

DEMOCRATIC REPUBLIC OF TIMOR-LESTE

GOVERNMENT

**Decree-Law No. /2003
Of**

ON PUBLIC COMPANIES

Efficiently organised and managed public companies may serve as a hinge to the development of a sound entrepreneurial sector and, to that extent, facilitate the national economy to start up. Therefore, it is expedient to guarantee the necessary framework for the attainment of this goal.

Pursuant to section 116(d) of the Constitution of the Republic, the Government enacts the following that shall have the force of law:

CHAPTER I

General principles

**Section 1
Goals**

Public companies are established by the State either with own capital or provided by other public entities, and do business within the framework of the State's socio-economic goals.

**Section 2
Legal personality**

1. Public companies enjoy legal personality and judicial capacity, are granted administrative and financial autonomy and have property of their own.
2. The legal capacity of public companies encompasses all rights and obligations required to pursue their object, as established in their respective articles of incorporation.

**Section 3
Establishment and subordination**

1. Public companies are established by decree of the Council of Ministers.
2. The constitutive instrument of a public company shall mention the organ of the state machinery to which the company is subordinated.
3. Proposals for the establishment of a company shall be accompanied by appropriate technical, economic and financial studies, as well as a draft organic structure of the company, including the opinion of Ministry of Planning and Finance.

Section 4

Articles of incorporation

The articles of incorporation of a company shall be attached to the constitutive instrument of such company and shall form an integral part thereof.

Section 5

Mandatory information in the articles of incorporation

1. The articles of incorporation of a public company shall contain the following specifications:
 - (a) Name;
 - (b) Main office and geographic area of its business;
 - (c) Object;
 - (d) Founding fund;
 - (e) Supervisory body;
 - (f) Composition, competencies and operating rules of its organs;
 - (g) Frequency of meetings, rules for the convening and operation of the Board of Directors and of the executive management team.
2. The name of a public company shall be followed by the words “Public Company” or the initials “PC”.
3. A public company may establish branches under the terms as established by its articles of incorporation.

Section 6

Financial interests

A public company may underwrite shares for the purposes of establishing a mixed company, provided authorisation to do so is granted by the relevant supervising Cabinet member and by the Minister of Planning and Finance.

Section 7

Registration

The constitutive document of a public company and amendments thereto must be registered with the Commercial Registry, within 30 days from the date of its publication in the Official Gazette.

Section 8

Rules of procedure

1. The rules of procedure of a public company shall be submitted by the chairperson of the Board of Directors to the organ of the state machinery that supervises the respective area of activity, for approval, within 90 days from the publication date of the constitutive instrument of the company.
2. The rules of procedure shall include aspects relating to its internal organisation, description of functions not mentioned in the articles of incorporation, work organisation, and salaries.

3. Amendments to the rules of procedure shall abide by the regime set forth under subsection 1.

CHAPTER II Organs

Section 9 Social organs

A public company shall have the Board of Directors and the Monitoring Board as mandatory social organs.

Section 10 Board of Directors

1. The Board of Directors is the managerial body of a public company and is comprised of a minimum of five and a maximum of seven members, in accordance with the nature and size of the company.
2. It is incumbent upon the Council of Ministers to appoint or dismiss the chairperson of the Board of Directors, and the responsibility of appointing or dismissing the other members rests with the minister responsible for the respective area of activity.
3. The members of the Board of Directors must include one representative from the Ministry of Planning and Finance and one representative elected by the employees of the company.
4. The appointment of members of the Board of Directors shall be in compliance with the criteria of recognised technical and professional capacity.
5. The term of office of the members of the Board of Directors shall be 4 years renewable for equal periods of time.

Section 11 Competencies of the Board of Directors

The Board of Directors shall have the necessary powers to ensure the management and development of the company, notably:

- (a) To administer the assets of the company;
- (b) To approve and vote on the annual and multi-annual business plan and financial plan of the company;
- (c) To approve the management policy of the company;
- (d) To review and vote on the annual business plan and the respective budget for the following year, not later than the 15th of April of each year;
- (e) To review and vote, not later than the 30th of September of each year, the balance sheet pertaining to the previous financial year and the corresponding opinion for the Monitoring Board;
- (f) To review and vote on the proposal for the application of the outputs from the previous financial year, before its submission for higher-level approval;
- (g) To approve accountability documents;

- (h) To approve the acquisition or disposal of assets or shares where these are provided for in the approved annual budget and within the limits as established by law or by the company's articles of incorporation;
- (i) To submit to the relevant Minister acts and documents that, under the terms established by law or by the company's articles of incorporation, must be referred to the Minister for approval;
- (j) To guarantee the higher-level administration and management of the company;
- (k) Any other powers as established by the general law.

Section 12

Chairperson of the Board of Directors

1. It is especially incumbent upon the Chairperson of the Board of Directors, or anyone replacing him or her:

- (a) To represent the company in court and elsewhere, either actively or passively;
 - (b) To co-ordinate the activity by the Board of Directors and the executive directors;
 - (c) To convene and chair Board of Directors and executive directors meetings;
2. The Chairperson of the Board of Directors, or his or her legal substitute, shall have a casting vote in any decision being made.

Section 13

Executive directors

Where deemed necessary, the Board of Directors may appoint executive directors, clearly defining the scope of their activity.

Section 14

Monitoring Board

1. It is incumbent upon the Monitoring Board:
- (a) To verify the legality of acts by the company organs, their compliance with the articles of incorporation and all other applicable legislation;
 - (b) To monitor the execution of the business plan and work schedules;
 - (c) To periodically review the company's accounting and budget execution;
 - (d) To issue its opinion on criteria for asset valuation, for capital amortisation and repossession, for the establishment of provisions and reserves, and for the determination of financial outputs;
 - (e) To express a detailed opinion on the balance sheet, report and accounts of the Board of Directors;
 - (f) To issue its opinion on the financial performance and management of the company, on the realisation of the planned outputs and benefits;
 - (g) To exercise any other functions as established by its articles of incorporation and all other relevant legal provisions.
2. The Monitoring Board is comprised of an odd number of members that shall not be less than 3 and shall not exceed 5.
3. Monitoring Board Members are appointed by the Minister of Planning and Finance, after consultation with the relevant supervising Minister, for a renewable 4-year term.

4. At its own discretion or at the request of the chairperson of the Board of Directors, the Monitoring Board may seek assistance from hired external auditors.
5. The chairperson of the Monitoring Board may attend Board of Directors meetings or be represented thereat by another member.

Section 15

Civil and criminal liability

1. Public companies are civilly accountable to a third party for acts or omissions committed by their administrators, without prejudice to the exercise of the right of action by the company against its administrators.
2. Incumbents of the management organs of a public company are civilly accountable for damage caused by failure to fulfil their legal or statutory duties, without prejudice to the exercise of the right of action by the company.
3. The provisions of the preceding subsections do not prejudice the criminal or disciplinary liability that an incumbent of any of the company organs might incur.

CHAPTER III

Economic, financial and property management

Section 16

Property

1. The property of a public company comprises the assets and rights received or acquired while doing business.
2. A public company administers and freely disposes of the assets that constitute its property without being subject to norms relating to the State's private domain, unless otherwise especially provided for in its articles of incorporation.
3. A public company also administers the assets of the State's public domain allotted to activities under its responsibility, keeping an updated register thereof, earmarking the assets deemed convenient to be incorporated thereinto and withdrawing those assets that can be dispensed with in its own activity.
4. The property of a public company is the exclusive collateral for debts incurred.

Section 17

Statutory capital

1. The statutory capital of a public company, as well as the conditions for its realisation, shall be established in the constitutive instrument.
2. Appropriations and other property inputs from the State and any other public entities intended to reinforce the capital of a public company shall be entered in a special account, under the terms as may be established by regulation.

Section 18

Revenues

Revenues of a public company include:

- (a) Those deriving from its activity;
- (b) Income from its own assets;
- (c) Stakes, appropriations and subsidies allocated to it;
- (d) Proceeds from the disposal of its own assets or from the establishment of rights over such assets.
- (e) Grants, inheritances or legacies;
- (f) Any other income or values derived from its activity or that, in accordance with the law, its articles of incorporation or by contract, may be owned by the public company.

Section 19

Financial autonomy

It is the exclusive competency of a public company to collect revenues derived from its activity or provided to it under the terms established by its articles of incorporation or by law, as well as to realise all expenditures inherent in the fulfilment of its object.

Section 20

Management principles

1. A public company shall be managed in accordance with the State's social and economic policy with a view to promoting development and ensuring the economic feasibility and financial balance of the company.
2. Management pursues, inter alia:
 - (a) short- and medium-term economic and financial goals as established in contract-programmes with the State;
 - (b) The principle of economic and financial self-reliance, except where the State, for reasons of a political character, imposes an under-pricing practice or establishes social goals that are not economically cost-effective for the company.
 - (c) The State's price policy, where the public company occupies a monopolist or dominant position on the market;
 - (d) A salary policy, which takes into account the status of the domestic labour market, promoting short- and medium- term collective employment contracts with the aim of creating social harmony and allowing for pay increases based on productivity;
 - (e) The goal of ensuring an increase in productivity while reducing production costs;
 - (f) The goal of having adequate economic and financial cost-effectiveness rates for investments.
3. Where a public company is compelled to practise under-pricing or is forced to pursue economically unfeasible goals, the State shall grant a budget subsidy to offset costs not covered by own revenues.

Section 21

Financial management

1. Economic and financial management of a public company shall follow its annual and multi-annual business plans, together with its respective budget and a breakdown of its operating and investment budget.
2. Multi-annual plans shall be brought up-to-date each year and shall reflect the company's medium-term strategy, with the former being incorporated into the guidelines defined in the planning of the sector under which the company is subsumed.
3. Financial plans shall show the progression of revenues and expenditures, projected investments and their sources of funding.

Section 22

Budget

1. A public company shall prepare, each financial year, an operating and investment budget, by comprehensive budget lines, to be submitted to the Minister of Planning and Finance for approval, following a proposal by the relevant supervising Minister.
2. The mid-year update on the operating budget and the investment budget shall be approved by the relevant supervising Minister.
3. The draft budget referred to in subsection 22.1 shall be submitted, not later than February 28th of each year, to the relevant supervising Minister, who shall approve it not later than April 15th, and such draft budget shall be considered as tacitly approved upon expiry of the set deadline.
4. Without prejudice to the provisions of the previous subsections, a public company shall submitted to the relevant supervising Minister, not later than October 15th of each year, a first draft of the basic elements of its production and investment plans for the following year.

Section 23

Amortisation, repossession and re-evaluation of assets

Amortisation and repossession of assets, re-evaluation of fixed assets, and establishment of provisions in a public company shall be carried out by the Board of Directors, under the terms of the applicable law, without prejudice to the specificities established in its constitutive instrument.

Section 24

Reserves and funds

A public company shall establish the provisions, reserves and funds contemplated in its articles of incorporation, in compliance with the provisions of the tax legislation in force.

Section 25

Accounting

A public company shall keep its accounting organised in order to allow for a permanent budget control and easy verification of consistency between asset values and accounting values.

Section 26

Accountability documents

1. A public company shall prepare, with June 30th of each year as the reference date, the following documents:
 - a) The Board of Directors report, giving account of the way the company's goals have been achieved and reviewing its efficiency in the various fields of its activity;
 - b) A balance sheet and a statement of outputs;
 - c) A breakdown of its stock and of the medium- and long-term investments realised;
 - d) A chart of origin on the application of funds.
2. The documents referred to in the preceding subsection, as well as the opinion of the Monitoring Board, shall be submitted, in the course of the month of October, to the relevant supervising Minister, who shall, within 30 days, review and submit these documents to the Minister of Planning and Finance, who has another 30 days to proceed with the approval thereof.
3. The documents shall be considered as tacitly approved in the absence of any decision within the set deadlines.
4. A public company shall have the Board of Directors annual report, the balance sheet and the statement of outputs, as well as the opinion of the Monitoring Board, published in the Office Gazette.
5. The provisions of this section do not prejudice any provision of the tax legislation in force.

CHAPTER IV

Dissolution, merger, demerger or liquidation of public companies

Section 27

Forms of dissolution

1. The dissolution of a public company may be aimed at reorganising its activities, by way of demerger from or merger with other(s), or may be intended to terminate its activity, in which case termination of activity shall be followed by the liquidation of the assets of the company;
2. The forms of dissolution of a public company are only those contemplated in this chapter, and neither the rules on the dissolution and liquidation of corporations nor bankruptcy or insolvency practices shall be applicable to a public company.

Section 28

Merger, demerger or liquidation of companies

The merger, demerger or liquidation of companies is done by decree-law of the Council of Ministers.

Section 29

Merger

1. Two or more companies may merge into one.
2. A merger shall be carried out by consolidating one or more companies into another to which all the assets of the former are transferred, or by establishing a new company receiving the assets of the merged companies, including all their rights and obligations.
3. The instrument ordering the merger shall also approve the amendments to the articles of incorporation of the new company resulting from the merger.

Section 30

Demerger

1. A public company may be dissolved and its assets divided, with each of the resulting parts being converted into a new public company.
2. Part of the assets of a public company may be detached with the aim of converting it into a new company, or transferred to an already existing public company.
3. The instrument ordering the demerger by way of dissolution or detachment shall indicate the assets and the debts of the demerged company that shall be transferred to the new company or companies.

Section 31

Personality of companies in liquidation

Once the dissolution of a public company has been enacted, such company shall retain its legal personality for the purposes of liquidation until the final approval of the accounts presented by the liquidators.

Section 32

Appointment of liquidators

The instrument dissolving a company and determining its entry into liquidation shall appoint the liquidators, who shall be its former administrators or selected from among them, and shall have the powers required to liquidate the assets of the dissolved company, including powers to sell real property without prior authorisation, provided that disposal is carried out as indicated in the instrument of dissolution for all or some of the assets.

Section 33

Verification of liabilities

1. The instrument on the dissolution shall set the deadline, which shall not be less than two months, within which the creditors of the company may claim their credits.
2. Creditors shall be notified of the liquidation by way of a notice published on the local media and by registered mail, where the company in liquidation is aware of their credits.
3. The liquidators shall prepare a list of the claimed credits in which these shall be ranked in accordance with the general law, and such list shall be made available for examination by creditors within a deadline to be set by the liquidation committee, which shall under no circumstance be less than 20 days.

Section 34
Realisation of assets

1. It is also incumbent upon the liquidators to realise the assets, selling property and proceeding with the collection of the credits of the company.
2. The instrument ordering the dissolution and liquidation of the company may indicate the property or rights to be assessed, whose ownership the State reserves for itself or disposes of otherwise, and the State shall be obligated to return to the property in liquidation the money determined by the assessment. Such money can be offset by the state credits ranked on the top of the list.
3. The assessment referred to in the preceding subsection shall be undertaken by three assessors, one designated by the relevant supervising Minister, another designated by the creditors and a third selected by the other two assessors or, failing to reach agreement, by a judge of the district court of the jurisdiction where the main office of the company is located.

Section 35
Payment to creditors

1. Once the verification of the liabilities and the realisation of the assets of the company have been completed, the creditors shall be paid on the basis of the established ranking.
2. Should the proceeds from the realisation of the assets prove insufficient for payment to common creditors, the latter shall be paid on a pro-rata basis.
3. Where, upon payment of every related liability, there is a balance left, this shall accrue to the state treasury, in case the dissolution instrument has not indicated how to otherwise dispose of such balance.
4. Once the liquidation operations have been closed, the liquidators shall present the respective accounts to the Minister of Planning and Finance and the relevant supervising Minister, for approval.

Section 36
Subsidiary law

Public companies are governed by the present law, by their respective articles of incorporation and, on matters not specifically regulated, by the rules of private law.

Section 37
Competent court

1. It is incumbent upon the courts of law to adjudicate disputes in which one of the parties is a public company, including actions to enforce civil liability for acts committed by any of its organs, as well as the review of civil liability of any employee of such organs with respect to the respective company, without prejudice to the provision of subsection 2 of this section.
2. It is incumbent upon the Administrative Court to adjudicate appeals on definitive and executory acts by any organ of a public company, as well as to adjudicate actions on the validity, interpretation or execution of administrative contracts entered into with a public company.

3. Until such a time as the Administrative Court is up and running, it shall be incumbent upon the Court of Appeal to adjudicate the cases referred to in the preceding subsection.

Section 38
Executive force of documents

A document issued by a public company, in accordance with its accounting books, shall serve as an executive title against whoever is found to be a debtor to the said company, irrespective of any other formalities required by law.

Section 39
Tax regime

Public companies are subject to the general tax regime without impediment to possible exceptions as may be established in the constitutive instrument.

Section 40
**Conversion of a public company into a limited liability company
or joint stock company**

The conversion of a public company into a limited liability company or joint stock company is permitted, provided that the competent entity authorises the conversion of such public company.

Section 41
Previously constituted public companies

Public companies constituted before the entry into force of the present law shall, within one year, attune their articles of incorporation to the provisions of the present law.

Section 42
Entry into force

The present decree-law shall enter into force fifteen days after its publication date.

Seen and approved by the Council of Ministers on the 16th day of July 2003.

The Prime Minister and Minister of Development and Environment,

[Signed]
(Mari Bim Amude Alkatiri)

Promulgated on the 8th day of August 2003

To be published.

The President of the Republic

[Signed]

(Kay Rala Xanana Gusmão)