

DEMOCRATIC REPUBLIC OF TIMOR-LESTE
Decree-Law on the Downstream Sector

Decree-Law no. 1/2012, of 1 February 2012

The regulation of the activities pertaining to the supply, processing, transportation, storage, trading and marketing of petroleum, petroleum products and similar products, and connected activities is of the utmost importance to the Democratic Republic of Timor-Leste. These downstream activities can have a major impact not only on the security of energy supply, but also on public safety and economic growth and prosperity of the country.

Decree-Law no. 20/2008, of 19 June 2008 created the Autoridade Nacional do Petróleo (ANP), entrusting it, amongst others, with the responsibility for regulating and supervising downstream activities in the country, including the use of petroleum infrastructure such as pipelines, terminals and transport infrastructure, as well as refining and processing activities. To achieve these goals, the ANP may establish regulations on technical aspects related to downstream activities, on the granting of authorizations to entities and legal persons to carry out said activities, administrative procedures and duties, and sanctions applicable in case of non-compliance with same regulations.

This Decree-Law on the Downstream Sector approves the general legal framework applicable to the licensing of downstream activities, the ANP's powers related therewith and with the supervision of the downstream sector, as well as the rules on inspection and supervision of downstream activities, investigation of infractions, and their sanctioning regime. To duly equip the ANP to fully carry out its functions in the field of inspection of activities and facilities, this Decree-Law also allows for the creation of a special investigation team, the Downstream Activities' Inspection Division, entrusted with carrying out the necessary measures and procedures to investigate and collect evidence of infractions to the rules contained herein and in any regulations approved hereunder, as well as to prepare the sanctioning procedures resulting therefrom.

Now therefore, under the terms of Articles 115.1 (e) and 116 (a) and (d) of the Constitution of the Democratic Republic of Timor-Leste, the Government hereby enacts into law, the following:

CHAPTER I — GENERAL PROVISIONS

Article 1
Object

1. This Decree-Law on the Downstream Sector is aimed at setting forth the rules applicable to the performance of Downstream Activities in the Territory of Timor-Leste, the powers of the ANP in this respect, the duties of Licensees, and the rules and procedures applicable to the sanctioning of Offences to the rules contained herein and in ancillary regulations.
2. Whenever justified by their complexity and importance to the national economy of Timor-Leste, the Government may decide to submit certain downstream projects to special legislation to be approved on a case-by-case basis, but always in compliance with the general principles contained herein.

Article 2

Definitions

For the purposes of this Decree-Law and the ancillary regulations approved hereunder, the following terms shall have the meanings set out below:

- (a) *Downstream Activity*: means any activity carried out downstream of exploration and production of Crude Oil and Natural Gas not affecting any reservoir, as well as of feedstocks for the production of Biofuels or for any other alternative forms of fuels, including Supply, Processing, Transportation, Storage, Trading and Marketing, which is carried out independently from exploration and production (“upstream”) operations and for commercial purposes;
- (b) *Storage*: means the activity aimed at receiving, collecting, keeping and releasing of Crude Oil, feedstocks for Biofuels or for any other alternative forms of Fuels, as well as Natural Gas, Biofuels and Fuels for commercial purposes, or for exclusive use by the Licensee in its business activities or for residential purposes;
- (c) *Notice of Offence*: means the notice prepared by an inspection authority referred in Article 44.1;
- (d) *Autoridade Nacional do Petróleo or ANP*: means the Autoridade Nacional do Petróleo of Timor-Leste, created by Decree-Law no. 20/2008, of 19 June 2008;
- (e) *Biofuels*: means Fuel derived from organic matter (obtained directly from plants, or indirectly from agricultural, commercial, domestic, and/or industrial waste);
- (f) *Fuel*: means products processed and blended from Crude Oil and Condensate, namely gaseous Fuels (such as Liquid Petroleum Gas), liquid Fuels (such as automotive and aviation grades of gasoline, kerosene, various aviation turbine fuels, and diesel fuels), other Fuel oils (commercial fuel heavier than gasoline and naphtha used for the generation of heat or power) and other products (such as lubricants, paraffins, sulfur, bulk tar, asphalt, petroleum coke and petrochemical feedstocks);
- (g) *Trading*: means the activity aimed at importing and exporting Natural Gas, Biofuels, and any other forms of Fuels, and other products processed and derived from Crude Oil and Condensate for commercial purposes, independently from upstream operations;
- (h) *Condensate*: means all liquid hydrocarbons obtained from Natural Gas by condensation or extraction;
- (i) *Fuel, Lubricant and Biofuels Quality Standard*: means a technical quality standard for fuels, lubricants and products processed and blended from Crude Oil and Condensate, as well as for biofuels approved under the regulations referred in Article 7.2 (d);
- (j) *Supply*: means the activity aimed at purchasing and importing Natural Gas, Crude Oil and Condensate, as well as feedstocks for Biofuels or for any other alternative forms of Fuels for Processing;
- (k) *Natural Gas*: means any hydrocarbons or mixture of hydrocarbons and other gases consisting primarily of methane which at a temperature of 15°C and 101.325 kPa are predominantly in gaseous state;
- (l) *Liquefied Natural Gas or LNG*: means Natural Gas (predominantly methane and ethane) that has been temporarily condensed to liquid form close to

- atmospheric pressure by freezing to a temperature of approximately – 162°C (-260°F) for ease of Storage or Transport in insulated pressure containers;
- (m) *Liquefied Petroleum Gas* or *LPG*: means a group of hydrocarbons processed and derived from Crude Oil refining or Natural Gas fractionation, composed mainly of a mixture of propane and butane, and which is used as combusting Fuel;
 - (n) *Offence* or *Administrative Offence*: means an Offence under this Decree-Law or its ancillary regulations and subject to the special rules contained in Chapter V of this Decree-Law;
 - (o) *Downstream Infrastructure*: means any onshore or offshore infrastructure, plants and equipment located in the Territory of Timor-Leste, as well as any integrated supporting offshore infrastructure, used for the gathering, Storage, Processing and Transportation of Crude Oil, Natural Gas, and feedstocks for Biofuels and for any other alternative forms of fuels, as well as Biofuels and Fuels, and for activities related to the sale thereof, which are carried out independently from upstream operations, for Processing and commercial purposes;
 - (p) *Inspector*: means a person appointed as an inspector by the ANP to carry out inspection activities pursuant to Chapter V of this Decree-Law;
 - (q) *Interested Person*: means any physical or legal person whose interests may be affected by Downstream Activities or by a decision taken pursuant to this Decree-Law, including the applicant for a License;
 - (r) *License*: means an authorization issued by the ANP under Chapter III of this Decree-Law, allowing a legal person to carry out Downstream Activities in the Territory of Timor-Leste;
 - (s) *Licensee*: means a legal person to which a License is granted under Chapter III of this Decree-Law;
 - (t) *Marketing*: means the activity aimed at purchasing, selling and distributing Fuels and other products processed and derived from Crude Oil, from Condensate, feedstocks for Biofuels or for any other alternative forms of Fuels in the local market through retail, wholesale and direct sales channels, as well as purchasing, selling and distributing Natural Gas in the local market;
 - (u) *Offence Report*: means the report prepared under Article 44.2;
 - (v) *Petroleum*: means any naturally occurring hydrocarbon, whether in a gaseous, liquid or solid state, and any mixture of naturally occurring hydrocarbons, whether in a gaseous, liquid or solid state;
 - (w) *Crude Oil*: means crude mineral oil and all liquid hydrocarbons in their natural state;
 - (x) *Processing*: means the activity aimed at purifying, improving of quality, and increasing added value of Natural Gas, Crude Oil, Condensate, and feedstocks for Biofuels and for any other alternative forms of Fuels, including refining, LNG and LPG production and similar activities, such as transformation of its by-products;
 - (y) *Public Register*: means the register maintained by the ANP, foreseen in Article 17;
 - (z) *Pricing Regulations*: means any type of rule or mechanism, established by the ANP, to control, prevent and/or, regulate, price fixing, price fluctuation and speculation in the market, such as, amongst others, rules and mechanisms on

maximum and minimum price caps, price determination methods and criteria, and rules on anti-competition practices;

- (aa) *Technical Requirements*: means the set of rules and requirements of a technical, technological or scientific nature aimed at ensuring, amongst other purposes, that the equipment, facilities and any other means used to carry out Downstream Activities fulfill the minimum accepted standards, as defined by the ANP, notably in terms of engineering and design, construction and installation, operation, performance, reliability, safety, and quality. The ANP may, from time to time, adopt such internationally, regional or otherwise adopted recognized Technical Requirements as it deems appropriate, including those issued by international organizations and entities that issue guidelines and rules in respect of the Downstream sector;
- (bb) *Fine*: means any penalty imposed as a consequence of an Administrative Offence established in this Decree-Law, which under Chapter V results in the payment by the offender of a monetary amount;
- (cc) *National Oil & Gas Security*: means a situation of accumulated Storage of Crude Oil, Natural Gas and Fuels that is sufficient to guarantee the Supply and distribution of Fuels and feedstocks for Processing activities in Timor-Leste, in situations of national emergency and disruption of Supply;
- (dd) *Territory of Timor-Leste*: means the territory defined in Article 4 of the Constitution of the Democratic Republic of Timor-Leste;
- (ee) *Transportation*: means the activity aimed at transporting Crude Oil, Condensate, Natural Gas, feedstocks for Biofuels and for any other alternative forms of Fuels, as well as of their processed and derived products for commercial purposes, either by ship, pipeline, road transportation or rail.

Article 3

Geographical scope

1. This Decree-Law shall apply to all Downstream Activities carried out in the Territory of Timor-Leste, as defined in Article 4 (dd).
2. This Decree-Law shall not apply to any areas of the Territory of Timor-Leste subject to a special legal regime.

Article 4

Personal Scope

This Decree-Law shall apply to all legal or physical persons, irrespective of their public or private nature, or nationality, that wish to carry out one or more of the activities regulated hereunder, including all members of international organizations or missions present in the Territory of Timor-Leste, irrespective of their mandate.

Article 5

Principles

The performance of Downstream Activities subject to this Decree-Law and ancillary regulations is governed by the following general principles:

- (a) Prior licensing by the ANP;

- (b) Maximizing Timor-Leste's participation;
- (c) Technical and economic capability of Licensees;
- (d) Freedom of access to Downstream Activities and to participate in tenders for granting of the respective Licenses, subject to applicable laws and regulations;
- (e) Neutrality and non-discrimination between Licensees and applicants for a License;
- (f) Access to information of a non-confidential nature;
- (g) ANP supervision;
- (h) Compliance with applicable Technical Requirements and rules, and administrative and reporting duties;
- (i) Personal and financial liability for breach of rules and duties;
- (j) Universal and stable availability of Fuels and lubricants throughout the Territory of Timor-Leste;
- (k) Compliance with Fuel, Lubricant, and Biofuel Quality Standards;
- (l) Fair market competition;
- (m) Transparency;
- (n) Compliance with applicable laws and regulations on environmental protection.

Article 6

Public domain

1. By decision duly grounded on public interest, the ANP may request that the Government classify existing or future Downstream Infrastructure aimed at the public distribution of Fuel in the Territory of Timor-Leste as State's Public Domain.
2. The classification of existing infrastructure as State Public Domain shall be preceded by the acquisition of the same by direct negotiation or, whenever an agreement with the current owner is not possible, by means of expropriation for public interest under the terms of the law.
3. The reasons of public interest mentioned in Article 6.1 may be grounded, amongst others, on enforcement of the principles outlined in Article 5, or in the pursuance of the ANP's powers and responsibilities defined in Article 7.
4. After consulting with the State's supervisory body, the ANP may grant rights to operate Downstream Infrastructure classified as State Public Domain under Article 6.1 to public entities, or legal or physical persons by means of a concession contract. Amongst other details, the contract shall establish the terms of the concession and guarantee the access of third parties to the infrastructure.

CHAPTER II — POWERS OF THE ANP

Article 7

Powers and responsibilities

1. The ANP's powers and responsibilities in the management and supervision of the downstream sector include:

- (a) Promoting the rational and efficient use and optimization of installed infrastructural capacity;
- (b) Guaranteeing access by all interested parties to existing surplus infrastructural capacity;
- (c) Licensing legal persons to carry out Downstream Activities;
- (d) Supervising compliance with all laws and regulations applicable to Downstream Activities;
- (e) Carrying out inspection activities and collecting evidence of breach of applicable laws and of the regulations mentioned in Article 7.2;
- (f) Organizing and preparing sanctioning proceedings and application of Fines and other measures and additional sanctions for breach of the applicable laws and the regulations mentioned in Article 7.2;
- (g) Maintaining a central registry of all Downstream Infrastructure located in the Territory of Timor-Leste;
- (h) Advising the Government in all downstream-related issues, including the issuance of opinions and recommendations on management and efficient use of Fuels, the establishment of special measures in case of national emergency and pricing policies;
- (i) Ensuring the supply of Fuels and lubricants throughout all of the Territory of Timor-Leste;
- (j) Ensuring all equipment used in Downstream Activities is in accordance with industry practices;
- (k) Request from the Government, within the scope of the ANP's activities, the declaration of public interest in expropriations of land or other assets required for the construction and operation of Downstream Infrastructure;
- (l) Subject to the Government's supervision, coordinating the management of the downstream sector and the distribution of Fuels in cases of national emergency, natural catastrophes, war, rebellion, or similar situations, under the regulations to be approved by the ANP.

2. To carry out its activities under this Decree-Law, the ANP shall issue regulations on the following matters, which shall be binding on all public and private legal and physical persons:

- (a) Administrative procedures, requirements and fees for the granting, renewal and modification of Licenses authorizing the performance of Downstream Activities;
- (b) Technical Requirements and rules for the construction, modification, operation and decommissioning of Downstream Infrastructure and for carrying out the various Downstream Activities subject to this Decree-Law, including the mandatory preparation of a safety case outlining the infrastructure's capability to maintain adequate safety levels in case of failure;
- (c) Technical requirements for Supply, Processing, Transportation, Storage, Marketing and Trading activities;
- (d) Fuel, Lubricant and Biofuel Quality Standards and specifications;
- (e) Fuel supply stations and respective equipment;
- (f) Public Register referred in Article 17 of this Decree-Law;
- (g) Central registry of Downstream Infrastructure;

- (h) ANP's Inspectors;
 - (i) Licensees' record-keeping and annual filing obligations;
 - (j) National Petroleum Security, including constitution of the national strategic reserve and management of the downstream sector and the distribution of Fuels in emergency situations;
 - (k) Pricing Regulations;
 - (l) The Downstream Activities' Inspection Division;
 - (m) ANP's role in ensuring fair market competition, notably in avoiding price manipulation, monopolies and any other anti-competition arrangements;
 - (n) Any other matters connected with the regulation and supervision of the downstream sector.
3. The regulations mentioned in Article 7.2 (j) shall include the ANP's right to, on behalf of the State, forcefully request the use of Downstream Infrastructure and operate the same in case of public interest aimed at guaranteeing stability and universality of supply of Fuels and lubricants, notably in force majeure situations, subject to payment of fair compensation assessed under the terms set forth for expropriation for public interest.
4. The regulations approved under Article 7.2 above shall become effective upon publication in the *Jornal da República*.

CHAPTER III — LICENSING OF ACTIVITIES

Article 8

Activities subject to prior licensing

1. The following activities are subject to prior licensing by the ANP:
- (a) Supply activities;
 - (b) Processing activities;
 - (c) Storage activities;
 - (d) Transportation activities;
 - (e) Marketing activities;
 - (f) Trading activities;
 - (g) Construction and operation of pipelines and Fuel distribution networks;
 - (h) Construction and operation of Fuel supply stations;
 - (i) Any other activities falling within the scope of the ANP's authority, as specifically foreseen in the regulations to be approved by the latter.
2. The performance of more than one Downstream Activity listed in Article 8.1 shall not require multiple Licenses insofar as one of the activities is the main commercial activity, and the remaining activities are merely ancillary or supporting activities. In this case, the Licensee shall only be required to obtain a License for the main activity, which shall include the authorization to perform the other ancillary or support activities.

3. Licensees performing more than one activity pursuant to Article 8.2 are always required to comply with all rules and technical requirements applicable to the ancillary or supporting activity as well as those applicable to the main activity.
4. The granting of Licenses by the ANP should, whenever appropriate, be preceded by consultation with the members of the Government on matters within their scope of activity, notably in respect of Biofuels and alternative energies.

Article 9

Minimum requirements

1. Companies wishing to carry out Downstream Activities shall comply with the following minimum requirements:
 - (a) be a company correctly incorporated under the laws of Timor-Leste;
 - (b) have a minimum share capital in the amount set forth in the regulations to be approved by the ANP for each type of activity;
 - (c) have the organizational and financial capability, including duly qualified technical staff and adequate equipment, to carry out the activities it intends to perform;
 - (d) comply with all environmental protection laws and regulations in force;
 - (e) comply with all laws and regulations applicable to protection of occupational and public health and safety;
 - (f) have its operational office and effective place of management in Timor-Leste;
 - (g) have a minimum participating interest of at least 5% held by a public entity or State-owned company belonging to the State of Timor-Leste, by Timorese citizens, or by legal person owned by Timorese citizens;
 - (h) joint stock companies may not have bearer shares;
 - (i) fulfill all of the requirements set forth in this Decree-Law and ancillary regulations.
2. Consortia of companies may also carry out any of the activities subject to ANP licensing, provided all consortium members fulfill the requirements listed in Article 9.1.
3. When deciding on a request for a License the ANP shall also take into consideration, amongst other factors to be determined by it, the interests of consumers and the foreseeable impact on economic and regional development.

Article 10

Procedure

1. Companies wishing to carry out Downstream Activities shall apply to the ANP for a License aimed at covering the intended activity, by filing an application in a form to be approved by the ANP.
2. The application referred to in Article 10.1 shall include, amongst others to be determined by the ANP in additional regulations, the following documents:
 - (a) Companies' Registry Certificate;
 - (b) Copy of the company's by-laws and proof of deposit of the share capital;

- (c) License to carry out economic activities;
 - (d) Taxpayer number;
 - (e) Proof of filing of the previous year's tax return, if applicable;
 - (f) Certificate confirming non-existence of tax and social security debts;
 - (g) Proof of insurance covering the activity or activities the company wishes to carry out, including coverage against general civil liability including for damages to individuals and respective assets, accidents at work and occupational illness, and environmental damage;
 - (h) Documents evidencing the company's organizational and financial capability to carry out the activities for which it is seeking licensing;
 - (i) CV's of the technical staff responsible for the management of its operations, evidencing that they have the necessary training, experience and know-how to carry out the same;
 - (j) Detailed business plan; and
 - (k) Proof of environmental licensing, under the applicable law.
3. Upon receipt of the application form, the ANP shall confirm if it has been correctly completed and all the required documentation has been attached.
 4. The ANP may request that the Interested Person provide it with additional documents which it deems necessary to adequately assess the request.
 5. The ANP shall issue a decision on the granting of the License within 90 days of the date on which it receives the last of the documents required under Article 10.2 above, or the additional documents requested under Article 10.4.
 6. The ANP may determine that applications for Licenses be submitted during specific periods each year, as well as establish rules for the organization of public tenders aimed at granting Licenses.

Article 11

Duration of the License

1. The Licenses issued by the ANP shall have a duration to be determined in the regulations approved under Article 7.2, ranging from one to 30 years, depending on the specific activity being performed. The duration of each specific License shall be clearly stated thereon.
2. The initial duration of the License shall be sufficient to allow the Licensee to recover its capital investment, in accordance with the financial model included in the License application.
3. The Licenses may be renewed by the ANP, at the request of the Licensee, by submitting a License extension request under the terms to be determined by the ANP, at least 60 days prior to the expiration of the initial duration or any renewal thereof.
4. The ANP's decision to renew a License is discretionary, and may only be granted to Licensees that:
 - (a) Comply with the requirements then in force for the carrying out of the intended activities, including any new requirements introduced by legislation that came into force after the granting of the initial License;

- (b) Have fulfilled all of their duties and obligations towards the ANP and the State of Timor-Leste under the existing License.

Article 12

Transfer of License

1. A License may only be transferred to another company with the prior written authorization of the ANP, and if the requirements listed in Article 11.4 above have been complied with.
2. In case of merger, or total or partial acquisition of the Licensee's shares by a third party, corresponding to a change of effective control of the Licensee to a third party, the ANP shall reassess the situation to determine if the Licensee maintains the necessary requirements to carry out the Downstream Activities it is licensed for. If deemed necessary, the ANP may require that the Licensee implement corrective measures aimed at maintaining or reinstating the referred requirements.

Article 13

Form and minimum contents of the License

The License shall be in the form set out in Annex I to this Decree-Law, and contain the following information:

- (a) the Licensee's name;
- (b) the Licensee's tax identification number;
- (c) the Licensee's registered address;
- (d) the activities to which the License respects and any special conditions, duties or limits applicable to their exercise;
- (e) the duration of the License;
- (f) the identification of any vehicles used in the activities;
- (g) periodicity of payment of the fees due;
- (h) any other details deemed relevant by the ANP.

Article 14

Fees

1. The fees due for the issuance, transfer, modification or renewal of Licenses and for any other services rendered by the ANP in connection with the licensing and supervision of Downstream Activities shall be determined by the ANP, and published in the *Jornal da República*.
2. The fees referred in Article 14.1 must be paid by the Licensee prior to the issuance of the License, and thereafter with the periodicity established in the License. Failure to pay the fees shall result in cancellation of the License.
3. The fees mentioned in this Article 14 are aimed at reimbursing the ANP for the costs incurred by it in its licensing and supervision activities, and funding its activities respecting the downstream sector, and shall constitute exclusive revenue of the ANP to be collected by it.

Article 15

Liquefied Natural Gas projects

1. All projects aimed at implementing, constructing or operating facilities for liquefaction of Natural Gas for internal use or for export to foreign markets, including all related activities and infrastructure, shall be subject to prior licensing by the ANP under the terms of this Decree-Law and ancillary regulations.
2. Notwithstanding Article 15.1 above, and the powers granted to the ANP in this Decree-Law, the projects referred in this article may be subject to specific legislation governing, amongst others, the following aspects:
 - (a) Tax regime;
 - (b) Foreign exchange regime;
 - (c) Customs regime;
 - (d) Special labor rules for construction of facilities;
 - (e) Hiring of goods and services;
 - (f) Use of State's public and private domain land;
 - (g) LNG shipping regulations;
 - (h) Any other issues deemed relevant.

Article 16

Publication of information by the ANP

1. Within five working days of issuance of a License, the ANP must make public a notice on its website, under terms to be established by it, containing at least the following information:
 - (a) The name of the Licensee;
 - (b) The duration of the License;
 - (c) Any relevant details pertaining to the activity covered by the License.
2. The granting of the License referred in Article 16.1 shall also be published in the *Jornal da República*.
3. The ANP shall also publish an annual report respecting to its activities in the management and supervision of the downstream sector for the previous year, including, amongst others, information on the activity within the sector, fees collected, sanctioning procedures, and Fines applied.

CHAPTER IV – REGISTRY AND RECORD-KEEPING OBLIGATIONS

Article 17

Register

1. The ANP shall keep a Public Register at its office, containing information on the Licenses issued, including:
 - (a) Identification of the Licensees;
 - (b) Type of License issued;

- (c) Duration of each License;
 - (d) Relevant technical details;
 - (e) Pricing information;
 - (f) License fee;
 - (g) Any other information established in each specific regulation approved under Article 7.2.
2. The ANP shall approve regulations on the establishment and maintaining of the Public Register.
 3. The Public Register may be maintained by electronic means, and should be updated monthly.
 4. The ANP shall make the Public Register available for any person to access it at the times and places to be determined in the regulations referred in Article 17.2. The Public Register shall also to be made available for access on the Internet.

Article 18

Record-keeping

Licensees must keep records in one of the official languages of Timor-Leste, at their office in Timor-Leste, prepared in accordance with the regulations to be approved by the ANP.

Article 19

Annual statements

1. Licensees shall present to the ANP annual statements of activity, drafted in accordance with the regulations to be approved by the ANP, by the 31st of March of the year following the year to which they respect.
2. The statement must be in a form to be determined in the regulations mentioned in Article 7.2 (i), and include, amongst others, the following details:
 - (a) Information on the amount and value of transactions concluded during the year to which the statement respects;
 - (b) Level of existing stocks;
 - (c) Estimate of activity for the following year.

CHAPTER V – ADMINISTRATIVE OFFENCES AND FINES

Article 20

Scope

1. All unlawful and reprehensible acts, which correspond to a legal type of breach of laws and regulations respecting the licensing and carrying out of Downstream Activities, which establish rights or impose duties, punished with a Fine under this Chapter V shall be deemed an Administrative Offence.
2. For the purposes of Article 20.1, laws and regulations shall include this Decree-Law, and any ancillary regulations approved under Article 7.2.

Section I
Administrative Offences

Article 21

Inspection, investigation, and imposition of Fines and additional sanctions

1. Without prejudice to the powers of other entities, the ANP shall be responsible for carrying out the inspection and supervision activities set forth in this Decree-Law.
2. The ANP shall be responsible for the investigation of the Administrative Offences and for the imposition of fines and any applicable additional penalties.
3. The revenue resulting from the application of Fines shall be collected by the ANP and become exclusive revenue of the ANP.

Article 22

Principle of legality

Only acts described and subject to penalties by legislation in existence prior to the time of their practice shall be punishable as an Administrative Offence.

Article 23

Application in time

1. The punishment of the Administrative Offence is determined by the law in force at the time of commitment thereof or the fulfillment of the conditions on which it depends.
2. If the law in force at the time the Administrative Offence was committed is later amended, the more favorable law to the offender shall be applied, unless the offender has already been convicted by a final decision or by a decision which has become a *res judicata*.
3. The act committed during the period of validity of temporary laws is still considered an Administrative Offence.

Article 24

Jurisdiction

Except when contrary to international treaties or conventions, the rules contained in this Chapter V are applicable to acts committed:

- (a) In the Territory of Timor-Leste, regardless of the nationality or headquarters of the offender;
- (b) On board of Timorese flagged or registered aircraft, trains, ships and motor vehicles.

Article 25

Time of the act

An act is deemed committed at the time the offender acted or, in case of omission, should have acted, regardless of the time when the typified result occurs.

Article 26

Place of commitment of act

An act is deemed committed at the place where the agent acted totally or partially, under whatever form of complicity, or in case of omission, should have acted, as well as in the place where the typified result occurred.

Article 27

Responsibility for Administrative Offences

1. Fines may be applied to physical persons and private or public legal persons, regardless of the regularity of their incorporation, and to *de facto* companies or associations without legal personality.
2. Legal persons and equivalent entities referred in Article 27.1 shall be deemed responsible for the Administrative Offences set forth herein, provided the acts have been committed in carrying out their respective activity, in their name or on their behalf, by the respective officers, attorneys-in-fact, representatives or employees.
3. Members of the management of the legal persons and equivalent entities referred above, as well as individuals responsible for the direction or supervision of the areas of activity in which an Administrative Offence was committed, shall be liable for the penalty applicable to the offender, specially attenuated, if they knew or should have known that the Administrative Offence would be commitment and they failed to take appropriate measures to immediately prevent it, unless a more severe penalty is provided for in another statutory provision.
4. The responsibility under Article 27.2 shall apply even if the legal person proves that although it complied with all the duties it was bound by, it nevertheless was unable to prevent the employees or attorneys without authority from committing the Offence. In this case the legal person may request compensation for the damages caused from the employee or attorney, under the terms of the law.

Article 28

Punishment of willful misconduct and negligence

1. Administrative Offences are punishable whether committed with willful misconduct or negligence.
2. Administrative Offences committed with negligence are always punishable.
3. An Administrative Offence shall not be punished as willful misconduct if a mistake respecting the elements of a type of Offence, a prohibition, or certain circumstances the knowledge of which would exclude the unlawfulness of the act or the offender's culpability occur.

Article 29

Punishment of attempt

An attempt is punishable with a Fine corresponding to between half of the minimum and half of the maximum penalty applicable to a consummated Administrative Offence.

Article 30

Joint and several liability

If the offender is a legal person or an equivalent entity, the members of the highest corporate body of State legal persons, the partners, directors or managers, shall be joint and severally liable for the payment of the Fine.

Article 31

Mistake on unlawfulness

1. A legal or physical person shall be deemed to have acted without fault when it does so unaware of the unlawfulness of its actions, provided the mistake is not censurable.
2. If the mistake is censurable, the penalty can be specially mitigated.

Article 32

Punishment of minors

Minors under the age of 16 are not punishable for an Administrative Offence under this Decree-Law.

Article 33

Author of the Administrative Offence

The following shall be punishable as the author of the Administrative Offence, if the Administrative Offence has been executed or execution has commenced:

- (a) The legal or physical person who performs the act by itself or through someone else as an intermediary; or
- (b) The legal or physical person who directly participates in the execution of the act, in agreement or together with another person; or
- (c) The legal or physical person who intentionally instigates another person to carry out the act.

Article 34

Accomplices

1. The legal or physical person who, intentionally and irrespective of its form, materially or morally assists another in the performance of an act with willful misconduct, is punishable as an accomplice.
2. The penalty applicable to the accomplice is the same set forth for the author, specially mitigated.

Article 35

Participation

1. If several agents participate in the act, any of them shall be liable for the Offence, even if the unlawfulness or the degree of unlawfulness of the act is dependent on certain qualities or special relationships of the offender that only exist in one of the participants.
2. Each participant is punished according to its culpability, regardless of the punishment or degree of culpability of the other participants.

Article 36

Right of access

1. In the performance of its duties of inspection, monitoring and supervision, the ANP shall have free right of access to businesses, locations, Downstream Infrastructure and vehicles where or through which Downstream Activities are carried out.
2. Persons responsible for the businesses, locations, Downstream Infrastructure and vehicles referred in Article 36.1 must allow the ANP's staff to enter into and remain at the said businesses, locations, infrastructure and facilities, and shall provide them with the documents, books, records and any other elements required by the ANP, as well as with any information that the latter may require.
3. If ANP's right of access is refused, or its inspection, monitoring or supervision activities are obstructed, the ANP may request the cooperation of the police force to remove such obstruction, and to ensure the performance of the inspections and guarantee the safety of the ANP's staff.
4. The provisions of this Article shall apply to all types of Downstream Infrastructure under investigation, including but not limited to, pipelines, motor vehicles, aircraft, trains and ships.

Section II –Provisional measures

Article 37

Police authorities and Inspectors

1. The police authorities and the ANP, through its Inspectors, shall take note of all events or circumstances capable of resulting in liability for Administrative Offences and take any necessary measures to prevent the disappearance or destruction of evidence.
2. The police authorities shall have the same rights and obligations set forth in the Criminal Procedure Code and ancillary legislation.
3. The police authorities shall immediately forward the Notice of Offence and any evidence gathered to the ANP.
4. The Criminal Procedure Code rules on secrecy shall not prevent the police authorities from forwarding the Notice of Offence and respective proof referred in Article 37.3 to the ANP, which shall be subject to the same rules on secrecy applicable to criminal investigations.

Article 38

Seizure of objects

1. The ANP may temporarily seize any objects that were used or were intended to be used to commit an Administrative Offence, or objects produced as a result of the Administrative Offence, as well as any other objects that may be used as evidence.
2. The objects seized under Article 38.1, shall be returned as soon as the seizure becomes unnecessary for the purposes of evidence, unless the ANP intends to declare them forfeited.
3. In any case, seized objects shall be returned immediately upon issuance of the final conviction decision, unless they have been declared forfeited.
4. Any objects seized under Article 38.1, shall be described in a seizure notice prepared by the respective Inspector.

Article 39

Identification by administrative and police authorities

The ANP, any other public authorities of the State of Timor-Leste, and the police authorities may require the author of an Administrative Offence to provide its identification. Refusal to provide the requested identification is deemed criminal disobedience and punished as such under the Criminal Code.

Article 40

Measures restricting fundamental rights

1. Provisional custody, intrusion into the correspondence or in telecommunications equipment, or use of evidence in breach of professional secrecy is not allowed.
2. Evidence conflicting with privacy, as well physical examinations and blood tests are only admissible upon the consent of the person subject to the same.

Article 41

Preventative measures

1. If a legal or physical person has engaged, is engaging, or is about to engage in any conduct that is or would be an Administrative Offence under this Decree-Law or ancillary regulations, the competent District Court may, upon application by the ANP or any other aggrieved person, grant a preventative measure restraining the person from continuing to engage in the conduct.
2. The preventative measure may consist in:
 - (a) Ordering the person to refrain from taking a certain action;
 - (b) Ordering the person to cease a certain conduct;
 - (c) Ordering the person to perform a certain action;
 - (d) Ordering the person to provide the ANP with any documents, equipment, samples or any other goods required by the ANP in conducting its inspection activities;

- (e) Any other measures deemed necessary or adequate to force the person to avoid, cease or perform a certain action, or in any other way avoid a breach of this Decree-Law or ancillary regulations.

Section III – Process

Article 42

Notices

1. Notices served under this Decree-Law shall be carried out by:
 - (a) Personal contact with the person to be notified and at the place where he/she may be found;
 - (b) Registered letter with proof of receipt;
 - (c) Simple letter.
2. The offender shall be served with a Notice of Offense, an Offense Report, a conviction decision, a decision which applies an additional sanction, and of the occurrence of any other act, in which its presence or participation is mandatory, through registered letter with proof of receipt or personal contact.
3. Notices shall be addressed to the headquarters of a legal person or to the residence of a physical person.
4. If the registered letter with proof of receipt is returned to the sending authority, the notice shall be resent by means of a simple letter to the person to be notified.
5. The notice sent by simple letter shall have the date of dispatch of the letter and the address where it was sent. In this case, the notice is deemed to have been served on the fifth day following the date of dispatch of the letter.
6. If the person to be notified refuses to receive or sign the notice, the notifying agent shall certify the refusal in the letter, and the notice is deemed to have been served.
7. Notices may also be served by fax or electronic mail. In these cases, the notice is deemed to have been served the day it is sent. Copy of the receipt stating that the message was successfully sent shall be sufficient evidence of service of notice.
8. Any situation respecting notices not foreseen in this Article 42 shall be governed by the rules on notices and notifications contained in the Criminal Procedure Code, duly adapted.

Article 43

Notice of Offence and Offence Report

1. The ANP shall prepare a Notice of Offence when, in the exercise of its powers and attributions, it personally verifies or confirms, even if indirectly, any breach of any rules contained in this Decree-Law or ancillary regulations. The Notice of Offence shall be deemed as evidence of the events verified.
2. If the Administrative Offence is not personally verified by the ANP, the latter shall prepare an Offence Report including the evidence in its possession.
3. The ANP shall notify the relevant authorities of any threat to or breach of the provisions of the environmental laws and regulations of which it becomes aware by reason of the exercise of its duties.

Article 44

Requirements of Notice of Offence and Offence Report

1. The Notice of Offence or the Offence Report mentioned in Article 43 shall, whenever possible, contain the following details:
 - (a) Facts which constitute the Administrative Offence and the legal provisions that were breached;
 - (b) Date, time, place and the circumstances in which the Administrative Offence was committed or detected;
 - (c) If the Administrative Offence is committed by a physical person, the necessary identification details of the offender and his/her residency;
 - (d) If the administrative Offence is committed by a legal person or similar entity, its identification details, including headquarters, identification and residency of its managers, directors and other officers;
 - (e) Identification and address of witnesses, if any;
 - (f) Name, job position and signature of the Inspector or officer who verified or reported the Offence.
2. Entities that do not have powers to investigate the Offence shall submit the Notice of Offence or the Offence Report to the ANP within 10 working days.

Article 45

Investigation

1. The Inspector or officer who verified or reported the Offence shall not perform any investigation activities in the same process.
2. The investigation shall be concluded within 180 days as of the date of distribution of the file to the respective investigator.
3. If the investigation is not completed within the deadline set forth in Article 45.2 above, the ANP may, upon duly grounded proposal from the investigator, extend the deadline for up to an additional 120 days.
4. The effective duration of the investigation and the respective activities shall take into account, amongst others, the nature of the facts described in the Offence Report or Notice of Offence, the amount and type of evidence gathered at the scene of the Offence, and the number of witnesses, and may include, namely but not limited to, the following activities:
 - (a) Taking of samples and respective laboratory analysis;
 - (b) Request of expert opinions;
 - (c) Physical investigation of the scene of the Offence or of any goods or equipment used to commit the same or produced as a result thereof.
5. To assist in the investigation the ANP may call experts, and/or request the use of material means belonging to other government authorities and entities, which shall not refuse said assistance.
6. The notice for witnesses, experts, and/or the offender to be present at any investigation procedure or act shall be served under the terms set forth in Article 42.

Article 46

Protection of witnesses

Whenever deemed justified by the ANP, witnesses of facts that constitute an Administrative Offence may be subject to witness identity protection in the investigation carried out by the ANP.

Article 47

Offender's right to be heard and to file a defense

1. The Notice of Offence shall be served on the offender, after its confirmation by the ANP and prior to the issuance of a final decision, along with all necessary details to allow the offender to gain knowledge of the relevant factual and legal grounds that may justify the decision. Within 15 working days of receipt of the notice the offender may present any oral or written arguments it deems convenient.
2. Within the deadline referred in Article 47.1, the offender may also present a written defense, along with any supporting documentary evidence it possesses and designate up to two witnesses for each fact, with a maximum of seven.

Article 48

Attendance of witnesses and experts

1. Witnesses and experts shall be heard at the ANP's headquarters, at the place where the investigation is conducted or at an ANP delegation.
2. Witnesses may be heard by the police authorities, at their own or at ANP's request.
3. The hearing of witnesses and experts may only be postponed once, even if the failure to attend the first hearing was deemed justified.
4. If a witness or an expert fails to attend a second hearing, after failing to attend the first, the ANP may request that its Inspectors or any other public servant visit said individuals' home or work place to provide them with transportation to the place of the hearing.
5. The absence of witnesses and experts that have been duly notified to be present does not impede the Administrative Offence proceedings from following their terms.

Article 49

Attendance and absence of the offender

1. Offenders shall be heard at the ANP's headquarters, at the place where the investigation is conducted or at an ANP delegation.
2. Offenders may be heard by the police authorities, at ANP's request.
3. An offender that fails to attend on the date, hour and place designated for a hearing or other procedural event, and does not justify the absence on the same day or within five working days following the date of the hearing or event, shall be subject to a Fine of up to USD 1,000.
4. An absence is deemed justified if it results from a fact that is not attributable to the offender that impedes the latter from being present.
5. The hearing of an offender may only be postponed once, even if the failure to attend the first hearing was deemed justified.

6. The failure by an offender to attend a second hearing, after failing to attend the first, may be sanctioned by the ANP with a Fine ranging between the amount of the Fine levied under Article 49.3 and double the same amount.
7. The payment of Fines under this Article 49 is due within 10 working days as of the service of notice on the offender of the amount of the fine by the ANP. ANP's notice shall be sufficient title for enforcement of the Fine.
8. The absence of an offender that has been duly notified to be present does not impede the Administrative Offence proceedings from following their terms.

Article 50

Conviction decision

1. The decision that imposes a Fine and/or additional sanctions shall include:
 - (a) The identification of the offenders;
 - (b) Description of the facts and indication of the corresponding evidence;
 - (c) Indication of the provision of the law or regulation breached, the provisions which establish the penalty, and the grounds of the decision.
2. The decision shall also inform that:
 - (a) The conviction shall become final and enforceable unless judicially challenged under Article 52;
 - (b) In case of judicial review, the court may decide through a public hearing or, if the offender and the Public Prosecutor do not object, by means of a simple judicial order.
3. The decision shall also contain:
 - (a) The order to pay the Fine within 10 days as of the decision becoming final or *res judicata*;
 - (b) The indication that if the offender is unable to timely pay the Fine, it must advise ANP of such fact in writing.
4. The Offences are assessed under an administrative proceeding which shall be organized according to Articles 43 *et seq.* of this Decree-Law, and shall contain sufficient elements to determine the nature of the Offence, the individualization and exact determination of the penalty, as well as ensure the right to present a defense and the adversarial procedure under Article 4.3 of Decree-Law no. 20/2008, of 19 June 2008.
5. Under Article 4.1 (d) of Decree-Law no. 20/2008, of 19 June 2008 and the sanctioning powers set forth in Article 7.1 (f) of this Decree-Law, the ANP's Chairman is responsible for issuing the ANP's final conviction decision, applying any sanctioning measure established herein, including additional sanctions, for breach of the rules and duties set forth in the regulations referred in Article 7.2 of this Decree-Law.

Article 51

Mandatory appeal to the supervisory entity

1. Whenever the rights or statutorily protected interests of an Interested Person or a Licensee are affected by a decision issued by the ANP under this Decree-Law or

ancillary regulations, they are entitled to lodge an appeal to the Government body responsible for the petroleum sector, under the law.

2. For the purposes of Article 51.1, the following, amongst others, are deemed decisions that negatively affect the interests of an Interested Person or Licensee:
 - (a) refusal to grant a License, or to approve a renewal, transfer or amendment thereof;
 - (b) granting of a License under terms that differ from those requested;
 - (c) imposition of specific requirements in a License;
 - (d) Application of a penalty in accordance with this statute.
3. The appeal shall be in writing and submitted to the ANP within 20 days of service of notice of the decision on the offender. The appeal shall include a statement of the case and the conclusions.

Article 52

Judicial appeal

1. The ANP's decision to impose a penalty may be challenged before the courts, under the general law.
2. The appeal may be lodged by the offender or its counsel.

Section IV –Fines

Article 53

Determination of penalties

1. The exact amount of the Fines and the applicability and extent of additional sanctions shall be determined considering the seriousness of the Offence and the culpability of the offender.
2. The offender's past and subsequent behavior, as well as the prevention needs shall also be taken into account in determining the Fines.
3. Coercion, counterfeiting, false statements, simulation or other fraudulent means used by the offender, as well as the existence of acts of concealment or disguise designed to impede the discovery of the Offence shall also be taken into consideration.

Article 54

Repeat offenders

1. A person that commits an Administrative Offence with willful misconduct is punished as a repeat offender if it has previously been penalized for any other Offence.
2. A person that commits any Administrative Offence after having been penalized for an Administrative Offence committed with willful misconduct shall also be punished as a repeat offender.
3. The Administrative Offence for which the agent has been previously penalized is not relevant for purposes of determining a repeat Offence if a period corresponding

to the first Administrative Offence's statute of limitations has elapsed between both Offences.

4. In case of repeat Offence the minimum and the maximum amounts of the Fine shall be increased by one third.

Article 55

Concurrent Administrative Offences

1. A person who has committed several Administrative Offences shall be punished with a Fine in a maximum amount corresponding to the sum of the Fines effectively applied to the various Offences in concurrence.
2. The Fine may not exceed twice the amount of the highest Fine abstractly applicable to the Administrative Offences in concurrence.
3. The Fine may not be inferior to the highest amount actually applied to the various Administrative Offences.

Article 56

Concurrent infractions

1. If the same act constitutes both a crime and an Administrative Offence, the offender shall be liable for both infringements. In such case, different proceedings shall be initiated and each case shall be decided by the competent authority, subject to the following provisions of this Article 56.
2. The administrative decision that imposes a Fine shall lapse if the offender is convicted in a criminal proceeding for the same act.
3. If the offender is punished for a crime, it may still be subject to any additional penalties applicable as a consequence of the respective Administrative Offence.

Article 57

Administrative Offences punishable under this Decree-Law and ancillary regulations

1. The following acts constitute a light Offence punishable with a Fine from USD 250 to USD 15,000, in case of physical persons, and from USD 1,250 to USD 75,000 in case of legal persons:
 - (a) The supply of Fuel in breach of the public information obligations set forth in the regulations to be approved by the ANP in this respect under Article 7.2;
 - (b) Breach of the mandatory information, signaling and inscription obligations set forth in the regulations to be approved by ANP under Article 7.2;
 - (c) Breach of the duties established in any other provisions of this Decree-Law, for which a more serious penalty is not set forth;
 - (d) Breach of the record-keeping and annual filing obligations foreseen in the regulations to be approved by the ANP in this respect under Article 7.2.
2. The following acts constitute a serious Offence punishable with a Fine from USD 750 to USD 50,000, in case of physical persons, and from USD 15,000 to USD 300,000 in case of legal persons:

- (a) Breach of the terms and conditions contained in the Licenses issued under Chapter III of this Decree-Law, whenever such breach is not deemed a very serious Offence;
 - (b) Variation of the statutory Fuel, Lubricant or Biofuel Quality Standards, outside the situations foreseen in the regulations approved by the ANP in this respect under Article 7.2;
 - (c) Breach of the rules for supply of Fuel additives provided in the regulations approved by the ANP in this respect under Article 7.2;
 - (d) Breach of the Inspector's right of access and other rights, and the duties to cooperate with inspections set forth in Chapter V of this Decree-Law;
 - (e) Breach of any other technical, administrative, environmental and risk-management provisions contained in the regulations to be approved by the ANP under Article 7.2, aimed at protecting the safety of the environment, persons and goods, and which is classified as a serious Offence.
3. The following acts constitute a very serious Offence punishable with a Fine from USD 1,500 to USD 150,000, in case of physical persons, and from USD 75,000 to USD 1,000,000 in case of legal persons:
- (a) The importation and supply of Fuel or Biofuel in breach of the Fuel, Lubricant or Biofuel Quality Standards set forth in the regulations approved by the ANP in this respect under Article 7.2;
 - (b) Failure to comply with a preventative measure applied in accordance with Article 41;
 - (c) Carrying out of Downstream Activities without the necessary License;
 - (d) Breach of the technical rules, duties and requirements set forth in the regulations approved by the ANP under Article 7.2;
 - (e) Storage and/or Transportation of Fuel, Crude Oil, or other Petroleum in violation of the volumes and/or other specifications applicable as a result of the respective License or the regulations approved by the ANP under Article 7.2;
 - (f) Breach of any other technical, administrative, environmental and risk-management provisions contained in the regulations to be approved by the ANP under Article 7.2, aimed at protecting the safety of the environment, persons and goods, and which is classified as a very serious Offence.
4. The application of a Fine for a light Offence may be preceded by the issuance by the ANP of a compliance notice, establishing a deadline no greater than 30 days for the offender to correct the breach, and clarifying that failure to do so within the given deadline implies the automatic assessment of the Fine.
5. The breach of legal and regulatory provisions relating to the downstream sector, that establish rights, duties or technical requirements, and for which a Fine is foreseen, constitute an Administrative Offence.
6. For the purposes of Article 57.5, laws and regulations shall include all laws and regulations pertaining to technical, administrative, environmental and risk-management components of Downstream Activities, which shall include but not be limited to those set forth in Article 7.2.

Section V
Additional Sanctions

Article 58
Additional sanctions

The offender who commits an offense foreseen in this Decree-Law and ancillary regulations may also be sanctioned with the following additional sanctions:

- (a) Seizure and forfeiture of goods belonging to the offender and used to commit the offense or produced as a result thereof;
- (b) Closure, for up to two years, of the business or commercial activity subject to ANP prior licensing, in case of very serious Offenses;
- (c) Termination or suspension, for up to two years, of authorizations, licenses and permits related to the performance of the respective activity, in case of serious or very serious Offenses;
- (d) Sealing of production equipment;
- (e) Imposition of any measures deemed adequate to prevent environmental damage, or to recover the situation that existed prior to the Offense or minimize the effects resulting therefrom;
- (f) Publicizing of the conviction.

Article 59
Procedure

1. Additional sanctions shall always apply after the commitment by the offender of two very serious offenses, or of any set of five Offenses classified as serious or very serious, within a given two year period.
2. Notwithstanding Article 59.1, whenever the seriousness of the infraction or of the offender's culpability so justify, the offender may be subject to one or more of the additional sanctions listed in Article 58, which may be applied in conjunction with the Fines set forth in Article 57.
3. When the offender obstructs the enforcement of the measures foreseen in Articles 58.(b), and 58 (e), the ANP or the administrative authority that has applied the additional sanction may request that the competent entities notify the utility companies to suspend the supply of power to the offender's facilities.
4. The sanctions foreseen in Articles 58 (b), 58 (c) and 58 (d) may only be applied when the Offense was committed in the performance or due to the activities to which the authorizations, licenses or permits respect, or due to the operation of the facility.
5. The ANP shall keep a registry of Offenses committed by the various offenders for purposes of assessment of additional sanctions.

Article 60
Forfeiture of goods to the State

Any goods that were used or were aimed at being used to commit an Offence, or which were produced as a result thereof, may be forfeited to the State, provided same goods,

due to their nature or the circumstances of the situation, represent a serious risk to the health, assets or safety of people or the environment, or there is a serious risk that they will be used to commit a crime or another Offence foreseen in this Decree-Law.

Article 61

Goods belonging to third parties

The forfeiture of goods belonging to third parties to the State can only occur when:

- (a) their owners have contributed, with fault, to their use or production or have benefited from the Offence; or
- (b) the goods have been acquired, by any means, after the commitment of the Offence, and the acquirers were aware of their origin.

Article 62

Suspension of additional sanctions

1. The administrative authority that has applied the additional sanction may totally or partially suspend its enforcement.
2. The suspension referred in Article 62.1 may be conditional on the compliance with certain obligations, notably those deemed necessary to correct the unlawful situation, repair the damages caused, or prevent risk to the health or safety of persons and goods, or to the environment.
3. The duration of the suspension shall be between one and three years, counted as of the date of expiration of the deadline for judicial challenge of the penalty for an Administrative Offence.
4. Upon expiration of the suspension period, the sanction shall be deemed of no effect, provided the offender has not committed another Administrative Offence or breached any duty that has been imposed on it during the suspension term. If another Administrative Offence has been committed or the said duties breached, the additional sanction shall be applied.

Section VI – Statute of limitations

Article 63

Statute of limitations

1. Notwithstanding the general rules on interruption and suspension of statutes of limitations contained in other laws which shall apply to these proceedings, duly adapted, the proceedings aimed at sanctioning Administrative Offences and applying additional sanctions is subject to a statute of limitations of three years as of the date on which the infraction occurs.
2. The statute of limitations for Fines and additional sanctions is three years.
3. Notwithstanding the general rules on interruption and suspension of statutes of limitations contained in the Criminal Code, the period of the statute of limitations set forth in Article 63.2 is counted as of the date on which the administrative or judicial decision which determines the applicability of the Fine or additional sanction becomes final or *res iudicata*.

CHAPTER VI – Transitional and Final Provisions

Article 64

Downstream Activities' Inspection Division

1. The ANP is hereby authorized to create an inspection team, the Downstream Activities' Inspection Division, to carry out its supervision and inspection powers and responsibilities under this Decree-Law.
2. The powers of the Downstream Activities' Inspection Division under Articles 7.1 (d), 7.1 (e) and 7.1 (f) include, but are not limited to:
 - (a) Collecting, analyzing, treating and processing all data obtained from the Licensees as a result of its regular inspection and supervision actions carried out within the scope of its powers;
 - (b) Planning supervision and inspection activities in its different areas of intervention;
 - (c) Executing supervision and inspection actions, if necessary together with other administrative authorities. The ANP may request the use of police force, whenever deemed necessary to effectively carry out its inspection duties;
 - (d) Preparing Notices of Offence respecting the breach of legal and regulatory provisions;
 - (e) Preparing and conducting investigations, inquiries and processes related to Administrative Offences, required to duly ground the proposed decision to be taken within the ANP's sanctioning powers.
3. For the purposes of this article, the ANP and its supervising Inspectors may request that any Licensee provide them with the documentation required to prove the facts subject to the ANP's regulation, as well as the access to any place or Downstream Infrastructure used in the Licensee's activity, under Article 36 of this Decree-Law.
4. The Inspectors of the Inspection Division referred in this article shall be granted the necessary administrative and other means required for the effective performance of their activities and shall, at all times, be duly identified.
5. The ANP shall issue regulations on the Inspection Division as soon as it possesses the personnel and material means to effectively implement the same.

Article 65

Transitional Provision

1. All physical and legal persons carrying out Downstream Activities on the effective date of this Decree-Law shall be given a deadline, set forth in the regulations to be approved by the ANP under Article 7.2, to request the respective License and to bring their operations into compliance with the rules set forth herein and in other regulations applicable to their activities.
2. Within six months of the effective date of this Decree-Law, the physical and legal persons referred in Article 65.1 shall provide the ANP with information on their existing activities, by completing the form attached to this Decree-Law as Annex II, which shall contain the following information:
 - (a) Type of Downstream Activity;
 - (b) Existing Downstream Infrastructure;
 - (c) Products;
 - (d) Identification details of the legal or physical person;

- (e) Geographical area of activity.
3. The issuance of Licenses for performance of the various Downstream Activities by the ANP is dependent on the prior approval of the necessary regulations under Article 7.2.
 4. The ANP shall issue a public notice of the approval of the necessary regulations and of the date from which it will start accepting License applications on its website and in the *Jornal da República*.

Article 66

Subsidiary law

1. Unless otherwise provided in this Decree-Law, the following statutes shall apply on a subsidiary basis, duly adapted:
 - (a) the Decree-Law on Administrative Procedure, in respect of the ANP's activities of an administrative nature, foreseen in Chapters III and IV hereof; and
 - (b) the Criminal Code, the Criminal Procedure Code, and ancillary legislation, in respect of the establishment and determination of Administrative Offences, investigation procedures, and application of Fines and additional sanctions, foreseen in Chapter V hereof.
2. Unless otherwise provided for in this Decree-Law, in the procedure for application of a Fine and additional sanctions, the ANP shall be entitled to all the rights and is subject to all the duties set forth in law required for the investigation of Offences and the application of the Fines established herein.

Article 67

Repeal

1. All prior legislation contradicting the provisions of this Decree-Law is hereby repealed.
2. The general law on licensing of economic activities, including the provisions of Decree-Law no. 24/2011, shall not apply to downstream economic activities governed by this Statute, insofar as special rules are set forth herein.

Article 68

Effective Date

This Decree-Law is effective on the day following its publication in the *Jornal da República*.

Approved at the Council of Ministers on 12 October 2011.

The Prime Minister,

Kay Rala Xanana Gusmão

Promulgated on 15 January 2012,

Be it published

The President of the Republic,

José Ramos-Horta

**ANNEX I
FORM OF LICENSE**



**DOWNSTREAM ACTIVITIES LICENSE
No. ____/20__**

COMPANY IDENTIFICATION		
Name or Company Designation:		
Registration no.:	Share Capital:	
Taxpayer Identification No.:		
Representative:		
Address:		
ZIP Code:	District:	Suco:
Telephone:	E-mail address:	

ACTIVITIES <small>Please check where applicable</small>	
Main Activity(ies)	Supporting Activity(ies)
<input type="checkbox"/> Supply	<input type="checkbox"/> Supply
<input type="checkbox"/> Processing	<input type="checkbox"/> Processing
<input type="checkbox"/> Storage	<input type="checkbox"/> Storage
<input type="checkbox"/> Transportation	<input type="checkbox"/> Transportation
<input type="checkbox"/> Marketing	<input type="checkbox"/> Marketing
<input type="checkbox"/> Trading	<input type="checkbox"/> Trading
<input type="checkbox"/> Construction and operation of pipelines and fuel distribution networks	<input type="checkbox"/> Construction and operation of pipelines and fuel distribution networks
<input type="checkbox"/> Construction and operation of fuel supply stations	<input type="checkbox"/> Construction and operation of fuel supply stations
<input type="checkbox"/> Other _____ <small>Please specify</small>	<input type="checkbox"/> Other _____ <small>Please specify</small>

LICENSE TYPE <small>Please check where applicable</small>	
<input type="checkbox"/> New <input type="checkbox"/> Renewal	Duration: ____ years Fee amount and periodicity:
Identification of the vehicles used in the activities:	
Special conditions, duties or limits of the License:	

Additional details:

DOCUMENTS FILED	
<small>Please check where applicable</small>	
The Applicant has filed the following documents with the ANP:	
<input type="checkbox"/> Companies' Registry certificate	<input type="checkbox"/> Certificate confirming non-existence of tax and social security debts
<input type="checkbox"/> Copy of the company's by-laws and proof of deposit of the share capital	<input type="checkbox"/> Proof of insurance covering the activity or activities the company wishes to carry out
<input type="checkbox"/> Registration with the National Directorate for Commerce of the Ministry of Tourism Commerce and Industry	<input type="checkbox"/> Documents evidencing the company's organizational and financial capability to carry out the activities for which it is seeking licensing
<input type="checkbox"/> Taxpayer Identification Number	<input type="checkbox"/> CV's of the technical staff responsible for the management of its operations, evidencing that they have the necessary training, experience and know-how to carry out the same
<input type="checkbox"/> Proof of filing of the previous year's tax return, if applicable	<input type="checkbox"/> Detailed business plan
Observations:	

<i>Signature of Legal Representative</i>	<small>To be completed by ANP</small>
Signature: _____	Fees paid: _____
Place: _____ Date: _____	Receipt No. _____
_____/_____/_____	Signature of the individual in charge

**ANNEX II
TRANSITIONAL PERIOD INFORMATION FORM**



1. COMPANY IDENTIFICATION		
Name or Company Designation:		
Business registration no.:	Share Capital:	
Certificate of registration no.:		
Taxpayer Identification No.:		
Representative:		
Address:		
ZIP Code:	District:	Suco:
Telephone:	E-mail address:	
Fax No.:		

2. INFORMATION

Please provide a description of the Company's downstream activities for the purposes of Article 65.2 of Decree-Law no. ___/___, of ___ 20__.

Commencement of activity in the country: Date (dd/mm/yyyy):

Please indicate the current status of your registration request and/or authorization procedure:

- Registered and/or authorized to carry out activity
- Waiting for registration or authorization / provisional registration
- Denied


3. ACTIVITIES Please check the current activities in which you are engaged in the country
--

<input type="checkbox"/> Supply
<input type="checkbox"/> Processing
<input type="checkbox"/> Storage
<input type="checkbox"/> Transportation
<input type="checkbox"/> Marketing
<input type="checkbox"/> Trading
<input type="checkbox"/> Construction and operation of pipelines and fuel distribution networks
<input type="checkbox"/> Construction and operation of fuel supply station

8		
9		
10		
11		
12		
13		
14		
15		
<input type="checkbox"/> Please check if additional information is provided in Annexes		

8. Employees
 Please provide information on the number of employees working in Timor-Leste. In addition, please detail the nationality of said employees.

No.	Employee Name	Nationality
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
<input type="checkbox"/> Please check if additional information is provided in Annexes		

9. MAP	
	
Geographic reference:	
Please provide information on the Company's geographical area of activity	
<input type="checkbox"/> Please check if additional information is provided in Annexes	

I certify that all of the information contained in this form is complete and accurate. I understand the information provided to the ANP is subject to review and audit. The detailed records which substantiate the information contained herein are available upon request.

NOTE: This form and any relevant additional information is of public record and will remain on file. By filing this form you are declaring that you will not use the information you receive now or afterwards for any illegal or unlawful purposes.

<p style="text-align: center;"><i>Signature of Legal Representative</i></p> <p>Signature: _____</p> <p>Place: _____ Date: __/__/____</p>	<p>To be completed by ANP</p> <p>Fees paid: _____</p> <p>Receipt No. _____</p> <p style="text-align: center;">Signature of the individual in charge</p> <p>_____</p>
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