

**Decree Law No. 18/2010**

**of December 1**

**SPECIAL REGIME FOR THE IMMEDIATE INCORPORATION OF COMPANIES**

The fostering of the development of the private sector as the driver of the country's economic growth, while encouraging the creation of jobs, represents one of the essential priorities of the IV Constitutional Government of East Timor.

The current government in its program decided to go for more efficient institutional support for investors by simplifying the administrative procedures involving investment transactions as a means of enabling companies to attain higher levels of competitiveness, without jeopardizing the public mechanisms for legal security and certainty, essentially represented by registry and notary services which are responsible for incorporating the rights to property and capital in instruments to which full faith and credit are given by the State.

These desiderata were naturally incorporated into the Strategic Plan for the Justice Area recently approved by the government where it indicated as its objective the strengthening of the capacity of the registry and notary services in order to ensure that the acts are carried out in a manner that is quick and accessible to the public by implementing solutions already internationally validated, such as the "one-stop shop" and "on-the-spot company", without prejudice to the simultaneous strengthening of their capacity as representatives of a preventive justice so as to ensure the security of legal trade.

In the process of constituting business companies, the State should restrict itself to ensuring the security of the companies' activities and of the commercial transactions, and should eliminate procedures that do not add value to the protection of those values.

This statute seeks to meet the Government's priorities and objectives within the scope of developing the national economy, creating an "on-the-spot company" procedure, that is, a procedure for the immediate incorporation of business companies through a personal and continuous assistance within the competence of the commercial registry service of the National Board of Registrars and Notaries.

Worthy of note in this procedure is the formalization of the company incorporation act using a pre-approved model of articles of association chosen by the interested parties, thereby speeding up this formalization and simplifying the act of verifying the admissibility of the company. In addition the commercial registry service ensures that notification of the registration of the company's incorporation is electronically sent to all services of the different ministries with responsibilities for legalizing commercial activities, thereby relieving the interested parties from having to present proof of that fact to all those services.

Also envisaged is the possibility of the commercial registry service functioning as a one-stop shop for receiving information and the documents required for legalizing the start-up of the companies' activities at all those ministerial departments, a solution that is especially useful in

those cases that do not required the intervention of the Specialist Investment Agency contemplated within the Law on Private Investment currently at the approval stage in the National Parliament.

As regards the formalization of the incorporation act, it has been decided not to apply the procedure under appreciation to those cases involving the incorporation of companies where capital injections are made partly or in full through the transfer of rights to property to the company, bearing in mind the special complex nature of prior verification of the ownership of the rights to the property being transferred on account of the weaknesses that still exist within the legal framework regarding the regime of actual rights to property in East Timor. That is why it was decided that the formalization of the company incorporation act in situations such as this should obligatorily remain in the exclusive sphere of notaries within the scope of a formalization process not subject to the contingencies of swiftness of the procedure under appreciation.

Consideration was given to taxing the procedure under appreciation through emoluments, bearing in mind the expected approval of regulations enshrining overall taxation of the acts of registrars and notaries.

The emoluments established cost the interested parties less than those charged in the traditional means of incorporating a company – incorporation by a public deed or by a private document – since the new procedure not only enables dispensing with the intervention of a notary or lawyer when incorporating the company, but also equally relieves the interested parties from the need to obtain different certificates of registration for the company to be presented to the various ministerial departments, without failing to ensure the necessary legal security when formalizing the act, in addition to ensuring the advantages arising from a one-stop shop service.

This statute also covers the adaptations to the existing law required by the new solutions enshrined herein, taking advantage of the opportunity to clarify several rules of the Commercial Registry Code, without prejudice to a future overall review of this code which now appears necessary.

The regime for approving the name (trade name) of the business companies is regulated in a more in-depth manner, without prejudice to the need for future approval of a more comprehensive legal system containing the principles and general rules for protecting the name (trade name or denomination) of legal entities and of sole proprietorships.

Lastly, this statute also introduces a probative simplification measure that appears to be urgently required: the widening of the scope of those entities qualified to translate documents written in foreign languages.

A favorable opinion was obtained from the member of the government responsible for the Finance area.

Thus:

The Government decrees, under the stewardship of article 115, paragraph 1, sections n) and o) and article 116, sections d) and e) of the Constitution of the Republic, with the force of law, the following:

## **CHAPTER I**

### **SPECIAL REGIME FOR THE IMMEDIATE INCORPORATION OF COMPANIES**

#### **Article 1**

##### **Purpose**

This statute creates a special regime for the immediate incorporation of business companies.

#### **Article 2**

##### **Scope**

The regime envisaged herein is not applicable to companies whose capital injections are made, partly or in full, by the transfer of rights to property.

#### **Article 3**

##### **Premises for Application**

Application of the regime envisaged in this statute presupposes the option for the articles of association model approved by the member of the Government responsible for the Justice department.

#### **Article 4**

##### **Competence**

The entire course of the process referred to in article 1 lies within the competence of the central service of the National Board of Registrars and Notaries, responsible for carrying out commercial registry activities.

#### **Article 5**

##### **Handling period**

The service referred to in the previous article must commence and conclude the procedure on the same day at a single personal appointment.

## **Article 6**

### **Commencement of the procedure**

1. Those interested in setting up the company file their request with the competent service, indicating the intended company and manifesting their option for the model of the articles of association.
2. The progress of the procedure depends on the initial verification of the identity, capacity and regular status of those interested in the act, as well as of those persons designated therein and who participate as heads of the company departments.

## **Article 7**

### **Documents to be presented**

For the purpose of setting up the company, the interested parties must present:

- a) Documentary proof of their identity, capacity and the regular status as representatives in the act, in addition to the persons designated therein and who participate as heads of the company departments;
- b) Proof of prior authorizations that may be required for exercising the activity for which the company is being set up;
- c) Proof of having contributed with the capital required in cash, by means of:
  - i) Documentary proof of having deposited the equity interests in cash with a credit institution to the order of the company's management; or
  - ii) Statements that the capital has been paid in by the shareholders and the respective settlements by the managers appointed and participating in the incorporation act;
- d) Proof of having paid in the capital in cash, by means of:
  - i) A statement signed by the managers appointed and participating in the incorporation act, vouching that the company has taken ownership of the assets and that these have been delivered to the company. This declaration shall be confirmed by the company secretary when appointed and participating in the incorporation act; and
  - ii) A report by an auditor or an audit company identifying, describing and evaluating the assets with which the contributions in kind must be made under the terms of article 31 of the Business Companies Law;

e) The remaining documents legally required for formalizing and registering the incorporation of business companies.

2. Under a statute from the member of the Government responsible for the Justice department and based on the memorandum of understanding entered into between the latter and other members of Government with responsibilities for legalizing the exercise of business activities, consideration may be given to the possibility of presenting at the service referred to in article 4, the forms or documents intended for obtaining from the competent ministerial services those permits, authorizations, registrations or other administrative acts legally required for the company to commence its activities.

3) Should the interested parties fail to file the forms or documents referred to in the previous section, their attention is drawn to the mandatory nature of the filing thereof with the competent services within the deadlines legally established for that purpose.

## **Article 8**

### **Sequence of the procedure**

Once the initial verification of the identity, capacity and powers of representation for the act has been completed, in addition to the proper status of the documents presented, the appropriate service proceeds with the following acts in the order shown below:

- a) Collection of the charges shown to be due;
- b) Verification of the admissibility of the intended company and the computerized registration thereof on behalf of the company to be set up;
- c) Drawing up of the company's incorporation act pursuant to the model previously chosen by the interested parties and in accordance with the indications provided by them;
- d) Acknowledgement in person of the signatures of the participants in the act contained in the incorporation document;
- e) Annotation of the filing of the verbal request for registration;
- f) Registration of the company incorporation document and of the appointment of the incumbents of the respective company departments.

2. The fulfillment of the steps envisaged in sub-items b), c), d) and f) of the previous number lies within the exclusive competence of the manager of the service, the registrar or notary assigned to the same service on a request-based system.

## **Article 9**

### **Refusal to grant the request**

1. The employee qualified to formalize the company incorporation act must refuse to do so in the following cases:

a) Whenever the existence of omissions, errors or deficiencies is detected which affect the manifestation of the will of the participants in the act or the documents underlying it and which prevent completion of the corresponding definitive registration;

b) Whenever the act is annulable or ineffective;

2. In the event of refusal, if the interested party declares verbally or in writing that he/she intends to contest the respective decision, the employee responsible for the decision must enter a report specifying the respective motives.

3. The refusal to grant the request is applicable to the system for contesting the decisions of the registrar envisaged in the Commercial Registry Code.

## **Article 10**

### **Non conclusion of the process**

Non conclusion of the procedure within the timeframe envisaged in article 5, due to a fact attributable to the interested parties, determines the forfeiture of the right to use the trade name assigned to the company to be incorporated and does not entitle reimbursement of the fees charged.

## **Article 11**

### **Documents to be handed over to the company**

Once the procedure for setting up the company is concluded, the competent service immediately hands over to the company's representatives, free of charge:

a) Certified copies of the company's incorporation document intended for each founding shareholder and the company;

b) Certificate of the registrations made;

c) Proof of receipt of payment of the fees due.

## **Article 12**

### **Diligences following the conclusion of the procedure**

1. Following conclusion of the procedure for incorporating the company, and within a period of twenty-four hours, the appropriate service:

a) Arranges for publication of the registration of the company's articles of incorporation and of the appointment of the incumbents of the respective company departments;

b) Notifies the registration to the other ministerial services responsible for legalizing the exercise of business activities under the terms to be laid down under a statute from the member of Government responsible for the Justice Department, based on the memorandum of understanding to be entered into between the latter and the government members responsible for those services;

c) Arranges for the remaining diligences that may be established under regulations or protocol.

2. Having verified the premises for the application of article 7, section 2, the commercial registry service sends the forms or documents contemplated in that legal precept to the remaining ministerial services responsible for legalizing the exercise of business activities.

## **Article 13**

### **Fees**

1. For the fulfillment of the acts contemplated in the procedure for the immediate incorporation of companies as governed by this statute, emoluments of USD 130,00 are charged.

2. Without prejudice to the provisions of article 10, emoluments are not charged where granting of the request is refused; in which case the amounts charged for the company incorporation procedure governed by this statute will be returned.

## **Article 14**

### **Memorandum of Understanding**

1. For executing the provisions of article 7, section 2 and of section 1, sub-item b) and article 12, section 2, the member of Government responsible for the Justice Department must enter into a memorandum of understanding with the members of Government responsible for the departments of Finance, Tourism, Trade and Industry, Economics and Development, Foreign Business, Immigration and Employment, as well as with other members of government responsible for services that may have responsibilities in relation to the legalization of the exercise of business activities.
2. The memorandum of understanding contemplated in the previous section must establish the administrative and technological procedures required for sharing of information and for the transmission of forms and documents between the ministerial services involved, whenever possible electronically, as well as the conditions of the respective financing.

## **CHAPTER II**

### **AMENDMENTS TO THE LEGISLATION**

## **Article 15**

### **First Amendment to the Commercial Registry Code**

Articles 25, 29, 31, 34, 47, 51, 78, 96, 100 and 116 of the Commercial Registry Code approved by Decree Law No. 7/2006 of March 1 shall now read as follows:

#### **<<Article 25**

[...]

Registration takes place at the request of the interested parties, on the official model form, except in those ex officio cases contemplated in law.

#### **Article 29**

[...]

1. Verification of the admissibility of a business legal entity or of a sole proprietorship that adopts a name different from its full or abbreviated name must be requested to the commercial registry service:
2. The provisions of the previous section do not apply to cases where the alteration of the legal entity is limited to amending the element that identifies the respective legal type.



3. The admissibility of the company is proven by means of the respective certificate issued by the commercial registry service.

4. The certificate contemplated in the previous section is requested by one of the founding members of the company or, as the case may be, by the already incorporated entity, on the official model form, together with the documents considered relevant for appreciating the request.

5. The requesting parties must be officially requested to attach, within no less than five days, the proof required for verifying compliance with the requirements established by law, under penalty of having the request rejected.

6. The first request presented for the certificate takes precedence over all subsequent requests, taking into account the date and time when the request was registered on the computer system.

7. The certificate must be issued within two days, and is effective for the period of sixty days commencing on the date on which it is issued for the company, with the purpose, requesting party and effectiveness conditions indicated therein.

8. Certificates that are granted based on the participation as a member of a sole proprietorship or owner of a firm, trade name of an establishment or brand already registered are only effective when used by the person authorized to do so.

9. The incorporation act or the acts that lead to the amendment of the company or of the purpose of legal entities cannot be entered into without producing a valid certificate of admissibility of the company, to which reference must be made in the certificate by indicating the respective number and date of issuance.

10. Violation of the conditions of effectiveness referred to in sections 7 and 8, as well as the provisions of section 9, shall render the act null and void which, if referring to the obligation contemplated in section 9, is rectifiable by presenting to the commercial registry the missing certificate within sixty days from the date of the act.

11. Registration of the incorporation or of the fact that determines the amendment of the company or the purpose of legal entities can only take place against presentation of a valid certificate of admissibility of the company, except where it has already been presented to a notary public and the effectiveness period thereof has not yet elapsed.

12. Issuance of the company certificate of admissibility is waived and replaced by an electronic company admissibility registration to be completed upon presentation of a request thereof to the commercial registry service in cases of:

- a) Registration of commencement of activity or amendment of sole proprietorship companies;
- b) Procedures for the immediate incorporation of companies on the terms contemplated under special law.

### **Article 31**

[...]

1. – [...]
2. – [...]
3. Documents drafted in foreign languages can only be accepted when accompanied by their translation into one of the official languages of East Timor, executed by one of the entities contemplated in article 28, section 1 of the Notary Services Legal System.
4. Documents issued in a foreign country are subject to the provisions of article 48 of the Notary Services Legal System, with the necessary adaptations.

### **Article 34**

[...]

1. In order to register the incorporation of companies the following documents must be submitted:
  - a) The company incorporation document, which must identify the shareholders and the appointed heads of the company departments, in addition to containing the company's articles of association;
  - b) Declaration of acceptance of the position signed by each appointed head of the company departments;
  - c) Documents or declarations that prove the capital injections required under the Business Company Law.
2. Identification of the shareholders must be made by indicating their name, nationality, domicile and marital status, specifying whether they are minors or adults, in the case of single persons, or the name of the spouse and the property system in the case of married shareholders, tax identification number and the date of issuance and the issuing entity of the civil identification document.
3. Identification of the heads of the company departments must be made by indicating their name, nationality, domicile, marital status and tax identification number.
4. [formerly section 2]
5. [formerly section 3]
6. [formerly section 4]

### **Article 47**

[...]

1. Registration can only be refused in the following cases:

a) [...]

b)[...]

c) [...]

d) [...]

e) When the certificate of admissibility of the company has been issued in clear violation of the law.

2. [...]

3. [...]

4. [...]

#### **Article 51**

##### **Qualification Decisions**

1. [...]

2. [...]

3. The provisions of the previous sections are applicable to decisions declaring the inadmissibility of the firm.

#### **Article 78**

[...]

1. The register and the documents filed therein are proven by means of certificates.

2. The registration certificates are valid for one year and may be extended for successive periods of equal duration by means of confirmation by the registrar's department.

3. Registration certificates or documents requested by other public services can be requested and transmitted by fax.

4. For each registration process, a certificate in the official model is delivered or sent to the requesting party free of charge, containing the description of the registrations made covered by that request.

#### **Article 96**

[...]

1. [...]

2. [...]

3. In the event of an error by the commercial registry on issuing the company admissibility certificate, a new certificate is issued and rectifications are made to the public deed and the acts affected by that error, free of charge.

#### **Article 100**

[...]

1. The following decisions by the registrar can be contested using the means contemplated in the provisions of this chapter:

- a) Refusal to carry out the registration under the requested terms;
- b) Declaration of inadmissibility of the company;
- c) Refusal to issue certificates or other means of proof;
- d) Issuance of a payment slip relating to the registration procedure.

2. [...]

## **Article 116**

[...]

The official models of the supporting documents and forms envisaged in this Code are approved by a statute from the member of government responsible for the Justice department.

## **Article 16**

### **Second amendment to the Notary Services Legal System**

Article 28 of the Notary Services Legal System approved by Decree Law No. 3/2004 of February 4, amended and republished by Decree Law No. 24/2009 of August 26, shall now read as follows:

### **<<Article 28**

[...]

1. The attachment of documents not drawn up in the official languages of the Democratic Republic of East Timor requires their prior translation by the notary, by the diplomatic representation of East Timor in the country where the document was issued, by the latter's diplomatic representation in East Timor or by a sworn public translator authorized by the member of government responsible for the Justice department.

2. Where the translation cannot be secured in any of the manners contemplated in the previous section, it can be made by an interpreter appearing before the notary at the time of submitting the request for incorporating the document, who shall sign the respective minutes and take responsibility for the translation.>>

## **Article 17**

### **First amendment to the Notary Office Regulations**

Article 124 of the Notary Office Regulations approved by Decree Law No. 25/2009 of August 26 shall now read as follows:

## <<Article 124

[...]

1. [...]

2. Translations can be done on the body of the document to be translated or on an attached sheet, and may also be incorporated into the document registration book pursuant to the terms contemplated in article 28 of the Notary Service Legal System. [...]>>

## CHAPTER 111

### FINAL PROVISIONS

#### Article 18

##### **Extension of the immediate company incorporation system**

Under a statute from the member of government responsible for the Justice department, the immediate company incorporation system regulated herein may be extended to other commercial registry services that may be created as external services of the National Board of Registrars and Notaries.

#### Article 19

##### **Interconnection of companies, brands and names of establishment data bases**

In order to execute the provisions of article 30 of the Commercial Registry Code, members of the government responsible for Justice, Tourism and Trade and Industry must enter into a memorandum of understanding in order to define the administrative, technological and financing procedures regarding the interconnection among the companies, brands and names of establishment data bases.

#### Article 20

##### **Effectiveness**

1. The provisions of chapter I hereof, with the exception of the precepts of article 7, section 2, section 1, sub-item b) and article 12, section 2, in addition to the provision contained in article 29, section 12, sub-item b) of the Commercial Registry Code introduced by this statute, shall take effect on January 1, 2011.

2. The precepts of article 7, section 2, section 1, sub-item b) and article 12, section 2 shall come into effect on the date when the ministerial statute referred to therein takes effect.

3. The remaining provisions hereof shall take effect thirty days after their publication.

Approved by the Council of Ministers, on August 25, 2010

Prime Minister

Kay Rala Xanana Gusmão

Minister of Justice

Lúcia M. B. F. Lobato

Enacted on November 18, 2010

This should be published forthwith

President of the Republic

José Ramos-Horta