

DECREE-LAW No. 26/2010

of 22nd December

**REGISTRATION OF INDIVIDUAL
ENTREPRENEURS FROM THE BUILDING
AND CONSTRUCTION SECTOR**

Upon analysis of the entrepreneurial dimension in the building and construction sector, it has been ascertained that a great number of entrepreneurs do not have the economic and financial capacity to be legally incorporated as companies. However, many of these professional individuals have experience in running small businesses in the building and construction sector and are therefore able to carry out small contracts and other works in a very efficient manner.

Aware of this reality, the Ministry of Infrastructures wishes to give these professionals the possibility to take part in public procurement tenders in order to carry out contracts and other works of a lower value, as a way to meet the current needs for the creation of self-employment, on the one hand, and, on the other, as a way to promote entrepreneurial growth in Timor-Leste in the building and construction sector.

The present legal diploma shall create a special regime for the registration and filing of individual entrepreneurs in different professional areas of the building and construction sector. At the same time, conditions shall be created for those who do not possess professional certification to be able to obtain such certification by way of specific vocational training courses in the area of the building and construction sector promoted by the Ministry of Infrastructures, in a solution that is more suitable to the current reality of Timor-Leste and to the needs of the civil construction industry in the country.

The Government hereby decrees, within the scope of the provisions set out in sub-paragraph e) of article 115.1 and of sub-paragraph d) of the Constitution of the Republic, the following to prevail as law:

**CHAPTER I
GENERAL PROVISIONS**

**Article 1
Scope and Object**

1. The present Decree-Law shall regulate the registration conditions for individual entrepreneurs with academic or professional qualifications in the area of the building and

construction sector and who perform their activities on national territory.

2. Unless otherwise stipulated, the registration certificate established in the present decree-law shall only cover individuals with higher education qualifications or qualifications from technical or professional courses acquired in public education establishments or other private education establishments in Timor-Leste, and which are recognised by law.

3. Individuals with qualifications from courses acquired outside Timor-Leste shall previously obtain the recognition of the diplomas from the competent public authorities under the terms of the applicable law.

**Article 2
Civil Construction Activities and Public
Works**

The activities of individual entrepreneurs in professional qualification areas of civil construction and public works shall depend on the registration certificate, under the terms of the present legal diploma and other complementary legislation to be approved.

**Article 3
Registration Certificate**

1. The registration certificate shall be the document which qualifies individual entrepreneurs to enter into procurement contracts with the State in order to carry out projects or works in their area of professional qualification to the value of USD 25,000.00 (twenty-five thousand US dollars) or under.

2. Without prejudice to paragraph 1 above, certain sub-categories of projects or works in the area of the professional qualification and professional specialisation of individual entrepreneurs may be carried out by them, by ministerial diploma issued by the Minister of Infrastructures.

**Article 4
Powers and Inspection**

1. The Ministry of Infrastructures shall be responsible for registering individual entrepreneurs by issuing the competent registration certificate.

2. The execution of the projects or works in areas of professional qualification and specialisation within the scope of the above paragraph may not be undertaken without the prior appraisal and approval of the competent services of the Ministry of Infrastructures.

Article 5
Areas of qualification and professional specialisation

Under the terms of the present diploma and other complementary legislation to be approved Individual entrepreneurs may register in the following areas of qualification and professional specialisation:

- a) Engineer;
- b) Architect;
- c) Project Supervisor;
- d) Chartered Land Surveyor;
- e) Project Manager;
- f) Technical Designer;
- g) Electrician;
- h) Plumber;
- i) Driver and Handler of Transport Equipment;
- j) Driver and Handler of Lifting Equipment;
- k) Construction Painter;
- l) Plasterer;
- m) Joiner;
- n) Bricklayer;
- o) Steel Fixer;
- p) Floor and wall tiler;
- q) Others.

CHAPTER II
REGISTRATION REQUIREMENTS AND PROCEDURES

Article 6
Registration Requirements

Individual entrepreneurs may proceed to request registration should they cumulatively meet the following requirements:

- a) They are national citizens and are adults, under the terms of the applicable legislation;
- b) They hold a higher education certificate or one from a technical or professional course in any of the areas of qualification or professional specialisation referred to in the article above;
- c) They are registered as individual entrepreneurs under the terms of the Code of Company Registration, where the following information is found:

- i. Full identification and, should they be married, the type of marriage contract;
 - ii. The chosen name of the firm;
 - iii. Indication of the commercial activities it performs;
 - iv. Address.
- d) They have a tax number as individual entrepreneurs;
 - e) They have never been convicted, with the force of res judicata, to an unconditional term of imprisonment for a crime wilfully committed;
 - f) No administrative or judicial sanction has been applied to them for the performance of their professional or commercial activities in the last two years;
 - g) They are not part of the technical staff of any construction company or certified construction consultancy company registered with the Ministry of Infrastructures;
 - h) They do not work for a public authority, unless duly authorised for this purpose under the terms of the applicable law;

CHAPTER III
REGISTRATION PROCEDURE

Article 7
Requests and Submission of Documents

1. Individual entrepreneurs, upon incorporation and registration under the terms of the commercial registry in force, shall submit the request for registration as individual entrepreneurs in their area of professional qualification of the building and construction sector to the services of the Ministry of Infrastructures, and such request shall be accompanied by the following documents:
 - a) Letter addressed to the Ministry of Infrastructures requesting that a registration certificate be issued for individual entrepreneurs in their area of professional qualification;
 - b) Individual entrepreneur registration certificate issued by the competent services of the Justice Ministry;
 - c) Copy of their tax number;
 - d) Certificate proving that such individual entrepreneurs have no debts to the State, issued by the competent services of the Finance Ministry;
 - e) Certificate of the academic or technical or professional course

issued by the competent official educational establishment;

- f) Criminal record certificate issued by the competent services of the Ministry of Justice;
 - g) Copy of national citizen identification document, passport or other;
 - h) Declaration of commitment stating that such individual entrepreneur is not a member of the technical staff of another company or construction consultancy company;
 - i) Declaration of commitment stating that such individual entrepreneur does not work for any public authority, or declaration of authorisation issued by the public authority, should it be permitted by law;
 - j) Declaration stating that such individual entrepreneur shall undertake to respect all legal, regulatory or technical provisions with regard to the activities to be carried out by such individual entrepreneur;
 - k) Other relevant information.
2. Without prejudice to the provisions set out in paragraph 1 above, the Ministry of Infrastructures may request all the documents and explanations it considers necessary to analyse the situation of the individual entrepreneur.

Article 8 Registration Certificate and Deadline for its Issue

1. The registration certificate of the individual entrepreneur shall be issued by the services of the Ministry of Infrastructures within eight working days from the date of conclusion of the administrative procedure.
2. The administrative procedure of the registration of individual entrepreneurs shall be concluded within three working days from the date of submission of all the documents referred to in article seven above.
3. The registration certificate shall grant no selection rights in public procurement tenders in the area of civil construction, but merely bears witness to the competence and technical capacity of individual entrepreneurs to undertake projects or works in their area of qualification and professional specialisation, under the terms and conditions set out in article 3 of the present Decree-Law.
4. The model for the registration certificate of individual entrepreneurs shall be approved by ministerial diploma by the Minister of Infrastructures.

Article 9 Inclusion in databases

The Ministry of Infrastructures keeps an updated database of individual entrepreneurs, which can only be altered in the situations expressly set out in the present diploma and with the prior knowledge of the aforementioned individual entrepreneur.

Article 10 Registration Certificate Fee

There shall be a fee to pay for the issuing, renewal or substitution of the individual entrepreneur registration certificate, the amount of which shall be set by joint ministerial diploma issued by the Minister of Infrastructures and Finance Minister.

Article 11 Validity, Renewal and Intransmissibility

- 1 The individual entrepreneur registration certificate shall be valid for one year, renewable for an equal period of time given that the initial conditions remain unaltered.
2. The individual entrepreneur who is the holder of such registration certificate shall request to the Ministry of Infrastructures that it be replaced whenever any of the data contained in such registration certificate have been changed.
3. The holders of the individual entrepreneur registration certificate shall request its renewal to the Ministry of Infrastructures up to thirty days before the validity of such registration certificate terminates.
4. The holders of individual entrepreneurs registration certificate may not, under any form, transfer the rights and duties resulting from such registration certificate to third parties.
5. The violation of the provisions set out in paragraph 4 above shall determine that the transfer be considered null and void, without prejudice to the application of other sanctions established in the present diploma.

CHAPTER IV DUTIES

Article 12 Duties of the Individual Entrepreneur

1. The holders of an individual entrepreneur registration certificate shall always be accountable to the competent services of the Ministry of Infrastructures for the complete observance of the laws

and regulations concerning all civil construction activities.

2. The holders of an individual entrepreneur registration certificate may only perform activities in their area of professional qualification indicated on such registration certificate.

3. The holders of an individual entrepreneur registration certificate shall provide all the information requested of them by the competent services of the Ministry of Infrastructures as the supervisory body.

Article 13 Special Reporting Requirements

1. Individual entrepreneurs who, within the scope of a public contract, are responsible for the execution of the projects or works in their area of professional qualification, may not leave Timor-Leste without previously informing the competent services of the Ministry of Infrastructures.

2. The written information shall be submitted within three working days before the date foreseen for such absence, except in the case of duly justified *force majeure*.

3. Any other alteration to the information included in the individual entrepreneur registration certificate and corresponding inclusion in the database shall be communicated to the services of the Ministry of Infrastructures within eight working days from their occurrence.

4. The violation of the provisions set out in the present article shall determine the suspension of the activities of the individual entrepreneur, without prejudice to the application of other sanctions established in the present diploma.

Article 14 Deadline for Updating the Registration Certificate

1. The services of the Ministry of Infrastructures shall proceed to alter the individual entrepreneur registration certificate and corresponding inclusion in the database three working days from the reception of the request made by the holder of such certificate.

2. The services of the Ministry of Infrastructures shall issue an updated registration certificate which shall be delivered to the holder upon payment of the corresponding fee.

CHAPTER V SANCTIONS

Article 15 Offence

1. The non-fulfilment of the provisions set out in the present diploma and complementary legislation shall constitute an offence punishable under the terms of the following articles, without prejudice to other offences of a criminal or civil nature as set out in the general law.

2. Negligence or attempting shall also be punishable by law.

3. The fines shall be set between a minimum and a maximum, and their application shall depend on the severity of the offence, the danger to the safety of the projects or works, losses resulting thereof for the State and third parties, the degree of guilt of the offender and the existence of reoffending.

4. Reoffending shall be considered when the offender has committed an offence of the same type within a period of three months from the date of application of the sanction.

Article 16 Typification and Fines

Offences punishable with the following fines shall be:

- a) Activities of individual entrepreneurs in the area of professional qualification in the civil construction and public works sector in breach of the provisions set out in articles 6 and 7, with a fine of between \$5,000.00 USD and \$8,000.00 USD;
- b) The non-fulfilment of the conditions and limitations imposed on the individual entrepreneur registration certificate or the performance of activities outside their areas of professional qualification in breach of articles 3, 8 and 12, no. 2, with a fine of between \$10,000.00 USD and \$12,000.00 USD;
- c) The performance of activities by another person or entity that is not the holder of the individual entrepreneur registration certificate in breach of the provisions set out in no. 4 of article 11, with a fine of \$15,000.00 USD and \$20,000.00 USD.

Article 17 Suspension and Cancellation of the Registration Certificate

In addition to the provisions set out in article 16 above, the suspension or cancellation of the individual entrepreneur registration certificate in the

area of professional qualification in the civil construction or public works sector may be applied as an accessory sanction.

Article 18 Attachment of Equipment

In the event of offences as set out in sub-paragraph c) of article 16, the attachment of machinery or any other civil construction equipment used may be determined, should the offenders not cease their activities within a maximum period of twenty-four hours, upon notification by the competent services of the Ministry of Infrastructures.

CHAPTER VI POWERS AND PROCEDURES FOR THE APPLICATION OF SANCTIONS

Article 19 Powers

The services of the Ministry of Infrastructures shall be responsible for initiating an administrative procedure for the application of sanctions due to breach of the provisions set out in the present diploma, as well as the application of fines or other accessory sanctions.

Article 20 Procedure

1. For each offence detected records are taken which are deemed an authentic version of the facts observed and described, in the absence of evidence to the contrary, and shall be used as the grounds for the procedure.
2. The offender shall be notified by way of a notification containing the following information:
 - a) The facts related to the offence and the legislation infringed;
 - b) The applicable sanctions;
 - c) The location and the time limit to prepare his/her defence;
 - d) The possibility to voluntarily pay the fine at the minimum value and the consequences of non-payment.
3. The offender may, within a period of fifteen days, prepare his/her defence in writing or proceed to make the voluntary payment, except in the case of the offence set out in sub-paragraph c) of article 16, the sanction of which shall be applied immediately.
4. Proceedings may be brought before the court vis-à-vis the final decision.

Article 21 Destination of the Fines

The proceeds of the fines shall revert to the Ministry of Infrastructures which shall supervise the fulfilment of the provisions of the present diploma and shall proceed to initiate the corresponding procedure.

CHAPTER VII TRANSITIONAL AND FINAL PROVISIONS

Article 22 Transitional Provision

1. Those interested in obtaining an individual entrepreneur registration certificate and who have not completed a professional course may temporarily register as long as they are attending a suitable professional course promoted by the Ministry of Infrastructures.
2. The contents and the duration of the course referred to in paragraph 1 above shall be established by way of Infrastructure Minister decision and shall grant professional certificates in the area of civil construction only.
3. The temporary registration of an individual entrepreneur shall also be valid for one year, and may be renewed for up to a maximum period of three years, and upon satisfactory completion of the professional course referred to in paragraph 2 above it shall become definitive.

Article 23 Entry into Force

The present diploma shall enter into force on the day immediately following its publication.

Approved in Council of Ministers on 10th November, 2010

Prime Minister
Kay Rala Xanana Gusmão

Finance Minister
Emília Pires

Minister of Infrastructures
Pedro Lay da Silva

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The President of the Republic
José Ramos-Horta