

# TIMOR-LESTE EXPROPRIATIONS' LEGAL FRAMEWORK APPROVED

## INTRODUCTION

After approximately 8 years' of discussions, the Timor-Leste Parliament recently approved the Country's Expropriations' Law (the "Law") by means of Law 8/2017, of 26 April 2017.

The new Law, which came into force on 27 April 2017, is an important part of the "Land Law Package" that has been in discussion for almost a decade, and that includes a number of other significant statutes that are expected to be approved and/or gazette in the near future. Although expropriation/ eminent domain is always a controversial subject, whatever part of the World you are in, it is an important tool for governments to implement public policies. In a country such as Timor-Leste, where basic urbanization and public infrastructure are still at their early stages, and where non-planned private construction has been the rule, the ability of the State to expropriate private property is a crucial tool that can be used together with adequate urban planning to improve the lives of the general population. It is also an important mechanism that can be used, when necessary, in Private Public Partnerships which the State of Timor-Leste has also started exploring.

Below you will find a list of questions & answers aimed at giving you a brief, general overview of the Law.

---

## GENERAL OVERVIEW Q&A

### ***How does the Law define "expropriation"? What is covered?***

The Law defines expropriation as any legally admissible restriction to private property or related rights or interests, irrespective of the persons or entities to which they belong.

### ***Does the Law apply to immovable property owned by traditional communities?***

Community immovable property may also be expropriated, subject to the specific terms foreseen in the new statute.

### ***In what circumstances may the State resort to expropriation?***

Expropriation is only admissible in cases of "public interest" (*utilidade pública*) in the use of the asset. The Law lists the following situations as being of "public interest" for purposes of justifying expropriation:

- (i) National defense and security;
- (ii) Public pathways, roads, tunnels, railroads, and ancillary facilities;
- (iii) Public transportation systems;
- (iv) Reservoirs, dams, infrastructure for the distribution and drainage of water and residues, and irrigation;
- (v) Ports, airports and terminals;
- (vi) Exploitation of petroleum, gas, minerals, and geothermal energy facilities;
- (vii) Public electricity generation and distribution systems;

- (viii) Telecommunications systems;
- (ix) Waste collection and treatment;
- (x) Public hospitals, treatment and diagnostic centers, and other essential infrastructure used for public health services;
- (xi) Public firefighting and civil protection services;
- (xii) Public cemeteries and “Heroes Gardens”;
- (xiii) Public, social and cultural facilities, and green areas;
- (xiv) Preservation and conservation of historic and cultural monuments, whether isolated or inserted in urban or rural centers;
- (xv) Protection of landscapes and sites of special natural beauty;
- (xvi) Infrastructure for protection against landslides, floods, and other mechanisms for protection against natural disasters;
- (xvii) Public housing;
- (xviii) Public education and teaching facilities;
- (xix) Public sports facilities and markets;
- (xx) Other situations provided in special legislation.

***Who does the Law consider as “interested parties” for purposes of intervening in the expropriation procedure?***

The Law has adopted a broad definition of “interested party”, which in part reflects the underlying reality of land tenure and land use in Timor-Leste. The following are considered interested parties for purposes of the Law:

- (i) The holders of rights *in rem* over the real estate asset to be expropriated;
- (ii) The holders of contractual rights over the asset, notably leases, rights of way, etc.;
- (iii) The occupiers of the asset at the time of public notice of commencement of the expropriation procedure;

***Who can request and carry out an expropriation?***

Only public entities of the direct administration of the State may be beneficiaries of an expropriation. Public Institutes and State-owned companies, amongst other bodies of the indirect Administration of the State may not do so directly.

***What happens if the property to be expropriated has not yet been registered?***

If the property is not registered, a registration procedure under the general legal framework must be conducted.

***Is the State free to expropriate a given property without studying alternatives?***

Expropriation can only take place on an exceptional basis, when it is not possible to use another asset

or redesign the project. The Law requires that alternative solutions be assessed.

***What language should be used when notifying the interested parties under the expropriation procedure?***

All documents delivered to the interested parties must be drafted in the two official languages of Timor-Leste (Tétum and Portuguese) in order to be valid.

***Are the rights of vulnerable persons and groups duly protected?***

The Law determines that special attention shall be given to the most vulnerable population groups when they are affected by expropriation.

***What happens if instead of expropriating property, the State simply wishes to establish a right of way?***

Constitution of administrative easements (rights of way, etc.) is expressly foreseen, subject to payment of adequate compensation.

***What are the phases of the expropriation procedure?***

The expropriation procedure is divided into the following phases:

- (i) Project planning;
- (ii) Public consultation;
- (iii) Property survey;
- (iv) Negotiation for acquisition of the asset (*aquisição por via do direito privado*).

***What happens in the planning phase?***

In the planning phase, the expropriating authority shall carry out the environmental licensing and social study of the effects of the project, prepare a relocation program (if applicable), review any possible alternatives for the project, and prepare a statement of the grounds for the public interest in the expropriation.

***What happens next?***

After the planning phase is concluded, the public consultation phase takes place, in which the project is publicized and submitted to any interested parties for comments. Meetings are also held so feedback on the project can be received.

***What is the purpose of the property survey phase?***

The public consultation is followed by a property survey, aimed at registering all the legal and physical characteristics of the property, which may be relevant to determine the fair compensation that will be due to the owner/ holder of rights over the property. A survey report is then prepared and notified to the interested parties.

***What happens after the interested parties receive the report?***

After the report is prepared, a negotiation phase takes place by means of which the expropriating authority attempts to acquire the property under the terms of private law, i.e., by means of a sales and purchase agreement.

***What happens if the owner does not wish to sell the property?***

If the parties cannot reach an agreement, and the negotiation phase is not successful, the expropriation procedure proper will commence, with the issuance of the “declaration of public interest”.

***If the owner does not agree with the grounds of the declaration of public interest, what can it do?***

The declaration may be appealed to the local court of first instance, although without suspensive effects, i.e., the appeal does not stop the expropriation.

***If more than one property is required to implement the project, do they all have to be expropriated at the same time?***

Expropriations may be conducted in phases, when the underlying project will also be implemented in phases.

***How does the expropriation procedure work? What happens after the declaration?***

The first step in the procedure is for the authorities to once again make a proposal for the acquisition of the property, thus trying to avoid the costs and bureaucracy of the expropriation.

***What happens if, once again, there is no agreement?***

If the new acquisition attempt fails, then an arbitral phase will commence to determine the fair compensation amount.

***How does this arbitration work? Who appoints the arbitrator?***

The arbitration is conducted by a single arbitrator (the “expert”), appointed by the court.

***What is the aim of the arbitration?***

The arbitration’s sole purpose is to decide on the amount of the fair compensation.

***What is the timeframe for the rendering of the arbitral decision?***

The arbitrator/ expert must render a decision within 30 days of his/her appointment.

***Is there any way to appeal the arbitrator’s decision?***

The arbitral decision may be appealed to the local court of first instance, but the appeal does not suspend the expropriation.

***Does the Law explain or contain any rules on how to assess fair compensation?***

The Law contains the basic principles on the assessment of fair compensation due for the expropriation. The specific rules used to determine the value of the compensation shall be approved by Government Decree which has not yet been gazette.

***Is fair compensation limited to a cash payout?***

The Law gives preference to compensation through attribution of ownership rights over an equivalent property belonging to the State. Relocation is also one of the forms of compensation that is foreseen, when applicable.

### ***How are the interested parties rights to compensation protected?***

The Law approves the creation of a “Real Estate Financial Fund”, with the purpose of paying compensation due by the State as a consequence of determination of ownership rights under the future Land Law, compensation and relocation under the Expropriations’ Law, and other projects including public housing. Additionally, towards the end of each year, the Government must prepare an expropriations’ plan covering all anticipated expropriations for the following year, which must also be budget for.

---

### **DO YOU REQUIRE ADDITIONAL ASSISTANCE?**

Miranda has a dedicated public law and expropriations practice that is available to provide any additional assistance our clients may require in respect of the new Expropriations’ Law. Our attorneys have over 15 years of experience dealing with expropriations in different jurisdictions, having practiced and written extensively on this matter, and lectured courses on expropriations law. Two of the members of our Timor-Leste jurisdiction team were responsible for preparing the first drafts of the Expropriations’ Law back in 2009, after having won the public tender launched for the regulation of the Land Law.