

PANORAMIC

# **GAS REGULATION**

East Timor



LEXOLOGY

# Gas Regulation

Contributing Editors

**David Tennant and Adam Brown**

Dentons

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# Contributors

## East Timor

Vieira de Almeida & Associados



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João Afonso Fialho

[jaf@vda.pt](mailto:jaf@vda.pt)

Ângela Viana

[axv@vda.pt](mailto:axv@vda.pt)

Tomás Cabral Anunciação

[tda@vda.pt](mailto:tda@vda.pt)

Teófilo de Jesus

[tmj@vda.pt](mailto:tmj@vda.pt)

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## DOMESTIC SECTOR OVERVIEW

### State of the market

Describe the domestic natural gas sector, including the natural gas production, liquefied natural gas (LNG) storage, pipeline transportation, distribution, commodity sales and trading segments and retail sales and usage.

East Timor attained its independence in 2002 and, since then, its economy has shifted from relying on foreign aid to relying heavily on the returns from investing revenues received from extracting petroleum resources; in particular, on the Bayu-Undan field, which, unfortunately, is expected to dry up and commence its decommissioning next year. The imminent decommissioning of the Bayu-Undan field has urged the government to launch a new licensing round for the award of onshore and offshore blocks in 2023 and to continue to push for the final approval of the regulatory and contractual framework for the development of the Greater Sunrise fields currently under discussion with the Australian government and the Sunrise joint venture.

The Greater Sunrise fields, located in the Timor Sea 150 kilometres south-east of East Timor and 450 kilometres north-west of Australia's Northern Territory, are estimated to contain at least 5.1 trillion cubic feet of natural gas, plus 226 million barrels of condensate and are well placed to supply the world's biggest LNG markets in East Asia. However, the negotiation of the Greater Sunrise regulatory and contractual framework has been delayed, and there is still no firm timeline for commencement of the development of the Greater Sunrise fields.

The natural gas sector in East Timor is considered as one of the most reliable revenue sources for the country. The official annual report published by the National Authority of Petroleum (ANP) refers to the fact that, in 2021, East Timor produced LNG close to some 30 million barrels of oil equivalent, in 45 shipments, of which 44 per cent were exported to China, 38 per cent to Japan and the remainder to South Korea, India and Taiwan. In 2022, production declined sharply, resulting in the production and sale of close to 15 million barrels of oil equivalent, totalling only 19 shipments.

Domestic natural gas production is intended for exports and is not processed or consumed in the country because there are currently no infrastructures built for such operations.

**Law stated - 8 December 2023**

### Consumption

What percentage of the country's energy needs is met directly or indirectly with natural gas and LNG? What percentage of the country's natural gas needs is met through domestic production and imported production?

In accordance with the annual report published by the International Renewable Energy Agency (last updated on 8 August 2023), the percentage of the country's energy needs met, directly or indirectly, with natural gas and LNG, was zero per cent, owing to energy consuming infrastructures and sectors, such as industry, transport and domestic households, not yet developed for its use.

## Government policy

### What is the government's policy for the domestic natural gas sector and which bodies set it?

The legal framework for the development of natural gas is established by the National Assembly and the government under:

- the Petroleum Law and ancillary Offshore and Onshore Regulations (upstream); and
- the Downstream Regulations (downstream).

These statutes set forth a robust regulatory framework for investment in the sector, with a particular focus on protection of the environment and local content to ensure the sustained development of Timorese national and local services and goods providers.

The special regulatory and contractual regime for the Greater Sunrise (gas) fields – which is the most significant gas project to be developed in East Timor – is currently under discussion with the Australian government and the Sunrise joint venture.

Law stated - 8 December 2023

## Regulatory authorities

### Which authorities make regulatory policies and decisions in respect of the production, transmission, distribution and supply of natural gas?

The key regulatory bodies responsible for regulating the natural gas sector are:

- the Ministry of Petroleum and Minerals (MPM), which is responsible for the design and implementation of the energy policy and the management of mineral resources (including petroleum) and for the licensing and regulation of industrial activity of oil and mineral processing, including but not limited to:
  - drafting and proposing the sector's policy and legislation;
  - establishing the sectorial administration and management system and regulating the activities of the sector; and
  - promoting national opportunities in the sector to attract and retain foreign investment;
- the ANP created through the enactment of Decree-Law 20/2008 of 19 June 2008, which is the main regulatory body of the oil and gas upstream and downstream sector. Its main attributions include the regulation, control and supervision of petroleum-related activities, being, in the downstream sector in particular, responsible for the promotion of 'efficient use and optimisation of the installed capacity in petroleum infrastructures such as pipelines, terminals, transport and communications infrastructures' and 'guaranteeing national energy security and

monitoring and regulating all petroleum activities so that satisfactory levels of quality and supply of products to consumers are ensured’;

- Timor Gap – Timor Gás & Petróleo EP and the National Oil Company tasked to identify, develop and optimise the strategic and commercial value of oil and gas of the country’s resources; and
- the Petroleum and Geology Institute, established in 2012 by means of Decree-Law 33/2012 of 18 July, a public institution of the East Timor government under MPM supervision, with the objective of developing geological studies of mineral resources, including East Timor’s oil and gas.

**Law stated - 8 December 2023**

## REGULATION OF NATURAL GAS PRODUCTION

### **Ownership and organisation**

**What is the ownership and organisational structure for production of natural gas (other than LNG)? How does the government derive value from natural gas production?**

Under the Timorese Constitution and the Petroleum Activities Law, the Timorese state is the owner that controls all natural resources located in East Timor, including natural gas.

Upstream exploration and production (E&P) rights are awarded to private entities by means of a licence or a concession agreement to be entered into between the government and the investor international oil companies or international energy companies.

The government derives value from natural gas produced under the terms of the relevant E&P contract and taxation, namely, corporate income tax, profit tax and supplemental petroleum tax.

**Law stated - 8 December 2023**

### **Regulatory framework**

**Describe the statutory and regulatory framework and any relevant authorisations applicable to natural gas exploration and production.**

The regulatory framework applicable to natural gas exploration and production can be found in:

- the Petroleum Activities Law (Law No. 13/2005 of 2 September 2005);
- the Offshore Petroleum Activities Regulation (Decree-Law 32/2016 of 17 August 2016); and
- the Onshore Petroleum Activities Regulation (Decree-Law 18/2020 of 13 May 2020).

The exercise of natural gas E&P rights is subject to a licence or an E&P concession agreement to be entered into with the Ministry of Petroleum and Minerals. Downstream activities are subject to licensing by the National Authority of Petroleum (ANP).



The ANP is the regulatory body of the oil and gas upstream and downstream sectors, with broad statutory attributions and authority including the regulation, control and supervision of all petroleum activities.

Law stated - 8 December 2023

### **Unconventional gas production**

**Are there different rules for, or any restrictions on, unconventional natural gas production (including fracking)?**

East Timor has not yet established a specific legal framework dealing with rules and restrictions on unconventional natural gas production.

Law stated - 8 December 2023

### **Required security and guarantees**

**Are participants required to provide security or any guarantees to be issued with a licence to explore for or to store gas?**

Bank or parent company guarantees are usually required to ensure the fulfilment of work obligations under the relevant E&P concession contracts or licences.

Both the Onshore Petroleum Activities Regulations and the Offshore Petroleum Activities Regulations set out other circumstances under which additional guarantees may need to be provided by the participants, including:

- dismantling activities;
- payment of wages, benefits, indemnities and other work responsibilities, which may arise from judicial orders (if the period of validity of the relevant insurance policy is less than three years counting from the date of termination of the authorisation and the amount insured is less than plus 1 per cent of the payroll of the authorised person); and
- liability arising from non-compliance with statutory obligations and requirements.

Law stated - 8 December 2023

## **REGULATION OF NATURAL GAS PIPELINE TRANSPORTATION AND STORAGE**

### **Ownership and infrastructure**

**Describe in general the ownership of natural gas pipeline transportation, and storage infrastructure.**

Pursuant to the Onshore Petroleum Activities Regulations and the Offshore Petroleum Activities Regulations, infrastructure for natural gas transportation and storage is property of Timor Gap – Timor Gás & Petróleo EP (Timor Gap) and the National Oil Company of East Timor.

Infrastructures acquired by the contractor (except for leased assets) for the development of petroleum activities under a petroleum contract become assets of Timor Gap when acquired in East Timor and, when acquired abroad, when they enter Timorese territory. The contractor shall possess and have control over the infrastructures and is entitled to use them in petroleum operations free of charge during the whole term of the relevant exploration and production (E&P) concession contract. The contractor shall be liable to carry out proper maintenance and repair of all infrastructures to ensure their integrity and usefulness at all times.

**Law stated - 8 December 2023**

### **Regulatory framework**

**Describe the statutory and regulatory framework and any relevant authorisations applicable to the construction, ownership, operation and interconnection of natural gas transportation pipelines, and storage.**

Pursuant to the Onshore Petroleum Activities Regulations and the Offshore Petroleum Activities Regulations, construction and operation of natural gas transportation pipelines and storage infrastructures are subject to authorisation by the Ministry of Petroleum and Minerals (MPM) as follows.

- Natural gas pipeline transportation activities: a pipeline project plan must be presented to the MPM at least six months before the commencement of the construction works, and it must contain all relevant information in that respect; namely, the envisaged area for the project, a description of the staff involved in the construction and operation of the pipeline, all studies and evaluations carried out under this context and all information deemed required or necessary by the MPM. The operator must also present monthly reports to the MPM, with data regarding the volume of fluids transported through the pipeline, the ownership of such fluids and the general maintenance status of the transportation infrastructure, among other information.
- Natural gas storage activities: a storage installation plan with general information of the project must be approved by the MPM, with the latter having the power to not approve the plan and request additional information or a general redraft of the plan. In such case, the relevant entity may amend the plan and present it again before the MPM, within the deadline established in the non-approval notice.

**Law stated - 8 December 2023**

### **Land rights**

**How does a company obtain the land rights to construct a natural gas transportation or storage facility? Is the method for obtaining land rights to construct natural gas distribution network infrastructure broadly similar?**

The Onshore Petroleum Activities Regulations set out that an authorisation (exploration, access or seepage use) or a petroleum contract grants its holder the right to occupy the corresponding authorised area (as geographically identified in such contract or authorisation) and develop petroleum activities therein, including the construction of natural gas transportation and storage facilities. Whenever the concession area falls over privately held land, the authorised person under the E&P contract or licence should enter into an agreement with the relevant land owner for the development of petroleum activities or construction and operation of facilities in the concession area. If parties fail to reach an agreement, an expropriation procedure may be initiated by the Timorese state under the applicable legal framework.

The Offshore Petroleum Activities Regulations establish that the opening and use of an authorised area for the execution of E&P contracts and award of authorisations (exploration, access or seepage use) must be authorised by the MPM. Such titles are necessary for the development of offshore petroleum activities, including the construction of transportation and storage facilities. The above-described regime applicable to onshore petroleum activities is applicable to the onshore facilities used in offshore petroleum activities.

**Law stated - 8 December 2023**

### **Access**

**How is access to the natural gas transportation system and storage facilities arranged? How are tolls and tariffs established?**

Both the Onshore Petroleum Activities Regulations and the Offshore Petroleum Activities Regulations foresee the possibility of access, by third parties, to facilities used for transportation and storage.

According to said Regulations, authorised persons (namely, the holder of an authorisation or the counterpart of an E&P contract) must grant access to third parties in reasonable time, if such access does not unreasonably jeopardise the needs of the authorised person or other uses of the transportation system and storage facilities. The access agreement must be approved by the MPM, which may also, as a condition of approval of the agreement, change access rates and other terms and conditions agreed among the parties.

The Model Onshore and Offshore Production Sharing Agreement sets forth that a 'contractor shall . . . provide for third-party access to the Facilities and other property within the Contract Area on reasonable terms and conditions'.

**Law stated - 8 December 2023**

### **Interconnection and expansion**

**Can customers, other natural gas suppliers or an authority require a pipeline or storage facilities owner or operator to expand its facilities to accommodate new customers? If so, who bears the costs of interconnection or expansion?**

The law does not expressly regulate the expansion or interconnection of a pipeline or storage facilities. Nevertheless, the holder of an authorisation for the development of transportation or storage activities or the counterpart of an E&P contract may be contractually bound to meet such requests (subject to the relevant commercial terms and conditions, including the allocation of the costs of interconnection or expansion).

**Law stated - 8 December 2023**

### **Processing**

**Describe any statutory and regulatory requirements applicable to the processing of natural gas to extract liquids and to prepare it for pipeline transportation.**

The processing of natural gas is subject to authorisation by the MPM. A processing installation plan with general information of the project must be approved by the MPM, with the latter having the power to not approve the plan and request additional information or a general redraft of the plan. In such case, the relevant entity may amend the plan and present it again before the MPM, within the deadline established in the non-approval notice. Sixty days before the end of each year, entities authorised for the development of natural gas processing activities must present an annual operational plan, containing information regarding regulatory, technical and health and safety practices, as well as any changes to the installed infrastructures.

**Law stated - 8 December 2023**

### **Contracts**

**Describe the contractual regime for transportation and storage.**

There is no statutory contractual regime for the transportation and storage of natural gas imposed by Timorese law. Any model agreement commonly used in the oil and gas industry (governing reserved capacity, obligations of the parties, quality or specifications of the gas, among other commercial terms and conditions) may be adopted by the parties.

**Law stated - 8 December 2023**

## **REGULATION OF NATURAL GAS DISTRIBUTION**

### **Ownership**

**Describe in general the ownership of natural gas distribution networks.**

The Downstream Regulations do not expressly regulate ownership of natural gas distribution networks. Rules on the ownership of natural gas distribution networks must be regulated under the relevant distribution licence.

**Law stated - 8 December 2023**

### **Regulatory framework**

**Describe the statutory and regulatory structure and authorisations required to operate a distribution network. To what extent are gas distribution utilities subject to public service obligations?**

Pursuant to the Downstream Regulations, the operation of a distribution network is subject to the issuance of a licence by the National Authority of Petroleum (ANP).

Companies willing to carry out downstream activities – including operating a distribution network – are required to be duly incorporated under Timorese law and must have financial and organisational capacity (including duly qualified staff and adequate equipment to carry out the activities they intend to develop), have their office and place of effective management in East Timor and must have a minimum 5 per cent participating interest held by a public entity or company or by Timorese citizens, or by a company owned by Timorese citizens.

**Law stated - 8 December 2023**

### **Access and pricing**

**How is access to the natural gas distribution grid organised? Describe any regulation of the prices for distribution services. In which circumstances can a rate or term of service be changed?**

Access to the natural gas distribution grid is not expressly regulated by law. The ANP may, nevertheless, subject the issuance of the licence to certain terms and conditions; namely, specific rules on access to the gas distribution grid.

According to the Downstream Regulations, the ANP is the state authority responsible for the regulation of prices for distribution services.

**Law stated - 8 December 2023**

### **System/service expansion and limitation**

**May the regulator require a distributor to expand its system to accommodate new customers? May the regulator require the distributor to limit service to existing customers so that new customers can be served?**

The expansion or limitation of distribution systems is not expressly regulated by law. The ANP may, nevertheless, subject the issuance of the licence to certain terms and conditions; namely, specific rules on the expansion or limitation of distribution systems.

**Law stated - 8 December 2023**

### **Contracts**

**Describe the contractual regime in relation to natural gas distribution.**

There is no statutory contractual regime for natural gas distribution imposed by Timorese law.

Law stated - 8 December 2023

## REGULATION OF NATURAL GAS SALES AND TRADING

### Ownership and organisation

#### What is the ownership and organisational structure for the supply and trading of natural gas?

Pursuant to the Downstream Regulations, the National Authority of Petroleum (ANP) is the state authority responsible for licensing downstream activities, including the supply, trading and marketing of natural gas in the country.

Companies willing to carry out downstream activities – including the supply and trade of natural gas – are required to be duly incorporated under Timorese law and must have financial and organisational capacity (including duly qualified staff and adequate equipment to carry out the activities they intend to develop), have their office and place of effective management in East Timor and must have a minimum 5 per cent participating interest held by a public entity or company or by Timorese citizens, or by a company owned by Timorese citizens.

Law stated - 8 December 2023

### Government oversight

#### To what extent are natural gas supply and trading activities subject to government oversight? What authorisations are required to engage in wholesale trading of gas?

Natural gas supply, trading and marketing activities (downstream) must be licensed by the ANP.

Law stated - 8 December 2023

### Trading processes

#### How are physical and financial trades of natural gas typically completed?

There are no statutory nor standard processes, agreements or terms for the supply and trading of natural gas. Any international used and accepted forms of supply and trading of natural gas may be adopted by the parties.

Law stated - 8 December 2023

### Available services and products

**Must wholesale and retail buyers of natural gas purchase a bundled product from a single provider? If not, describe the range of services and products that customers can procure from competing providers.**

There are no express rules imposing wholesale and retail buyers of natural gas to purchase a bundled product from a single provider.

**Law stated - 8 December 2023**

## REGULATION OF LNG

### **Ownership and organisation**

**What is the ownership and organisational structure for LNG, including liquefaction and export facilities, and receiving and regasification facilities?**

The implementation of an LNG project (LNG facilities' installation and operation) is subject to licensing from the National Authority of Petroleum (ANP) and may be subject to a special regime including on fiscal, foreign exchange, customs, labour, procurement, land rights, LNG shipping and other relevant matters.

Companies willing to carry out downstream activities – including LNG installation and operation – are required to be duly incorporated under Timorese law and must have financial and organisational capacity (including duly qualified staff and adequate equipment to carry out the activities they intend to develop), have their office and place of effective management in East Timor and must have a minimum 5 per cent participating interest held by a public entity or company or by Timorese citizens, or by a company owned by Timorese citizens.

**Law stated - 8 December 2023**

### **Regulatory framework**

**Describe the regulatory framework and any relevant authorisations required to build and operate LNG facilities.**

The implementation of an LNG project (LNG facilities' installation and operation) is subject to licensing from the ANP in accordance with the Downstream Regulations.

**Law stated - 8 December 2023**

### **Pricing**

**Describe any regulation of the prices and terms of service in the LNG sector.**

No regulations have been established in relation to prices and terms of service in the LNG sector. Prices are, nevertheless, overseen by the ANP.

**Law stated - 8 December 2023**

## MERGERS AND COMPETITION

### Competition authorities

Which government body may prevent or punish anticompetitive or manipulative practices in the natural gas sector?

East Timor does not have a competition government body responsible for the prevention or punishment of anticompetitive or manipulative practices. Nevertheless, as the regulatory body for the oil and gas sector, the National Authority of Petroleum (ANP) has the right to oversee and control anticompetitive or manipulative practices in the sector.

Law stated - 8 December 2023

### Competition standards

What substantive standards does that government body apply to determine whether conduct is anticompetitive or manipulative?

There are no express rules on anticompetitive or manipulative practices in the natural gas sector. In the absence of such express rules, the ANP may refer to the standard anti-competition and oilfield best international practices.

Without prejudice to the above, according to the Downstream Regulations the ANP must safeguard loyal competition in the market and fight price manipulation, monopolies and other anticompetitive or manipulative practices.

Law stated - 8 December 2023

### Enforcement

What authority does the government body have to preclude or remedy anticompetitive or manipulative practices?

ANP enforcement powers and authority to preclude or remedy anticompetitive or manipulative practices may be ultimately limited or impaired by the lack of express, clear and binding rules on the matter. However, as the regulatory body of the sector, the ANP may have grounds to revoke or refuse the issuance or renewal of a licence and (or) take other preventive measures as a result of anticompetitive or manipulative practices.

Law stated - 8 December 2023

### Merger control

Does any government body have authority to approve or disapprove mergers or other changes in control over businesses in the sector or acquisition of production, transportation or distribution assets?

Under the Law of Petroleum Activities, changes of control (including control of the shares or voting rights or of the powers of controlling the management of a company) of a contractor



are subject to prior approval by the Ministry of Petroleum and Minerals (MPM), save consent having been previously obtained, or the terms of the corresponding authorisation or the contract expressly foreseeing that possibility. If there is a change of control without consent of the MPM occurs, the MPM may revoke the corresponding authorisation or contract with the relevant assignment, transfer, novation, merger or encumbrance, as applicable, not being considered valid nor producing any effect.

The transfer of downstream licences is subject to the ANP's prior authorisation under the Downstream Regulations. Any indirect transfer of a downstream licence by effect of a merger operation shall give the ANP the right to assess whether the holder of the licence continues to satisfy the qualification requirements for the exercise of the relevant licensed activities.

**Law stated - 8 December 2023**

### **Price restrictions**

**In the purchase of a regulated gas utility, are there any restrictions on the inclusion of the purchase cost in the price of services?**

There are no regulated gas utilities in East Timor.

**Law stated - 8 December 2023**

### **Corporate governance regulations**

**Are there any restrictions on the acquisition of shares in gas utilities? Do any corporate governance regulations or rules regarding the transfer of assets apply to gas utilities?**

There are no restrictions in respect of the acquisition of shares in gas utilities nor corporate governance regulations or rules regarding the transfer of gas utilities assets, apart from the fact that companies willing to carry out downstream activities are required to be duly incorporated under Timorese law and must have financial and organisational capacity (including duly qualified staff and adequate equipment to carry out the activities they intend to develop), have their office and place of effective management in East Timor and must have a minimum 5 per cent participating interest held by a public entity or company or by Timorese citizens, or by a company owned by Timorese citizens.

**Law stated - 8 December 2023**

## **INTERNATIONAL**

### **Foreign participation**

**Are there any special requirements or limitations on foreign companies acquiring interests in any part of the natural gas sector?**

There are no special requirements or limitations on foreign companies acquiring interests in any segment of the natural gas sector.

Without prejudice to the above, it is worth noting that:

- in the upstream sector, Timor Gap – Timor Gás & Petróleo EP and its subsidiaries have certain state participation prerogatives in exploration and production contracts, including a 20 per cent carried participating interest and right of first refusal in the transfer of exploration and production participating interests; and
- in the downstream sector, companies engaged in downstream activities must comply with several requirements including a minimum 5 per cent participating interest held by a public entity or company of the state of East Timor, by Timorese citizens or a by a legal person held by Timorese citizens and having their office and place of effective management located in East Timor.

**Law stated - 8 December 2023**

### **International agreements**

#### **To what extent is regulatory policy affected by treaties or other multinational agreements?**

Timorese regulatory policy is approved or amended to give effect to the country's commitments under international treaties and other multinational agreements adhered to by East Timor. For example, East Timor has recently been accepted to the Association of Southeast Asian Nations as an observer member and is expected to conclude its accession in full in the coming years, which will have an effect on international importing, exporting and trading of all commodities, including natural gas.

In the conduct of petroleum operations, concessionaires are statutorily required to consider and abide by the internationally accepted standards and good oilfield practices.

**Law stated - 8 December 2023**

### **Cross-border sales and deliveries**

#### **What rules apply to cross-border sales or deliveries of natural gas?**

There are no specific rules applying to cross-border sales or deliveries of natural gas. One must, nevertheless, take into consideration the legal framework governing the activities relating to the transportation, storage and handling of natural gas.

**Law stated - 8 December 2023**

## **TRANSACTIONS BETWEEN AFFILIATES**

### **Restrictions**

#### **What restrictions exist on transactions between a natural gas utility and its affiliates?**

There are no special restrictions on transactions between a natural gas utility and its affiliates, without prejudice to the general rules on transfer pricing and control of direct and indirect assignments.

Law stated - 8 December 2023

### **Enforcement**

**Who enforces the affiliate restrictions and what are the sanctions for non-compliance?**

Not applicable.

Law stated - 8 December 2023

## **UPDATE AND TRENDS**

### **Gas sector-specific regulation**

**Describe recent trends and developments in the regulation of the domestic natural gas sector.**

East Timor has not known significant recent regulatory or legislative developments in the natural gas sector. It is, however, worth mentioning that the regulatory and public policy authorities are studying the feasibility of carbon capture and storage projects in the fields off Timor's south coast, particularly the Bayu-Undan field, currently in its decommissioning phase.

The government has also been invested in developing the Tasi Mane project, a corridor of petroleum infrastructure along the southwest coast of the country, which includes:

- in Suai: the Suai Supply Base area, industrial estates, Nova Suai town, Suai Airport and a crocodile farm;
- in Betano: a refinery and petrochemical complex and petroleum city (Nova Betano), including environmental assessment;
- in Beacu: a liquid natural gas plant complex, Nova Beacu, Nova Viqueque and Viqueque Airport; and
- a highway from Suai to Beacu (the first 30 kilometres have already been built).

The use of the Suai Supply Base in exploration and production operations is expressly foreseen under the Petroleum Activities Law. Yet, the significant development costs for the Suai Supply Base have put the project on hold.

Law stated - 8 December 2023

### **Other regulatory developments of particular relevance to the gas sector**

**Describe any other recent regulatory trends and developments of particular interest to those operating in the domestic natural gas sector.**

East Timor has been accepted as an observer member of the Association of Southeast Asian Nations (ASEAN) and is expected to conclude its accession as a full member in the coming years. Under this context, legislative and regulatory harmonisation with ASEAN standards is expected to occur, particularly in the employment, anti-bribery, anticorruption and tax sectors.

**Law stated - 8 December 2023**