

Decree Law No. 5/2011
Dated February 9

ENVIRONMENTAL LICENSING

As one of the youngest nations in the world, since its independence was restored on 20/May/2002, East Timor has shown major concern and awareness as regards environmental issues.

Thus, acknowledging the quality of the environment as an integral and essential part of the quality of life of all Timorese, the Constitution of the Democratic Republic of the East Timor establishes in its Article 61, the right not only to a healthy and ecologically balanced human quality of life, but also the duty imposed on all individuals of maintaining and protecting the environment for future generations.

Within this context, there is constitutional recognition of the need to maintain and value the natural resources and the need to develop actions for fostering and protecting the environment as an essential means for the sustainable development of the economy of East Timor.

At the international level, East Timor has been a noticeable presence at several Conferences and has ratified several International Agreements entered into within the sphere of the United Nations (UN), such as the Kyoto Protocol, the UN Convention on Biological Diversity, the UN Convention to Combat Desertification, the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer. Although the State issues 0.02 tons per habitant and per year, the State intends to voluntarily reduce this rate following the UN Framework Convention on Climate Change (UNFCCC).

Similarly and seeking to comply with the obligations arising from the above-mentioned International Conventions, East Timor is now establishing and defining the basis for its domestic environmental bodies of law, incorporating internationally accepted environmental law concepts .

The creation of environmental licensing for preventing negative impacts on the environment instead of later fighting its effects is undoubtedly the most effective environmental policy. Thus environmental licensing based on the environmental assessment of public or private interventions and using as its tools the Certificate of Environmental Impact (DIA) and the Environmental Management Plan ensures the so-called preventive nature of environmental protection.

On the other hand, public consultation is a fundamental right upheld by the Constitution and is also an instrument for the decision-making process that makes it possible to include the views and perceptions of the various segments of society into the project, thus creating the conditions appropriate for the implementation of the project and its incorporation both at the community and national levels.

There is indeed the need to regulate the issue with a view to:

- a) Instituting an environmental licensing system based on the principles of efficiency, transparency and independence;

- b) Ensuring the participation of the community and of the public in the Environmental Assessment process.
- c) Identifying and assessing the consequences of the development proposals for the environment;
- d) Creating the conditions for minimizing or eliminating the environment and social negative impacts arising from the implementation of projects;
- e) Determining the environmental and social protection measures to be applied at the time the projects are implemented;
- f) Preventing the materialization of projects that have a significant potential impact on the environment;
- g) Instituting a process for issuing environmental licenses resulting from environmental assessment that can truly contribute to environmental control.
- h) Overseeing and monitoring the projects according to the provisions of the Environmental Management Plan (PGA).

Hence, this statute establishes the Environmental Licensing System conceived as an additional system for responding to the need to prevent the negative environmental impacts resulting from complex projects and meets the social and economic reality of East Timor. Furthermore, the system envisages the granting of environmental licenses and monitoring thereof as a logical consequence of the process for the environmental assessment of projects, thus creating an integrated process and a simplified procedure for preventing negative environmental impacts and controlling pollution from the projects.

As a part of the environmental licensing process, an optional phase is included that seeks to guide the applicant and optimize the environmental assessment and which effectively seeks to assist the applicant in classifying the project and to contribute to the preparation of the project terms of reference, which is a fundamental guiding document for preparing the Certificate of Environmental Impact and Environmental Management Plan. In the Environmental Assessment phase, a system has been created where the public participates in the assessment process from the outset, thus allowing their timely contributions and recommendations to be incorporated by the Assessment Committee. Thus, the Government decrees, pursuant to item 1, sub-item b) of Article 115 of the Constitution of the Republic, to be enforced as a law, the following:

CHAPTER I GENERAL PROVISIONS

Article 1 Definitions

For the purposes of this statute, the terms below shall have the following meanings:

- a) Protected Environmental Area: an area that becomes the habitat of an endangered species, defined as a protected or sensitive area by the statutes in force in East Timor, an area where material goods and assets of cultural interest are located, especially assets that have been built, archeological assets (found on land, in rivers

and in the sea), the traditional architecture and traditional sites with a cultural relevance linked to local customs and living experience;

b) Environmental Authority: the administrative authority responsible for the environmental area;

c) The Higher Environmental Authority: a governmental entity responsible for determining the Environmental Licensing Procedure;

d) Environmental Assessment: a generic concept of the procedure for deciding on the environmental feasibility of executing certain projects based on the environmental assessment and management tools defined in this statute comprising the following:

I – Environmental Impact Assessment: the procedure for the environmental assessment of category A projects.

II – Initial Environmental Examination (EAI): the procedure for the environmental assessment of category B projects.

e) Categories A, B and C: categories for classifying the projects based on the size of the potential environmental impacts that correspond to different legal requirements for the environmental licensing of projects;

f) Endangered Species: are the fauna or flora species protected or endangered, pursuant to the provisions of the laws in force;

g) Construction Phase: the specific period during which the clearing, excavation, dredging and selection work is initiated as well as other activities linked to the physical implementation of the project;

h) Decommissioning Phase: the specific period during which the area where the extractive, industrial or operational unit of the project is located is released for other uses, usually through the dismantling of the facilities and the removal of the items of equipment, thus ensuring good safety conditions and environmental compliance;

i) Development Phase: the period between the construction and the dismantling phase during which the project is in full operation and execution taking into account the planning made, especially as regards deadline, costs and quality. The work associated with this phase includes the definition of the organization, the allocation and management of human, material and financial resources and the hiring of equipment and services, the monitoring and control of deadlines, costs and quality as well as re-planning;

j) Inspection: a routine or unscheduled procedure performed by the Environmental Inspection Service, consisting of observing and systematically collecting data on the environmental status or on the environmental effects of a certain project and the periodic description of these effects in a report with the purpose of analyzing the efficacy of the measures provided for in the Environmental License so as to avoid, minimize or offset the environmental impacts resulting from the execution of the respective project.

k) Environmental Impact: a set of positive and negative alterations in the environmental and social parameters comprising, among others, the people and their economic and social structures, air, water, fauna, flora or in their habitats, within a specific period of time and in a specific area, resulting from the execution of the project.

The impacts will be analyzed comparing the situation that would have occurred during this period of time and in this area had the project not been implemented;

l) Environmental Inspection Service: the entity of the direct or indirect State Administration responsible for the environmental oversight;

m) Facilities: the premises and items of equipment that are an integral part of the project;

n) Environmental Assessment Tools: preventive tools pertaining to the environmental policy within the sphere of the Environmental Assessment procedure comprising the Certificate of Environmental Impact and the Environmental Management Plan.

o) Stakeholders: the applicant, the owner, the related Ministries, the communities, the citizens or any public or private entity with a legitimate interest in the project, including the respective representative organizations and the non-governmental organizations in the environmental area;

p) Environmental License: The written decision that grants the applicant the right to carry out the project, so as to ensure the integrated prevention and control of the environment;

q) Environment: the definition, pursuant to the laws in force in East Timor as the set of physical, chemical, biological and living organisms and the natural resources, including human beings and their behavior and the property that influence the continuation and the quality of life of man, of other living beings and the quality of the ecosystems;

r) Monitoring: the process implemented by the owner consisting of the observation and systematic collection of data on the status of the environment or on the environmental effect of a specific project and the periodic description of these effects by means of reports designed to permit the analysis of the efficacy of the measures provided for in the Environmental Assessment procedure in order to avoid, minimize or offset the environmental impacts resulting from the execution of the respective project;

s) Pollution: the direct or indirect introduction through human action, of microorganisms, substances, waste or heat into the environment, which may harm human health or the quality of the environment or cause the deterioration of the material assets or the deterioration or impediments to the use of the environment and to the legitimate use of the water and soil. This definition includes the activities deemed as being noisy, likely to produce a harmful or disturbing noise for beings located at sensitive locations or for those who live, work or remain in the proximity of the site where these occur.

t) Polluter: an individual or collective person, whether public or private who commits polluting acts or actions;

u) Project: under the control of the laws in force in the East Timor, it consists of the design and the interventions in the natural habitat or in the landscape, of a public or private nature (including the construction works and the interventions designed to exploit natural resources);

v) Applicant: individuals or legal entities, be they public or private, that apply for the environmental licensing of a project;

w) Public: the communities, citizens or any entity, public or private, with a legitimate interest in the project, including the respective representative organizations and non-governmental organizations in the environmental area;

x) Waste: the definition, pursuant to the laws in force in the East Timor, of any solid, liquid, gaseous or radioactive substance or matter that causes alterations when discharged into the environment, resulting from the activities of individual, public or private institutions;

y) Non-Technical Summary is one of the documents of the Environmental Impact Assessment (AIA) that provides a summarized description in accessible language rather than technical jargon, of the information contained in the AIA;

z) Terms of Reference (TR): the document containing the preliminary analysis of the project, defining the content and the purpose of the Environmental Impact Assessment. This document is part of the Definition of the Scope of the projects classified as category A;

aa) Owner: An individual or collective person to whom an environmental license for a project is granted.

CHAPTER II ENVIRONMENTAL LICENSING SYSTEM

Article 2 Object

1. This diploma creates the environmental licensing system for public and private projects likely to produce environmental and social impacts on the environment.

2. The environmental licensing system is a system based on the assessment of the potential size of the environmental impact of projects taking into account their nature, size, technical characteristics and the location.

Article 3 Environmental Licensing Procedure

1. The environmental licensing procedure consists of the following:

- a) Guidance for defining the scope;
- b) Environmental Assessment and the Granting of the Environmental License;
- c) Emission and Renewal of the Environmental License
- d) Inspection

2. The beginning of the environmental licensing process is considered to be the time when the project documents are submitted to the Environmental Authority in order to comply with the provision of sub-item b) of the previous item.

Article 4 Definition of the Categories and Types of Environmental Assessment Procedure

1. The classification of the projects is carried out according to Annex I and II and is structured as follows:

a) Category A – includes projects that may have significant environmental impacts and which are subject to the Environmental Impact Assessment (AIA) that is based on the Analysis of the Impact and on the Environmental Management Plan (PGA), as per the provisions of this statute.

b) Category B – includes projects that may cause environmental impacts and which are subject to the Initial Environmental Examination (EAI) that is based on the Environmental Management Plan as per the provisions of this statute.

c) Category C – includes projects where the environmental impacts are negligible or do not exist and which are subject to any Environmental Evaluation process, as per the provisions of this statute.

2. In the cases described below the category is determined based on the severity of the probable impacts:

a) A project that may cause some or significant adverse impacts but does not fall under the categories described in Annex I and II;

b) A project that may cause significant adverse impacts and falls under the categories of Annex II.

3. For the purposes of this statute, Certificate of Environmental Impact (DIA) is a document based on technical studies and consultations with the participation of the public, prepared by the Applicant, containing a summary description of the project, the anticipated progress of the *de facto* situation in case the project is not implemented, the identification and assessment of the probable impacts, both positive and negative, which the project may have on the environment, the environmental management measures aimed at avoiding, mitigating or offsetting the expected negative impacts and a non-technical summary of this information, as provided for in the appropriate statute.

4) For the purposes of this statute, Environmental Management Plan (PGA) is the document that identifies the potential environmental impacts that may take place during the construction, development and decommissioning phases and determines how they will be managed and monitored, as provided for in the appropriate statute.

CHAPTER III INFORMATION PHASE OF THE ENVIRONMENTAL ASSESSMENT

Article 5 Definition of the Scope of the Project

1. The applicant, for the purposes of obtaining guidance on the fact-finding step of the environmental assessment process, may question the Environmental Authority concerning the Definition of the Scope.

2. Definition of Scope is the classification of the project under one of the categories provided for in this statute and additionally, for the projects that fall under category A, the preparation of the terms of reference.

3. The enquiry concerning the definition of scope referred to in number 2 of this article has a preliminary character, should precede the Environmental Assessment and is also optional.

4. For the purposes of the provisions of item 1 of this article, the applicant must submit the documents related to the project to the Environmental Authority which should include the following information:

- a) Name of the promoter, particulars and contact information;
- b) The location and size of the project;
- c) The plans and technical drawings of the project;
- d) The technical studies concerning the feasibility of the project;
- e) Technical opinions or other types of documents related to the project originating from other entities;
- f) Proposal for classifying the project in a category, according to Annex I of this statute;
- g) Proposal for Terms of Reference for Category A projects, as defined in supplementary laws.

5. When submitting the documents, the applicant has to pay the fees pertaining to the information phase, as defined in an appropriate statute.

Article 6 Information Phase Procedure

1. Within 15 days of the receipt of the documents referred to in the previous article, the Environmental Authority shall issue an opinion concerning the Definition of the Scope.

2. The opinion of the Environmental Authority is informed to the applicant through a public notice posted at its facilities.

3. Whenever it deems it necessary, the Environmental Authority may contact the applicant, the representatives of the area affected by the proposed project as well as the related Ministries in order to obtain information on the project.

4. The purpose of the opinion envisaged in item 1 of this article is to provide guidance to the applicant but it does not create any obligation for the applicant.

5. The timeframe provided for in item 1 of this article refers to the information phase and should not be confused with the timeframes for the environmental evaluation, according to the provisions of Article 12 and 19.

Article 7 Right to Information

The information phase does not prevent the applicant from requesting the Environmental Authority information concerning any other aspect of the environmental licensing at any time.

CHAPTER IV
PROCEDURE FOR THE ENVIRONMENTAL IMPACT ASSESSMENT AND FOR
GRANTING THE ENVIRONMENTAL LICENSE.

Article 8
Procedural Phase

For environmental licensing purposes, the projects classified under Category A are subject to the Environmental Impact Assessment (AIA) and the granting of the Environmental License, comprising the following phases:

- a) Submission of the project for evaluation and request for the environmental license;
- b) Public consultation;
- c) Analysis and Technical Opinion by the Assessment Committee;
- d) Decision on the procedure for the Environmental Impact Assessment and granting of the Environmental License;

Article 9
Presentation of the Project for Environmental Impact Assessment (AIA)
purposes and Application for Environmental License

1. The applicant for a project classified under Category A initiates the environment impact assessment and the application for an environmental license by submitting the following information and documents to the Environmental Authority:

- a) Name of the applicants and their particulars and contact information;
- b) Composition of any economic group the applicant is part of;
- c) The location and size of the Project;
- d) The plans and technical drawings of the project;
- e) The technical studies concerning the feasibility of the project;
- f) Technical opinions or other types of documents related to the project issued by other entities;
- g) Any other document legally required by law for the approval of the project and for which proof of granting of the environmental license is not required;
- h) Certificate of Environmental Impact (DIA) including a Non-Technical Summary and the Environmental Management Plan (PGA)
- i) Application for the granting of the Environmental License;

2. The information and documents referred to in the previous item are presented in a specific form and as provided for in the relevant statute;

3. The applicant must prepare the DIA and PGA according to the provisions of Article 4, items 2, and 4 and in accordance with the supplementary laws.

4. Upon submission of the documents, the applicant has to pay the fee related to the Environmental Impact Assessment defined in the appropriate statute.

Article 10 Assessment Committee

1. For each category A project, within 10 days after the submission of the documents referred to in the previous article, the Higher Environmental Authority shall establish an Assessment Committee of a deliberative nature for the purpose of managing the AIA, with the following duties:

a) To submit the DIA and the Environmental Management Plan to public consultation and to voice its opinion on the proposals, suggestions and comments received;

b) To check the legal compliance and to conduct a technical evaluation of the DIA and the respective Environmental Management Plans;

c) To hold and call, whenever necessary, meetings with the applicant and the other stakeholders;

d) To request, whenever necessary, expert opinions from entities external to the Environmental Authority;

e) To prepare the final technical opinion on the AIA.

2. The Assessment Committee consists of an odd number of members as follows:

a) A representative from the governmental department responsible for the environment impact assessment and pollution control areas, who shall preside over the Committee;

b) A representative from the governmental department responsible for the tourism, commerce and industry sectors;

c) A representative from the governmental department responsible for the health area;

d) A representative from the governmental department responsible for the cultural area;

e) A representative from the governmental department responsible for the infrastructure area;

f) At least two technicians who are experts in the area or sector related to the project;

3. Should a governmental entity become an advocate of the development project, it shall be excluded from the committee so as to ensure an arms-length decision.

4. The rules governing the functioning of the Assessment Committee shall be defined in an appropriate statute.

Article 11 Public Consultation

- 1) It is incumbent on the Assessment Committee to promote a public consultation whose goals are the following:
 - a) Provide public access to the documents referred to in article 8 of this statute;
 - b) Inform and provide clarifications on the project to the public, including the potential environmental impacts and their mitigation;
 - c) Promote a debate on the DIA and PGA.
2. The timeframe for holding the public consultation is 24 days and commences 10 days after the Assessment Committee is set up.
3. Any individual from the public can send the Assessment Committee informed recommendations or proposals on the DIA and PGA, within the timeframe defined in item 2 of this article.
4. The requirements and procedures for the participation by the public are defined in the appropriate statute.
5. A Public Consultation for Definition of the scope needs to discuss the Terms of Reference (TOR) of the project, and the opinion of the stakeholders must be reflected in the TOR.

Article 12 Technical Analysis of the Project by the Assessment Committee

1. The timeframe for the technical analysis of the DIA and the respective PGA is fifty (50) days and commences 5 days after the Assessment Committee is set up, pursuant to the provisions of this statute.
2. For the purposes of the technical analysis and evaluation defined in item 1 of this article, the Assessment Committee may, whenever it deems necessary, contact the applicant, the representative(s) of the community(ies) potentially affected by the project, as well as the Ministries involved in the project, in order to collect additional information and clarifications on the project.
3. The Assessment Committee may request from the applicant a one-off reformulation of part or of the entirety of the studies or analyses that constitute the DIA and the respective Plans, based on the recommendations received during the technical analysis and public consultation procedure.
4. The timeframe defined in item 1 of this article shall be suspended up to the delivery by the applicant of new studies and analyses.
5. The assessment Committee has at least 10 days to review the new documents, or the number of days remaining to complete 40 days, provided the remaining number of days is not less than 10.
6. Should the applicant disagree with the request made by the Assessment Committee provided for in item 3 of this article, then it must defend its reasons and present them in writing to the Assessment Committee.

Article 13
Issuance of an Opinion by the Assessment Committee

1. The Assessment Committee is responsible for submitting a final technical opinion based on the documentary evidences provided by the applicant, on the contributions made at the public consultation and on the findings of the technical analysis of the Assessment Committee within the timeframe specified in item 1 of the previous article.
2. The Assessment Committee then sends the technical opinion to the Higher Environmental Authority which may decide either of the following:
 - a) that the DIA and the PGA be recommended for approval, or
 - b) that the DIA and the PGA not be recommended since the negative environmental impacts exceed the benefits generated.
3. Should the AIA process conclude that the negative impacts can be mitigated in the light of the science and technology available at the time or that the mitigation costs exceed the positive impacts, then the Assessment Committee must recommend the action indicated in item 2, sub-item b) of this article.

Article 14
Decision on the Environmental Impact Assessment and Environmental License

1. It is incumbent on the Higher Environmental Authority to issue a final decision concerning the AIA based on the technical opinion of the Assessment Committee, pursuant to the provisions of this statute.
2. The decision of the Higher Environmental authority must be either one of the following:
 - a) Approval of the DIA and Environmental Management Plans and authorization for the issuance of the environmental license for the project; or
 - b) Non approval of the DIA and the Environment Management Plans in which case the environmental license process is then closed.
3. In the case of sub-item a) of the previous item, the decision must define the additional conditions and restrictions deemed necessary for protecting the environment and which must be an integral part of the environmental license.
4. The decision referred to in the previous item is issued by means of an official decision and within 15 days as of the date of the receipt of the technical opinion from the Assessment Committee and published in the Jornal da República (Official Gazette).

CHAPTER V
PROTECTION OF TRADITIONAL CUSTOMS AND RIGHTS

Article 15
Impact and Benefits Agreement (AIB)

1. The Impact and Benefits Agreement (AIB) is the legal instrument within the private sphere governed by the Civil Code which defines the rights and obligations between the applicant and the legal representative of the communities under protection, the respect for the traditional use of the land, the customs and rights of this community and compensations compatible with the potential environmental impacts identified in the Certificate of Environmental Impact of the project at hand.

2. The Impact and Benefits Agreement (AIB) is entered into with the communities located around or in the vicinity of the category A project whose traditional use of the land, other customs or traditional rights are likely to be affected.

Article 16
Negotiation of the AIB

1. The Impact and Benefits Agreement (AIB) can be negotiated at any time after the publication of the decision on the environmental impact assessment.

2. This agreement results from the discussion of the proposed DIA and Environmental Management Plans between the applicant and the affected community.

3. The community and the applicant may at any time request the Environmental Authority to intermediate the negotiation of the AIB.

4. In case of any conflict arising with the enforcement of the AIB, the parties may resort to the appropriate court, pursuant to the civil laws in force.

5. The Impact and Benefits Agreement shall be the subject matter of its own specific statute.

CHAPTER VI
INITIAL ENVIRONMENTAL EXAMINATION (EAI) AND GRANTING OF THE ENVIRONMENTAL LICENSE

Article 17
Procedural Phases

1. For environmental licensing purposes, the projects classified as Category B are subject to an Initial Environmental Examination (EAI) and the granting of the Environmental License comprising the following phases:

- a) Submission of the Project and the Application for an Environmental License;
- b) Technical Analysis and Opinion by the Environmental Authority;
- c) Decision on the Initial Environmental Examination (EAI) and the Granting of the Environmental License;

Article 18

Submission of the Project

1. The applicant of a project classified as category B starts the Initial Environmental Examination (EAI) process and the application for an environmental license upon the submission to the Environmental Authority of the following documents and information:

- a) Name of the applicant and their particulars and contact information;
- b) The location and size of the Project;
- c) The plans and technical drawings of the project;
- d) The technical study concerning the feasibility of the project;
- e) Technical opinions or other types of documents related to the project issued other entities;
- f) Environmental Management Plan (PGA);
- g) Application for the granting of the Environmental License;

2. The information and documents referred to in the previous item are presented in a specific form and as provided for in the supplementary laws

3. The applicant must prepare the PGA according to the provisions of Article 4, item 2, and in accordance with the supplementary laws.

4. Upon submission of the documents, the applicant has to pay the fee related to the Environmental Impact Assessment defined in the appropriate statute.

5. Should the Environmental Authority require a public consultation, this must be held to discuss the issues pertaining to the project.

Article 19

Technical analysis by the Environmental Authority

1. The Initial Environmental Examination (EAI) consists of the technical evaluation and the issuance of an opinion on the PGA by the Environmental Authority within 30 days following submission of the project.

2. For the purpose of the technical analysis and evaluation, the Environmental Authority may, whenever it deems necessary, contact the applicant, as well as the Ministries involved the project, in order to obtain additional information and clarifications on the project.

3. The Environmental Authority may, based on the technical analyses, request the applicant a one-off reformulation of part or the entirety of the PGA.

4. The timeframe defined in item 1 of this article shall be suspended until the delivery of a new PGA by the applicant.

5. The Environmental Authority has at least 10 days to review the new documents or else the number of days remaining to complete 30 days, provided the remaining number of days is not less than 10.

6. Should the applicant disagree with the request made by the Environmental Authority provided for in item 3 of this article, then it must defend its reasons and present them in writing to the Environmental Authority.

Article 20

Opinion by the Environmental Authority

1. The Environmental Authority is responsible for submitting a technical opinion to the Higher Environmental Authority based on the documentary evidence submitted by the applicant and on the findings of the technical analysis of the Environmental Assessment which may be either one of the following:

- a) that the PGA be recommended for approval or
- b) that the PGA not be recommended due to the fact that the negative environmental impacts exceed the benefits generated.

2. Should the Initial Environmental Exam conclude that the negative impacts cannot be mitigated, based on the sciences and technologies existing at the time, or that the mitigation costs are higher than the positive impacts, the Environmental Authority must recommend the action indicated in item 1, sub-item b) of this article.

Article 21

Decision on the Simplified Environmental Assessment

1. It is incumbent on the Higher Environmental Authority to issue the final decision concerning the simplified Environmental Assessment procedure, based on the technical opinion of the Environmental Authority, pursuant to the provisions of this statute.

2. The decision by the Higher Environmental Authority may be either of the following:

- a) Approval of the PGA and authorization for the issuance of the environmental license for the project; or
- b) Non approval of the PGA in which case the project licensing procedure is closed.

3. In the case of sub-item a) of the previous item, the decision must define the additional conditions and restrictions deemed necessary for protecting the environment and which must be an integral part of the environmental license.

4. The decision referred to in the previous item is issued by means of an official decision and within 10 days as of the date of the receipt of the technical opinion from the Environmental Authority and published in the Jornal da República (Official Gazette).

CHAPTER VII ENVIRONMENTAL LICENSE

Article 22 Type of Environmental License

1. As a result of the favorable decision by the Higher Environmental Authority, two types of licenses are issued, according to the project category, namely Category A Environmental License and Category B Environmental License.
2. The following documents shall be part of the license, depending on the type of license:
 - a) Category A – The Certificate of Environmental Impact and the Environmental Management Plan (PGA);
 - b) Category B – The Initial Environmental Examination (EAI) and the Environmental Management Plan.
3. The format and content of a category A or B environmental license shall be defined in a supplementary law.
4. The environmental License can not be transferred to another project belonging to the same or a different applicant.
5. In the case of category C projects, the Environmental Authority encourages the applicant to maintain environmental management.

Article 23 Issuance of the Environmental License

1. The Environmental Authority is the entity responsible for issuing the environmental license.
2. The timeframe for issuing the license is 10 days after the official decision of the authority referred to in item 1 of the previous article.
3. The applicant is advised of the fact in writing up to 5 days after the timeframe defined in the previous item.
4. The applicant must pay the fee related to the environmental license in accordance with the provisions of the supplementary law and within 10 days after receipt of the notice. However, governmental projects are exempted from paying the environmental fees.
5. No project can proceed to the implementation phase in the absence of a favorable final decision concerning the assessment procedure, the issuance of the environmental license and the payment of the environmental license fee, according to the provisions of this statute.

Article 24
Duration and Renewal of the Environmental License

1. The Environmental License of category A and B projects is valid for 2 years and is renewable for equal successive periods up to the date the Environmental Decommissioning of the project is completed.
2. The renewal process is automatic following payment of the renewal fee, according to the supplementary laws and provided the conditions envisaged in article 25 are not present.

CHAPTER VIII
ALTERATIONS TO THE CONDITIONS OF THE ENVIRONMENTAL LICENSE

Article 25
Review of the DIA and of the PGA

1. The holder of a license is required to conduct a review of the Certificate of Environmental Impact and the Environmental Management Plan which must be submitted to the Environmental Authority for evaluation and approval whenever it intends to implement or has planned to implement the following:
 - a) Alterations in the project which may significantly affect:
 - i) the quantity and quality of the waste discharged into the environment, according to the definition of the environmental laws in force;
 - ii) the physical area of the project, as well as its size;
 - b) the physical transfer of the project site;
2. The request for review provided for in the previous item is to be made in a specific form and accompanied by the following documents:
 - a) A proposed review of the conditions and restrictions defined in the Certificate of Environmental Impact and the Environmental Management Plan, in the case of category A projects; or
 - b) A proposed review of the conditions and restrictions defined in the Environmental Management Plan, in the case of category B projects;
3. The request for review provided for in item 1 of this article includes the estimated timeframe required to make the physical alterations needed by the project.
4. The compulsory review of the documents alluded to in item 2 of this article does not prevent the holder of the license from making the necessary amendments to the project documents required by the proposed alteration to the project, including the DIA and the Impact and Benefits Agreement, so as to comply with the provisions of this Statute.
5. The applicant of the request for review must pay the fee related to the alteration to the environmental license, pursuant to the provisions of its relevant statute.

Article 26
Issuance of an Opinion and Decision of the Review of the PGA

1. The Environmental Authority shall analyze the documents submitted by the owner according to the previous article and within 30 days shall issue an opinion to the Higher Environmental Authority that can be either one of the following:
 - a) Favorable to the proposed review in the documents mentioned in the previous item; or
 - b) Unfavorable, proposing new conditions and restrictions to be included in the documents referred to in the previous item.
2. The Higher Environmental Authority shall issue a decision on the review of the environmental license within 15 days, which may be one of the following possibilities:
 - a) Approval of the review of the PGA and authorization to issue a new environmental license;
 - b) Rejection of the review of the PGA and a request to the owner to provide additional information or to re-do, either totally or partially, the documents provided for in item 2 of the previous article;
 - c) Rejection of the review of the PGA, in which case the procedure for altering the environmental license is closed;
3. The decision is advised to the applicant within 5 days following the timeframe defined in item 2 of this article and published in the Jornal da República (Official Gazette).

Article 27
Timeframe for Executing the Alterations

1. After receiving the notice concerning the decision mentioned in item 2, sub-item a) of the previous article, the applicant must execute the alterations to the project within the timeframe specified in the respective notice.
2. Should the applicant fail to execute the alterations as defined in the previous article and fails to present a plausible justification, the new environmental license related to the review process will lapse, and the applicant must then submit a new review process should it intend to proceed with the proposed alterations.
3. For the purposes of the previous article and should the applicant present a plausible justification for the non-compliance with the deadline, a new deadline shall be granted to it and which may not exceed half of the deadline defined in the notice referred to in item 1 of this article.
4. If the deadline defined in item 2, sub-item b) of the previous article is complied with, then the applicant shall submit the documents required for the opinion of the Environmental Authority, according to the provisions of item 1 of the previous article and subsequent course of the procedure until the final decision, pursuant to the provisions of article 2 and 3 of the previous article.

5. In the case provided for in item 2, sub-item c) of the previous item, the owner shall keep the previous environmental license with the respective classification and conditions defined therein and may not make any alterations to the project.

Article 28
Alteration in the Category of the License

In the case of alteration of the environmental license from category B to category A due to alterations in the project that change its nature, size, technical characteristics and location, the project must be submitted to the Environmental Impact Assessment and the related procedure, pursuant to the provisions of this statute.

CHAPTER IX
REGIME APPLICABLE TO PREVIOUS PROJECTS

Article 29
Projects in the Construction and Development Phase

1. Category A and B projects in the construction and development phase which had been granted an environmental license to operate prior to the enactment of this statute must have registered with the Environmental Authority within 240 days following the coming into force of this statute;

2. After registration, the Environmental Authority will issue the environmental license.

3. The environmental license shall be issued according to the provisions of this statute.

4. Category A and B projects in the construction and development phase which have no environmental license to operate must submit their project for Environmental Assessment and granting of an Environmental License, pursuant to the provisions of this statute, within 120 days from the date on which this law came into force.

5. In the case of non-compliance with the provisions of this article, the owners will be subject to the administrative penalties provided for in this statute.

Article 30
Projects Undergoing an Assessment Procedure

1. Category A and B undergoing an Environmental Assessment process may decide on a new Environmental Assessment process or proceed pursuant to the laws and regulations in force before this statute takes effect.

2. In the case of the previous item, the applicant must state their option for the new regime in the relevant form defined in the appropriate statute.

CHAPTER X INSPECTION AND MONITORING

Article 31 Inspection

1. The Environmental Inspection Service has the duty to inspect projects with environmental licenses during the construction, development and decommissioning phases, so as to verify whether the owner is fulfilling the conditions of the environmental license, pursuant to the provisions of this statute;
2. The Environmental Inspection Service agents, properly identified when discharging their duties, may enter the project facilities during working hours, for the following purposes:
 - a) To conduct an environmental inspection of the project facilities;
 - b) To identify and order the removal of any substance or material that may cause pollution;
 - c) To fulfill the obligations "provided for in this statute".
3. In case of a suspected environmental crime, the environmental inspection service may ask the appropriate judicial authorities for authorization to inspect the site outside the working hours, according to the provisions of the law in force.
4. In the discharge of the duties provided for in this article, the Environmental Inspection Service must:
 - a) Cause minimum disruption to the activity developed by the facilities;
 - b) Remain on the site only for the reasonable period of time needed to conduct the inspection;
 - c) Cooperate, as much as possible, with the person responsible for the facilities.
5. The Environmental Inspection Service agents must show their official credentials whenever requested by the owner, and may not enter or remain at the facilities if they do not present their credentials.
6. The owner is required to provide access to and cooperate with the Environmental Inspection Service agents so that they may execute their duties provided for in item 1 of this article.
7. Owners who fail to comply with its obligations provided for in the previous item will be subject to the penalties envisaged in the provisions of this statute.

Article 32 The Duty to Inform

Any person, provided they duly identify themselves, can provide information and evidence to the Environmental Inspection Service or to the Environmental Authority on the negative impacts on the environment or indications of infringement of the provisions of this statute caused by executing any of the project phases, thus initiating the inspection process defined in the previous article.

Article 33
Duty of the Owner to Monitor and Provide Information

1. The owner has the duty to monitor their activities in any phase of the project in accordance with the provisions of the PGA.
2. As a result of the monitoring process, the owner must:
 - a) Provide the Environmental Inspection Service with all the information they are asked to provide concerning the project;
 - b) During the construction phase, to provide the Environmental Inspection Service with semi-annual reports on the environmental activities of the project;
 - c) During the Development phase, to provide the Environmental Inspection Service with a semi-annual report on the environmental activities of the project;
 - d) During the decommissioning phase, to provide the Environmental Inspection Service with a semi-annual report on the environmental activities of the project;
3. Without prejudice to the provisions of this statute, the Environmental Inspection Service may admonish the owners and grant them no more than 10 days to remedy the non-compliance, pursuant to the provisions of item 2 of this article;

CHAPTER XI
PENALTIES

Article 34
Administrative Violations

1. Infringements of this statute constitute administrative violations.
2. Administrative violations are penalized and proceedings are started in consonance with the respective general law, with the adaptations provided for in this statute.
3. The act is considered to have been committed at the place where the agent acted totally or partially and under any form of joint participation, or in the case of omission, failed to act, as well as in the situation where the typical result has occurred.
4. Any attempt is punishable in a similar manner to committing of the act, and especially mitigated in accordance with the laws in force.
5. Committing any of the infringements below constitute an administrative violation punishable with a fine from US\$ 5,000 to US\$ 50,000 in the case of individuals and from US\$ 25,000 to US\$ 250,000 in the case of a legal entity:
 - a) Total or partial execution of a Category A or B project;
 - i) contrary to the decisions defined in the terms of this statute;
 - ii) without a prior conclusion of the Environmental Assessment process or before the granting of the Environmental License, pursuant to the provisions of this statute;

iii) without the completion of the process for issuance of the Environmental License, pursuant to the provisions of this statute;

iv) without payment of the fees provided for in this statute;

b) Non-execution of Category A and B projects, as defined in the DIA and PGA approved according to this statute and the respective supplementary regulations in their construction, development and decommissioning phases;

c) Any impediment or obstacle created by the owner to the carrying out of any inspection determined by the Environmental Inspection Service;

d) Any project activity that might cause an environmental impact outside the approved environmental management plan;

e) Non-compliance with the obligation to register the project with the Environmental Authority, pursuant to article 29;

f) Operating project facilities without an environmental license;

g) Operating project facilities without the appropriate environmental license, in line with the project category, pursuant to the provisions of article 28.

h) Operating project facilities whose environmental license is either suspended or overdue;

i) Non-fulfillment of the conditions provided for in the environmental license.

6. Where the violation has afforded the applicant an economic benefit exceeding the maximum penalty and where other means exist for restoring the condition prior to the violation, the amount of the penalty can be as high as the amount of the benefit.

Article 35 Ancillary Penalties

1. As regards the projects classified as Category A or B, the following ancillary sanctions can be applied cumulatively with the penalty:

a) To seize on behalf of the Government, the objects belonging to the owner used in committing the violation;

b) To order the owner to fully restore any location or area affected by the project to the initial conditions prior to the violation;

c) To suspend or cancel the environmental license;

d) To suspend for a two-year period, the practice of professions or occupations whose practice is subject to an authorization by the public authority;

e) To order the owner to cease the activities of the project, dismantle destroy it;

f) To block bank accounts in the name of the applicant or owner, in the cases where there are indications of damage to the environmental heritage before restoring

the conditions indicated in item 1, sub-item b) or complying with the provisions of item 2 of this article.

2. In case it is not possible to restore the environmental conditions prior to the infringement referred to in sub-item b) of the previous item, the applicant is required to carry out, under the express guidance of the Higher Environmental Authority, the measures needed to reduce or make up for the impacts caused.

Article 36 **Application of Sanctions**

1. The sanctions provided for in Article 34 and in Article 35, sub-items a), b), c), d) and e) are applied by the Higher Environmental Authority.

2. For the purposes of Article 35, sub-item f), the Higher Environmental Authority shall request the appropriate Judicial Authority to execute the respective sanction.

CHAPTER XII **CHALLENGING THE DECISIONS**

Article 37 **Administrative Proceedings**

1. The interested parties are entitled to request changes to or revocation of the decisions referred to by this statute, upon filing:

- a) a complaint with the issuer of the decision;
- b) an appeal to the hierarchical superior of the issuer of the decision.

2. The Administrative Proceedings currently in force shall apply to either case, the complaint or the hierarchical appeal.

CHAPTER VIII **FINAL AND TRANSITORY PROVISIONS**

Article 38 **Records and Access to Information**

1. The Environmental Authority shall maintain a record of the procedures related to the Environmental Assessment and to the Issuance of Environmental Licenses carried out in accordance with the provisions of this law, including the following:

- a) the documents related to the Environmental Assessment process of any Project;
- b) the decisions made by the Higher Environmental Authority in relation to the phases of the Environmental Assessment process of any Project;
- c) the opinions and communications by the Environmental Assessment Committee and the Environmental Authority;
- d) the environmental licenses granted and the respective PGA approved;

e) the documents related to the previous projects, in accordance with the provisions of article 29 and 30.

2. The registration of the environmental licenses issued shall include the following information:

a) The name of the activity or the business to which the license is issued;

b) The name of the owner or user of these sites or facilities;

c) The type of activity or business;

d) The specifications of the license, namely the nature and amount of waste released from the facilities or activities, the type of chemical substances stored or used in the facilities site as well as others, as defined in the PGA related to the project.

3. The records are made available to the public, free of cost, during the regular business hours of the Environmental Authority.

4. For the duplication of any records, the cost of duplication plus the cost of this service shall be charged to the public, pursuant to the competent statute.

Article 39

Information for the Regulatory Agency of the Sector of the Project

1. The Environmental Authority shall keep the regulatory institution of the sector of the project being evaluated informed of the environmental licensing procedure by sending copies of the notices issued during said procedure.

2. The institution regulating the sector of the project mentioned in the previous item may at any time during the environmental licensing process of a project request meetings with the Environmental Authority to collect information on said procedure in regard to timeframes.

Article 40

Duty to Provide Substantiated Information

All decisions provided for in this statute shall be made in writing and duly supported.

Article 41

Timeframes and Lapse of a Right

1. The Higher Environmental Authority, in a properly substantiated official decision, may authorize the extension of any of the timeframes provided for in this law, which shall never exceed twice the initial timeframe.

2. All timeframes indicated in this statute shall be counted in terms of working days.

3. The projects for which licenses have been issued may commence implementation as of the date of the notice of approval for the following timeframes:

a) 2 years, for the projects classified as Category A;

b) 1 year for the projects classified as Category B.

4. The Environmental License for each project shall lapse on expiration of the timeframes indicated in the previous item and shall determine that a new Environmental Assessment procedure be carried out in case the applicant presents the project again.

5. For the purposes of the provisions of the previous item, it is incumbent on the Environmental Authority to determine on a case by case basis which steps of the new Environmental Assessment procedure need to be fulfilled.

Article 42 Supplementary Regulation

The following matters will be addressed in a specific statute:

- a) Terms of Reference, DIA and PGA;
- b) The Public Consultation Procedure;
- c) The Impact and Benefits Agreement;
- d) The bylaws of the Assessment Committee;
- e) The fees and other costs related to the Environmental Licensing process;
- f) The specific forms for the Environmental Licensing process;
- g) The regime for rehabilitating and decommissioning of projects;
- h) The technical parameters of environmental emissions for the various components of the environment;

Article 43 Costs of the Environmental Assessment Process

1. The expenses incurred in the preparation of the Environmental Assessment, submission of the documents necessary for the environmental licensing process and activities related to the Public Consultation Phase shall be borne by the applicant.

2. In the cases where the environmental license is granted, the costs incurred in the environmental monitoring and management of the project undertaken by the owner shall be borne by the same.

3. The expenses involving the remaining phases of the environmental licensing procedure shall be borne by the State.

Article 44 Application of the Environmental Laws

In addition to the provisions of this statute, the Category A, B and C projects are also subject to the environmental laws in force.

Article 45
Transitory Regime

Up to the time the supplementary laws referred to in article 42 are approved, the regulatory rules in force that do not contravene the provisions of this statute shall be provisionally maintained.

Article 46
Revocation of Regulation

The former Governmental Rule No. 51/1993 on the Environmental Impact Assessment as well as the Decree No. 39/1996 of the Ministry of the Environment related to the regulation Law no. 23/1997 on the Environmental Management and the other regulations on the Environmental Impact Assessment shall be revoked upon the enforcement of the decree.

Article 47
Coming into Effect

This statute shall come into effect on the day following its publication.

Approved by the Council of Ministers on 16/December/2010

The Prime Minister

Kay Rala Xanana Gusmão

The Minister of the Economy and Development

João Mendes Gonçalves

Enacted on 4/February/2011

Let this be published.

The President of the Republic

José Ramos-Horta