

## **DECREE-LAW No. 29/2011**

**of 20th of July**

### **FAIR PRICE**

The present diploma shall establish forms of intervention of Public Administration in the formation of prices, the purpose of which being to regulate prices of goods and services which are considered fundamental for the well-being of the population.

The present regime also contributes towards the improvement of the social and economic justice of families, through the practice of fair prices and comes accompanied with measures to criminalise the hoarding goods and the speculation of prices, which resulted from the collaboration a legal initiative with the National Parliament.

This Regime shall not be confused however with the public supply regulation effected directly by the State through the introduction of goods on the market. The purpose of public supply is to make up for the lack of basic goods. This happens, among other reasons, due to lack of market capacity, particularly by private economic agents, to supply it with a sufficient quantity of these goods. This is what is happening with the Country's rice supply and the sale of this product at prices below market prices. This activity is governed by its own diplomas, specifically those set out in Government Resolution no. 20/2008; Decree-Law 28/2008 and Government Decree no. 13 /2008, respectively, all published on 13<sup>th</sup> August.

Interventions in the normal functioning of pricing mechanisms on the market

are also based on the fact that the principle of perfect competition and the subsequent establishment of "normal price" are acknowledged, thus creating a balance between supply and demand, and the variants of profit, but sometimes leads to imbalances or dominant situations in supply which in turn leads to the practice of a price which is higher than that which would be fixed in normal circumstances, close to perfect competition.

It is considered that among the powers of the Government, it is responsible for directing and regulating economic activity to ensure that market mechanisms function in the most regular fashion possible and in particular by protecting the most vulnerable consumers.

That activity, in principal exceptional and therefore falling on a limited number of available goods and services, shall be cautious when addressing anomalous situations which may emerge, by interfering as little as possible and by respecting the legitimate interests of traders and consumers without falling into the temptation of centralist state intervention, unsustainable by nature.

In these terms, different types of price control practiced on the market are established. These modalities may be: fixation of highest prices; fixation of highest marketing margins; prices contracted with the commercial and services sector, and monitored prices.

Therefore, the Government, under the terms of sub-paragraphs i) and o) of paragraph 1 of article 115 of the

Constitution of the Republic, hereby decrees that the following be law:

## **CHAPTER ONE**

### **PRINCIPLES AND DEFINITIONS**

#### **Article 1**

##### **Principles**

1. It is one of the constitutional powers and an obligation of the Government to direct and regulate the economic activity and that of the social sectors, as well as to protect consumers.

2. The regimes and intervention measures established and set out in the present diploma shall be of a transitional nature and shall be aimed at correcting market prices and the risks induced in the access of the population to basic goods, by reintroducing the fair price of these goods and services.

3. Discretionary criteria regarding intervention in the price of basic goods shall be measured through the observation of one or more of the following situations:

a) Situations of illicit distortion of market prices through monopolies, cartels or collusion for artificial price setting;

b) Substantial variation of prices with speculative and unjustified profit margins given the national and international climate;

c) Signs of hoarding of basic goods;

d) Other anomalous situations of market prices which do not justify or which are

not within the scope of intervention under the legal regime of public supply.

4. In the price references in the import stage, the CIF (Cost, Insurance and Freight) value prevails or in case of doubt, the customs value.

5. The price regimes set out in the present decree-law shall be widely disseminated by the media.

6. The intervention shall start on the date of publication of that diploma which establishes the price regime.

7. The specific conditions and procedures of each price regime shall be those which are included in the present diploma and respective annexes, which shall be an integral part thereof.

#### **Article 2**

##### **Definitions**

For the effects of the present diploma:

a) *Hoarding* shall, without prejudice to the rules of criminal law, be understood to mean the formation of abnormally large stocks with a view to obtaining a dominant market position in terms of basic goods.

b) *Speculation* shall, without prejudice to the rules of criminal law, be understood to mean the attempt to profit with changes brought about illicitly in the market price, notably through the sale of goods and services at higher prices than those permitted or than that would result from the normal exercise of an activity, or also by way of a:

i) poor price marking, by demanding payment of a price higher than that marked;

ii) no price marking for sale to the public with violation of the price regime to which the good or service is subject by application of the present diploma.

c) *Public Sale Price (PSP)*, shall be understood to be the total price to be paid by the final consumer in order to acquire the goods with all taxes and surtaxes included.

d) *Initial PSP* shall be understood to be the public sale price established and freely displayed by the retailer for the first time, vis-à-vis an acquisition from a wholesaler or vis-à-vis an import.

e) *Price re-marking*, shall be understood to mean the act or effect of setting a new, higher price on products or their packages of the same stock that have been previously marked and sold at a lower initial PSP.

### **Article 3**

#### **Accounting Transparency of Stocks**

1. All importers, storekeepers, supermarkets and stores where food products are sold, and pharmacies shall keep a clear and simple recording system of the quantities and corresponding prices of the merchandise acquired, and respective stocks to which they belong, as well as their sales.

2. For the purposes of the application of the provisions of the preceding paragraph, there obligatorily shall be in the aforementioned accounting systems

with entry and exit records, identified by prices and quantities, in accordance with the rules universally used for the movement of stocks.

### **Article 4**

#### **Prohibition to Remark at a Higher Price**

It shall be forbidden to remark prices, as is defined in article 2 of the present diploma.

## **CHAPTER II**

### **PRICE REGIMES**

#### **Article 5**

##### **Price Regimes**

1. The prices of goods and services sold or provided may be subject to the following regimes:

a) Setting of Highest Prices;

i) sale to retail by wholesalers;  
or

ii) sale to final consumer, i.e. the public;

b) Fixed marketing margins;

c) Contracted prices;

d) Monitored prices;

e) Free prices, whenever they are not subject to the preceding regimes.

2. The goods and services listed in the present diploma and in its annexes of which they are an integral part may go from one price regime to another, depending on market conditions, the

reason why they may be part of more than one of the lists in the annexes.

## **Article 6**

### **Maximum Price Setting Regime**

1. This exceptional regime consists in setting a maximum price for the goods or services in different stages of economic activity, notably in the sale to the final user by taking into account their essential nature and their importance for the life of the population, as well as the elasticity of their demand and production and marketing conditions, in conditions of great need.
2. Companies interested may at any time request the revision of prices, accompanying the request with accounting elements on the progress of the activity and an analysis of the production costs and sale of the goods and services.
3. By way of illustration and safeguarding the right of the Government to introduce other products, those goods and services considered of an essential nature and of importance of the life of the population shall be those which shall be included in the lists attached to the present diploma.

## **Article 7**

### **Maximum Marketing Margin Setting Regime**

1. This regime shall consist in the setting of the percentage of the value that the economic agent may add to the price of the sale of the product in question as profit.

2. Importers and traders shall undertake to communicate the prices practiced in the last 30 days immediately before the date of notification to provide such information.

3. Marketing margins fixed for the wholesaler and for the retailer fall on the sale price or replaced price, without the re-marking of prices.

4. To prove the replaced price, the purchaser shall show the proof of order or purchase, whenever requested by the competent authorities.

5. Wholesale companies shall also sell retail directly may accumulate totally or partially the marketing margin as long as they prove they perform both commercial operations.

6. Regardless of the number of agents acting on the circuit, it is not permitted to use the margin which, as a whole, exceeds the limit resulting from the application, for the corresponding product, of the maximum margins fixed.

7. By way of illustration and safeguarding the right of the Government to introduce other products, those goods and services considered of an essential nature and of importance of the life of the population shall be those which shall be included in the lists attached to the present diploma.

## **Article 8**

### **Contracted Price Regime**

1. This regime gives companies, groups of companies or entrepreneurial associations the possibility to establish specific conditions with the Government to fix prices.

2. The contract which underlines the price agreement only commits the companies signatories to it and in the case the signatory is an association, only the economic agents affiliated in such association.

3. The contract shall be valid for the period it is agreed in such contract.

4. The termination of the contract, which may be declared by any of the parties with the notice set out in such contract, implies the immediate onset of negotiations with a view to establishing a new price agreement.

5. Once the contract has been terminated, with no new contract and until such time, the same prices shall remain in force, given market demands and negotiation difficulties, or those which shall be fixed by the Government.

6. Companies or associations signatories to the contract shall publish the price alteration before it enters into force.

#### **Article 9**

##### **Monitored Price Regime**

1. This regime consists in the mandatory dispatch to the Trade Department by the companies expressly notified for such purpose of the prices and marketing margins fixed on the date of notification and the reasons justifying the variations implemented.

2. It shall determine that companies shall obligatorily communicate prices practiced in the last 30 days immediately prior to the date of

notification to provide such information.

3. By way of illustration and safeguarding the right of the Government to introduce other products, those goods and services considered of an essential nature and of importance of the life of the population shall be those which shall be included in the lists attached to the present diploma, and especially those in Annex IV.

#### **Article 10**

##### **Free Price Regime**

This regime requires no government intervention in terms of prices, consisting in the determination of price levels by market agents themselves and covers all goods and services which are not included in other regimes, except for other situations which are set out in specific legislation.

### **CHAPTER III**

#### **POWERS AND LIABILITIES**

##### **Article 11**

##### **Price Lists**

1. Producers, importers and wholesalers shall undertake to draw up price lists corresponding to different sales conditions which they practice and to provide these lists to their clients and to the Food and Economic Inspectorate-General, when required.

2. Retailers covered by specific legislation shall be subject to the provisions set out in the preceding paragraph.

3. Retailers selling gas and fuel shall visibly display at the entrance of the point of sale, the price list, by category and quality of product.

## **Article 12**

### **Modality and Application of Price Regimes**

1. The fixation of maximum prices shall be of the responsibility of the Prime Minister, or to whomever is delegated by him, at the proposal of the Ministry of Tourism, Trade and Industry.

2. The Ministry of Tourism, Trade and Industry shall, by way of ministerial diploma, be responsible for submitting goods and services to other price regimes, safeguarding the competences of other authorities as regards medication and fuel.

3. The establishment of price regimes shall be previously announced and published by ministerial dispatch, which shall include a summary of the grounds for intervention, the deadline for such intervention, the products covered and the specifications referred to in the present diploma.

4. The price regimes shall remain valid until they are expressly revoked and, or replaced by ministerial diploma.

5. Goods and services subject to their respective price regimes, annexed to the present diploma, may be updated, suspended or revoked by ministerial diploma, under the terms of the provisions set out in paragraphs 1 and 2.

## **Article 13**

### **Penalty Regime**

1. Offences to the provisions set out in the present decree-law, when other more severe penalties, namely criminal penalties, are not particularly established, shall be prosecuted and punished under the terms of the provisions set out in the Administrative Offences Regime against the Economy and Food Guarantee approved by Decree-Law no. 23/2009 of 5<sup>th</sup> August.

2. The competent authority for supervision and investigation shall be the Food and Economic Inspectorate (FEI) under the terms of Decree-Law as referred in the preceding paragraph, without prejudice to the legally assigned powers to other services.

3. Should the information which companies are obliged to send by way of the present document not be sent in time, or in the event of false declarations, they shall be subject to fines as set out in article 27 of Decree-Law 23/2009 of 5<sup>th</sup> August, in the event another more severe penalty not be applicable for the crime of disobedience or false declarations.

4. In the event of repeated and recurrent non-fulfilment of the obligation to provide officially requested information, or of well funded signs of falsification of documents, the FEI shall propose to the Ministry of Tourism, Trade and Industry:

a) the revocation of the activity licence or the application of accessory penalties of temporary closure of the establishment or of the exercise of activities or professions, as established in articles 33 and 34 of Decree-Law no 23/2009 of 5<sup>th</sup> of August.

b) The forwarding of the proceedings to the competent judicial authorities, invoking signs of crimes as referred in the paragraph above.

#### **Article 14**

#### **Violation of Rules Connected with the Economic Activity**

1. The exercise of activities subject to licensing, inscription or registration in public entities, or subject to their authorisation, without their corresponding title, shall be subject to the application of penalties as set out in article 22 of Decree-Law no. 23/2009 of 5<sup>th</sup> of August.

2. For the purposes of the application of penalties as set out in the diploma referred to in the preceding paragraph, to the offences practiced by legal persons shall always be practiced a fine no lower than twice the minimum established.

3. In the case of unjustified refusal to pay the fine, the FEI:

a) shall forward the proceedings and the notification document to the Public Prosecutor's Office basically invoking the crime of disobedience, set out in the Criminal Code;

b) shall suggest to the Minister to definitively revoke the activity licence and the accessory licence of temporary closure of the establishment or others;

c) may take civil proceedings to request payment if the amount of the fine applied is higher than a third of the maximum amount set out by law.

#### **Article Fifteen**

#### **Entry into Force**

The present decree-law shall enter into force on the thirtieth day following its publication.

Approved in Council of Ministers on 22<sup>nd</sup> June 2011

Prime Minister

#### **Kay Rala Xanana Gusmão**

Minister of Tourism, Trade and Industry

#### **Gil da Costa S. N. Alves**

Promulgated on 14/07/2011

To be published

President of the Republic

#### **José Ramos-Horta**

#### **Annex I**

#### **Maximum Price Regime**

Goods and services set out in the following annexes may be subject to the maximum price regimes under the following conditions:

a) The length of time the maximum price regime is fixed for the public shall be as short as possible, and normal market operations shall be re-established in the free price regime or

other regime more suitable to the extraordinary circumstances;

b) Companies interested shall, at any time, through their representative associations, request the revision of the prices accompanying the request with the elements justifying the desired increase, namely with the accounting elements on the progress of the respective economic activities and an analysis of the production costs and sale of the goods and services;

c) The competent authorities may request that other elements considered necessary for the appraisal be forwarded, and, for the same purpose resort to the direct examination of the company books.

d) Regardless of the number of agents acting on the circuit, it is not permitted to use the margin which, as a whole, exceeds the limit resulting from the application, for the corresponding product, of the maximum margins fixed.

List of Goods subject to the fixation of maximum marketing margins:

Goods	Wholesaler	Retailer

**Annex II**

**Maximum Marketing Margin Regime**

The following goods shall be subject to the maximum marketing margin regime to which article 7 refers, under the following conditions:

a) Marketing margins fixed for the wholesaler and for the retailer fall on the sale or replaced price, once the competent authorities have been heard;

b) To prove the replaced price, the purchaser shall show the proof of order or purchase, whenever requested by the competent authorities.

c) Any economic agent may accumulate all or part of the marketing margin as long as such agent performs the inherent commercial operations;

**Annex III**

**Contracted Price Regime**

Goods and services which shall be subject to the contracted price regime, as set out in article 8, in which there shall be a price intervention shall observe the following conditions:

a) The contract which requires a price agreement commits, besides the Government only companies signatories to such contract and in the case the signatory is an association, only the



economic agents affiliated in such association;

b) The Government shall be represented by the Minister for Tourism, Trade and Industry, except in the sector of oil-derivative fuel where the National Oil Agency is heard and contracts subject to the approval of the Prime Minister;

c) The contract shall be valid for the period it is agreed in such contract.

d) The termination of the contract, which may be declared by any of the parties with the notice set out in such contract, implies the immediate onset of negotiations with a view to establishing a new price agreement.

e) Once the contract has been terminated, with no new contract and until such time, the same prices shall remain in force, given market demands and negotiation difficulties, or those which shall be fixed by the Government.

f) Whenever goods and services are subject to a contracted price regime and had already been subject to any of the price regimes set out in the present decree-law. The prices established under the scope of those regimes remain valid, until an initial contract is entered into.

g) Companies or associations signatories to the contract shall publish the price alteration before it enters into force.

The following goods and services shall be subject to the monitored price regime to which article 9 refers, under the following conditions:

a) The competent authorities shall be heard on the matter;

b) The elements referred to in article 9 shall be forwarded to the Trade Department to the fifteen working day upon date of notification.

List of Goods and Services subject to the monitored price regime

1. Sugar (retail);
2. Rice (wholesale and retail);
3. Corn (import and marketing retail stages);
4. Chicken, rooster, hen meat and other offal (import and marketing retail stages);
5. Cement (marketing retail stages);
6. Taxis and chauffeur driven hired cars;
7. Urban collective transports;
8. Interurban collective transports;
9. Cooking oils (wholesale and retail);
10. Eggs in their natural state (retail);
11. Pasta;
12. Sand and stones for the building and constructions sector;
13. Medication to be specified by the Ministry of Health.

#### **Annex IV**

#### **Monitored Price Regime**