

DECREE-LAW No. 32/2011

of 27th of July

**MANAGEMENT AND DISPOSAL
OF STATE PROPERTY**

The legal regime governing state-owned property presents a number of regulatory flaws in crucial areas, such as the regime applicable to the management and disposal of assets.

It is therefore necessary to approve procedures for the State to be able to undergo a better management of its assets at a minimum cost and to ensure that all operations concerning the movable property may be carried out with transparency.

The present diploma shall be oriented by objectives of efficiency and rationalisation of public resources and appropriateness to the organisation of the state, it therefore being with this objective in mind that the regime applicable to the movable assets of the State shall be approved.

The Government hereby, under the terms of sub-paragraph o) of article 116 of the Constitution of the Republic, decrees that the following shall be law:

CHAPTER I

GENERAL PROVISIONS

Article 1

Object and Scope

1. The present diploma shall establish the general principles governing the management and disposal of movable property of the State.

2. Property which is part of the financial assets of the State, property which is part of the cultural heritage, documents and archives, which are part of the archivist heritage and the movable property and vehicles allocated to the Armed Forces and which are considered to be military material shall not be covered by the present diploma.

3. All State property that the services do not require for the performance of their duties shall be delivered to the State Property Department, by way of a document signed by the Director of such department and Director of the service disposing of such property.

CHAPTER II

MOVABLE PROPERTY

Article 2

Acquisition of Property

1 The regime set out for public expenditure and procedures in relation to public procurement shall apply to the acquisition of movable property.

2. Within prejudice to the provisions set out in the following paragraph, the top directors of the State services shall be responsible for deciding one accepting donations of movable property, which shall be communicated to the State Property Department, for the purposes of Inventory.

3. All movable property donated to the State shall be considered property of the State, of any nature or by any means through its representatives, including property donated to services and holders

of public posts in service, when the commercial value of such property is higher than 500 dollars as long as it is not of a strictly personal nature.

4. For the purposes of the paragraph above, property of a personal nature shall be considered that which, due to its nature, consists of objects which are traditionally used as personal objects.

5. The property considered likely to attract the attention of whoever receives the donation is, regardless of its value, declared to the State Property Department.

Article Three

Property Management

1. The property management referred to in article two above shall be of the entire responsibility of the State Property Department which may be decentralised, and its powers may be delegated to the directors responsible for the administration and finances of each one of the ministries and institutions.

2. The inventory and property registry to which the paragraph above refers shall be governed by the rules of the ministerial diploma on the State property inventory.

Article Four

Transfer of Property

1. The movable property which is under the direct administration of the State Property Department may be transferred to State services.

2. The transfer set out in the preceding paragraph shall be authorised by way of a document signed by a representative of the State Property Department and by the other service involved in the transfer, at the time of delivery of the property or upon its initial inventory.

Or to be Article Five

Availability of Property

The movable property of the State that the services do not need to perform their duties shall be made available by the State Property Department, with a view to being re-transferred to other services or to be disposed of.

Article Six

Re-transfer of Property

1. The availability of property shall be communicated to the department responsible for the administration and the finances of the ministry to which the services belong, with a view to transferring the property made available to other services of the same ministry.

2. When, in the same ministry, there are no services interested, the department responsible for administration and finances shall communicate the availability of the property, with a short description of the condition in which the property is in, to the State Property Department, for the possible transfer to other entities.

3. The transfers set out in the preceding paragraphs shall be undertaken by way of documents, signed by a representative of the service which has made such property available and the other having accepted such transferred

property, upon delivery of such property.

CHAPTER III

DISPOSAL

Article Seven

Authorisation for Disposal

1. The State Property Department shall be responsible for evaluating the property and the Auction Commission for authorising the disposal and establishing the form of such disposal.

2. The authorisation for disposal referred to in the preceding paragraph shall be approved by dispatch by the minister responsible for the finance area.

3. For reasons, duly founded and by Prime Minister's dispatch, upon the official opinion of the State Property Department, of public interest, the donation of movable property may be authorised, notably, to social solidarity institutions or others which prove to be of significant interest for the benefit of society.

Article Eight

Procedures for Disposal

1. Without benefit to the provisions set out in the following paragraph the disposal of property, considered disposable shall be carried out in public auction, by public tender or by internal competition.

2. Disposal may be undertaken by way of direct negotiation with a given person:

a) In duly founded cases by the State Property Department, given the nature of the property and upon dispatch by the Prime Minister;

b) When it is presumed that in the forms set out in the preceding paragraph the best price will not result thereof or there will be an absence of interested parties;

c) When it has not been possible to dispose of the property in any of the ways set out in the preceding paragraph.

Article Nine

Public Auction

1. Public auction consists in the disposal of property by way of face-to-face bidding, being conducted by the Auction Commission.

2. The bidding shall cease when the chair of the commission has called out the highest bid three times and no higher bid has been made.

3. In the public auction announcement to be published in the national media, the conditions of the auction shall be described, namely:

a) Place, date and time in which the public auction will take place;

b) Description and the starting price of each piece of property to be disposed of;

c) Payment conditions.

4. The successful bidders shall be issued a document for payment, containing the

amount to be paid and the description of the property awarded.

5. Property shall only be handed over to the successful bidders, once payment of the amount due has been made to the State, which shall be effected in a maximum time limit of 5 working days.

6. When the successful bidder who is in first place does not make the payment within the established time limit, the next bidder may pay the price the first successful bidder should pay if, notified to pay this option, such bidder pays within three days. In the event the second bidder rejects this option to buy at the highest bid, the bidding shall be repeated, but the first bidder shall be excluded.

Article Ten

Public Tender

1. The procedure to sell property by public tender shall be done by way of proposals presented in a sealed letter by the candidates.

2. The public tender announcement shall be made public in the national media.

3. The public tender shall be directed by the State Property Department.

4. The following points shall obligatorily be included In the notice of the tender:

a) Description of the goods to be disposed of;

b) Base value of the bid, in situations where this can apply;

c) Payment conditions and deadlines of the property by the successful bidder;

d) Place, deadline, date and time limit for delivery of proposals;

e) Days and times that the property can be visited;

f) Place, day and time that the proposals will be opened;

5. The proposals shall be submitted by the bidders in sealed envelopes, addressed to the State Property Director and delivered at the place indicated until the time limit on the day indicated on the notice of the tender or on the place of the tender, until the time such tender takes place.

6. A delivery not of the proposal shall be issued and delivered to the bidder, identifying him and indicating the day and time such proposal was received by the services of the State Property Department.

7. The property shall be awarded to the bidder who has made the highest bid. In the event of a tie, the face-to face bid shall be repeated between those bids in a tie.

8. The opening of the proposals shall be a public act. The proposals shall remain sealed and kept under the responsibility of the State Property Department until the day and time that it has been determined that they will be opened, in accordance with the notice of the tender.,

9. The proposals shall be opened one by one and, once each envelope is open, and containing each one of the bids, the

name of the bidder and the amount of his bid shall be announced out loud.

10. If after the deadline determined for the payment of the property, the bidder who has made the highest bid, has not paid the amount due, the opportunity shall be given to the bidder who proposed the second highest amount. In the event the latter does not pay the amount the opportunity shall be given to the third bidder who proposed the highest amount.

11. The State Property Department shall draw the public tender documents.

Article Eleven

Internal Competition

1. The internal competition procedure shall be limited to State employees and agents and may take the form of the following modalities:

a. Internal competition limited to the central administration body to which the property belongs;

b. Internal competition limited to the public administration bodies.

2. The procedures referred to in the paragraph above follow the rules applicable to the public tender procedure with the necessary adjustments.

3. The Auction Commission shall be responsible for fundamentally choosing the internal competition modalities to be used.

4. The State Property Department shall be responsible for directing the internal competition.

Article Twelve

Destruction of Movable Property

1. The destruction of movable goods shall only be permitted when they are in such a state of degradation that they cannot possibly be recovered for further use.

2. The list of property to be destroyed shall be drawn up by the State Property Department, and shall be approved by the minister responsible for the area of finance, the Auction Commission being responsible for defining the procedure to be used.

3. The State Property Department shall be responsible for destroying all property, object of disposal, using the procedure recommended by the Auction Commission.

4. All property destroyed shall be registered.

Movable Property Subject to Registration

Any movable property subject to registration, bought from the State, by way of the procedures referred to in the present diploma, shall be duly registered in the name of the person acquiring such property, the successful awardee of the disposal procedure, and the competent services of the State Property Department shall ensure the fulfilment of the provisions set out in the present article.

CHAPTER IV

AUCTION COMMISSION

Article Fourteen

Composition

The members of the Auction Commission, which consists of a president, a vice-president and three members, shall be appointed by joint dispatch by the Finance Minister and Minister for Infrastructures and shall be from:

- a) National State Property Department, from Finance Ministry, which shall chair;
- b) National Domestic Tax Department, from Finance Ministry;
- c) National Customs Department, from Finance Ministry;
- d) National Land Transport Department, Ministry of Infrastructures;
- e) Administration Department from the Ministry to which the property belongs.

Article Fifteen

Sessions

1. The Auction Commission shall work in the premises of the National State Property Department, where their meetings shall also take place, except if the majority of the six members decide otherwise and with a regularity of ordinary sessions which internally shall be decided under the same conditions.
2. The chair shall summon the extraordinary meetings with a minimum advance notice of 3 working days, except in the case of a justified emergency.

3. The Auction Commission shall decide and approve all acts by simple majority.

CHAPTER V

FINAL PROVISIONS

Article Sixteen

Regulations

The procedures required for the implementation of the principles established in this diploma shall be the object of a ministerial diploma by the ministry responsible for the finance area.

Article Seventeen

Repeal

Decree-Law no. 41/2008 of 29th of October on Auction Commission shall hereby be repealed.

Article Eighteen

Entry into Force

The present Decree-Law shall enter into force on the day immediately following that of its publication.

Approved in Council of Ministers on 3rd of June 2011

Prime Minister

Kay Rala Xanana Gusmão

Finance Minister

Emília Pires

Promulgated on 21/07/11

To be published

The President of the Republic

José Ramos-Horta