



REGULATION NO. 2001/30

ON THE BANKING AND PAYMENTS AUTHORITY OF EAST TIMOR

The Special Representative of the Secretary-General (hereinafter: the Transitional Administrator),

Pursuant to the authority given to him under United Nations Security Council resolution 1272 (1999) of 25 October 1999, as reaffirmed in United Nations Security Council resolution 1338 (2001) of 31 January 2001,

Taking into account UN Transitional Administration in East Timor (UNTAET) Regulation No 1999/1 of 27 November 1999 on the Authority of the Transitional Administration in East Timor, and UNTAET Regulation No. 2000/6 of 22 January 2000 on the Establishment of a Central Payments Office of East Timor,

Taking further into account the actions of the Specialized Legislative Commission of the Constituent Assembly,

For the purpose of strengthening the economy of East Timor by providing for efficient payments and sound banking systems as a further step towards creating a central bank, the Central Payments Office of East Timor is transformed into a Banking and Payments Authority of East Timor,

Promulgates the following:

A. DEFINITIONS

Section 1
Definitions

Wherever used in the present Regulation, the following terms shall have the following meanings:

(a) "*Bank*" means a juridical person engaged in the business of accepting deposits in East Timor and using such funds either in whole or in part to make extensions of *Credit* or investments for the account and at the risk of the person carrying on the business, as the same is defined in UNTAET Regulation 2000/8 of 25 February 2000 on Bank Licensing and Supervision.

(b) “*Banking and Payments Authority*” or “*BPA*” means the Banking and Payments Authority of East Timor as established in Section 2.1 of the present Regulation.

(c) “*Capital Account*” means the minimum authorized capital account of the *BPA* as set forth in Section 12 of the present Regulation.

(d) “*Central Fiscal Authority*” or “*CFA*” means the Central Fiscal Authority of East Timor established pursuant to UNTAET Regulation No. 2000/1.

(e) “*Credit*” means any direct or indirect commitment to disburse a sum of money in exchange for a right to repayment of the amount disbursed and outstanding and to payment of interest or other charges on such amount, any extension of the due date of a debt, any debt payment guarantee issued, and any commitment to acquire a right to payment of a sum of money; the term “*Credit*” shall not include bank deposits and the purchase of debt securities in the secondary market.

(f) “*East Timor Public Administration*” or “*ETPA*” means the East Timor Public Administration established pursuant to Regulation No. 2001/28 of 19 September 2001 on the Establishment of the Council of Ministers.

(g) “*Financial Institution*” means a *Bank* or other juridical person that is engaged in the business of making extensions of *Credit* or investments for the account of and at the risk of the person carrying on the business.

(h) “*General Manager*” and “*Deputy General Manager for Supervision*” and “*Deputy General Manager for Payments*” mean the members of the *Management* of the *BPA* as comprised pursuant to Section 27 of the present Regulation.

(i) “*General Reserve Account*” means the general reserve account of the *BPA* as set forth in Section 12 of the present Regulation.

(j) “*Governing Board*” means the governing board of the *BPA* as constituted pursuant to in Section 15 of the present Regulation.

(k) “*Guideline*” means a non-obligatory recommendation or policy statement issued by the *BPA* for the information of *Banks* and other parties concerned with *BPA* operations.

(l) “*Internal Auditor*” means the internal auditor of the *BPA* appointed pursuant to Section 30 of the present Regulation.

(m) “*International Accounting Standards*” means the most recent international accounting standards issued by the International Accounting Standards Committee.

(n) “*Instruction*” means an obligatory directive issued by the *BPA* in implementation of the present Regulation.

(o) “*Management*” means the management of the *BPA*, comprised of the as set forth in Section 27 of the present Regulation.

(p) “*National Assembly*” means the Constituent Assembly established pursuant to UNTAET Regulation No. 2001/2 of 16 March 2001 on the Election of a Constituent Assembly to Prepare a Constitution for an Independent and Democratic East Timor, or the subsequent legislature of democratically elected institutions of East Timor.

(q) “*Reasonable Fees*” means fees that defray the direct and indirect costs that the *BPA* incurs in providing the service or services for which the fee is charged.

(r) “*Rule*” means an obligatory directive issued by the *BPA* in implementation of the present Regulation to all *Banks* and *Financial Institutions*.

B. GENERAL PROVISIONS

Section 2

Status of the Banking and Payments Authority of East Timor

2.1 The Banking and Payments Authority of East Timor is hereby established as a distinct autonomous public legal entity, accountable for its operations to the Transitional Administrator in East Timor.

2.2 All provisions of existing UNTAET regulations, including, but not limited to UNTAET Regulations No. 2000/1, 2000/18, 2000/20, 2000/21 and 2000/35 and other laws inconsistent with the present Regulation, are hereby superseded by this Regulation to the extent of the inconsistency.

Section 3

Capacity of the BPA

The *BPA* shall have the capacity to:

- (a) enter into contracts;
- (b) to institute legal proceedings and to be subject to such proceedings; and,
- (c) for the purpose of its activities, acquire, hold, and dispose of property, whether movable or immovable.

Section 4

General Powers

4.1 The *BPA* shall exercise all powers specifically granted by the present Regulation and other applicable laws and such incidental powers as shall be necessary to carry out the powers so granted.

4.2 The *BPA* shall enjoy complete legal, operational, administrative, and financial autonomy from any other person or entity, including the government and any of its agencies, and subsidiary organs or entities, except as provided in the present Regulation, and notwithstanding UNTAET Regulations No. 2000/1, 2000/20 and 2000/21. The autonomy of the *BPA* shall be respected at all times and no person or entity shall seek to influence any

member of the *Governing Board*, member of *Management* or employee of the *BPA* in the discharge of their duties, or to interfere in the activities of the *BPA*.

4.3 The *BPA* shall retain all revenue and income generated by it or granted to it from any source, including but not limited to fee income, interest income, asset sales, seigniorage and donor funds.

Section 5 Objectives

5.1 The primary objective of the *BPA* shall be to achieve and to maintain domestic price stability.

5.2 The other objectives of the *BPA*, which shall be subordinated to the primary objective of the *BPA*, shall be to foster the liquidity and solvency of a stable market-based banking and financial system, to execute the foreign exchange policy of East Timor, and to promote a safe, sound, and efficient payment system.

5.3 Without prejudice to its primary objective, the *BPA* shall support the general economic policies of the government of East Timor.

Section 6 Specific Powers

The *BPA* shall have the following specific powers notwithstanding UNTAET Regulation No. 2000/1 or any other UNTAET law inconsistent herewith:

- (a) to recommend broad policy guidelines to the Transitional Administrator in areas under the *BPA*'s responsibility;
- (b) to issue coins, called centavos, that will have legal tender status in addition to the United States dollar, and to issue *Rules*, *Instructions* and *Guidelines* to determine the denominations and the design as well as the issuance and handling of such coins;
- (c) to formulate and implement measures for, and supervise and regulate, payments and settlement systems for transactions in domestic and foreign currency in East Timor;
- (d) to own, operate, or participate in one or more payment systems;
- (e) to act as banker to UNTAET and *ETPA*, the *Central Fiscal Authority*, and related agencies and to provide financial advice at their request;
- (f) to act as fiscal agent of UNTAET, *ETPA*, the *Central Fiscal Authority*, and related agencies;
- (g) to hold and manage all public financial resources, including the official foreign exchange reserves but excluding superannuation funds established by the Transitional Administrator;

- (h) to hold trust funds established by the Transitional Administrator out of public financial resources, including foreign exchange reserves of East Timor for special purposes;
- (i) to hold, in special circumstances or for special purposes, foreign currency deposits of *Banks*;
- (j) to ensure an adequate supply of banknotes and coins for the settlement of cash transactions;
- (k) to maintain a depository for safe keeping of currency and securities;
- (l) to license, supervise, and regulate *Banks*;
- (m) to license, supervise and regulate currency exchange activities in accordance with UNTAET Regulation No. 2000/5; and
- (n) to conduct regular economic and monetary analysis of the East Timor economy, make public the results, and submit proposals and measures to UNTAET and *ETPA* on the basis of such analysis.

Section 7 Cooperation with the Public Administration

7.1 The *BPA* shall cooperate with UNTAET and *ETPA* and their related agencies in pursuing its objectives.

7.2 The *BPA* shall provide general information as requested from time to time by *ETPA*, the *Central Fiscal Authority* and other entities of UNTAET and *ETPA* with respect to payments, banking and financial matters and they shall provide information to the *BPA* from time to time as the *BPA* may request concerning macroeconomic and financial matters. Such information shall include pertinent data on the receipt by the *BPA* of any funds from any source.

Section 8 Technical Cooperation

8.1 The *BPA* may participate in meetings of international councils and organizations concerning technical aspects of payment systems, *Bank* supervision and the other matters that are within its fields of competence.

8.2 The *BPA* may provide banking and payment services for the benefit of foreign governments, foreign banks and foreign monetary authorities and for public international organizations and other international institutions.

Section 9 Public Information

The *BPA* shall inform the public, UNTAET, *ETPA* and the *Central Fiscal Authority* on a regular and timely basis of its analysis of macroeconomic and financial market developments and on related statistical information.

Section 10 Offices

The head office of the *BPA* shall be in Dili. The *BPA* may establish branches, liaison offices, and operations facilities at places or in countries where it deems necessary.

Section 11 Accounts

11.1 The *BPA* may open accounts on its books only on behalf of the *Central Fiscal Authority* and other entities of UNTAET and *ETPA*, *Banks* lawfully operating in East Timor, foreign banks, public international *Financial Institutions*, and donor organizations. The *BPA* may not open accounts for natural persons or enterprises.

11.2 All depository account liabilities of the *BPA* shall have corresponding assets as provided in Section 48 of the present Regulation. The *BPA* shall specify the terms and conditions of its liabilities.

11.3 The *BPA* may open accounts in East Timor and abroad for its normal operational and financial activities, including for the purpose of holding and managing the official foreign exchange reserves of East Timor.

C. FINANCIAL PROVISIONS

Section 12 Capital

12.1 The authorized capital of the *BPA* shall consist of the *Capital Account* and the *General Reserve Account*.

(a) the *Capital Account*, representing the minimum authorized capital of the *BPA*, shall be United States dollars twenty million (US\$20,000,000).

(b) the *General Reserve Account* shall be equivalent to the difference between five percent of the aggregate amount of the *Credit* balances of all accounts maintained on the books of the *BPA* by account holders shown on the balance sheet of the *BPA* for the end of each financial year and US\$20,000,000.

(c) the capital of the *BPA* shall not be subject to lien or encumbrance of any kind.

12.2 Notwithstanding UNTAET Regulation No. 2000/20 and subject to Section 12.4 of the present Regulation, the authorized capital of the *BPA* may be increased by such amounts as may be determined by the *BPA* and approved by the Transitional Administrator; provided, however, no reduction of capital shall be effected except by promulgation of an UNTAET Regulation by the Transitional Administrator.

12.3 Upon the independence of East Timor, the competent authorities defined by the constitution may review the authorized capital and the mode of funding the capital.

Section 13

General and Supplementary Reserves, and Determination and Allocation of Income

13.1 Notwithstanding UNTAET Regulation No. 2000/1, for each financial year the net profit or the net loss of the *BPA* shall be calculated in accordance with *International Accounting Standards*.

13.2 Notwithstanding UNTAET Regulations No.2000/1, 2000/20 and 2000/21 and any other law inconsistent with the present Regulation, net income of the *BPA* in each year shall be allocated:

(a) first, to the *General Reserve Account* in such amounts that the sum of the *Capital Account* and the *General Reserve Account* shall be not less than an amount equal to five percent of the aggregate amount of the *Credit* balances of all accounts maintained on the books of the *BPA* by account holders shown on the balance sheet of the *BPA* at the end of each financial year;

(b) second, to a supplementary reserve account (the *Supplementary Reserve Account*) until such time as the sum of the *Capital*, *General Reserve* and *Supplementary Reserve Accounts* is equal to seven percent of the aggregate amount of the *Credit* balances of all accounts maintained on the books of the *BPA* by account holders shown on the balance sheet of the *BPA* for the end of each financial year; and

(c) third, any balance of net income shall be transferred to the *Central Fiscal Authority* as revenue for the general budget of *ETPA*.

13.3 In the event of a net loss of the *BPA* in a year, the loss shall be charged first to the *Supplementary Reserve Account* and, upon the depletion thereof, to the *General Reserve Account*.

13.4 Whenever:

(a) on a monthly pro forma balance sheet of the *BPA* the value of its assets falls below the sum of its liabilities and its unimpaired authorized capital, or

(b) the net profit of the *BPA* for any financial year is insufficient to increase the *Capital Account* and *General Reserve Account* of the *BPA* to a level equivalent to five percent of the aggregate amount of the *Credit* balances of all accounts maintained on the books of *BPA* by account holders shown on the balance sheet of the *BPA* for the end of that financial year,

within one month after publication of that balance sheet, after consultation with *BPA* and the *Central Fiscal Authority*, the Transitional Administrator shall, notwithstanding UNTAET Regulations No. 2000/20 and 2000/21, instruct the *Central Fiscal Authority* to make a capital contribution to the *BPA* within such one-month period in such amount or amounts as shall be necessary to remedy this deficit.

Section 14
Annual Budget

Except as specified in Section 69.1 of the present Regulation, and notwithstanding UNTAET Regulations No. 2000/1, 2000/20 and 2000/21 and any other law inconsistent with the present Regulation, all proposed material expenditures of the *BPA* shall be reported in an annual budget to be approved by the *Governing Board* and submitted for information to the *Central Fiscal Authority*. All revenue and income generated by the *BPA* or granted to the *BPA* from any source (including but not limited to fee income, interest income, asset sales, seigniorage and donor funds, as generally described in Section 4.2 of the present Regulation) shall be reported in any such budget.

D. ORGANIZATION AND ADMINISTRATION

Section 15
Organization

The *BPA* shall have a governing board, a management and a staff.

Section 16
The Governing Board

16.1 The *Governing Board* shall formulate policies for the operations of the *BPA* and supervise their implementation.

16.2 The *Management* shall report, not less than ten times each year, to the *Governing Board* on the conduct of its operations and policies, on the soundness of the financial system, and on the state of the money, capital and foreign exchange markets, including all events and conditions that have or are expected to have a significant effect on the administration or operations of the *BPA* or on the conduct of its policies or on the financial system or on the before-mentioned markets.

Section 17
Powers of the Governing Board

The *Governing Board* shall have the following powers, notwithstanding UNTAET Regulations No. 2000/1, 2000/20 and 2000/21 and any other law inconsistent with the present Regulation:

- (a) to determine the policies for the execution of the powers of the *BPA* described in Section 6 of the present Regulation and to supervise their implementation by the *Management* and staff;
- (b) to adopt all *Rules, Instructions* and *Guidelines* issued by the *BPA*;
- (c) to approve all reports and recommendations that the *BPA* makes to UNTAET or *ETPA*;
- (d) to make recommendations to the Transitional Administrator on the *BPA*'s participation in technical consultations with international organizations;

- (e) to adopt the by-laws of the *BPA*;
- (f) to determine the organization of the *BPA*;
- (g) to approve the appointment of the *Internal Auditor*;
- (h) to establish and close branch offices and agencies of the *BPA*;
- (i) to determine the terms and conditions of employment of the *BPA* agents and correspondents;
- (j) to determine the terms and conditions of employment of *BPA* employees subject to approval of the general terms and conditions, including the scales of remuneration, by the Transitional Administrator;
- (k) to determine the accounting policies of the *BPA* and to approve the periodic reports and financial statements of the *BPA*;
- (l) to decide on the incurring of debt in material amounts by the *BPA* and the terms and conditions of such debt;
- (m) to determine the categories of assets that shall be suitable for investment of the *BPA* 's financial resources; and
- (n) to approve or deny applications for *Bank* licenses and to revoke *Bank* licenses.
- (o) to determine denominations and design of coins and their issuance and handling.

Section 18
Composition of the Governing Board

18.1 The *Governing Board* shall be composed of seven members, at least four of whom shall be East Timorese, appointed by the Transitional Administrator and comprised of the Chairperson, the *General Manager*, the *Deputy General Manager for Supervision* and the *Deputy General Manager for Payments*, and three other persons.

18.2 *Governing Board* members shall be persons of recognized integrity and professional experience in financial, banking, or legal matters.

18.3 The term of each member of the *Governing Board* shall be six years, provided that, as far as practicable, the completion dates of the terms of individual members shall be spread evenly over each six year period. *Governing Board* members shall be eligible for reappointment, unless a ground for removal under Section 21 of the present Regulation would apply to them.

18.4 The members of the *Governing Board* appointed prior to independence shall tender their resignation upon the independence of East Timor.

18.5 The *Governing Board* shall, however, continue in office until the competent authority as defined by the constitution appoints a new *Governing Board*.

Section 19

Compensation of Members of the Governing Board

19.1 Members of the *Governing Board* who do not hold full-time *Management* positions in the *BPA* shall receive compensation similar to that received by persons holding non-executive positions with supervisory or managing boards of large *Banks* as recommended by the *General Manager* and approved by the Transitional Administrator.

19.2 Compensation received, or the renouncement of such compensation, by members of the *Governing Board* in relation to their service to the *BPA*, other than as described in Section 19.1 of the present Regulation, shall be disclosed in writing to the Transitional Administrator.

Section 20

Ineligibility to Serve on the Governing Board

No person shall serve on the *Governing Board* while he or she is a member of the *National Assembly*, or the Council of Ministers, an official of a ministry, or an official or employee of a *Bank* operating through offices in East Timor or is a beneficial owner of five percent or more of an equity interest in a *Bank*. For the purpose of this Section 20, an officer or employee of the university or any organization or institution independent of UNTAET or *ETPA* shall not be deemed to be an official or employee of a ministry.

Section 21

Disqualification and Removal of Members of the Governing Board

21.1 A member of the *Governing Board* shall be removed from the Board by the Board, or by the Transitional Administrator where the Board fails to act, if he or she:

(a) becomes ineligible to serve on the *Governing Board* pursuant to Section 20 of the present Regulation;

(b) has been convicted of an offense which carries a sentence of imprisonment with or without the option of a fine;

(c) has been a debtor in a bankruptcy or insolvency proceeding;

(d) has, on the grounds of personal misconduct, been disqualified or suspended by a competent authority from practicing a profession; or

(e) has been found by a majority of the members of the *Governing Board* to have engaged in illegal activity or serious misconduct in office.

21.2 In addition to the provisions of Section 21.1 of the present Regulation, any member of the *Governing Board* may be removed from the Board by the Board or by the Transitional Administrator if the Board fails to act, upon a finding and recommendation by a majority of the members of the *Governing Board* that the member:

(a) is unable to perform the functions of such an office because of an infirmity of body or mind that has lasted for more than two months; or

(b) has been absent from three consecutive meetings of the *Governing Board* without, in the opinion of the *Governing Board*, justifiable reason.

Section 22
Resignation

Members of the *Governing Board* may resign by giving not less than one month's notice in writing to the Transitional Administrator.

Section 23
Vacancy on the Governing Board

Any vacancy on the *Governing Board* shall be filled by the appointment of a new member of the *Governing Board* in accordance with Section 18 of the present Regulation.

Section 24
Meetings of the Governing Board

24.1 The meetings of the *Governing Board* shall be chaired by the Chairperson of the *Governing Board* or, in his or her absence, by another member of the *Governing Board*.

24.2 The *Governing Board* shall meet as often as the business of the *BPA* may require but not less frequently than once each calendar month.

24.3 Meetings of the *Governing Board* shall be convened by the *General Manager*; and may also be convened at the written request of any two members of the *Governing Board*.

24.4 *Governing Board* meetings shall be convened by communicating the time, venue and agenda of the meeting to all members of the *Governing Board* at least five working days before the date set for the meeting except in the event of an emergency when a meeting may be convened at shorter notice.

24.5 Each member of the *Governing Board* shall have one vote and in the event of a tie d vote, the Chairperson shall cast a tie-breaking vote.

24.6 A quorum for the conduct of business at any meeting of the *Governing Board* shall consist of five members of the *Governing Board*.

24.7 Except as otherwise provided by the present Regulation, decisions of the *Governing Board* shall be adopted by a simple majority of those present and voting, however, the by-laws of the *BPA* may permit meetings and voting by teleconferencing or, in exceptional circumstances, by tested telex or other tested electronic means of communication.

24.8 Subject to the quorum requirement of Section 24.6 of the present Regulation, no act or proceeding of the *Governing Board* shall be invalidated merely by reason of the existence of a vacancy or vacancies on the *Governing Board*.

24.9 All acts done by a person acting in good faith as a member of the *Governing Board* shall be valid notwithstanding that some defect in that person's appointment, eligibility or qualification is afterwards discovered.

Section 25

Proceedings of Governing Board Meetings

25.1 The proceedings of the meetings of the *Governing Board* shall be confidential. The *Governing Board* may decide to make the outcome of its deliberations on any matter public and shall publish promptly its decisions on general policy matters.

25.2 Minutes of each *Governing Board* meeting shall be signed by the Chairperson or the presiding member and by the Secretary of the *Governing Board*.

25.3 The Secretary of the *Governing Board* shall be appointed by the *General Manager* from among the senior staff of the *BPA* to attend all Board meetings and keep all *BPA* records and execute such other functions as described in the *BPA* by-laws. The Secretary shall not be a member of the *Governing Board*.

Section 26

Disclosure by Members of the Governing Board; Fiduciary Duties

26.1 Members of the *Governing Board* shall periodically disclose to the Transitional Administrator in full significant financial interests which he or she or any person with whom he or she has family, business, or financial connections may directly or indirectly possess and such disclosures shall comply with *Guidelines* adopted by the *Governing Board*.

26.2 Whenever any matter related to such interest is before the *Governing Board*, the member concerned shall disclose his interest at the beginning of the discussion and shall not participate in the discussion and decision on such matter; however, his or her presence shall be counted for the purpose of constituting a quorum.

26.3 *Governing Board* members and employees of the *BPA* have a fiduciary duty to the *BPA* and to the *BPA*'s customers to place the *BPA*'s interests and its customers' interests before their own pecuniary interest.

Section 27

Composition of the Management

The *Management* shall consist of the *General Manager*, the *Deputy General Manager for Supervision*, the *Deputy General Manager for Payments* and a chief accountant.

Section 28

Subsequent Service

Former members of the *Governing Board* shall not serve in a professional capacity in a *Bank* in East Timor during a period of one year immediately following their departure from the *BPA*.

Section 29 Management

29.1 The *General Manager* shall serve as the chief executive officer of the *BPA* in charge of the day-to-day business of the *BPA*. In the absence of the *General Manager* or otherwise unable to act, the *Deputy General Manager for Supervision* or, in his absence the *Deputy General Manager for Payments* shall act as chief executive officer of the *BPA*.

29.2 The *General Manager* shall be responsible to the *Governing Board* for the execution of its decisions and for the direction and control of the administration and operations of the *BPA*.

29.3 All powers that are not specifically reserved for the *Governing Board* shall be vested in the *General Manager*. Within the limitations of his powers, the *General Manager* shall have the authority to take all actions required or deemed advisable for the administration or operations of the *BPA*, including without limitation entering into contractual commitments on behalf of the *BPA*, appointing the employees, agents and correspondents of the *BPA*, and generally representing the *BPA*. The *General Manager* may, with the approval of the *Governing Board*, delegate some of his or her powers to other employees of the *BPA*.

29.4 The *Deputy General Manager for Supervision* shall be responsible to the *General Manager*. Notwithstanding Section 17 of the present Regulation, the *Deputy General Manager for Supervision* shall have the authority to take enforcement measures, including instructing any *Bank* to take remedial actions, appointing a receiver for a *Bank*, or imposing penalties provided in this Regulation or other applicable laws or regulations on *Bank* licensing and supervision and regulation.

29.5 The *Deputy General Manager for Payments* shall be responsible to the *General Manager*.

Section 30 Internal Auditor

30.1 An *Internal Auditor* of the *BPA* shall be appointed by the *General Manager* with the approval of the *Governing Board*. The *Internal Auditor* shall be a person who has qualifications similar to those that make him or her eligible to serve on the Board.

30.2 The *Internal Auditor* may resign from office on giving not less than two months notice to the *General Manager*. The *Internal Auditor* shall be removed from office only by a decision of the Transitional Administrator or the *Governing Board* that is supported by one or more of the grounds of removal specified in Section 21 of the present Regulation.

30.3 The duties of the *Internal Auditor* shall include:

- (a) evaluating the quality of existing and proposed management and financial control systems;
- (b) testing the operation of those systems and the reliability and integrity of information and transactions generated;

- (c) testing the adequacy of controls for safeguarding the assets of the *BPA* and, when appropriate, verifying the existence of assets;
- (d) testing compliance with laws, regulations, administrative directions, *Rules, Instructions, Guidelines*, orders and policies governing the *BPA*'s operations;
- (e) conducting reviews of the effective and efficient use of the *BPA*'s resources and making appropriate recommendations to *Management*; and
- (f) performing special reviews when requested by *Management* and liaising with the auditors of the *BPA*.

Section 31
Staff

31.1 Staff of the *BPA* shall hold no other office of employment, unless the *Governing Board* shall otherwise decide.

31.2 The *Governing Board* shall adopt the terms and conditions of employment subject to the provisions of Section 17(j) of the present Regulation that shall include provisions to preclude conflicts of interest.

31.3 In the employment of staff, the *BPA* shall apply non-discriminatory personnel policies.

Section 32
Employees, Agents and Correspondents

32.1 The *General Manager* shall appoint and terminate the appointment of the employees, agents and correspondents of the *BPA*, within the limits and in accordance with the general terms and conditions of employment adopted by the *Governing Board*.

32.2 No salary, fee, wage, or other remuneration or allowance paid by the *BPA* shall be computed by reference to the net income, net profits or other revenues of the *BPA*.

Section 33
Conflict of Interest

33.1 The *Management* and *Internal Auditor* shall devote the whole of their professional services to the *BPA*, and shall not occupy any other office or employment, whether remunerated or not, except as nominee of the *BPA* and for occasional educational and civic endeavors.

33.2 No member of the *Governing Board* or staff of the *BPA* shall accept any gift or credit, from or on behalf of any person with whom he or she has family, business, or financial connections, if the acceptance thereof would result, or give the appearance of resulting, in a diminishment of impartial devotion to his or her duties to the *BPA*.

Section 34
Secrecy

34.1 No person who serves or has served as a member of the *Governing Board* or staff or as an auditor, agent or correspondent of the *BPA* shall, in a manner unauthorized by the present Regulation permit access to, disclose or publicize nonpublic material information which he has obtained in the performance of his *BPA* duties or use such information, or allow such information to be used, for personal gain.

34.2 Notwithstanding Section 34.1 of the present Regulation, such persons may disclose nonpublic material information outside the *BPA*, in accordance with procedures established by the *BPA*, but only if:

- (a) in accordance with the express or implied consent of the person about whom the information relates;
- (b) in performance of a duty to the public to make disclosure, including to aid law enforcement and on the order of a court or other person of competent authority;
- (c) given to the auditors of the *BPA*;
- (d) given to *Financial Institution* supervisory authorities and staff of public international *Financial Institutions* in performance of their official duties; or
- (e) the interest of the *BPA* itself in legal proceedings requires disclosure.

E. RELATIONS WITH ENTITIES OF UNTAET AND ETPA

Section 35
Banker, Financial Adviser, Fiscal Agent

35.1 The *BPA* shall act as banker and as financial adviser to, and as fiscal agent of, the *Central Fiscal Authority* and other entities of UNTAET and *ETPA*; provided, however, that no transaction carried out by the *BPA* may serve to extend credit to or for the benefit of any public authority or any other physical or legal entity.

35.2 The *BPA* shall have the duty to render advice to UNTAET and *ETPA* on significant financial and banking matters that relate to the *BPA* objectives or that otherwise are within its fields of competence.

35.3 The *BPA* shall be consulted by the *Central Fiscal Authority* on the occasion of the preparation of the budget.

Section 36
Depository and Cashier

The *BPA* may accept deposits, in any currency, from UNTAET, *ETPA*, the *Central Fiscal Authority*, and other of its entities. As depository, the *BPA* shall receive and disburse moneys and keep account thereof and provide other financial services related thereto. The *BPA* shall pay to the limits of the deposited amounts against payment orders concerning such

accounts. The *BPA* shall pay interest on such deposits at market rates after deduction of *Reasonable Fees*.

Section 37
Fiscal Agency Function

The *BPA* may, on such terms and conditions as it shall agree with the UNTAET and *ETPA*, act as fiscal agent for the account of the *Central Fiscal Authority* and such of its agencies and instrumentalities as UNTAET may determine.

Section 38
Information to be Provided

The *BPA* shall receive from the *Central Fiscal Authority* and other entities of UNTAET and *ETPA* all such financial and economic information and documents as the *BPA* shall request for the carrying out of its functions.

F. RELATIONS WITH BANKS AND PAYMENT SYSTEMS FUNCTIONS

Section 39
Payments, Clearing and Settlement Facilities

The *BPA* may organize, own, operate, supervise and regulate systems for payment orders and for clearance and settlement of interbank payments, in currencies it determines, whether or not legal tender, including payments by check and other payment instruments, and shall establish such procedures and issue such *Rules*, *Instructions* and *Guidelines* relating thereto as it shall deem appropriate.

Section 40
Banks' Accounts

Each *Bank* operating in East Timor that wishes to participate in a payment, clearing, or settlement system shall open and maintain an account on the books of the *BPA*, on such terms and conditions as the *BPA* shall specify, and shall provide promptly as required to the *BPA* such information concerning its operations and financial condition as the *BPA* shall prescribe by *Rules*.

Section 41
Information Network

The *BPA* may establish and maintain an information network for the financial system of East Timor.

Section 42
Supervision and Regulation

The *BPA* shall be exclusively responsible for the licensing of *Banks* in East Timor and for their supervision and regulation and shall be empowered:

(a) to issue such *Rules*, *Instructions* and *Guidelines* and to take such other actions, including revoking *Bank* licenses, and assuming control of a failed *Bank* as it shall deem

necessary or advisable in order to execute, its powers and responsibilities under the present Regulation and other applicable laws;

(b) to cause an inspection to be made by any of its officers or by any other qualified person appointed to that effect, of any *Bank* and to examine its books, records, documents and accounts for the purpose of ascertaining the condition of its affairs and whether it is in compliance with the present Regulation, or any *Rule, Instruction, Guideline* and other applicable law on *Bank* licensing and supervision;

(c) to require a director, officer or employee of a *Bank* to furnish to the *BPA* such information as requested for the purpose of enabling the *BPA* to supervise and regulate *Banks*; and

(d) to cause any *Bank* to take remedial actions or to impose penalties provided in the present Regulation or any *Rule, Instruction, Guideline* or other applicable law on *Bank* licensing and supervision if there has been an infraction by a *Bank* or by one or more of its officers or directors with respect to the violation of a provision of the present Regulation or any *Rule, Instruction, Guideline* or other applicable law or a directive of the *BPA* pursuant thereto or the violation of any condition or restriction attached to an authorization or approval issued to a *Bank* by the *BPA* or the violation of any *Rule, Instruction* or *Guideline* issued by the *BPA*.

Section 43

Prudential Rules, Instructions and Guidelines

43.1 Each *Bank* shall comply with the *Rules, Instructions* and *Guidelines* of the *BPA* concerning: its balance sheet accounts, off-balance-sheet commitments, and income and expense statement items with respect to ratios among accounts or items and prohibitions, restrictions or conditions concerning specific types or forms of *Credit* or investments, or of *Credit* or investments that exceed a certain amount or forms of commitments of a risk-bearing nature or matching as to maturity of assets and liabilities and off-balance-sheet items or open foreign currency, swap, option or similar positions or access to the payment system.

43.2 *Banks* that engage in similar activities and that are in comparable financial condition shall be subject to similar *Rules, Instructions* and *Guidelines*.

Section 44

Submission of Information

44.1 *Banks* shall furnish to the *BPA* such information concerning their operations and financial condition as the *BPA* may require.

44.2 The *BPA* may publish such information and data in whole or in part in aggregate form for classes of *Banks* determined in accordance with the nature of their business.

G. FOREIGN EXCHANGE REGULATION AND OPERATIONS

Section 45 Currency Exchange Dealers

The *BPA* shall with respect to exchange currency dealers have the power to:

- (a) issue *Rules, Instructions* and *Guidelines* governing foreign exchange transactions of individuals, non-financial enterprises, *Financial Institutions*, and agencies and instrumentalities of the UNTAET;
- (b) supervise and regulate currency exchange dealers, including *Banks*;
- (c) set limits on foreign exchange positions of currency exchange dealers, including *Banks*; and
- (d) establish the method for determining the value of currencies in relation to other currencies.

Section 46 Reporting of Foreign Exchange Transactions

Licensed currency exchange dealers, including *Banks*, may be required by the *BPA* to report periodically to the *BPA* on their operations, including their open foreign exchange positions, on a currency-by-currency basis and the *BPA* shall prescribe the reporting forms and supporting documents to be submitted.

Section 47 Dealing in Foreign Exchange

The *BPA* may:

- (a) buy, sell, or deal in gold coins or bullion and other precious metals;
- (b) buy, sell, or deal in foreign exchange, using for these purposes assets described in Section 48 of the present Regulation; and
- (c) determine the rate at which it will buy, sell or deal in foreign currencies.

Section 48 Foreign Exchange Assets

48.1 The *BPA* shall hold on its balance sheet and manage assets denominated in United States dollars and currencies of foreign exchange, consisting of any or all of the following assets:

- (a) gold and other precious metals;
- (b) foreign exchange in the form of banknotes and coins held within East Timor or bank balances held abroad in foreign currencies in banks whose short term liabilities are rated in one of the two highest categories by internationally recognized credit rating agencies; and

(c) debt securities issued or guaranteed by the United States maturing within 180 days that are denominated and payable in United States dollars.

48.2 The primary objectives in selecting foreign exchange assets shall be safety of principal and liquidity. Subject to these objectives, such assets shall be selected to maximize earnings.

48.3 Where a Trust Fund is established from public financial resources, the trustees may direct the *BPA* on the investment policy or make portfolio decisions, provided the *BPA* shall in no event be liable for any depletion in the fund that may result from the execution of such investment policy or portfolio decisions of the trustees.

Section 49
Clearing and Payments Agreements

The *BPA* may, either for its own account or for the account and by order of the *Central Fiscal Authority*, enter into clearing and payments agreements or any other contracts for the same purpose with public and private central clearing institutions domiciled abroad.

H. CURRENCY MANAGEMENT

Section 50
Currency and Legal Tender

50.1 The monetary unit of East Timor shall be the United States dollar.

50.2 The *BPA* shall have the exclusive right to issue centavos, including numismatic coins, which shall be legal tender within East Timor with the same legal tender status as U.S. dollar banknotes and coins; and

(a) the *BPA* shall exchange centavos coins for United States dollars, and United States dollars for centavos coins, at the rate of one hundred centavos for one United States dollar;

(b) United States dollar banknotes and coins, and centavos coins not withdrawn from circulation by *BPA*, shall be legal tender at their face value for the payment of public and private debt;

(c) coins that are legal tender shall be accepted, at their face value, in payment of all public and private debts in East Timor;

(d) the *BPA* shall determine by specific Rule the face value and features of the centavos coins;

(e) the *BPA* shall arrange for the minting of centavos, for the security and safekeeping of United States banknotes and United States coins and centavos;

(f) the *BPA* shall arrange for the custody and destruction, as necessary, of centavos and of dies;

(g) the *BPA* shall arrange for the custody and repatriation of retired U.S. banknotes and coins;

(h) the *BPA* may decline to exchange banknotes or coins if their designs are illegible, misshapen or perforated, or if more than forty percent of their surface has been lost, and such currency shall be withdrawn without indemnity to the owner, except that the *BPA* may grant compensation in whole or in part;

(i) the *BPA* shall not be required to provide any compensation for banknotes or coins that were lost, stolen or destroyed and may confiscate without compensation any banknotes that have been altered in their external appearance, including in particular banknotes that have been written on, painted on, overprinted, stamped or perforated, or to which adhesive matter has been applied; and

(j) the *BPA* shall directly administer the currency reserve inventory, make issue plans, and ensure the regular supply of banknotes and coins, in order to meet the currency requirements of the economy.

50.3 Any person that falsely makes, forges, counterfeits or alters any banknote or coin that is legal tender, whether in East Timor or abroad, or any check, security or payment card, whether denominated in United States dollar or in another currency or possesses, transports or issues any such banknote, coin, check, security or payment card with the knowledge that it was falsely made, forged, counterfeited or altered or manufactures, possesses or transports any plate, stone, paper, die or other object or substance with the knowledge that it was destined to be used in falsely making, forging, counterfeiting or altering any such banknote, coin, check, security or payment card shall be guilty of a criminal offense.

50.4 (a) Any reproduction of banknotes, coins, checks, securities or payment cards, whether denominated in United States dollar or in another currency, and the creation of any objects that by their design imitate any such banknote, coin, check, security or payment card, shall require the prior written authorization of the *BPA*; provided, however,

(b) that the *BPA* may issue *Rules* authorizing the publication of photographs of currency.

50.5 The *BPA* may issue *Rules* for the prevention and combating of counterfeiting that require action by *Banks*.

50.6 A person who breaches the provisions of this Section 50 may be subjected to a fine as provided for in *Instructions* issued by the *BPA*.

50.7 The *BPA* shall provide, upon payment of *Reasonable Fees*, custodial facilities to *Financial Institutions* and the public at large for banknotes and coins in currencies that it determines.

Section 51 Currency Reserve Inventory

The *BPA* shall administer a currency reserve inventory in such currencies as it deems appropriate for the settlement of domestic and international transactions to ensure the regular

supply of currency to meet the requirements of the economy of East Timor and may charge *Reasonable Fees* for this service.

I. FINANCIAL STATEMENTS, AUDIT, AND REPORTS

Section 52 Financial Year

The financial year of the *BPA* shall begin on the first day of July and end on the last day of June.

Section 53 Accounting Practices

53.1 The *BPA* shall maintain accounts and records in accordance with *International Accounting Standards* to reflect its operations and financial condition.

53.2 The financial statements of the *BPA* shall include separate accounts for a General Reserve, Supplementary Reserves, provisions for bad and doubtful debts and depreciation in assets.

Section 54 Financial Statements

The *BPA* shall prepare financial statements for each of its financial years. The financial statements shall include a balance sheet, a profit and loss statement, and related statements.

Section 55 Independent Audit

The accounts, records, and financial statements of the *BPA* shall be audited by internationally recognized independent auditors recommended by the *Governing Board* and approved by the Transitional Administrator. The Transitional Administrator may dismiss the *BPA*'s independent auditors for good cause.

Section 56 Transmittal and Publication of Statements and Reports

56.1 Within four months after the close of each of its financial years, the *BPA* shall submit to the Transitional Administrator and shall present, for informational purposes, to the *National Assembly*:

- (a) financial statements certified by its external auditors;
- (b) a report of its operations and affairs during that year; and
- (c) a report on the state of the economy.

56.2 The *BPA* shall prepare, as soon as possible after the last working day of each calendar quarter, but in any event within 15 working days, summary financial statements as of the end of that quarter.

56.3 Upon their completion, the *BPA* shall publish the financial statements and reports described in Sections 56.1 and 56.2 of the present Regulation and the *BPA* may publish such other reports and studies on financial and economic matters as it may deem appropriate.

56.4 Each year, *BPA* shall publish a policy statement that shall contain:

(a) a description of, and an explanation of the reasons for, the policies to be followed by *BPA* during the next year;

(b) a description of the principles that *BPA* proposes to follow in the adoption and execution of its policies during the next year; and

(c) a review and assessment of the adoption and execution by *BPA* of its policies during the previous year.

J. SPECIFIC PROVISIONS

Section 57

Consultations on Regulatory Proposals

The *BPA* shall be consulted by the UNTAET and *ETPA* on any proposals with respect to matters that relate to the *BPA*'s objectives or that otherwise are within its fields of competence, before they are finalized.

Section 58

Preferential Right

58.1 The *BPA* shall have an unconditional preferential right to satisfy each of its claims from any cash balances and other assets that it holds for its own account or for the account of the debtor concerned, whether as collateral to secure its claims or otherwise, at the time that such claim becomes due and payable.

58.2 The *BPA* may exercise its preferential right only by keeping cash balances and by selling other assets against a reasonable price and paying itself from the proceeds of the sale after deducting there from the costs associated with the sale. No court action shall be required for, and no competing claim shall be permitted to delay, the exercise by the *BPA* of its preferential right in accordance with the provisions of this Section 58, not even claims of ownership or other previously acquired rights, unless there shall be clear and convincing evidence that staff of the *BPA* knew or should be considered to have known at the time that the assets came into the possession of the *BPA* that the assets did not belong to the debtor concerned.

Section 59
Prohibited Activities

59.1 Except as otherwise specifically authorized by the present Regulation or any subsequent regulation or administrative direction, the *BPA* shall not:

- (a) grant any *Credit* or make any monetary or financial gift;
- (b) engage in commerce, purchase the shares of any corporation or company, including the shares of any *Financial Institution*, or otherwise have an ownership interest in any financial, commercial, agricultural, industrial, or other undertaking; or
- (c) acquire by purchase, lease, or otherwise any real rights in or to immovable property, except as it shall consider necessary or expedient for the provision of premises for the conduct of its administration and operations or similar requirements incidental to the performance of its functions under the provisions of the present Regulation.

59.2 Notwithstanding any other provision of the present Regulation, the *BPA* may:

- (a) make loans to, or have an ownership share or otherwise participate in, any organization that is engaged in activities that are required for the proper discharge of the *BPA's* own functions or responsibilities; and
- (b) acquire, in the course of satisfaction of debts due to it, any interests or rights referred to in Section 59.1(b) of the present Regulation; provided, however, that all such interests or rights so acquired shall be disposed of at the earliest suitable opportunity.

Section 60
Collection of Statistical Information

60.1 The *BPA* shall collect the statistical information required for the achievement of its objectives and the carrying out of its tasks and may engage in technical cooperation to this end with competent authorities from outside East Timor.

60.2 The *BPA* shall define the statistical information so required and the form in which such information is to be provided to the *BPA*, the persons that are to provide such information to the *BPA*, and the confidentiality regime that shall apply to statistical information provided to the *BPA*.

60.3 The *BPA* shall contribute to the harmonization of rules and practices governing the collection, compilation and distribution of statistics within its fields of competence.

Section 61
Immunity from Taxation

Notwithstanding UNTAET Regulations No. 2000/18 and 2000/35 and any other law inconsistent with the present Regulation, the *BPA* shall be exempt from all taxes on its income and all duties, excise and other taxes and levies on the purchase and importation of currency.

Section 62
Regulatory and Inspection Powers

62.1 The *BPA* shall be empowered to issue such *Rules*, *Instructions* or *Guidelines* to visit such offices of *Banks*, to examine such accounts, books, documents and other records, and to take such other action as the *BPA* shall deem necessary or advisable to give effect to the provisions of the present Regulation.

62.2 All *Rules*, *Instructions* and *Guidelines* issued by the *BPA* that apply to more than one institution shall be published and shall take effect on the date of such publication or on such later date as such directive or guideline shall specify. The *BPA* shall maintain a public register of such *Rules*, *Instructions* and *Guidelines*.

62.3 *Rules* and *Instructions* of the *BPA* shall be final determinations in administrative proceedings.

Section 63
Standards of Good Administration

63.1 The *BPA* shall use the powers given to it under the present Regulation equitably and uniformly and in accordance with sound administrative practices. It shall refrain from using any such power to serve an objective for which the power was not given or in excess of what shall be required to achieve the objective for which the power was given.

63.2 The decisions of the *BPA* taken pursuant to the present Regulation shall be impartial and shall be motivated only by objective and rational considerations and they shall be executed with fairness and restraint.

Section 64
Trust Accounts

The *BPA* shall be authorized to open, and maintain on its books, trust accounts, the assets and liabilities of which shall be segregated from the other assets and liabilities of the *BPA*. The assets of each such account shall be available only to meet liabilities of that account and no other assets of the *BPA* shall be available to meet liabilities of such account.

Section 65
Judicial Review

In any court or arbitration proceeding arising out of or in connection with the present Regulation against the *BPA* or an officer, employee, or agent of the *BPA*:

(a) the sole question before the court or arbitration court in determining whether the defendant acted unlawfully shall be whether the defendant acted in an arbitrary or capricious manner in light of the facts and the law or *Rules*, *Instructions* or *Guidelines* at issue; and

(b) an administrator, employee, or agent of the *BPA* shall not be liable for damages or otherwise liable for acts or omissions performed pursuant to and in the course of the duties and responsibilities unless such acts or omissions constitute intentional wrongful conduct; and

(c) the action in question shall continue without restriction during the period of an appeal and any further appeal or other judicial proceedings related to the appeal.

K. MISCELLANEOUS PROVISIONS

Section 66 Interpretation

66.1 The headings in the present Regulation are used solely for convenience of reference and are not a part of and are not intended to govern, limit, or aid in the construction of any term or provision hereof.

66.2 Terms used in the conjunctive or disjunctive in the present Regulation may be read vice versa whenever the change is necessary to effectuate the obvious intention of the provision in question.

66.3 Words in the singular in the present Regulation may be construed as plural and vice versa whenever the change is necessary to effectuate the obvious intention of the provision in question.

Section 67 Implementation

The Transitional Administrator shall have the power to give administrative directions and orders in relation to the implementation of the present Regulation.

Section 68 Effect on Previous Statutory Provisions

UNTAET Regulation No. 2000/6 on the Establishment of a Central Payments Office of East Timor, shall be superseded by the present Regulation. The *Instructions, Guidelines*, licenses and other actions issued or taken under the provision of UNTAET Regulation No. 2000/6 shall continue in force until superseded by *Instructions, Guidelines*, licenses and other actions issued or taken under the present Regulation.

Section 69 Transitional Provisions

69.1 Until and when the *BPA* is fully capitalized as stipulated in Section 12.1 of the present Regulation, the annual budgetary requirement of the *BPA* shall be fully provided for by UNTAET or *ETPA*. Notwithstanding UNTAET Regulations No. 2000/1, 2000/20 and 2000/21, upon approval of the annual budget by the Board of Governors of the *BPA* and its endorsement by the Transitional Administrator the full dollar amount shall be transferred to the *BPA* at the beginning of the financial year. Accountability for the financial operations of the *BPA* shall be as defined in the present Regulation.

69.2 On the effective date of the present Regulation, the authorities that conduct payments transactions and central banking activities in East Timor shall cease to engage in activities that, in the judgment of the *BPA*, interfere with the conduct of its functions.

Section 70
Entry into Force

This Regulation shall enter into force on 30 November 2001.

Sergio Vieira de Mello
Transitional Administrator