

GOVERNMENT RESOLUTION No. 37/2014

of 17 December 2014

**APPROVES HEINEKEN'S INVESTMENT PROJECT AND
DRAFT SPECIAL INVESTMENT AGREEMENT**

Under the provisions of Article 29 of Law No. 14/2011 of 28 September (Private Investment Law), the State may authorize the execution of Special Investment Agreements with private investors, defining special legal regimes for investment or reinvestment projects which, due to their scale or nature or their economic, social, environmental or technological impact, may be of great interest to the country within the strategic framework of the National Development Plan.

Considering the relevance that the investment project presented by Heineken will have in the national economy, namely through the substitution of imports by national production, job creation, human resource capacity building, stimulus, start-up and promotion of several related economic activities.

Taking into consideration the need to attract international investors to Timor-Leste who can contribute, in a sustained way, to social and economic development, including the qualification of national staff, and who can also serve as a stimulus for the evolution and development of Timorese companies.

The Heineken investment project received a favorable opinion from the Secretariat of State for the Support and Promotion of the Private Sector and TradeInvest Timor-Leste.

Thus, the Government resolves, under the terms of paragraph e) of article 116 of the Constitution of the Republic and paragraph 2 of article 29 of Law no. 14/2011, of 28 September, the following:

1. To approve the Heineken investment project and the draft Special Investment Agreement attached to this Resolution and of which it is an integral part, to be signed with the HEINEKEN TIMOR, S.A., a company established in Timor-Leste by the company HEINEKEN ASIA PACIFIC PTE. LTD., relating to the development, construction, operation and management of an industrial unit for the production of beverages;
2. To mandate the Secretariat of State for the Support and Promotion of the Private Sector, on behalf and in representation of the Government, to sign the referred agreement.

Approved by the Council of Ministers on 21 November 2014

Publish yourself.

The Prime Minister,

Kay Rala Xanana Gusmão

SPECIAL INVESTMENT AGREEMENT

Under the terms and for the purposes of Article Twenty-Nine of Law No. 14/2011, of 28 September ("Private Investment Law")

between

THE STATE OF THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE

represented by Her Excellency the Secretary of State

for the Support and Promotion of the Private Sector

Dr. Veneranda Lemos

e

HEINEKEN TIMOR, S.A.

represented by the Managing Director of Heineken

Asia Pacific PTE. LTD.

Dr. Roland Pirmez

SPECIAL INVESTMENT AGREEMENT

Between:

1st - **THE STATE OF THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE**, in this act represented by Her Excellency the Secretary of State for the Support and Promotion of the Private Sector, Dr. Veneranda Lemos, (hereinafter referred to as "**STATE**"),

e

2nd - **HEINEKEN TIMOR, S.A.**, in this act represented by Dr. Roland Pirmez (hereinafter referred to as "**HEINEKEN**").

The **STATE** and **HEINEKEN** shall also be individually referred to as "Parties" and jointly referred to as "Parties".

WHEREAS:

- A) The preamble of Law No. 14/2011, of September 28 (Private Investment Law) highlights the essentiality of private investment as a factor generating wealth and employment outside the framework of State activities;
- B) The said Law was created and developed as an engine to attract private investment, granting tax and customs benefits and incentives aimed at creating favorable conditions for investment and greater flexibility to adapt to the needs of investors;
- C) The same legal framework provides for the possibility of the State to enter into Special Investment Agreements with investors, defining special regimes for investment projects which, due to their scale or nature or their economic, social, environmental or technological impact, may be of great interest to the Country, justifying the granting of other benefits or incentives not provided for in the referred law;
- D) Heineken wishes to invest in East-Timor through the construction and operation of a beverage production plant in the country with an estimated investment value between USD 30,000,000.00 and USD 45,000,000.00 and this Investment Project was approved at the meeting of the Council of Ministers on November 21, 2014;
- E) The Heineken investment plan for Timor-Leste foresees the creation of about 1000 (direct and indirect) jobs, the decrease of imports through its substitution by national production, acting as a catalyst for the national productive sector and greater foreign investment, an increase in the State's tax revenue and the establishment of a qualification platform for national workers and knowledge transfer;
- F) For Heineken's investment to be viable, a realignment in the tax regime is necessary, since currently a low import tax and a high excise tax benefit imports to the detriment of local production;
- G) It is the intention of the State to give full support and assist Heineken in the implementation of the Investment Project and to comply with the obligations foreseen in this Special Investment Agreement, taking into consideration and accepting the relevance of the referred investment for the Timorese economy, job creation and welfare of the national population;

- H) It is Heineken's intention to comply with all obligations arising from the Law and the Special Investment Agreement;
- I) The Parties are duly represented for the purposes of this Agreement.

Accordingly, the Parties, jointly and in good faith, enter into this Special Investment Agreement (hereinafter the "Agreement"), which shall be governed by the following clauses, mutually agreed and accepted:

FIRST CLAUSE

DEFINITIONS AND INTERPRETATION

1. For the purposes of this Agreement, whenever used in capital letters, unless the context otherwise requires, the following terms and expressions shall have the following meanings:

Special Agreement of

Investment or Agreement: this Agreement and all its Annexes, as well as any amendments thereto made pursuant to Clause 20;

Heineken: Heineken Timor, S.A., the company established by Heineken Asia Pacific PTE. LTD. to hold its interests in Timor-Leste;

Annexes: any documents that are complementary to this Special Investment Agreement and form an integral part thereof for all legal or contractual purposes;

Clauses: the provisions of this Agreement, excluding recitals;

Effective Date: the date of signature of this Agreement;

Investment Project: Heineken's investment project as detailed in Appendix I (Investment Plan), and an integral part of this Agreement;

Lease Agreement: the lease agreement to be entered into between the State and Heineken pursuant to Clause 4 of this Agreement;

State: the State of the Democratic Republic of Timor-Leste;

Private Investment Law: Law no. 14/2011, of 28 September and any amendments thereto;

Country: Timor-Leste;

Parties: Heineken and the State;

Government: the Government of the Democratic Republic of Timor-Leste, acting as representative of the State.

2. In addition to the definitions contained in this Clause, whenever this Agreement uses definitions provided in the Law of Private Investment, they shall have the meaning attributed to them by that Law on the Effective Date.

SECOND CLAUSE

LEGAL NATURE AND OBJECT

1. This Agreement is of an administrative nature.
2. The object of this Agreement is to regulate the rights and obligations of the Parties in the implementation of the Investment Project.

THIRD THREE

TAX ADVANTAGES

1. Through this Agreement, the State grants Heineken all the benefits and all the exemptions contained in the Private Investment Law for a period of 5 years after the beginning of commercial production with the exception of the benefits provided for in Articles 21.2, 21.3 a) and 22.1 a) that come into force on the Effective Date.
2. Notwithstanding paragraph one of this Clause, for a period of 20 years after the commencement of commercial production, the only taxes and fees applicable to Heineken in respect of the production and sale of beer, cider and other malt based alcoholic beverages shall be as follows:
 - a) Excise duty of USD 0.40/liter on beer, cider and other malt-based alcoholic beverages produced by Heineken, with 4.5% or less alcohol content, or the tax established by general law if lower;
 - b) Excise duty of USD 0.80/liter on beer, cider and other malt-based alcoholic beverages produced by Heineken with more than 4.5% alcohol content, or the duty set by the general law if lower;
 - c) Sales tax or tax or rate equivalent to a maximum of 2.5% of the price;
 - d) Excise duty, sales tax and import duty as provided for in general law on beverages imported by Heineken; and
 - e) Excise duty, sales tax and import duty on raw materials imported by Heineken for the production of beverages, as provided for in the general law.
3. Without prejudice to the application of the rates of excise duty and import customs duties in force on the Effective Date, the State, in order to promote national production, economic development and job creation in Timor-Leste, as well as to ensure the viability of investment in the country, undertakes to, during the period foreseen in number 2 of this Clause, ensure the protection of the domestic production of beer, cider and other malt-based alcoholic beverages from imports, by ensuring that the combined application of excise duty, sales tax and customs duties or any other taxes and/or levies that may be created, is at a minimum amount of USD 1,50/liter (one US dollar and fifty cents per liter) higher for the import of such products.
4. For the purposes of paragraph 1 of this Clause, the list of goods exempted as defined by the Report of the Commission for External Investment or annexed documents shall be taken into account.
5. The State undertakes not to grant any producer of beer, cider or other malt-based alcoholic beverages more favorable tax treatment than that provided for in this Clause.
6. Heineken undertakes to use its best endeavors to use domestic products in preference and, where available with the specific quality requirements applicable, to import where this is not possible.

FOURTH CLAUSE

LAND

The State will rent Heineken, at market prices, an industrial land of about 10 hectares, not charged, for a 50 + 50 (fifty plus fifty) years period, in/onto Dili in a location acceptable to Heineken, with road access, access to and adequate water supply, for a maximum consumption of 500 cubic meters per day, both natural and public supply (minimum 8 inch line), and with adequate power supply (minimum 33KVA line).

FIFTH CLAUSE

LAND USE

1. For the purposes of compliance with Clause 4, the State shall confer on Heineken the right to demolish the building, if any, on the land, to design, develop, build, operate and manage the beverage production plant and to provide the services necessary to ensure the use, maintenance, operation, management and profitability of that plant.
2. In relation to the previous paragraph, the State shall ensure that the industrial land is free of any encumbrances and that the buildings on it, if any, are owned by the State and the State shall provide Heineken with all necessary assistance in defending any claims to the contrary and shall compensate Heineken in the event of losses or damages arising from such claims.
3. The State authorizes Heineken to use alternative sources of water for its production, such as sea water and/or groundwater.

SIXTH CLAUSE

LAND AND PREMISES OWNERSHIP

1. After the term of the Lease Contract established in Clause 4, the totality of the installations and improvements carried out on the land reverts to the State.
2. For the avoidance of any doubt, any removable equipment, machinery and facilities such as tanks, etc. owned or built by Heineken shall belong to Heineken and shall not, unless expressly agreed between the Parties, revert to the State under this Clause.

SEVENTH CLAUSE

CONDITIONS FOR CONSTRUCTION, OPERATION AND MANAGEMENT OF THE INVESTMENT PROJECT

Heineken is the sole party responsible for the design, development, construction, operation and management of the beverage production plant.

EIGHTH EIGHT

BUILDING WORKS

1. Heineken may subcontract to another entity, in whole or in part, the carrying out of work and studies necessary for the design, development and construction of the beverage production plant.
2. If Heineken opts for the faculty provided for in the previous paragraph, it shall remain the sole responsible before the State and shall be liable for the actions and omissions of the third party.
3. Heineken undertakes to communicate to the State the entity that will carry out the works and studies necessary for the design, development and construction of the industrial unit.
4. Heineken undertakes to have a staff, materials and machinery necessary for the correct and timely execution of the construction works.
5. Heineken undertakes to register all workers, to pay wages punctually, committing itself to respect labor and work safety regulations, and to be responsible for all expenses and damages arising from this service.

NINEHTH CLAUSE

CHANGES IN CONSTRUCTION WORK

Heineken requires written authorization from the State in the event of substantial modifications to the beverage plant construction project.

TENTH CLAUSE

WORK SCHEDULE

1. Heineken undertakes to apply for the necessary licenses and permits to demolish the existing building, if any, on the land and in the construction of the drinks production plant and undertakes to start demolishing the said building, if any, within 180 (one hundred and eighty) days of the date of granting of the licenses and permits referred to above.
2. Heineken undertakes to commence construction work on the beverage production plant within a maximum period of 12 (twelve) months from the date on which the licenses and permits referred to in paragraph 1 of this Clause are obtained.
3. The Parties may, by written agreement, extend the periods referred to in the preceding paragraphs.

ELEVENTH CLAUSE

BUILDING INSPECTION

1. The State may, if necessary, inspect the demolition works of the existing building, if any, on the land and construction of the beverage production plant.
2. For the purposes of the previous paragraph, Heineken is obliged to provide the State with free access to the site of the works, which should occur during working hours, in safety conditions and should be carried out with the minimum of disruption to the works.
3. If substantial defects or non-conformity of the construction with the terms and conditions of this Agreement or its Annexes are discovered, the State may ask Heineken to remedy the defects or non-conformity of the works.
4. Heineken shall, within one hundred and twenty (120) days, commence the correction of defects and conformation of the construction works under the terms and conditions of this Agreement and its Annexes and terminate within a reasonable time.

TWELFTH CLAUSE

CONSTRUCTION SAFETY STANDARDS

For the purposes of Clause Eight, Heineken will always be responsible for compliance with health, hygiene and safety standards at the construction site, even if the work is carried out by another entity.

THIRTEENTH CLAUSE

WORKING VISAS, PERMITS, LICENCES AND APPROVALS

1. The State shall grant Heineken Special Stay Authorizations, for up to twenty (20) qualified foreign workers and provided that the said workers meet the requirements established in Timorese legislation.
2. The State shall grant Heineken work permits for a maximum of sixty (60) foreign consultants, technicians and workers during the period of construction of the industrial unit.
3. The State shall assist Heineken and collaborate in obtaining all licenses, permits and approvals necessary to implement the Investment Project in accordance with Timorese law.

FOURTEENTH CLAUSE

DEADLINE

This Agreement shall enter into force on the Effective Date and shall remain in force for a period of fifty (50) years.

FIFTEENTH CLAUSE

TERMINATION OF THE SPECIAL INVESTMENT AGREEMENT

1. Without prejudice to the right of termination provided for under general law, the State may terminate this Special Investment Agreement, in particular when it has occurred:
 - a) Heineken's insolvency; or
 - b) In the event Heineken deliberately delays the implementation of the Investment Project, in any of its phases, for a period exceeding twelve (12) months except when such delay is due to the delay in obtaining demolition and construction permits and licenses or due to the act or omission of the State or its failure to comply with any of the obligations set forth herein.
2. Without prejudice to the right of termination under general law, Heineken may terminate this Special Investment Agreement if the terms of the lease under Clause 4 are not agreed between the Parties and the lease is not entered into within 6 (six) months after the Effective Date.
3. Without prejudice to the foregoing paragraphs and in addition thereto, either Party may terminate this Agreement in the event of substantial breach by the other Party of any of the material obligations contained herein and, if such breach is not remedied within ninety (90) days after its occurrence.
4. In the cases provided for in the preceding paragraph, the Parties are obliged to notify the other Party in writing of the reasons for the termination.

SIXTEENTH CLAUSE

OBLIGATIONS

Under this Agreement, Heineken undertakes to:

- a) Train local workers as described in the Investment Project;
- b) Respect and comply, at any time, with Timorese laws and regulations on hygiene and safety at work, working conditions and environmental protection;

- c) Collaborate with the State in the promotion of moderate and responsible alcohol consumption;
- d) Promote, respect and defend the Timorese culture and traditions in the workplace and in the company;
- e) Ensure the technical and financial availability necessary for the correct and timely implementation of this Agreement;
- f) Ensure the availability of equipment and materials necessary for the correct and timely implementation of this Agreement;
- g) Authorize the State to inspect the demolition works of the existing building on the ground, if any, and the construction works under the Investment Project;
- h) Comply with other legal obligations;

Under the scope of this Agreement, the State undertakes to:

- a) Grant Heineken a non-revocable activity license, after it has complied with the legal and regulatory conditions;
- b) Grant Heineken a declaration and guarantee of non-nationalization and non-expropriation of Heineken business or assets in Timor-Leste;
- c) Protect and secure Heineken's investment in the event of social unrest;
- d) Ensure, within the applicable legal and regulatory framework, rapid customs clearance of materials, equipment and raw materials or other imports from Heineken, at national ports and/or airports;
- e) Strengthen surveillance at ports, airports and land borders and take all appropriate measures to ensure compliance with local legislation for all beer imports into Timor-Leste;
- f) Not to repeal the Private Investment Law or, if it is repealed, to maintain before Heineken all the obligations provided in this Agreement;
- g) Promptly facilitate the issuance of any visas or permits required for the entry, stay and exercise of foreign workers necessary for the implementation of the Investment Project;
- h) Promote in a timely manner such administrative and legislative acts as may be necessary to ensure the diligent and timely fulfilment of the obligations under this Agreement;
- i) Promptly assist Heineken in issuing licenses and permits and in any other administrative acts necessary for Heineken to establish a commercial company under local law;
- j) Provide Heineken with a safe investment environment for the execution of this Agreement and the Investment Project.

SEVENTEENTH CLAUSE

MORE FAVOURABLE TREATMENT

In the event of any legislative or regulatory change which sets out conditions applicable to Heineken's activity which are more favorable than those contained in this Agreement, such conditions shall automatically apply to Heineken.

EIGHTEENTH CLAUSE

CONFIDENTIALITY

1. All acts implementing this Agreement are strictly confidential and may under no circumstances be disclosed to any third party without the prior written consent of the other Party.
2. In addition, during the term of this Agreement and after its termination, both Parties undertake not to disclose, reveal, use or discuss, directly or through an intermediary, any information, know-how and/or elements to which they have had access or become aware in the performance of their functions under this Agreement, including, but not limited to, elements relating to organization, management methods, marketing techniques, business and investments, internal policies, projects and work procedures, as well as the identity of suppliers and customers, and therefore keep strictly confidential all such matters or any others related to the other Party.
3. The obligation of confidentiality set forth in this Clause shall not apply to the disclosure, where necessary or required by law or contract, of any information by Heineken to its shareholders, consultants, employees and suppliers.
4. The obligation of confidentiality set forth in this Clause shall not apply to the publication of this Agreement or its draft in the Official Gazette.
5. This obligation shall continue even after the termination of this Agreement.

NINETEENTH CLAUSE

INVESTMENT PROJECT VALUE

1. The Investment Project is budgeted at between USD 30 and 45 million, including working capital and investment losses.
2. The Investment Project will be designed and executed with equity or loans that Heineken has or will request.
3. Heineken undertakes to have one or more bank accounts domiciled at banking institutions in Timor-Leste that guarantee the existence of the financial means necessary for the correct and timely execution of the obligations arising from this Agreement before the State, Government, Public Entities, workers and suppliers.

TWENTIETH CLAUSE

ENVIRONMENTAL PROTECTION

Heineken undertakes to comply and enforce the environmental legislation in force, namely, to submit environmental impact assessments that prove necessary for the execution of the Investment Project.

TWENTY-FIRST CLAUSE

INVESTOR STATUS

The investor status provided for in this Agreement is granted to Heineken and is not transferable to third parties. Such status remains with Heineken even in the event of the sale or disposal of all or part of the share capital of Heineken by any of its shareholders and is not transferable to any shareholders.

TWENTY-SECOND CLAUSE

SETTLEMENT OF DISPUTES

1. The Parties agree to use their best endeavors to resolve amicably, by direct and informal negotiation, any disagreement or dispute between the Parties under or in connection with this Agreement.
2. If the Parties do not resolve the dispute by mutual consultation within thirty (30) days of the commencement of such consultation, either Party may request that the dispute be resolved by final recourse to arbitration at the Singapore International Arbitration Centre or at Maxwell Chambers in Singapore in accordance with the Convention, Regulations and Rules of the International Centre for the Arbitration of Investment Disputes ("ICSID") in force at that time. The arbitral tribunal shall consist of three (3) arbitrators appointed by the Chairman of the Board (Administrative Council) of the ICSID. The language used in the arbitration shall be English.
3. The State undertakes to perform any legislative, regulatory or administrative acts that may be necessary for the full and complete execution of the arbitration award rendered under this Clause in Timor-Leste as if it were a final decision of a national court, and hereby expressly waives any defense based on immunity from sovereignty and waives to invoke immunity.

TWENTIETH-THIRD CLAUSE

APPLICABLE LAW

This Agreement shall be governed by the law of the Democratic Republic of Timor-Leste.

TWENTY-FOURTH CLAUSE

DESIGNATED CONTACTS

For the purpose of implementing and applying this Agreement, the Parties appoint the following designated contacts:

STATE:

Name: Dr. Veneranda Lemos

Position: Secretary of State for the Support and Promotion of the Private Sector

Address: Secretaria de Estado para o Apoio e Promoção do Private Sector, Dili, Timor-Leste

HEINEKEN:

Name: Dr. Vinay Mathur

Position: Managing Director of Heineken Timor, S.A.

Telephone: +6597529670

E-mail: vinay.mathur@heineken.com

Address: 9 North Buona Vista Drive, #12-01 The Metropolis

Tower 1, Singapore 138588

TWENTY-FIFTH CLAUSE

FINAL ARRANGEMENTS

1. The Parties may send formal communications to the designated contacts by any means of communication in writing with proof of receipt. Communications by letter shall be deemed to have been received on the date of receipt or, if received after normal working hours, on the following working day. E-mail communications shall be deemed to have been received on the date on which they are received, as evidenced by the dispatch of the message receipt to the sender, if applicable.
2. Nothing in this Agreement, or any rights or obligations hereunder, shall be assigned, in whole or in part, to a third party without the prior written consent of the other Party, which shall not be unreasonably withheld.
3. Should any provision of this Agreement be, for any reason or grounds, held invalid, void or unenforceable by a competent authority, such invalidity, voidness or unenforceability shall not affect the validity of the remaining provisions of the Agreement, and the Parties undertake in good faith to agree on arrangements to supersede the previous ones which, so far as possible, have the same effect.
4. Any delay or omission by the Parties in exercising any right or remedy granted to them under this Agreement shall not be considered a waiver of such right or remedy and shall remain in force.
5. This Agreement and the Annexes thereto shall form an integral part for all legal purposes and shall constitute the whole of the agreement concluded between the Parties. There shall be no statements, oral or written, about facts, understandings or agreements between the Parties that are not fully expressed in this Agreement.
6. No amendment, waiver or release shall be deemed valid unless it is in writing and signed by an authorized representative of the Party against whom the amendment, waiver or release shall be made.
7. In case of divergence between the Annexes and the terms of this Agreement, the latter shall prevail, and in case of divergence between the various Annexes, those with a later date shall prevail over those with an earlier date.

TWENTY-SIXTH CLAUSE

LANGUAGE OF THE SPECIAL INVESTMENT AGREEMENT

1. This Agreement has been drawn up in the Portuguese language and is the only valid version for the purposes of its interpretation and application.
2. All correspondence between the Parties shall be in the Portuguese language or, if accepted by both Parties, in the English language.

TWENTY-SEVENTH CLAUSE

START AND DURATION OF THE AGREEMENT

This Agreement shall enter into force on the date of its signature and shall remain valid until the expiry of the period provided for in the Fourteenth Clause.

CLAUSE TWENTY-EIGHTH

ANNEXES

This Agreement consists of this document and the following Annex:

Annex I - Investment Plan

This Agreement consists of this document and the Annex provided for in the Twenty-Eighth Clause, done in two copies, each one of the parties with one of them to be signed on January 8, 2014 in the city of Dili, as they reflect the will expressed by both parties.

Dili, 8 January 2015

For the State of the Democratic Republic of Timor-Leste

Dr. Veneranda Lemos

Secretary of State

For Heineken

Dr. Roland Pirmez

Managing Director Heineken Asia Pacific PTE. LTD.

This Agreement contains 13 (thirteen) pages and 1 (one) annex with 59 (fifty-nine) pages, for a total of 72 (seventy-two) pages, all duly initialed or signed, as applicable, by the signatories, and is in Portuguese language in two originals.