Clause 2 of the SIA, the State may participate in the investment project under terms and conditions to be agreed upon in an autonomous agreement to be signed between the State and TL Cement, Ltd.

The State intends to attract and support investment projects for Timor-Leste that promote and stimulate economic growth outside the Dili areas and create employment and professional training opportunities for Timorese workers.

The project is of national importance and significant public interest, due to its economic, social and technological impact, and is expected to bring significant benefits to Timor-Leste, namely through the creation of jobs, transfer of capacity and knowledge translated into the capacity building of national workers, through the multiplying effect that the investment will bring to the municipality and surrounding area and through the creation of a cheaper local supply of cement and better quality, thus reducing the country's dependence on cement imports.

The Government resolves, under the terms of paragraph o) of no. 1 of article 115 of the Constitution of the Republic, the following:

1. To approve the State's participation in the commercial company TL Cement, up to a maximum limit of 40% of its share capital.

2. To approve the draft of the contract promising to increase the capital and transfer the company, which is published as an annex to this Resolution and forms an integral part thereof.
3. To charge the technical team constituted under the terms of Government Resolution no. 43/2015, of 25 November, to negotiate with TL Cement, Ltd. the implementation of the promised contract of capital increase and transformation of the company and any necessary shareholders' agreement.
4. To appoint the Minister of State, Coordinator of Economic Affairs, the Minister of Finance and the Minister of Petroleum and Mineral Resources to jointly sign the promissory contract and the definitive contract on behalf of the State.
5. Determine that, on behalf of the Government, the request for payment of USD \$4,900,000.00 (four million nine hundred thousand United States dollars) to the bank account of TL Cement, Ltd. shall be made by the Minister of Finance, using the budgetary appropriations entered in the Counterpart Fund, within the scope of the appropriations for the Whole of Government.

Approved by the Council of Ministers on November 22, 2016.

Be it published.

The Prime Minister,

---

**Dr. Rui Maria de Araújo**

**PROMISSORY TRANSFORMATION  
AND  
INCREASE OF SHARE CAPITAL AGREEMENT**

This Promissory Transformation and Increase of Share Capital Agreement (“Agreement”) is entered into by and between:

- (1) THE STATE OF THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE, in this act represented by His Excellency, the Minister of State, Coordinating Minister for Economic Affairs, Estanislau Aleixo da Silva, the Minister of Petroleum and Mineral Resources, Alfredo Pires, and the Minister of Finance, Santana Cardoso (hereinafter referred to as “State”);
- (2) JAMES RHEE, [marital status], of [nationality] nationality, residing at [address], holder of Passport/Identity Card [number], issued by [entity], on [date], taxpayer number [number] (hereinafter referred to as “First Shareholder”); and
- (3) SWAN ENERGY PTY LTD, a company incorporated and existing under the laws of Australia, with registered offices at Level 5, 22 Mount Street, Perth, Western Australia 6000, herein represented by its Managing Director Mr. James Rhee of [●] nationality, holder of [Passport/Identity Card] [number], issued by [entity], on [insert date] (hereinafter referred to as “Second Shareholder”).
- (4) TL CEMENT, LDA., a company incorporated and existing under the laws of Timor-Leste, with a share capital fully subscribed and paid up of USD 100,000,00 (one hundred thousand United States dollars), taxpayer number and under the company’s unique number 1184223, with head offices at Koica Office, Ramelau Hotel, Dili, Timor-Leste, (hereinafter referred to as “TLC”).

(State, First Shareholder, Second Shareholder and TLC shall be hereinafter jointly referred to as “Parties”, and First Shareholder and Second Shareholder shall be hereinafter jointly referred to as “Shareholders”).

This Agreement is hereby entered into, under the following terms and conditions:

WHEREAS:

- (A) TLC is a company incorporated under the laws of Timor-Leste by the Shareholders and wishes to carry out the activity of production and sale of cement in Timor-Leste;
- (B) By means of the Government Resolution 14/2016, of 6 May 2016, the Council of Ministers approved a Special Investment Agreement (“SIA”) to be entered into between the State and TLC, the latter in the capacity as investor, for the construction and operation of a cement plant to be located in Baucau Municipality, with projected investment amount of USD 400,000,000,00 (four hundred million United States dollars) [hereinafter the “Project”];
- (C) The Parties executed the SIA on 17 May 2016, being the same in full force and effect;
- (D) Pursuant to Clauses 2.4 and 2.5 of the SIA, the State may participate in the Project pursuant to terms and conditions to be agreed by means of a separate agreement to be entered into between the State and TLC;
- (E) The State wishes to farm-in TLC in the capacity of shareholder, in order to give its contribution to the success of the Project, and for such purpose shall make available the amount of USD 4,900,000,00 (four million and nine hundred thousand United States dollars), during this current year 2016;

- (F) In order to allow the above mentioned State's farm-in, the Parties agreed to transform TLC (which is a limited liability company by quotas) in a limited liability company by shares ("Transformation") and subsequently increase the TLC's share capital so that the State becomes the owner of forty percent (40%) of TLC share capital.
- (G) NOW THEREFORE, in consideration of the premises and the mutual agreements and covenants hereinafter set forth, and intending to be legally bound, the Parties hereby agree as follows:

#### **CLAUSE 1 – PURPOSE**

- 1.1 The purpose of this Agreement is to set forth the terms and conditions under which the State shall farm-in TLC.
- 1.2 The Parties agreed that the farm-in provided for in Clause 1.1 above shall be made as follows:
- a) The Shareholders shall carry out the Transformation; and
  - b) After the Transformation, the Shareholders shall approve the increase of TLC's share capital by means of a State contribution in the amount of four million and nine hundred thousand United States dollars (USD 4,900,000.00), to subscribe and pay-up the increased share capital, so that the State becomes the owner of forty percent (40%) of TLC's share capital (hereinafter referred to as "Transaction").
- 1.3 The State and Shareholders and/or TLC will enter into additional agreements to set forth the terms and conditions of additional State contributions for the Project which exceeds USD 4,900,000,00 (four million and nine hundred thousand United States dollars).

#### **CLAUSE 2 – OBLIGATIONS**

- 2.1 The Shareholders hereby promise to, until 31 March 2017, to approve in a General Assembly of TLC (a) the Transformation of TLC and (b) the increase of share capital of the TLC under the terms of Clause 4 below.
- 2.2 The resolutions shall be signed by the Shareholders, the Chairman and the Secretary of TLC's General Assembly and their signatures must be duly recognized by a Notary Public.
- 2.3 The Shareholders hereby promise to, immediately after the approval of the resolutions provided for in Clause 2.1 above and, in any case, no later than 14 April 2017, take all steps to register the Transformation and increase of share capital with the Service for Registration and Verification of Enterprises, issue the share titles and take any other steps required or convenient under the applicable law to complete the Transaction.

#### **CLAUSE 3 - TRANSACTION DOCUMENTS**

- 3.1 The Shareholders undertake to, until 31 January 2017, provide the State with the draft(s) minutes of the resolutions provided for in Clause 2 above, as well as any other documents required for the Transformation and the increase of the share capital, including the report justifying the transformation provided for in Article 138 of the Law 4/2004, of 21 April 2004 ("Companies Law") and the draft new by-laws that will govern TLC after the Transformation ("NewBy-Laws").
- 3.2 On or before 28 February 2017 the Parties shall agree on at least on:
- a) The wording of the resolutions mentioned in Clause 2.1; and
  - b) The wording of the New By-Laws mentioned in Clause 3.1.
- 3.3 The Parties may also agree on a Shareholders Agreement or on any other documents they deem necessary or appropriate.

#### **CLAUSE 4 - INCREASE OF SHARE CAPITAL**

- 4.1 The increase of share capital shall be made by means of a new contribution in cash of the State.
- 4.2 After the increase provided for in Clause 4.1 above, the State shall own forty percent (40%) of TLC's share capital.
- 4.3 The State shall transfer to TLC's bank account the amount of USD 4,900,000,00 (four million and nine hundred thousand United States dollars) up until 25 of November 2016 to subscribe and pay-up the increase of TLC's share capital under the terms provided for in this Clause 4.
- 4.4 Until the Transformation and the share capital increase are made and formalized, TLC's bank account referred to in Clause 4.3 can only be disposed within the budget annexed to this agreement as Annex I and through the joint signature of a person designated by the State for such purpose and the signature of the holders the account
- 4.5 In case the Parties agree that the amount provided for in Clause 4.3 above exceeds the amount required or convenient to subscribe and pay-up the increase of TLC's share capital, the exceeding amount may be used as any legal form of funding to TLC permitted by law, as agreed by the Parties.
- 4.6 TLC shall notify in writing to the State of the details of its bank account to where the amount provided for in Clause 4.3 above shall be transferred.
- 4.7 The State has the right to transfer its stake in the share capital of TLC to a public company.

#### **CLAUSE 5 - NEW BY-LAWS**

Without prejudice to Clause 3 above, the By-Laws shall set forth, as a minimum, that:

- a) The State is entitled to appoint up to two members of the board of directors, and a member of the audit board;
- b) The board of directors shall have a maximum of five members and the audit board shall have three members;
- c) The favourable vote of the State is required to pass resolutions on TLC's participation in other companies, posting of guarantees, disposal of TLC's assets and execution of contracts in an amount equal or in excess of USD 2,000,000,00 (two million United States dollars) relocation of investment and collective redundancies.

#### **CLAUSE 6 - SPECIAL UNDERTAKINGS**

- 6.1 The Shareholders hereby undertake to call all necessary meetings and pass all and any resolutions, sign and execute all documents and take all steps that may be required by law or deemed convenient by the State in order to complete the Transaction, in the exact terms and conditions set forth herein.
- 6.2 The Shareholders hereby expressly undertake to approve the Transformation and the increase of the TLC's share capital, as well as to waive the right of first refusal to subscribe the share capital increase, provided for in Articles 298 et seq. of the Companies Law, by means of a resolution of TLC's General Assembly or otherwise, as may be deemed required or convenient by the State.
- 6.3 TLC hereby accepts that until the Transformation and the share capital increase are concluded and the State holds 40% (forty per cent) of TLC's share capital, all rights held by TLC over its assets will belong to the State.

**CLAUSE 7 - REPRESENTATIONS AND WARRANTIES**

- 7.1. Each Party undertakes and solemnly declares to the other Parties that as from the Effective Date it shall cooperate closely with the other towards the full achievement of the objectives of this Agreement and shall honour all agreements and understandings as to the Transaction contemplated herein.
- 7.2 Each Party solemnly declares and warrants to the other Parties that:
- (a) the execution, delivery and performance of this Agreement (i) does not contravene any material provision of any agreement or other instrument to which it is a party or by which it is bound and (ii) does not and will not conflict with, result in a breach of or constitute a default under any such agreement or other instrument; and
  - (b) this Agreement, when signed by the Parties, shall constitute a valid, binding and enforceable agreement in accordance with the terms herein.
- 7.3 Shareholders hereby further declare and warrant that:
- (a) they own the whole TLC's share capital and are entitled to comply with the obligations provided for in this Agreement;
  - (b) the current TLC's share capital is fully subscribed and paid-up;
  - (c) TLC's net asset value exceeds its share capital; and
  - (d) there are no factual or legal obstacles to the Transaction or to any other rights and/or obligations provided for in this Agreement.
- 7.4. Each Party undertakes to the other Party that it shall perform and abide by all the applicable provisions of this Agreement.
- 7.5 Each Party warrants that it, its affiliates and employees have not made, offered, or authorized and will not make, offer, or authorize with respect to the matters which are the subject to this Agreement, any payment, gift, promise or other advantage, whether directly or through any other person or entity, to or for the use or benefit of any public official (i.e. any person holding a legislative, administrative or judicial office, including any person employed by or acting for a public agency, a public enterprise or a public international organization) or any political party or political party official or candidate for office, where payment, gift, promise or advantage would violate (i) the applicable laws of the country in which business opportunities are pursued; (ii) the laws of the country of incorporation of that Party; or (iii) Timor-Leste Corruption Act.

**CLAUSE 8 – FORCE MAJEURE**

- 8.1 Non-performance or delay in performance by any of the Parties, of any of their obligations herein, shall not be considered breach of the Agreement if, and to the extent that, such nonperformance or delay is due to any unforeseen event beyond the reasonable control of the Party claiming to be affected by such event and, subject to the foregoing, shall include, but not be limited to, state of war, whether declared or not, rebellions or riots, terrorism, natural catastrophes, floods, storms, acts of God, fires, earthquakes, strikes, communications cuts and similar unavoidable accidents.
- 8.2 If a Force Majeure event occurs, the Party in default as a result of such event, shall be excused of all the obligations herein, and the other Party's obligations shall also be suspended, until the status quo prior to the occurrence of the event(s) constituting Force Majeure is restored.
- 8.3 The Party that wishes to claim a situation of Force Majeure shall serve notice on the other Party within 10 (ten) days and shall use all reasonable efforts to remedy the situation of Force Majeure as soon as possible.

#### **CLAUSE 9 - SPECIFIC PERFORMANCE**

The breach of this Agreement by any of the Parties, shall grant to the other Party the right, to the extent permitted by the applicable law, to seek specific performance of same under Article 765 of the Civil Code.

#### **CLAUSE 10 - TERMINATION**

10.1 The State may terminate this Agreement in case the Shareholders fail to comply with their obligations in a substantial or continuous basis without justification, particularly if the time limits provided for in Clauses 2 and 3 are not complied with for reasons attributable to the Shareholders.

10.2 If the State considers that any of the Shareholders has not fulfilled in a substantial or continuous basis this Agreement, it may notify the Shareholder(s), providing reasonable information about the circumstances of non-compliance and grant a period of no less than 30 (thirty) days to carry out remediation.

10.3 If the failure is not remedied within the deadline granted by the State under the preceding paragraph, the State may terminate this Agreement, with just cause, by written notice sent to all Parties.

10.4 In case of termination by the State on grounds of a breach to Clauses 2 and/or 3 of this Agreement, the Shareholders shall be jointly and severally liable to and shall cause TLC to reimburse the State the amount of USD 4,900,000,00 (four million and nine hundred thousand United States dollars) and shall also be held liable for any additional loss or damage suffered, or liability incurred, by the State due to the Shareholders breach.

#### **CLAUSE 11 – TLC ACKNOWLEDGMENT AND UNDERTAKING**

In case the State terminates this agreement under the terms of Clause 10 above, TLC expressly acknowledges and agrees to be jointly and severally liable with the Shareholders for the payment to the State of USD 4,900,000,00 (four million and nine hundred thousand United States dollars) and for any additional loss or damage suffered, or liability incurred, by the State due to the Shareholders breach.

#### **CLAUSE 12 – GOOD FAITH**

Each Party undertakes to act in good faith in implementing this Agreement, and to refrain from exercising any right or power in a manner that is unreasonably burdensome to the other Party.

#### **CLAUSE 13 – WAIVER AND NON-EXERCISE OF RIGHTS**

13.1 The fact that a Party waives or fails to exercise its rights in the event of non-compliance with any provision herein by the other Party shall not be understood or interpreted as constituting waiver of rights in relation to any other situation of default, of an identical or similar nature.

13.2 Any waiver of a right by a Party shall only be deemed valid and effective in relation to the other Party if it is in writing and signed by the Party or by a duly authorized representative of such Party.

13.3 The fact that one Party fails to demand the other Party to comply with any duty deriving from this Agreement, or grants a period for this purpose, shall not be understood or interpreted as a waiver of its rights.

#### **CLAUSE 14 – AMENDMENTS**

This Agreement may only be amended by the Parties in writing.

**CLAUSE 15 – NOTICES**

15.1 Notices between the Parties under this Agreement shall be delivered in person or by courier service or by any electronic means of transmitting written communications that provide written confirmation of complete transmission, to the following addresses:

a) in the case of the State:

Address: [address]

Fax: [number]

E-mail address: [email]

Attention: [name]

§

Address: [address]

Fax: [number]

E-mail address: [email]

Attention: [name]

§

Address: [address]

Fax: [number]

E-mail address: [email]

Attention: [name]

b) in the case of the First Shareholder:

Address: [address]

Fax: [number]

E-mail address: [email]

Attention: [name]

c) in the case of the Second Shareholder:

Address: [address]

Fax: [number]

E-mail address: [email]

Attention: [name]

d) in the case of the TLC:

Address: [address]

Fax: [number]

E-mail address: [email]

Attention: [name]

15.2 Any change to the above-mentioned addresses shall be notified to the other Parties at least 5 (five) days in advance.

15.3. Every notice, request, demand or other communication to be given or made under this Agreement shall be deemed to have been duly given and received by the Party to whom it was addressed:

(a) at the time of delivery, if delivered by hand,

- (b) 3 (three) working days after dispatch, if documents are sent by a reputable courier service and are to be transmitted within the Democratic Republic of Timor-Leste;
- (c) 5 (five) working days after dispatch, if documents are sent by a reputable courier service and are to be delivered internationally; and
- (d) in the case of email, upon receipt of an acknowledgement email from the Party to whom the email was addressed.

#### **CLAUSE 16 - GOVERNING LAW**

This Agreement is governed by the laws of The Democratic Republic of Timor-Leste.

#### **CLAUSE 17 - SETTLEMENT OF DISPUTES**

Any dispute arising from or related to the interpretation or application of this Agreement or the breach, termination or validity thereof, which the Parties cannot succeed to resolve amicably, shall be settled in Timor-Leste's judicial courts, under the law.

#### **CLAUSE 18 - EFFECTIVE DATE**

This Agreement shall come into effect ("Effective Date") on the date of its execution by all Parties

IN WITNESS WHEREOF, the Parties have executed this Agreement in four (4) identical copies, each Party keeping one copy.

#### **THE STATE OF DEMOCRATIC REPUBLIC OF TIMOR-LESTE**

---

Name: **Estanislau Aleixo da Silva**

Title: Ministro de Estado, Coordenador dos Assuntos Económicos

Date: 23 of November 2016

---

Name: **Alfredo Pires**

Position: Ministro do Petróleo e Recursos Minerais

Date: 23 of November 2016

---

Name: **Santina Cardoso**

Title: Ministra das Finanças

Date: 23 of November 2016

#### **FIRST SHAREHOLDER**

---

Name: **James Rhee**

Date: 23 of November 2016

**SECOND SHAREHOLDER**

---

Name: **Swan Energy Pty Ltd**

Represented by: James Rhee

Title: General Manage

Date: 23 of November 2016

**TL CEMENT, LDA.**

---

Name: **TL Cement, Lda.**

Represented by: James Rhee

Title: General Manager

Date: 23 of November 2016