

# DEMOCRATIC REPUBLIC OF TIMOR-LESTE

## Government

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### Decree-Law No. 18/2003

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## Road Transport Contracts

The 1<sup>st</sup> Government of Timor-Leste has established, following the approval of the Legislative Programme of the Ministry of Communications and Public Works, a set of priority goals on legislative matters. Among these goals is the legal regulation of road transport contracts. The present decree-law aims precisely at realising that goal.

A transport contract is a commercial contract, and a carrier is a businessperson. The principles of the Commercial Law are fully applicable to this type of contract.

The legal security required for the development of economic relations justifies the regulation of the contractual conditions for the transport of cargo by road, particularly with respect to the documents used for this type of transport and the carrier's liability.

Furthermore, with the introduction of the manifest, the Government now has a precious tool for controlling the transport of cargo, through law-enforcement officers, with a view to monitoring, especially, the fulfilment of obligations on the part of tax debtors.

Thus, pursuant to paragraph (d) of Section 116 of the Constitution of the Democratic Republic of Timor-Leste, the Government enacts the following that shall have the force of law:

### Chapter I General provisions

#### Section 1 Scope

1. The present decree-law shall apply to all contracts for the road transport of cargo by onerous title using road vehicles.
2. For the purposes of the present decree-law, "vehicles" means motor vehicles, articulated vehicles, trailers and semi-trailers.
3. The present decree-law does not apply to:
  - (a) Transport undertaken in accordance with international postal conventions;

- (b) Funerary transport services;
- (c) Transport of furniture while moving to a new house.

**Section 2**  
**Persons for whom the carrier is liable**

For the purposes of the present decree-law, the carrier answers for the acts and omissions of his or her agents and of all other persons whose services he or she has hired to undertake the transport of cargo, as if such acts or omissions were his or her own, where the acts or omissions by such agents or persons occur in the exercise of their functions.

**Chapter II**  
**Signing and execution of a transport contract**

**Section 3**  
**Transport contract**

1. A transport contract is entered into by way of a manifest.
2. The absence of, irregularity in, or loss of the manifest does not prejudice either the existence or the validity of the transport contract, which shall remain subject to the provisions of this decree-law.

**Section 4**  
**Manifest**

1. The manifest shall be issued in triplicate to be signed by the forwarding agent and by the carrier. The signatures may be either imprinted or replaced by the forwarding agent's and the carrier's stamp.
2. The first copy of the manifest shall be handed out to the forwarding agent, the second one shall accompany the cargo, and the third one shall be held by the carrier.
3. Where the cargo to be carried is loaded onto different vehicles, or where there are different types of cargo or different batches, the forwarding agent or the carrier has the right to require that as many forms as the number of vehicles to be used, or as many as the types or batches of cargo, be filled out.

**Section 5**  
**Contents of the manifest**

1. The manifest shall contain the following indications:
  - (a) Place and date on which the manifest is filled out;
  - (b) Name and address of the forwarding agent;

- (c) Name and address of the carrier;
- (d) Place and date of loading of the cargo and expected place of delivery;
- (e) Name and address of the addressee;
- (f) Current designation of the nature of the cargo and mode of packaging and, in case of hazardous cargo, its usually acceptable designation;
- (g) Number of volumes, special signs and numbers;
- (h) Gross weight of the cargo or quantity expressed otherwise;
- (i) Transport expenses (transport costs, accessory expenses, customs duties and other expenses as may be incurred from the signing of the contract until delivery);
- (j) Declared value of the cargo and, where applicable, an indication of the fulfilment of the tax obligations relating to the cargo;
- (k) Instructions required for customs procedures and others.

2. Where applicable, the manifest must also contain the following details:

- (a) Prohibition of transshipment;
- (b) Expenses borne by the forwarding agent;
- (c) Amount to be received at the time of delivery of the cargo;
- (d) Instructions from the forwarding agent to the carrier regarding cargo insurance;
- (e) Agreed deadline, within which the transport must be undertaken;
- (f) List of documents delivered to the carrier.

3. The parties may mention in the manifest any other details deemed useful.

4. For the purposes of proving the fulfilment of tax obligations relating to the cargo, where applicable, a supporting document with a format and contents to be defined by the Minister of Planning and Finance shall be attached to the manifest.

5. Failure to attach the document referred to in subsection 5.4 above may, with due regard to the circumstances, determine the seizure, by law-enforcement officers, of the vehicle and of the cargo being carried until such a time as the proof of total fulfilment of the tax obligations relating to such cargo has been produced.

6. The forwarding agent answers for all expenses, losses or damage suffered by the carrier as a result of the inaccuracy or insufficiency of the details contained in the manifest that he or she is to blame for.

## **Section 6**

### **Acceptance of items without reservations**

Where the carrier accepts without reservations the items to be carried, such items are presumed to have no apparent defects.

## **Section 7**

### **Legal value of the manifest**

1. The manifest shall, until proof to the contrary, attest to the conditions of the contract and the receipt of the cargo by the carrier.
2. Where the carrier fails to indicate his or her well-founded reservations in the manifest, the cargo and the package are presumed to have been in apparent good condition at the time when they were received into the carrier's custody, and the number of volumes, the signs and numbers to have been in conformity with the details as indicated in the manifest.

### **Section 8 Liability of the forwarding agent**

The forwarding agent shall be liable to the carrier for damage caused to persons or cargo, as well as for expenses originated by a defective package, unless the carrier, where a defect is apparent or he or she has become aware of it at the time when he or she received the cargo into his or her custody, has not expressed reservations in that respect.

### **Article 9 Documents**

1. For the purposes of fulfilling customs procedures and others to be observed until delivery of the cargo, the forwarding agent must attach to the manifest, or make available to the carrier, the required documents and provide the carrier with all the information requested.
2. The carrier is not obligated to make sure that such documents and information are accurate or sufficient. The forwarding agent is liable to the carrier for all damage resulting from the absence, insufficiency or irregularity of such documents and information, except in case of a fault on the part of the carrier.
3. The carrier is liable, as if he or she were an agent, for the consequences of the loss or improper use of documents mentioned in the manifest, attached thereto or that have been delivered to him or her; nevertheless, the compensation to which the carrier is subject shall not exceed the one that would be due in case of loss of the cargo.

### **Section 10 Right to dispose of cargo**

1. The forwarding agent has the right to dispose of the cargo, particularly requesting the carrier to suspend the transport of such cargo, to change the expected place of delivery and to deliver the cargo to an addressee other than the one indicated in the manifest.
2. Such right ceases when the second copy of the manifest is delivered to the addressee or the latter enforces the right provided for by subsection 11.1. Thereafter, the carrier is obligated to conform to the orders given by the addressee.
3. The right of disposal is, nonetheless, held by the addressee since the filling out of the manifest if the forwarding agent records such indication in the said manifest.

4. Where the addressee, in the exercise of his or her right of disposal, orders that the cargo be delivered to another person, the latter may not designate other addressees.

5. The exercise of the right of disposal is subject to the following conditions:

- (a) The forwarding agent or, in the case mentioned under subsection 10.3 above, the addressee who may wish to exercise such right, shall produce the first copy of the manifest, in which the new instructions given to the carrier must be recorded, and shall compensate the carrier for the expenses incurred and for the damage caused by the execution of such instructions;
- (b) Such execution is to be feasible at the time when the instructions get to the person who must execute them, and shall not render the smooth running of the carrier's company difficult, nor shall it prejudice the forwarding agent or addressee of the shipment;
- (c) Instructions shall never cause the split of a shipment.

6. When, by virtue of the provisions set forth in paragraph (b) of subsection 10.5 above, the carrier cannot execute the instructions received, he or she shall forthwith report the fact to the person issuing such instructions.

7. A carrier who does not execute instructions given under the conditions set out in this section, or who has conformed himself or herself to such instructions without having required the presentation of the first copy of the manifest, shall be liable to the entity holding the right of disposal of the cargo for the damage caused by this fact.

### **Section 11 Rights of the addressee**

1. Upon arrival of the cargo at the expected place of delivery, the addressee has the right to request that the second copy of the manifest be delivered to him or her against a receipt note. Should a loss of cargo occur or where the latter has not arrived within the deadline provided for by section 17, the addressee is authorised to enforce upon the carrier, on his or her own behalf, the rights arising from the transport contract.

2. An addressee using the rights conferred upon him or her under subsection 11.1 above is liable to pay the amount of the credits deriving from the manifest. In the event of contestation in this respect, the carrier is only liable to deliver the cargo if the addressee provides a surety to the carrier.

### **Section 12 Inability to execute the contract under the conditions stipulated in the manifest**

1. Where, for any reason, the execution of the contract under the conditions set out in the manifest is, or becomes, unfeasible before the arrival of the cargo at the expected place of delivery, the carrier must ask for instructions from the person holding the right to dispose of the cargo in accordance with section 10.

2. However, where the circumstances allow for the execution of the transport under conditions other than those set out in the manifest and where the carrier cannot get instructions in time from the person holding the right to dispose of the cargo in accordance with section 10, the carrier shall take the measures deemed best for the interest of the person holding the right to dispose of the cargo.

### **Section 13 Impediment to delivery**

1. Where there is an impediment to delivery, upon arrival of the cargo at the destination, the carrier shall ask for instructions from the forwarding agent. Should the addressee refuse to receive the cargo, the forwarding agent shall have the right to dispose of such cargo without having to produce the first copy of the manifest.

2. Even if the addressee has refused to receive the cargo, he or she may always request the delivery of such cargo, as long as the carrier has not received instructions to the contrary from the forwarding agent.

3. Where an impediment to delivery occurs after the addressee has issued an order to deliver the cargo to another person, in conformity with the right granted to him or her under subsection 10.3, the addressee replaces the forwarding agent and the said person replaces the addressee for the purposes of applying subsections 13.1 and 13.2 above.

### **Section 14 Rights of the carrier**

1. The carrier has the right to a refund of expenses originated by the request for instructions or execution thereof, unless such expenses are a consequence of a fault of his or her own.

2. In cases provided for in subsection 12.1 and section 13, the carrier may forthwith unload the cargo at the expense of the entity holding the right to dispose of such cargo; the transport is considered finished upon unloading. The cargo is now under the carrier's custody. The carrier may, however, entrust the custody of the cargo to a third party, and shall then be responsible only for the judicious choice of the said third party. The cargo remains encumbered with credits deriving from the manifest and from all other expenses.

3. The carrier may promote the sale of the cargo without waiting for instructions from the entity holding the right to dispose of such cargo, where the perishable nature or the condition of the cargo so justifies, or where the custody expenses are disproportionate to the value of the cargo. The carrier may also, in other cases, promote the sale of the cargo where he or she has not received from the entity holding the right to dispose of such cargo, within a reasonable deadline, instructions to the contrary the execution of which may be equitably required.

4. Where the cargo has been sold under this section, the proceeds from the sale must be made available to the entity holding the right to dispose of such cargo, once the expenses

encumbering the cargo have been deducted. Where such expenses are in excess of the proceeds from the sale, the carrier is entitled to the balance.

5. Sale procedures are established by law or by the practices followed at the place where the cargo is located.

### **Chapter III Liability of the carrier**

#### **Section 15 Liability for loss of, or damage to, cargo**

1. The carrier is liable for the total or partial loss of the cargo, or for the damage caused to it from loading until delivery.

2. The carrier is exonerated from such liability where the loss or damage to the cargo was caused by a fault on the part of the entity holding the right to dispose of such cargo, by an order issued by the latter not resulting from a fault on the part of the carrier, by a defect in the cargo itself, or by circumstances beyond the carrier's control or the consequences of which the carrier could not obviate.

3. The carrier may not allege, to be exonerated from his or her liability, either defects in the vehicles he or she is using to undertake the transport, or faults on the part of the person from whom he or she rented the vehicle or on the part of an agent of that person.

4. Taking into account subsections 16.2 to 16.5, the carrier is exempt from his or her responsibility where the loss or damage results from specific risks intrinsic to one or more of the following factors:

- (a) Use of open vehicles and not covered with a canvas, when the use thereof is agreed upon in an express manner and mentioned in the forwarding note.
- (b) Fault or defect in the package of a cargo that, given its nature, is subject to loss or damage when unpacked or badly packed;
- (c) Maintenance, loading, storage or unloading of the cargo by the forwarding agent or addressee or by persons acting on behalf of the forwarding agent or addressee.
- (d) Nature of certain types of cargo subject, for reasons inherent in its own nature, to either total or partial loss or damage, especially by breakage, rust, internal deterioration, drying, spillage or normal disintegration.
- (e) Insufficiency or imperfection of the signs or numbers on the volumes;
- (f) Transport of livestock

5. Where the carrier, by virtue of this section, is not answerable for some of the factors that have caused the damage, his or her liability is involved to the extent that the factors for which he or she is answerable by virtue of this section have contributed to the damage.

**Section 16**  
**Burden of proof**

1. The burden of proof as to whether the loss, damage or delay was caused by one of the factors provided for in subsection 15.2 lies with the carrier.
2. Where the carrier proves that the loss or damage, taking into account the factual circumstances, resulted from one or more of the specific risks provided for in subsection 15.4, such loss or damage shall be presumed to have resulted therefrom;
3. The above-mentioned presumption is not applicable to the case provided for in paragraph (a) of subsection 15.4, where the loss of an abnormal amount of cargo occurs.
4. Where the transport is undertaken by way of a vehicle equipped to keep the cargo away from the influence of heat, cold, temperature changes or air humidity, the carrier may not invoke the benefit of paragraph (d) of subsection 15.4, unless he or she produces proof that, taking into account the circumstances, all measures required from him or her in choosing, maintaining and using that equipment were taken, and that he or she complied with such special instructions as may have been issued to him or her.
5. The carrier may only invoke the benefit of subsection 15.4 if he or she produces proof that, taking into account the circumstances, he or she took all measures required from him or her and that he or she complied with such special instructions as may have been issued to him or her.

**Section 17**  
**Cargo delivery deadline**

1. The carrier is obligated to deliver the cargo within the deadline established by agreement or his or her special regulations and, in the absence thereof, by commercial practices, under penalty of paying the corresponding compensation.
2. There is delivery delay when the cargo has not been delivered within the agreed deadline or, where no deadline has been agreed upon, when the actual duration of the transport, taking into account the circumstances, exceeds the time deemed reasonable to be assigned to diligent carriers.
3. Should the delay exceed twice the time provided for in subsection 17.1 above, the carrier shall, in addition to the compensation, pay for the losses and damage resulting from the delay.
4. The carrier shall not be liable for a delay in the transport resulting from a fortuitous case, force majeure, or fault on the part of the forwarding agent or addressee.

**Section 18**  
**Liability for undelivered cargo**



1. The person concerned may, without having to produce further proofs, consider the cargo lost where this has not been delivered within 30 days after expiry of the agreed deadline, and the corresponding compensation shall be due to him or her.
2. In the absence of an agreed deadline, the compensation mentioned in subsection 18.1 above shall be due after 60 days from delivery of the cargo in the custody of the carrier.

**Section 19**  
**Liability for delivery of cargo without collection of amount  
due to forwarding agent**

Where the cargo is delivered to the addressee without collecting the refund that should have been perceived by the carrier by virtue of the provisions of the transport contract, the carrier must compensate the forwarding agent up to the refund value.

**Section 20**  
**Hazardous cargo**

1. Where the forwarding agent delivers hazardous cargo to the carrier, he or she shall indicate to the carrier the exact nature of the hazard that such cargo constitutes and may indicate the precautions to be taken.
2. In case the exact nature of the hazard posed by the cargo and the precautions to be taken are not mentioned in the manifest, it is the responsibility of the forwarding agent or the addressee to produce proof, by any other means, that the carrier was made aware of the exact nature of the hazard posed by the transport of the said cargo.
3. Hazardous cargo, the hazard of which the carrier was not made aware of under the conditions set out in subsection 20.1 above, may, taking into account the circumstances, be unloaded, destroyed or made harmless by the carrier, at any time and place, without any compensation.
4. In the case provided for in subsection 20.3 above, the forwarding agent shall be liable for all expenses and damage resulting therefrom.

**Section 21**  
**Calculation of compensation for partial or total loss of cargo**

1. Where compensation for partial or total loss of cargo is charged to the carrier by virtue of the provisions of this decree-law, such compensation shall be calculated on the basis of the value of the cargo at the place and time the cargo is accepted for transport.
2. The value of the cargo shall be determined by the commodity exchange or, in the absence of the latter, by the current market price or, in the absence of both, by the usual value of commodities of the same nature and quality.

3. However, the compensation may not exceed USD 10 per kilogram of missing gross weight.

4. Furthermore, the transportation cost, customs duties and other expenses originating from the transport of the cargo shall be refunded, in totality in case of total loss, and on a pro-rata basis in case of partial loss; no other compensations for loss or damage shall be due.

5. Higher compensations shall only be claimed where the value of the cargo is declared in accordance with section 22.

## **Section 22 Extent of limit of liability**

The forwarding agent may mention in the manifest, against payment of an additional price to be agreed upon, a cargo value exceeding the limit mentioned in subsection 21.3, in which case the declared value replaces that limit.

## **Section 23 Calculation of compensation for damage to cargo**

1. In case of damage to the cargo, the carrier pays the depreciation cost calculated on the basis of the value of the cargo determined in accordance with subsections 21.1, 21.2 and 21.4.

2. However, compensation may not exceed:

- (a) The value it would achieve in case of total loss, if the whole shipment has depreciated due to damage;
- (b) The value it would achieve in case of loss of a depreciated part, if only a part of the shipment has depreciated due to damage.

## **Section 24 Interest**

1. The entity holding the right to dispose of the cargo may claim interest on the compensation.

2. Interest, calculated at the rate of 5% a year, shall accrue from the date at which a claim in writing was filed with the carrier or, should there be no claim, from the date at which legal action was initiated.

## **Section 25 Extra-contractual liability**

1. Where a loss, damage or delay occurred during a transport subject to the present decree-law may give rise to an extra-contractual claim, the carrier may make use of the

provisions of the present decree-law that exonerate his or her liability or that either determine or restrict compensations due.

2. Where extra-contractual liability for loss, damage or delay, of one of the persons for whom the carrier is liable under the terms of section 2, is questioned, such person may also make use of the provisions of the present decree-law that exonerate the carrier from liability or that either determine or restrict compensations due.

### **Section 26** **Malice aforethought or negligence by a carrier**

Where the damage is caused by malice aforethought or negligence imputable to him or her, the carrier has not the right to make use of the provisions of the present chapter that exonerate him or her from liability or that shift the burden of proof.

## **Chapter IV** **Claims and action; limitation period**

### **Section 27** **Verification of the condition of cargo**

1. Where the addressee receives the cargo without cross-checking the condition thereof with the carrier, or without having expressed reservations indicating the overall nature of the loss or damage, not later than the time at which the cargo is delivered, in case of apparent loss or damage, or within seven days from delivery, not inclusive of Sundays and public holidays, in case of unapparent loss or damage, the cargo shall be presumed, until proof to the contrary, to have been received in the condition as described in the manifest.

2. The reservations indicated in subsection 27.1 above shall be mentioned in a written document, to be addressed to the carrier.

3. Where the condition of the cargo has been cross-checked by the addressee and the carrier, proof to the contrary of the result of such verification may only be adduced in case of unapparent loss or damage or where the addressee has expressed to the carrier reservations in writing within seven workdays from the date of such verification.

4. A delivery delay may only result in compensation where a reservation has been expressed in writing within fifteen workdays from the date at which the cargo was made available to the addressee.

5. The delivery date or, where applicable, that of verification of the cargo or of making such cargo available to the addressee, is not counted toward the deadlines established by the present decree-law.

6. The carrier and the addressee shall grant each other, on a reciprocal basis, all reasonable facilities to carry out the required observations and verifications.

**Section 28**  
**Limitation period**

1. Those actions that may be originated by a transport subject to the present decree-law shall lapse within one year.
2. However, the limitation period shall be three years in case of malice aforethought.
3. The limitation period shall accrue:
  - (a) From the date at which the cargo has been delivered, in case of partial loss, damage or delay;
  - (b) In case of total loss, 30 days after expiry of the agreed deadline or, where no deadline has been agreed upon, 60 days after delivery of the cargo under the custody of the carrier;
  - (c) In all other cases, after the expiry of a 3-month deadline, starting from the signing of the transport contract. The date indicated above as the starting point of the limitation period is not included in the deadline.
4. A written claim will suspend the limitation period until such a time as the carrier rejects the written claim and returns the documents that have been attached to it. In the event of partial acceptance of the claim, the limitation period shall only resume its course in relation to the portion of the claim that remains in dispute. The burden of proof of receipt of the claim or of reply and return of documents lies with the party invoking that fact. Subsequent claims pursuing the same purpose do not suspend the limitation period.
5. A lapsed action can no longer be exercised, not even in the form of counterclaim or exception.

**Section 29**  
**Arbitral Tribunal**

A transport contract may contain a provision vesting an arbitral tribunal with authority, provided that such a provision stipulates that the arbitral tribunal shall apply the present decree-law.

**Chapter V**  
**Provisions relative to transport undertaken by successive carriers**

**Section 30**  
**Transport undertaken by successive carriers**

1. Where a transport regulated by a single contract is executed by successive road carriers, each of these carriers assumes the responsibility for the execution of the whole transport.

2. In accepting the cargo and manifest, successive carriers become parties to the contract.

**Section 31**  
**Acceptance of cargo between successive carriers**

1. A carrier who accepts the cargo from the previous carrier shall:

- (a) give him or her a dated and signed receipt;
- (b) indicate his or her name and address in the second copy of the manifest;
- (c) where applicable, express reservations in the second copy of the manifest, as well as in the receipt, as to the condition of the cargo.

2. The provisions of section 7 apply to relations between successive carriers.

**Section 32**  
**Action on loss, damage or delay**

1. Except that a counterclaim or exception is filed in relation to a request based on the same transport contract, action on liability for loss, damage or delay may only be launched against the first carrier, the last carrier or the carrier who was executing the portion of the transport in which the fact that caused the loss, damage or delay occurred.

2. Action can be simultaneously launched against many of the carriers mentioned in subsection 32.1 above.

**Section 33**  
**Right of redress**

A carrier who has paid compensation under the provisions of the present decree-law shall have the right to bring an action against the carriers, who have participated in the execution of the transport contract, over the principal, interest and expenses, in conformity with the following provisions:

- (a) The carrier who has caused the damage is the only one liable to pay compensation;
- (b) Where the damage has been caused by two or more carriers, each of them shall pay an amount proportional to his or her extent of responsibility; in the event the assessment of the extents of responsibility is unfeasible, carriers are each liable in proportion to the amount of remuneration to which they are entitled;
- (c) Where carriers to whom responsibility must be ascribed cannot be determined, the compensation charges shall be supported by all carriers, in the proportion as established in paragraph (b).

**Section 34**  
**Insolvency**

Where one of the carriers is insolvent, the unpaid amount that such carrier is liable to pay shall be supported by all other carriers, in proportion to their remuneration.

**Section 35**  
**Action**

1. Where compensation has been established by a court decision, the carrier against whom one of the actions contemplated in sections 33 and 34 has been brought may not contest the ground on which the payment made by the carrier initiating the action was based, provided that the former has been duly informed of the proceeding and has had the possibility of intervening therein.
2. An action may be initiated in only one and the same instance against all the carriers concerned.
3. The provisions of section 28 are applicable to an action between carriers. However, the limitation period is accrued from either the date a final court decision determining the compensation to be paid by virtue of the provisions of the present decree-law is rendered or, in the event such a decision has not been rendered, from the actual payment date.

**Section 36**  
**Subsidiary provisions**

Provisions other than those of sections 33 and 34 may be agreed upon between carriers.

**Chapter VI**  
**Contractual clauses in conflict with the present decree-law**

**Section 37**  
**Nullity of contractual clauses in conflict with the present decree-law**

1. Except for the provisions of section 36, any contractual clause that, directly or indirectly, is at variance with the provisions of the present decree-law is null and void. The nullity of such stipulations does not imply the nullity of the other provisions of the contract.
2. In special, any clause under which a carrier grants himself or herself the cargo insurance benefit or any other similar clause, as well as any clause that shifts the burden of proof to someone else, is null.

**Chapter VII**  
**Final provisions**

**Section 38**  
**Revocatory clause**

The laws and regulations, in the field covered by the present decree-law, which have been adopted into the domestic legal order under section 165 of the Constitution, are hereby repealed.

**Section 39**  
**Entry into force**

This Decree-law comes into force on the day following the date of its publication.

Approved by the Council of Ministers on 23 July 2003.

The Prime Minister

[Signed]  
(Mari Bim Amude Alkatiri)

The Minister of Transport, Communications and Public Works

[Signed]  
(Ovídio de Jesus Amaral)

Promulgated on 9 September 2003. -

To be published.

The President of the Republic

[Signed]  
Kay Rala Xanana Gusmão