

DEMOCRATIC REPUBLIC OF TIMOR-LESTE

GOVERNMENT

Decree-Law No. 2 /2003 Of 10 March

BASIC LAW ON THE ROAD TRANSPORT SYSTEM

Considering the need to establish a systematized corpus of rules and principles to be followed in passenger and cargo transport by road;

Considering that, with this legal basis, conditions will be put in place for the establishment of technical standards indispensable for regulating the activity related to passenger and cargo transport by road in the country, thereby ensuring its orderly development.

Under the terms of section 116(d) of the Constitution, the Government enacts the following that shall have the force of law:

CHAPTER General provisions Section 1 Concept

1. The road transport system comprises the infrastructure and productive factors used for carrying people and goods by road within, or bound for, the East Timorese territory or that have a portion of their itinerary therein, and shall be governed by the present decree-law and by regulations for the execution hereof.

Section 2 General purpose and principles

1. The key purpose of the organisation and operation of the road transport system is to ensure its maximum contribution to economic development and to promote greater welfare for the people, namely through:

- a) a permanent adequacy of transport services to the needs of their users, both in quantitative and qualitative terms;
- b) a gradual reduction in the social and economic costs of transport.

2. The pursuit of the goals set out in item 1 shall comply with the following basic guiding principles:

- a) Users are guaranteed the freedom to choose the means of transport, including the use of own-account transport.
- b) Users are ensured, in parity of conditions, equal treatment in the access to and usufruct of transport services;
- c) Except those restrictions determined by a recognised public interest, the activity carried out by enterprises, public or private, that provide transport services shall

- be conducted under a regime of broad and fair competition, freedom of establishment, management autonomy, and fair investment profitability;
- d) Public powers will ensure a fair and equal treatment, by equalizing, to the extent possible, their basic competitive conditions, without prejudice to their structural differences and public interest requirements;
 - e) Public service obligations may be imposed on enterprises running transport activities considered as public service, in regard to the quality, quantity and price of deliveries inconsistent with the pursuit of their commercial interests;
 - f) The public entities responsible for planning transport activities considered as public service may decide to compensate the expenses borne by enterprises as a result of specific obligations imposed on them in this regard, taking into account the advantages and burdens that fall on the operator as a consequence of the provision of services;
 - g) Public investments in infrastructure shall be subject to adequate planning and coordination in order to ensure maximum social profitability.
3. The organisation and operation of the transport system shall also take into account:
- a) imperatives of national defence and requirements of a strategic character;
 - b) directions of the policies on territorial planning and regional development, life quality and environmental protection;
 - c) requirements of the other economic activity sectors;
 - d) the cost-effectiveness of power consumption;
 - e) the need for safe movement and transport.
4. The public service obligations referred to under paragraphs e) and f) of subsection 2.2 above comprise the obligation to operate, the obligation to carry and the tariff obligation and shall only be justifiable under the terms and to the extent required to guarantee the effective operation of the system so as to equate supply with the existing demand and the needs of the community.
5. In pursuing the road transport policy, issues relating to the most disadvantaged social classes, people with limited mobility and the integration of isolated regions or regions with limited accessibility, which may be subject to special provisions, shall be taken into special consideration.

Section 3

Basic definitions and classifications

1. For the purposes of the present decree-law and the regulations for the execution hereof, the basic definitions given in the following subsections shall be adopted:
2. Public transport, or for the account of someone else, refers to transport that is carried out by enterprises qualified to run activities related to the provision of transport services, on a regular or non-regular basis, and is intended to meet, through remuneration, the needs of users; and private transport, or own-account transport, refers to transport that is carried out by natural persons or corporate bodies to provide for their needs or to complement the exercise of their specific or main activity.

3. With regard to the purpose of the movement, a distinction is drawn between transport of people, or passengers, and transport of goods, or cargo, and mixed transport.
4. With regard to the spatial scope of the movement, transport may be:
 - a) International transport, the one that, implying border crossing, is carried on, in part, within the East Timorese territory;
 - b) Domestic transport, the one that is carried on exclusively within the national territory, in which case the following subcategories shall be considered:
 - Interurban transport, the one that envisages meeting the needs of movement between different municipalities that are not part of the same district;
 - Local transport, the one that envisages meeting the needs of movement within a district;
 - Urban transport, the one that envisages meeting the needs of movement in an urban and suburban milieu that is considered to be covered by the limits of an area of urban and suburban transport.
5. Area of urban transport refers to an area that has been considered and delimited as the area of an urban centre, or of a set of geographically contiguous population clusters.

Section 4 Sector Accounting

With a view to establishing a sector accounting, bodies and enterprises carrying on activities related to infrastructure or the operation of integrated transport services in the road transport system may be required to prepare accounts in compliance with the rules that will be established to that effect.

Section 5 Tax harmonisation

With the aim of doing away with disparities in treatment that may substantially falsify the competitive conditions of the various types of transport enterprises, including private transport, the specific tax regime to which they are subject shall be reformulated, in accordance with the following guidelines:

- a) a uniform and permanent accounting system for expenditure pertaining to road transport infrastructure, as a basis of taxation predicated on infrastructure expenditure imputation, shall be adopted;
- b) Owners of road transport vehicles, public or private, shall be subject to a tax on the use of their respective infrastructure, the basis of calculation on which wear and tear of that infrastructure, which is imputable to them, as well as external costs associated with such transport and supported by the community, shall be taken into account;
- c) Revenues generated by the tax referred to in the preceding paragraph, as well as any revenues generated from the use of road transport infrastructure shall, in

whole or in part, be earmarked for the expansion, modernisation and maintenance of its networks.

2. In addition to the specific tax regime provided for under section 5.1, carrier enterprises may only be subject to taxes that, in general, encumber those from all other economic sectors.

Section 6

Transport funding in urban environment

Under the terms to be defined by law, taxes and fees aimed at ensuring the maintenance and development of public passenger transport systems, in urban areas, may be assessed and the amounts of such taxes and fees shall accrue to the benefit of the entities responsible for their operation.

Section 7

Applicable legal rules

1. The planning, funding, management and control of infrastructure and the operation of the road transport system shall be governed by the present decree-law and other applicable legal and regulatory rules, safeguarding the rules of international treaties and conventions in force in the East Timorese domestic legal system.

2. The Directorate of Land Transport, within the Ministry of Transport, Communications and Public Works, is responsible for planning and controlling the various types of road transport and, under the legal and regulatory terms, it is incumbent on it:

- a) To approve technical directives on the services and operations thereof;
- b) To monitor the services and operations in order to ensure the effectiveness thereof;
- c) To impose penalties for the breach of applicable legislation, to be defined in the instruments for the execution of the present decree-law.

Section 8

Monitoring of road transport

1. The monitoring of compliance with the regulatory rules on road transport, as well as of complementary and ancillary road transport activities, shall be led and ensured by the Directorate of Land Transport, within the Ministry of Transport, Communications and Public Works.

2. Owners or employees of any enterprise or activity referred to or covered by the present decree-law and the instruments for the execution hereof, as well as any persons to which the present provisions apply are obligated to allow the staff of the body referred to in section 8.1, for inspection purposes, access to their vehicles and facilities and the examination of any elements of their bookkeeping and documentation, as and when required for monitoring compliance with transport legislation.

3. The monitoring function referred to in subsections 8.1 and 8.2 above shall be exercised by agents who will have the status of public authority agents and may seek and

secure the required support from any functionaries or agents of any services or bodies of the central, regional or local administration, especially from the security and monitoring forces, with general or specialised competency

Section 9 Emergency measures

The Government may, within the scope of their respective competencies, promote, guarantee, requisition, prohibit, suspend or restrict, in whole or in part, for a strictly necessary period of time, the provision of certain types of transport services that are the subject of the present decree-law when serious motives related to public order and health, movement security, environmental preservation, power supply or other public interests so justify.

CHAPTER II Road transport

Section 10 Road infrastructure

1. The national road network, which is part of the State's public domain assets, is defined in the National Road Plan.
2. The National Road Plan and district and local road networks shall be the subject of a specific instrument.
3. The instrument referred to in subsection 10.2 above shall establish the disciplinary rules on categories and technical characteristics of the roads of the national, district and local networks, which shall be adapted to the traffic nature and foreseeable traffic volumes.

Section 11 Construction, maintenance and operation of infrastructure

1. It is incumbent upon the central administration to construct, maintain and operate the national road network.
2. The construction, maintenance and operation of district and local road networks are incumbent upon the local authorities of the area where they are situated.
3. The construction and operation of roads and major artworks, namely bridges and tunnels, as part of the national road network may be the subject of a concession granted to an enterprise specifically constituted to that purpose.
4. For the purpose of subsection 11.3, the Government shall define the road stretches or the major artworks to be included in a concession, as well as their respective construction programmes.

Section 12

Private transport

Own-account road transport may be freely carried out and shall only be subject to rules to be defined by a regulation, in regard to:

- a) Technical and identification requirements for vehicles;
- b) Mechanisms for controlling the effective private character of transport.

Section 13 Public transport

1. Road public transport may operate under a regular or occasional transport regime.
2. Regular transport refers to public transport services undertaken in accordance with previously established itineraries, stops, timetables and prices.
3. Occasional transport means public transport services undertaken on a non-regular basis in accordance with itineraries, timetables and prices freely negotiated or established on a case by case basis, whether the total vehicle capacity is made available to only one user or not, or is made available to a plurality of users who use it and pay for a fraction of its capacity.
4. A vehicle being used for public transport services shall be subject to licensing and shall comply with the technical and identification requirements.

Section 14 International road transport

International road transport shall be subject to special legislation, as well as to international Treaties and rules binding on the East Timorese State.

Section 15 Access to carrier business

Access to road public carrier business shall be given to those enterprises that:

- a) belong to:
 - a natural person of East Timorese nationality; or
 - a corporate body with over 50% being controlled by East Timorese nationals, and constituted and regulated in accordance with the East Timorese law; or
 - persons enjoying the right to equal treatment with East Timorese nationals, in accordance with international conventions or rules that are binding on the East Timorese State.
- b) meet the conditions of competence, financial capacity and professional capacity, to be defined by regulation;

- c) are registered in the national registry of road carriers, to be established to that effect, and hold the respective title(s).

Section 16

Operation of urban and local regular passenger transport services

1. Urban and local regular transport is a public service, operated under the license or concession regime by duly qualified carrier enterprises, under the terms of section 15.
2. It is incumbent upon the Directorate of Land Transport, Ministry of Transport, Communications and Public Works, to grant licenses and negotiate concessions referred to in subsection 16.1.

Section 17

Operation of interurban regular passenger transport

1. Interurban regular transport shall be operated on the free initiative and for the account and at the risk of duly qualified carrier enterprises under the terms of section 15, provided they are licensed, under the authorisation regime for each line, by the Directorate of Land Transport, Ministry of Transport, Communications and Public Works.
2. Without prejudice to subsection 17.1, whenever the competent authorities consider that a demand for interurban or regional regular transport is not being met along the lines initiated by carrier enterprises, they may open a competitive bidding process for the concession or operation, under the service provision regime, of the lines the establishment of which may be deemed convenient, considering such enterprises as public service.
3. The granting of the authorizations referred to in subsection 17.1 may be denied on grounds of lack, original or supervenient, of the requirements for access to the carrier business by applicant companies, and where the conditions set out in the respective operation programme are likely:
 - a) to seriously disrupt the organisation of the regular transport market;
 - b) to affect the operation of urban and local transport in the respective zone of influence;
 - c) to amount to unfair competition with other carrier enterprises already in operation

Section 18

Operation of occasional passenger transport

1. The operation regime of occasional passenger transport shall include:
 - a) The distinction between transport by light vehicles and by heavy vehicles;
 - b) The possibility of assigning occasional transport vehicles to geographically defined places or areas.

2. It shall be incumbent upon the Directorate of Land Transport, within the Ministry of Transport, Communications and Public Works, to grant licenses for light and heavy vehicles to be used as occasional passenger transport.

Section 19 **Transport for collective tourist trips**

1. Regular or occasional passenger transport that is specifically designed for collective tourist tours may be the subject of rules to be defined by regulation, in respect of:

- a) Access conditions for the organisation and carrying out thereof, which shall include meeting the business access requirements as established under the terms of section 15.
- b) The subjection of vehicles intended for use in collective tourist tours to licensing and special technical, safety and identification requirements;
- c) The specific conditions for their operation, in order to ensure their compliance with the specific needs of the tourist business.

2. A collective tourist tour refers to a set of services that may not limit themselves to the mere provision of transport and covers the entirety of the commonly recognised needs of tourists taking part therein, through an overall price previously and individually set.

Section 20 **Operation of public cargo transport**

1. The operation regime of public cargo transport shall safeguard the existence of competitiveness and transport safety, especially of those that entail special danger.

2. For the purpose of the preceding subsection, geographic conditionalities or quantitative restrictions on market access may be established.

Section 21 **Tariffs and prices**

1. Tariffs of regular passenger transport by road operated under a public service regime shall be set by the respective conceding authorities.

2. Fares of all other regular transport shall be freely set by carrier enterprises.

3. The Government may, in case the need to safeguard the organisation of the transport market so justifies, define maximum and minimum limits within which tariffs and fares for regular passenger transport by road shall be set by the entities referred to in the preceding subsections.

4. Tariffs for occasional passenger transport in light vehicles shall be set under the terms to be regulated.

5. Fares for all other occasional transport, of passengers and cargo, shall be agreed upon by the carrier enterprises and the users.

6. Pre-set fares, tariffs and transport conditions, applicable over any period of time, shall be published and adequately disseminated.

CHAPTER III **Technical coordination**

Section 22 **Technical coordination**

Central and local administrations and carrier enterprises shall, within the scope of their competencies, promote the technical coordination of road transport and between the latter and non-road transport, namely through:

- a) the establishment of public transport terminals and stop points and vehicle parking lots, with a view to providing greater effectiveness, rapidity, safety and comfort in interchanges and connections between trips and means and modes of transport;
- b) the design and construction of coordination centres and passenger shelters that provide an adequate location and service to public transport terminals and stops;
- c) the technical complementarity of vehicles and all other equipment intended for the operation of transport services;
- d) due consideration of the transport function while planning the establishment of industrial areas or projects.

CHAPTER IV **Ancillary and complementary transport activities**

Section 23 **Ancillary and complementary transport activities**

1. With a view to ensuring the effectiveness of their coordination with carrier activities and the effective harmonisation, organisation and operation of their respective markets, special regulations shall apply to activities in the area of:

- a) transport agents;
- b) forwarding enterprises;
- c) Rental of passenger and cargo motor vehicles without a driver;
- d) Cargo pooling;
- e) Receipt, storage and distribution of cargo.

2. On matters relating to access to the respective businesses, the activities referred to under the preceding subsection shall be subject to the principles set out in section 15.

CHAPTER V
Final and transitional provisions

Section 24
Regulatory Arrangements

The Government shall regulate the present decree-law, within one year from the date of its publication.

Section 25
Revocatory clause

All rules established within the framework of the Indonesian legal system in the field covered by this instrument are hereby repealed.

Section 26
Entry into force

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

Seen and approved by the Council of Ministers on 18 July 2002.

The Prime Minister

[Signed]

(Mari Bim Amude Alkatiri)

The Minister for Transport, Communications and Public Works

[Signed]

(Ovídio de Jesus Amaral)

Promulgated on 15 October 2002.

To be published.

The President of the Republic

[Signed]

(José Alexandre Gusmão, Kay Rala Xanana Gusmão)

