

DEMOCRATIC REPUBLIC OF EAST TIMOR

GOVERNMENT

Decree Law No. 5-2006

**LEGAL REGIMEN FOR CERTIFICATION
OF AIR TRANSPORTATION OPERATORS**

Air transportation operations are very important in Timor-Leste as a commercial activity, not only because they encourage private investment but, above all, because they bring benefits for the economic and social development of the country.

On the other hand, growing competition in the air transportation sector is calling for rigorous definition and inspection of the operational conditions under which air transportation companies explore their services, including organizational charts and qualified personnel, before granting operators their licenses.

Companies must meet a series of technical requirements in accordance with the international standards and practices established by the International Civil Aviation Organization before being issued their certificates as Air Transportation Operators by the respective national Civil Aviation Authority, in order to ensure that all standards regarding control and safety of air transportation activities are duly met.

The object of this statute, therefore, is to establish the requirements and criteria for certifying air transportation companies, regardless of their specific activity - regular transportation, either international or domestic, or non regular transportation - or their respective legal status, i.e., public or private.

Under these terms, the Government orders the following, under the provisions foreseen in item (e) of no. 1 of article 115 and item (d) of article 116, of the Constitution of the Republic, to be valid as law:

CHAPTER I
General Provisions

Article 1
Object

1. This statute regulates the conditions for certification of commercial air transportation companies operating in the national territory, regardless of the location of their main offices or main administration facilities.
2. With no detriment of the provisions in the previous number, commercial air transportation companies which are duly certified to perform their activities in another country will be deemed holders of air operator certificates for the purpose of this statute provided that the other country has an air transportation agreement or other international legal instrument executed with the Democratic Republic of Timor-Leste, with reciprocity and equivalent effect.

Article 2
Access to the Activity of Air Transportation Operator

1. Commercial air transportation operators will have to obtain technical certification issued by the Timor-Leste Civil Aviation Authority, hereby designated as AACTL, under the terms of this statute and the international rules applicable to civil aviation.
2. Commercial air transportation services can only be provided by companies duly organized under the terms of this statute and Law n. 4/2004, of April 21, regardless of their status as public or private companies, and in accordance with all specificities foreseen in this statute.

Article 3
Competency to Issue Air Transportation Operator Certificates

1. AACTL is the agency competent to certify air transportation operators by issuing the appropriate certificates.
2. AACTL may establish technical cooperation agreements with other duly recognized and accredited countries or entities so as to request inspection or technical assistance services for the purposes of certifying air transportation operators.

Article 4
Form and Content of Air Transportation Operator Certificates

1. Air transportation operator certificates will be written in both the official languages of Timor-Leste and must include the following:

- a) Air Operator civil and tax identification numbers, as well as office address;
 - b) A list of commercial activities the Air Operator will be involved with;
 - c) Fleet composition, with explicit indication of all aircraft makes and models;
 - d) Expiration date of all aircraft documents;
 - e) All technical specifications, conditions and operational limitations stated in the attachment to the certificate and an integral part thereof.
2. Air Operator certificates do not grant any traffic rights and only attest to the technical capability of the operator for the authorized type of commercial air transportation activity.

Article 5 Fees for Air Transportation Operator Certification

The **fees** for issuing, renewing, replacing or amending air transportation operator certificates will be established by a ministerial statute issued jointly by the Minister of Transportation and Communications and the Minister of Plan and Finances.

Article 6 Duties of Air Transportation Operators

1. All holders of air transportation operator certificates are always responsible before AACTL for fully complying with all laws and regulations applicable to civil aviation, namely Operations, Maintenance, Safety and Training Manuals.
2. For the purposes of evidence of capabilities, qualifications and professional experience, air transportation operator certificate holders must submit to AACTL for prior approval the names of the people technically responsible for the areas described in the Manuals referred to in the previous number.
3. Air transportation operator certificate holders can only operate in the fleet stated in the certificate.
4. Holders of air transportation operator certificates can only operate aircraft of the make and model stated in the certificate.
5. Any occasional use of aircraft under leasing or charter contract regimen will depend on prior authorization by AACTL, which will establish the conditions and the period of time for that utilization so as to ensure the safety of the aircraft.
6. Holders of air transportation operator certificates must provide all the information requested by AACTL as an inspection body.

CHAPTER II
Requirements for Air Transportation Operator Certification

Article 7
Capital Stock and Organization of Commercial Air Transportation Companies

1. Except in the cases of operating companies providing public services of air transportation under a concession regimen, companies applying to air operator certificates in Timor-Leste must have a minimum stock capital of:
 - a) US\$ 3,000,000.00 (three million U.S. dollars) for commercial air transportation activities using aircraft outside the scope of public services;
 - b) US\$ 1,500,000.00 (one million, five hundred thousand U.S. dollars) for helicopter transportation activities outside the scope of public services.
2. Any alterations in the articles of organization of commercial air transportation operators must be communicated to AACTL within 15 days counting from the date of their approval by the corporate board of the company, regardless of registration.

Article 8
Technical Requirements for Certification

1. Each operator must have its own technical and duly qualified framework, as well as the facilities and technical human resources appropriate to the type of operation it intends to perform, and the following service areas will be mandatory:
 - a) Flight operation;
 - b) Flight safety;
 - c) Land operations;
 - d) Aircraft engineering and maintenance;
 - e) Crew training.
2. All technical frameworks indicated above is subject to prior certification by AACTL.
3. Operators must ensure that its entire staff directly or indirectly connected to flight and ground operations, as well as aircraft maintenance, have the capabilities, training, professional experience and technical abilities appropriate to the performance of their functions under the terms of this statute and other additional legislation eventually approved.

4. Until the additional legislation is approved, operators will submit to AACTL for prior approval the names of all technical staff responsible for the services stated in number 1.
5. The opinions issued by AACTL regarding capabilities and professional experience of the technical staff referred to in the previous number are binding and no substitutions will be allowed without prior communication to AACTL.
6. If an operator company does not have its own means to ensure the services mentioned in number 1, AACTL can authorize hiring other companies certified by AACTL or certified by other entities recognized by it.

Article 9 Technical Manuals

1. AACTL will also require the following documents before issuing operator certificates:
 - a) "Operations Manual";
 - b) "Maintenance Manual";
 - c) "Safety Manual";
 - d) "Training Manual".
2. All Operations and Maintenance Manuals must be drafted in accordance with Appendix 6 of the International Civil Aviation Organization (OACI) and other technical regulations applicable to civil aviation.
3. Once approved, the manuals cannot be altered without prior authorization from AACTL.
4. All air service operator certificate holders are responsible before AACTL for full compliance with all provisions included in the manuals referred to in n. 1.

CHAPTER III Documents to Accompany the Request

Article 10 Initial Request

1. Once legally organized, operator companies must submit to AACTL a certification request accompanied with the following items:
 - a) Letter addressed to the President of AACTL requesting issuance of the air transportation operator certificate stating company name, taxpayer number and address;

- b) Certificate of commercial registration showing stock capital and respective Bylaws;
 - c) Certificates of all technical staff responsible for each one of the technical frameworks of air transportation mentioned in n. 1 of article 8;
 - d) Location plan, floor plan and descriptive brief of facilities and technical frameworks mentioned in article 8;
 - e) Technical, economic and financial provisional study, with projection for three years, regarding feasibility of exploration and evolution of the company, with names of the authors;
 - f) Clearance certificate showing no debts with the State, issued by the competent department of the Ministry of Plan and Finances;
 - g) Insurance certificates applicable to civil aviation under legal terms;
 - h) Copy of the aircraft leasing or charter contract, if applicable;
 - i) Copy of the aircraft maintenance contract in the case of n. 6 of article 8;
 - j) All technical Manuals referred to in the previous article.
2. AACTL will draft an administrative procedure for each request and may ask applicants for other additional items deemed necessary to instruct the request before the final decision.

Article 11 Term for Decision

The final decision about the certification request must be provided within 90 days counting from the date of delivery of all the documents necessary to instruct the request.

Article 12 Certificate Term, Renewal and Non Transferability

1. Certificates for air service operators will be valid for 5 years and can be renewed for an equal period of time, provided that the initial conditions are kept the same.
2. Holders of air service operator certificates must request AACTL to replace their certificates whenever there is any alteration on any of the information stated in the certificates, including all annexes.
3. Holders of air service operator certificates must request AACTL to renew their certificates no later than 90 days before the expiration of the certificate.

4. Holders of air service operator certificates must never transfer to third parties the rights and duties resulting from the certificate.
5. Violations of the provisions of the previous number will result in the annulment of the act of transmission, with no detriment of other sanctions foreseen in this statute.
6. With no detriment of the provisions in n. 2 of article 1, companies involved in commercial air transportation currently operating in Timor-Leste have 90 days to request their Timorese certification.

CHAPTER IV

Charter or Leasing Regimen

Article 13

Specific Operating Conditions

1. If the operating company intends to use aircraft and crews under a leasing or charter contract, AACTL will have to approve all conditions for utilization in advance.
2. Until publication and implementation of supplementary civil aviation legislation, the operating company must submit the following documents, original or authenticated, to AACTL for approval:
 - a) Certificate of Navigability for the aircraft to be used, issued by the Civil Aviation Authority of the country where the aircraft is registered;
 - b) Certificate of Registration for the aircraft, issued by the Civil Aviation Authority of the country of registration;
 - c) Licenses and medical certificates for all aeronautics crew, issued by the Civil Aviation Authority of the country where they perform professional activities;
 - d) Radio License installed on the aircraft, issued by the Civil Aviation Authority of the country where it is registered;
 - e) Noise Certificate for the aircraft, issued by the Civil Aviation Authority of the country of registration.
3. If the operator company intends to operate under a partnership agreement with another air transportation operator registered in another country using leasing or charter of aircraft and crew registered in this country, it will have to submit to AACTL, besides the documents mentioned in the previous number, the Certificate of Air Transportation Operator issued by the Civil Aviation Authority of the country where the operator is registered, as well as a declaration of the same Authority which must include the following:
 - a) The type of operation authorized;

- b) That the air operator complies with all applicable requirements in its country of registration;
 - c) That it accepts responsibility for the safety of the operation authorized in Timor-Leste.
4. The regimen of this article is also applicable to operator companies who own aircraft registered in another country.

CHAPTER V Sanctions

Article 14 Violations

1. Failure to comply with the provisions in this statute and supplementary legislation constitutes serious violation punishable under the terms of the following articles, with no detriment of other violations of a criminal or civil nature foreseen in the general law.
2. Negligence and attempts are always punishable.
3. Fines are established with a maximum and a minimum and must be applied according to the seriousness of the violation, the danger for air safety, the damages it may cause to the State or to third parties, the degree of guilt of the violator and relapse.
4. Relapse will be defined as any violation of the same type in a period of 6 months counting from the date of application of a sanction.

Article 15 Violation Types and Fines

1. The following will constitute violations, punishable with the fines described as follows:
 - a) The exercise of air transportation activities in violation of the provisions in articles 8 and 9 will constitute infraction punishable by a fine between US\$ 5,000.00 (five thousand U.S. dollars) and US\$ 10,000.00 (ten thousand U.S. dollars);
 - b) Failure to comply with the technical specifications, conditions and limitations imposed by the certificate or use of aircraft of a make and model different from the ones stated in the certification. in violation of the provisions in article 6, constitutes violation punishable by a fine between US\$ 15,000.00 (fifteen thousand U.S. dollars) and US\$ 30,000.00 (thirty thousand U.S. dollars);
 - c) The exercise of air transportation operations by a domestic agency lacking a valid air transportation operator certificate, in violation of the provisions in article 12, constitutes a violation punishable by a fine between US\$ 20,000.00 (twenty thousand U.S. dollars) and US\$ 40,000.00 (forty thousand U.S. dollars).

Article 16
Suspension or Cancellation of the Certificate

In addition to the provisions stated in the previous article, operators may also have their certificates suspended or cancelled, as accessory sanctions.

Article 17
Confiscation of Aircraft and Aeronautical Equipment

In the case of the violation foreseen in item (c) of article 15, violators are also subject to confiscation of their aircraft and other aeronautical equipment if they do not cease operations in up to 48 hours following notification by AACTL.

CHAPTER V
Competency and Procedures for Application of Sanctions

Article 18
Competency

The President of AACTL is responsible for ordering the initiation of administrative procedures for application of sanctions in cases of violation of the provisions foreseen in this statute, as well as application of fines and other accessory sanctions.

Article 19
Procedures

1. A specific record will be assessed for each detected violation, stating as true the facts that were witnessed and described until proof to the contrary, which will be the grounds for the procedures.
2. Violators will be notified of their violation and the notice must include the following items:
 - a) Constitutive facts of the violation and violated legislation;
 - b) Applicable sanctions;
 - c) Location and term for presenting defense;
 - d) Opportunity for voluntary payment of the minimum value fine and consequences in the case of failure to pay.
3. Violators may submit their defense in writing or make voluntary payment within 15 days, except in the case of the violation foreseen in item (c) of article 15, which calls for immediate application of the sanction.
4. The law will allow for contentious appeal before the competent jurisdiction
5. The procedures for the violations foreseen in this statute will be terminated by statute of limitation within two years from the date of the respective occurrence.

Article 20
Destination of Fines

The product of the fines will revert to AACTL, which is in charge of inspecting compliance with the provisions of this statute and instructing the respective procedures.

CHAPTER VI
Final Provisions

Article 21
Transitory Standard

Until all members of AACTL agencies are nominated and installed, the inspection and certification competencies foreseen in this statute will be exercised by the commission foreseen in article 8 of the AACTL Bylaws, attached to Executive Order no. _____.

Article 22
Revocatory Standard

All legislation in contrary received in the internal judicial order under the terms of article 165 of the Constitution is hereby revoked.

Article 23
Effective Date

This statute will be in effect on the day following its publication.

Approved by the Council of Ministers on October 20, 2005

The Prime Minister

(signature)
(Mari Bim Amude Alkatiri)

The Minister of Transportation and Communications

(signature)
Ovídio de Jesus Amaral

Enacted on February 3, 2006

Released for publication.

The President of the Republic

(signature)
(Kay Rala Xanana Gusmão)