

DECREE-LAW No. 27/2010

of 22nd December

LEGAL REGIME GOVERNING THE CERTIFICATION AND REGISTRATION OF CIVIL CONSTRUCTION AND TECHNICAL CONSULTING COMPANIES

The technical provisions which regulate the certification, registration and filing of civil construction companies in Timor-Leste have been inadequately enforced and interpreted in the public tender procedure set out in the Legal Procurement Regime, approved by Decree-Law no. 10/2005 of 21st November, in the new wording provided by Decree-Law no. 24/2008 of 23rd July.

However, should the specificities of the regulations of the civil construction sector be taken into account, the existing procedure in the Ministry of Infrastructures for the classification of civil construction or technical consulting companies is obviously not adequate in terms of the current reality of Timor-Leste nor in terms of the sustainable development of the country.

Civil construction activity is an important development factor of the national economy, with a great contribution towards job creation, but as it is also an activity which consists of risks for the safety of the population, the certification of civil construction or technical consulting companies must follow rigorous criteria, not only in terms of financial probity but, and especially, in terms of technical capacity, and equipment and materials used in order to ensure that the quality and the security of the works, buildings or projects that are to be executed, do not jeopardise the lives and property of the people using them.

In this context, notwithstanding the fact that the complete drafting of legislation on construction and urban planning is underway, it is important to proceed to the immediate adoption of a regime of certification and registration of civil construction and technical consulting companies with the competent services of the Ministry of Infrastructures.

Therefore,

The Government hereby decrees, within the scope of the provisions set out in sub-paragraph e) of no 1 of article 115 and of sub-paragraph d) of article 116 of the Constitution of the Republic, the following to prevail as law:

CHAPTER I

GENERAL PROVISIONS

Article One

Scope and Object

1. The present decree-law shall regulate the conditions under which civil construction or technical consulting companies exercising their activities on national territory are certified and registered, regardless of the location of their head office or their effective main administration.

2. Unless otherwise stipulated, the regime established in this decree-law shall not be applied to civil construction companies certified by another State and covered by bilateral agreements established between the Democratic Republic of Timor-Leste and that State.

Article Two

Access to Activities in the Civil Construction Sector

Exercising activities in the civil construction sector shall depend on certification and registration under the terms of the present diploma and other complementary legislation to be approved.

Article Three

Powers to Issue Certificate

1. The Ministry of Infrastructures shall be responsible for certifying civil construction or technical consulting companies by way of issuing the competent certificate.

2. The Ministry of Infrastructures may enter into technical cooperation agreements with other public or private authorities, which are duly recognised and certified, in order to request inspection or technical assistance services for the purposes of certification within the civil construction sector.

Article Four

Certification and Registration of Civil Construction or Technical Consulting Companies in the Public Works Sector

Those civil construction or technical consulting companies wishing to bid for public procurement tenders in the area of civil construction with a view to entering into contracts with the State shall require to be registered and certified beforehand by the competent services of the Ministry of Infrastructures, under the terms of the present diploma.

Article Five

The Licensing and Supervising of Public Works

The execution of technical civil construction projects or works within the scope of article 4 above may not be undertaken without the prior appraisal and approval of the project and corresponding licence issued by the competent services of the Ministry of Infrastructures.

Article Six

Definitions

1. For the purposes of the present diploma and other complementary diplomas:
 - a) “*Civil construction works*” means the execution of new construction works, including bridges, roads, dams, landfills, excavations or others, the reconstruction, restoration, modification, extension or demolition of existing works and also any infrastructure projects under construction or others of a similar nature related to construction projects;
 - b) “*Civil construction company*” means any duly incorporated company registered in Timor-Leste, under the terms of the commercial legislation in force, and whose main object is civil construction projects;
 - c) “*Technical consulting company*” means any duly incorporated company registered in Timor-Leste, under the terms of the commercial legislation in force, and whose main object is only that of technical consultancy within the scope of the civil construction sector, such as engineering, architecture, or other technical consulting, but not covering the construction of the work;
 - d) “*Certification*” means the procedure whereby civil construction or technical consulting companies are technically evaluated and classified according to their technical and financial capacity;
 - e) “*Registration*” means the prior registration of civil construction or technical consulting companies in the competent services of the Ministry of Infrastructures;
 - f) “*Project Contractor*” means any public or private legal person who promotes and signs the appraisal and approval of a project and the corresponding execution of the project or technical work, or any private individual who only commissions the project or technical work;
 - g) “*Public works*” means all the constructions and any other infrastructures, already existing or to be built, of the public services and bodies of Public Administration or other State bodies;
 2. For the purposes of the present diploma and other complementary legislation, and project phases:
 - a) *Preliminary Draft Project* means the document which defines the outer and inner characteristics required due to the specific function of the project to which the architectural project corresponds when it is separately submitted from other special projects;
 - b) *Civil Work Project* means the set of projects in the areas of architecture, foundations and structures, water supply, sewerage and drainage, electricity and special installations;
 - c) *Draft amendment* means the set of special projects concerned with the undertaking of works which alter the approved project but which have not yet been executed or completed, or concerned with the rectification of a project submitted to the appraisal of the competent services of the Ministry of infrastructures and not yet approved.
- Special projects shall be:
- a) *Architectural project*: project which defines the outer and inner characteristics required due to the specific function of the project;
 - b) *Water supply project*: project, the purpose of which is the dimensioning of the water supply network;
 - c) *Sewerage and drainage project*: project, the purpose of which is the layout and dimensioning of the rainwater and waste water network;
 - d) *Electricity project*: project, the purpose of which is the layout and dimensioning of the electric energy wireline systems, including accessories and indispensable switching and protection equipment;
 - e) *Foundations and structures project*: project, the purpose of which is the design, calculation and dimensioning of the elements required for the foundations and structures;

- f) *Special installations project*: project, the purpose of which is the design and characterisation of the equipment and installations indispensable for the functioning of the construction, notably the air conditioning system, mechanical accesses and fire detection and protection;
- g) *Demolition project*: Project, the purpose of which is to define the demolition method which should be adopted and the precautionary measures vis-à-vis the stability and safety of the neighbouring constructions and people.

4. Types of project:

- a) *Construction*: the execution starting from scratch of any construction project corresponding to a project especially drawn up for the purpose;
- b) *Extension*: the execution of new floors in existing buildings or the addition of any surface area to its floors;
- c) *Conservation*: the execution of works with a view to maintaining construction in a good state of use;
- d) *Consolidation*: the execution of works with a view to reinforcing the existing parts of a construction;
- e) *Modification*: the execution of works which in some way alter the initial project of an already concluded construction;
- f) *Reconstruction*: execution of a construction on the same site but in accordance with the original project;
- g) *Repair*: execution of works on a construction aimed at replacing ruined parts, or deteriorated or malfunctioning elements;
- h) *Demolition*: destruction of part or of the whole existing construction.

CHAPTER II

CLASSIFICATION AND CERTIFICATION OF CIVIL CONSTRUCTION OR TECHNICAL CONSULTING COMPANIES

Article Seven

Classification Requirements

1. The classification of civil construction or technical consulting companies depends on the type and complexity of the works, projects or

other technical works to be carried out, the technical and professional competence of the staff required and the minimum value set for the project or the works.

2. Without prejudice to the fulfilment of the technical and regulatory provisions established when drafting projects or when managing projects, the following classification categories shall be created:

- a) **A** – Projects or works of an amount of over \$1,500,000.00 USD to a limit of \$7,500,000.00 USD and, that due to their technical complexity, can only be undertaken by companies with a paid-up share capital of an amount equal to or higher than \$150,000.00 USD, equipped with the appropriate installations and equipment and having a duly qualified and certified technical staff which is recognised internationally;
- b) **B-1** – Projects or works of an amount of under \$1,500,000.00 USD (one million five hundred thousand US dollars) and over \$750,000.00 USD (seven hundred and fifty thousand US dollars) and of an average technical complexity which can be undertaken by companies with a paid-up share capital of an amount equal to or higher than \$100,000.00 USD (one hundred thousand US dollars), equipped with the appropriate installations and equipment and having a duly qualified and certified technical staff;
- c) **B-2** – Projects or works of an amount of under \$750,000.00 USD (seven hundred and fifty thousand US dollars) and over \$250,000.00 USD (two hundred and fifty thousand US dollars) and of little technical complexity which can be undertaken by companies with a paid-up share capital of an amount equal to or higher than \$10,000.00 USD (ten thousand US dollars), equipped with the appropriate installations and equipment and having a duly qualified and certified technical staff;
- d) **C** – Projects or works of an amount of under \$250,000.00 USD (two hundred and fifty thousand US dollars) and over \$25,000.00 USD (twenty-five thousand US dollars) and of little technical complexity which can be undertaken by companies with a paid-up share capital of an amount equal to or higher than

\$10,000.00 USD (ten thousand US dollars), equipped with the appropriate installations and equipment and having a duly qualified and certified technical staff;

3. The services of the Ministry of Infrastructures shall be responsible for the prior evaluation of the companies, which shall concern, namely, the economic and financial capacity of the company, the technical staff and their academic and professional qualifications and the type and amount of appropriate equipment necessary for each one of the classifications A, B1, B2 and C.

4. The type and minimum amount of equipment and the minimum technical staff considered necessary for each one of the categories shall be included in a "Support Manual" drawn up by the competent services of the Minister of Infrastructures.

5. The certificate models of the companies shall be approved by ministerial diploma issued by the Minister of Infrastructures.

6. The projects or works of a value of over \$7,500,000.00 USD shall not be covered by this regulation, as such projects can only be carried out by international companies in accordance with the Procurement Law.

7. Within the scope of paragraph 6 above, the participation of national companies shall only be possible in the case of companies with an A classification, by way of consortia or associations with international companies duly classified as apt to carry out the entire works.

Article Eight

Special Regime of Category C

The attribution of the certificate of classification category "C" shall only be for civil construction companies incorporated and registered in Timor-Leste under the terms of the applicable commercial legislation and whose partners shall be of Timorese citizenship.

CHAPTER III

CERTIFICATION AND REGISTRATION PROCEDURES

Article Nine

Certification Requirements

1. Upon incorporation under the terms of commercial legislation, civil construction or technical consulting companies shall submit a request for certification to the competent services of the Ministry of Infrastructures, accompanied by the following documents:

- a) Letter addressed to the Ministry of Infrastructures requesting that a Builder or Technical Consultant certificate be issued with the name, tax number and head office of the company;
- b) Company registry certificate and document providing evidence that the share capital has been paid up and a copy of the respective articles of association;
- c) List of technical equipment, technical staff that work for the company and a list of projects previously carried out, indicating the classification category under which it intends to be certified, under the terms of the provisions set out in article 7.
- d) Certificates of the academic and professional qualifications of the technical staff responsible, under the terms of the provisions set out in article 7.
- e) Economic and financial conditions, including the financial balance sheets showing the evolution of the company over the last three years;
- f) Certificate providing evidence that the company has no debts to the State, issued by the competent department of the Finance Ministry;
- g) Insurance certificates applicable to civil construction under the applicable law, should such certificates exist;
- h) Certified copies of the leasing contracts of the equipment when this is the modality used by the company;
- i) Certified copies of all technical staff contracts;
- j) Declaration in which it is stated that all legal, regulatory and technical provisions, related to the activities it shall undertake, shall be respected.

2. Civil construction or technical consulting companies shall guarantee that all technical staff, directly or indirectly connected to the execution of the works or projects, have the academic qualifications, training, professional experience and adequate technical ability for the performance of their duties, under the terms of the present diploma and other complementary legislation to be approved.

3. Until the approval of complementary legislation, civil construction or technical consulting companies shall submit for prior opinion to be issued by the competent services of the Ministry of Infrastructures the names of the technical staff responsible for the projects or services.

4. The opinion referred to in paragraph 3 above shall be binding and be aimed at ascertaining and assessing the academic qualifications, ability and the professional experience of the technical staff of the civil construction or technical consulting companies, their replacement not being permitted without prior communication to the Ministry of Infrastructures.

Article Ten Registration

1. A prior administrative procedure of evaluation shall be drawn up for each company for its subsequent registration in a database of the competent services of the Ministry of Infrastructures containing all the information on the company, notably:

- a) Firm, tax number, address of company head office and classification category intended;
- b) Full name of partners and their holding in the company, as well as the company share capital;
- c) Full name of directors or whoever is responsible for the company;
- d) Full name, academic and professional qualifications of all the technical staff, with the name of those who are responsible for each one of the following areas:
 - i. Drafting of the projects;
 - ii. Managing the projects;
 - iii. Execution of the works.
- e) The experience of the technical staff of the company, the list of projects or works previously undertaken by the company, indicating the name of the place, value and occurrences regarding the projects which have been drawn up or executed;
- f) Declaration of commitment concerning the fulfilment of the regulatory provisions and technical rules during the drafting of projects or execution or management of projects;

g) Other relevant information on the company.

2. The Ministry of Infrastructures shall keep the an updated database of those registered civil construction or technical consulting companies, and other additional information which may be considered necessary for the processing of the request may be requested from the applicants.

3. The prior administrative procedure of evaluation shall be concluded within a time limit of fifteen working days from the date of delivery of all the necessary documents under the terms of article 9 of the present Decree-Law.

Article Eleven

Contents of the Certificate and Deadline for its issue

1. Having concluded the prior administrative procedure of evaluation and registration, the civil construction or technical consulting company certificate shall be issued and shall contain all the data regarding the company.
2. The civil construction or technical consulting company certificate shall grant no selection rights in public procurement tenders in the area of civil construction, but shall only bear witness to the technical capacity of the company and the category of civil construction work for which it is qualified and authorised to carry out.
3. The certificate shall be issued by the competent services of the Ministry of Infrastructures within a time limit of eight working days from the date of completion of the prior administrative procedure of evaluation and registration.
4. Finally, a certified copy of the registration of each company in the database of the Ministry of Infrastructures shall be submitted to each company. This copy can only be altered in situations set out in the present diploma and with the prior knowledge of the corresponding company.

Article Twelve

Certification and Registration Fees

There shall be a fee to pay for the issuing, renewal or substitution of the civil construction or technical consulting company certificate and corresponding registration, the amount of which shall be set by joint ministerial diploma issued by the Minister of Infrastructures and Finance Minister.

Article Thirteen

Certificate Validity, Renewal and Intransmissibility

1. The civil construction or technical consulting company certificate shall be valid for two years, renewable for an equal period of time given that the initial conditions remain unaltered.

2. The company holding such certificate shall request to the competent services of the Ministry of Infrastructures that it be replaced whenever any of the data contained in such registration certificate have been changed.

3. The companies holding a civil construction or technical consulting company certificate shall request its renewal to the services of the Ministry of Infrastructures up to ninety days before the validity of such certificate terminates.

4. The companies holding a civil construction or technical consulting company certificate may not, under any form, transfer the rights and duties resulting from such 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 Fourteen

Duties of Builders and Technical Construction Consultants

1. Companies holding a civil construction or technical consulting company certificate shall always be accountable to the competent services of the Ministry of Infrastructures for the complete fulfilment of the applicable laws and regulations covering all activities in the civil construction sector.

2. For the purposes of ascertaining the academic and professional qualifications and experience, the companies holding a civil construction or technical consulting company certificate shall undertake to submit to the prior approval of the competent services of the Ministry of Infrastructures the names of the technical staff responsible of the areas or sub-areas for which it was certified, notably, of those people responsible for drawing up projects, managing and executing the works.

3. Companies holding a civil construction or technical consulting company certificate may only perform their activities in the classification category indicated on the certificate.

4. Companies holding a civil construction or technical consulting company certificate shall provide all the information requested of them by

the competent services of the Ministry of Infrastructures as the supervisory body.

5. Companies holding a civil construction or technical consulting company certificate shall be subject to legislation and corresponding national regulations regarding the environment, gender equality, priority resource to national workers, as well as keeping a continuous training plan for its human resources.

Article Fifteen

Special Reporting Requirements

1. Whenever any of member of the technical staff responsible for drawing up projects, managing works or executing works indicated on the company certificate leaves Timor-Leste, the company shall inform the competent services of the Ministry of Infrastructures, indicating which registered technician shall serve as a replacement.

2. This information shall be submitted in writing within three working days from the date foreseen for such absence.

3. Any alteration to the articles of association of civil construction and technical consulting companies shall be communicated to the competent services of the Ministry of Infrastructures within a time limit of eight working days from the date of its approval by the directors of the company, regardless of its company register.

4. Any other alteration to the information included in the civil construction and technical consulting companies certificate and corresponding registration in the database shall be communicated to the services of the Ministry of Infrastructures within eight working days from such occurrence.

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

Article Sixteen

Time Limit for the Updating of the Certificate and its Registration

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

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

CHAPTER V

SANCTIONS

Article Seventeen

Offences

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 always 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 six months from the date of application of a sanction.

Article Eighteen

Typification and Fines

Offences punishable with the following fines shall be:

- a) The carrying out of civil construction and technical consultancy activities in breach of the provisions set out in articles 7 and 8, with a fine of between \$10,000.00 USD and \$15,000.00 USD;
- b) The non-fulfilment of the technical specifications, conditions and limitations imposed on the certificate or the performance of activities in a classification category different from that on the certificate in breach of the provisions set out in articles 14 and 15, with a fine of between \$20,000.00 USD and \$25,000.00 USD;
- c) The performance of civil construction and technical consultancy activities by another entity that is not the holder of the civil construction or technical consulting company certificate in breach of the provisions set out in no. 4 of article 13, with a fine of between \$30,000.00 USD and \$40,000.00 USD.

Article Nineteen

Suspension and Cancellation of the Certificate

In addition to the provisions set out in article 18 above, the suspension or cancellation of the civil construction or technical consulting company certificate may be applied as an accessory sanction.

Article Twenty

Attachment of Equipment

In the event of offences as set out in subparagraph c) of article 18, 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 forty-eight hours, upon notification by the competent services of the Ministry of Infrastructures.

CHAPTER VI

POWERS AND PROCEDURES FOR THE APPLICATION OF SANCTIONS

Article Twenty-One

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 Twenty-Two

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 working days, prepare his/her defence in writing or proceed to make the voluntary payment, except in the case of the offence set out in subparagraph c) of article 18, the sanction of which shall be applied immediately.
4. Proceedings may be brought before the court vis-à-vis the final decision.

Article Twenty-Three

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 Twenty-Four

Companies with Activities Already Begun

1. A time limit of ninety days shall be granted to existing civil construction and technical consulting companies which have already begun activities to request the certification and registration in compliance with the present regime.

2. For the purposes of paragraph 1 above, the competent services of the Ministry of Infrastructures shall proceed to notify the companies, the time limit of ninety days being counted as from the date of such communication or notification.

3. Should the existing companies not meet the legal requirements for certification, they may request from the competent services of the Ministry of Infrastructures that they be granted an additional period of thirty days to be able to proceed to their restructuring in compliance with the present regime.

Article Twenty-Five

Reformulation and updating of the database of the Ministry of Infrastructures

1. Within a time limit of sixty days from the entry into force of the present Decree-Law, the competent services of the Ministry of Infrastructures shall proceed to reformulate the database in compliance with the present regime, immediately notifying existing companies to request certification and registration in accordance with the legal requirements of the present Decree-Law.

2. Companies which do not request such certification and registration within a period of one hundred and eighty days from their notification under the terms of article 24 above shall be eliminated from the database, their certificate and corresponding registration being cancelled and they shall not be permitted to perform activities in the civil construction sector, without prejudice to the application of other sanctions set out in the present diploma.

Article Twenty-Six

Support and Information Services

The competent services of the Ministry of Infrastructures should provide civil construction or technical consulting companies with the "Support Manual" and provide them with all the information required to fulfil the certification model.

Article Twenty-Seven

Entry into Force

The present diploma shall enter into force thirty days 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

Promulgated on 16/12/2010

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The President of the Republic

José Ramos-Horta