

DEMOCRATIC REPUBLIC OF TIMOR-LESTE

GOVERNMENT

DECREE-LAW No. 10/2004

OF 19 MAY 2004

**ON CUSTOMS TAX OFFENCES IN TIMOR-LESTE
(RJIFATL)**

The need to regulate this type of offences is essential to ensuring state revenue, in addition to reasons of tax sovereignty, legal security, and rule of law.

Difficulties are being encountered in the application of international regulations and subsidiary law; hence the experience in this area does not prove adequate to the realities of this country.

Taxpayers fulfilling their tax obligations, as established by the Constitution, demand fair competition and since the Democratic Republic of Timor-Leste cannot forgo state revenue, it needs specific legislation in this area. It is therefore important to regulate the economic activity and that of the social sectors related to the customs activity, as provided in paragraph (e), section 115, of the Constitution of the Democratic Republic of Timor-Leste.

Certain behaviours are decriminalised without penal dignity in favour of economic and social offences punishable by administrative and pecuniary penalties. This option brings further advantages to handling cases and making decisions on the disposal of seized goods and means of conveyance in an expeditious fashion, thereby exonerating the courts from this specific type of minor offences.

Combating organised customs tax crime, such as the smuggling of weapons, drugs, toxic waste, including foodstuffs, adulterated vaccines and medicines, improper for consumption or harmful to public health, remains the exclusive jurisdiction of the courts and shall be dealt with in a specific decree.

Therefore, this decree does not deal with criminal matters, substantive or procedural, or with penalties involving a fine or imprisonment insofar as competence to do so lies with the courts alone. Disciplinary rules on the customs activity by the Customs Service and economic agents are established with the sole purpose of fully enforcing the customs tax law. By assuring the Administration a correct and fair collection of national revenue required to satisfy the country's financial needs, and compliant persons the principles of sound competition, of justice and of non-impunity of those who fail to fulfil their tax duties, thereby prejudicing all others.

Nor are issues on incidence, taxes or tax policy for establishing or amending taxes dealt with herein; hence amendments to budgetary expenditures or revenues are not in question.

Taking into consideration that with regard to certain types of unlawful conduct the application of a mere pecuniary penalty, translated into the payment of an administrative fine, is not sufficient, notably for recidivists or habitual tax offenders, accessory penalties such as the removal of a license to carry out certain activities or to benefit from a special customs tax regime, like the suspensive and exemptive ones, always for a definite period of time and with a provisional character, are hereby adopted.

In fact, it would barely be understood if the Public Treasury continued to grant certain tax regimes and benefits to natural or legal persons considered to be habitual tax offenders or recidivists going unpunished. Access to such regimes implies, on the contrary, added accountability to the Tax Administration and trust between taxpayers and the former.

Appraisal criteria for deciding the amounts of administrative fines, taking into account the gravity of the offence, the social status of the offender, the value and type of the goods in question, are hereby established.

Citizens are assured ample rights to contest any decision whereby an administrative fine or accessory penalty is applied.

Finally, a reasonable and adequate period of time is envisaged to make this decree-law correctly known to the public. To this end, it is provided that the present decree shall enter into force 45 days following the date of its publication.

Thus, acting pursuant to the authority given to it by section 97.1(c), the Government enacts the following, under the terms of section 115.1(e) and section 116(d) of the Constitution:

PART I

General Principles

Article 1

Approval

The Legal Regime for Customs Tax Offences in Timor-Leste (RJIFATL) is hereby approved.

Article 2

Comparison to pecuniary administrative penalties

1. All acts described as a customs tax violation in UNTAET regulations or in subsidiary legislation matching none of the customs tax offences typified in this legal regime shall be liable to a pecuniary administrative fine, which shall, in all respects, be governed by the provisions of this decree-law.
2. Tax crimes shall remain under the exclusive jurisdiction of the Courts and criminal law shall apply to such cases.

Chapter I **General provisions**

Article 3 **Scope of application**

1. This decree-law shall apply to offences against norms regulating customs tax activities, including those against the suspensive customs regime and the regimes for tax benefits, imports and exports, provided that such offences are not considered a crime.
2. The law shall provide a definition of customs tax offence and its judicial procedure.
3. This decree-law shall also apply to the general discipline of the customs regimes that, whether imposing or suspending customs duties or exempting certain goods therefrom or not, establish any facilities and streamline the procedures, duties, restrictions or prohibitions concerning the ownership, delivery, unloading and storage, use or forwarding, transit and circulation of goods, be they national, nationalised, imported or intended for export.
4. This decree-law is, irrespective of the offender's nationality, applicable to acts committed in the customs territory and, except as otherwise provided, to those committed outside the customs territory, where the typical result has been produced in Timor-Leste.

Article 4 **Definitions**

1. For the purposes of applying the provisions of this legal regime, the following terms shall mean:
 - (a) **Customs** means customs facilities, tax posts, footpaths directly leading to either the former or the latter, ports and airports, customs depots and, in general, sites subject to permanent monitoring where passengers are embarked and disembarked or goods are loaded or unloaded.
 - (b) **The accused** means those against whom an action has been initiated on grounds of a customs tax offence. They shall always have the right to counsel, including the right to contest in writing the charges that have been brought against them.
 - (c) **Order for remittal** means the authority conferred upon the Customs Controller to requisition and decide any case initiated in connection with an offence committed on the national territory on which a final decision has not yet been rendered.
 - (d) **Pecuniary administrative penalty or penalty for short** means the pecuniary administrative penalty translated into a given economic value, applicable to a conduct impinging upon the customs norms provided in this decree-law as a customs tax offence, the imposition of which is the competence of the customs; penalties are processed and imposed by the customs authorities and refer to any type of conduct damaging the interest of the Public Treasury, as duly typified in the customs law, which does not constitute a crime.
 - (e) **Maliciously or "with malice"** refers to a person who has acted with negligence, a person with an intent of committing a customs tax offence, acting knowingly to an end that he or she knows is in contravention of the law;

- (f) **Customs Border** means the limits of the customs territory, as established by the Constitution, including the periphery of airports, wharfs, rivers and international airports, as well as the maritime boundaries, as defined by Law No. 7/2002 of 20 of September;
- (g) **Guarantees of Payment** means guarantees of payment of duties and other taxes to be levied by the Customs Service, including fines, and are accepted in three different forms: cash deposit, surety or bank guarantee, to the order of the customs proceeding;
- (h) **Customs tax offence** means the typical act, that is, described in the law as unlawful and negligent and declared as such in this legal regime;
- (i) **Customs laws and regulations** means decree-laws and regulations applicable in the Democratic Republic of Timor-Leste, relative to customs tax revenues, to imports and exports, and to the transit of goods, as well as to the procedures for, and fulfilment of the responsibilities of, the customs administration;
- (j) **Fine** means a penalty imposed by a court in a legal proceeding and refers to a conduct seriously damaging the Treasury and duly established in the criminal law;
- (k) **Negligently or “with negligence”** refers to a person who has not acted with malice, but who, due to lack of attention, lack of knowledge or with neglect, failed to comply with their tax, economic or social obligations;
- (l) **Legal person or entity with a similar status** means a company, enterprise, association, foundation or any other form of association other than a natural person, whether or not it is duly constituted or regularised;
- (m) **Customs tax revenue or debt** means customs duties and other dues, including the selective excise tax and sales tax, fees and other fiscal or parafiscal revenue the levy of which is the responsibility of the customs;
- (n) **Recidivist** means an offender who has breached such customs laws and regulations more than once. Persons who breach these customs laws or regulations more than three times within a year’s period are considered as habitual offenders;
- (o) **Customs territory** means the territory of the Democratic Republic of Timor-Leste and covers the land surface, the maritime zone and the air space delimited by the national borders that historically include the eastern part of the Timor island, the enclave of Oe-Cusse Ambeno, Ataúro island, and Jaco island, under the terms of the Constitution and of Law No. 7/2002 of 20 September, including the other islands and natural and/or artificial formations and platforms for the exploration and exploitation of natural resources.

2. For the purposes of applying the provisions of this decree-law:

- (a) goods are considered to be in circulation from the moment they enter the country or exit from the production site until they are acquired by the end consumer;
- (b) means of conveyance by land, sea, river and air are considered to be in circulation whenever they are not, respectively, parked in exclusively private garages or docked, moored or anchored at the place as designated for that purpose by competent authorities, or parked in hangars at international or national airports, when duly authorised.

Article 5
Customs tax offences and crimes

1. Where the same unlawful act or conduct constitutes simultaneously a customs tax offence and crime as provided for in this decree-law, the perpetrator shall be punished for the crime, without prejudice to the accessory penalty as may be imposed by the competent court in accordance with the law.
2. Where the same act constitutes both a customs tax offence and other of a different nature, namely a health-, security- or environment-related offence, the penalties provided for both offences can be accumulated, where distinct legal interests have been infringed upon.
3. Customs tax crimes are under the exclusive jurisdiction of the Courts, which shall pursue and decide upon such crimes, without prejudice to the judge soliciting opinions, expert investigations or any other collaboration from the customs.

Article 6
Acting on behalf of another person

1. Any person acting voluntarily as the owner, manager or administrator of a legal person, company or a mere de facto association or legally and voluntarily representing another natural person shall be subject to this legal regime.
2. The inefficiency of the act that serves as a basis for representation, such as the absence of, or formal irregularity in, the power of attorney document or registration, shall not preclude the application of the provision of the preceding subarticle.

Article 7
Liability of legal persons and others with a similar status

1. Companies, legal persons, enterprises and entities with a similar status shall be liable for the offences provided in this decree-law when committed by their corporate bodies, managers, administrators or representatives, on their own behalf or in the corporate interest.
2. This liability shall be exonerated where the perpetrator has acted against express orders or instructions issued by the enterprise.
3. The liability of the entities referred to under subarticle 1 above shall not preclude the individual liability of the offenders.
4. Where the fine is imposed on a legal person, its corporate assets shall be liable for such penalty and, in the absence or insufficiency thereof, the assets of each of the associates shall be jointly liable.

Article 8
Liability to pay a fine

1. Employers of individuals who have committed customs tax offences are jointly liable to pay an amount equal to that of the fine applicable to employees, except where necessary action is proved to have been taken in order to make them comply with the law.
2. They shall be jointly liable, that is, both the employer and the employee owe the totality of the amount to be paid for customs duties and other taxes due.

3. The provisions of the preceding subarticles shall apply to parents and legal representatives of minors or disabled persons in connection with any offence committed by the latter.
4. The provisions of subarticles 1 and 2 shall apply to natural persons, legal persons and entities with a similar status.
5. Where the legal person or entity with a similar status concerned no longer exists at the time when action is brought forward, the individuals who were members of such legal person or entity shall be jointly liable for fines, penalties, customs duties and other taxes due.

Article 9

Assessment and payment of customs tax debt

1. Conviction, acquittal, dismissal of a case or serving a penalty for the commission of a customs tax offence shall not preclude the payment of duties and other taxes legally due for the goods, except where such goods are either abandoned or declared lost by their owners, in which case they shall be consigned to the customs to be sold in a public auction or donated to philanthropic or charitable entities.
2. Assessment of customs revenue and forwarding procedures for goods that are the object of a customs tax offence shall be the exclusive jurisdiction of the customs.
3. Goods abandoned to the State means those goods seized or consigned to the customs where, upon decision issued by the competent authority, forwarding procedures are not initiated within 60 days or where the outstanding duties and other taxes are not either paid or guaranteed within 10 days of notification, in both cases.
4. Liability to pay a customs tax debt shall be time-barred by statute of limitation 10 years after the date on which the decision referred to in subarticle 1 above was issued.

Article 10

Guarantee of payment

1. Goods, means of conveyance, and other assets seized from suspects or the accused shall constitute a guarantee of payment of the fine or penalty as may be imposed in the respective criminal or customs offence case.
2. Upon completion of the criminal or customs offence proceeding, such goods, means of conveyance or other assets shall constitute a guarantee of payment of the tax debt as may be assessed and levied by the customs.
3. Where such goods, means of conveyance or others assets are owned by persons without any liability in the offence, such persons shall only be liable to pay the amount of the customs tax instalment due.

Article 11

Payment in instalments

1. Once the particular circumstances of each case and the safeguard of the public interest have been considered, the Ministry of Planning and Finance may authorise the payment of the tax debt in monthly instalments in a number that shall not exceed 12.

2. Authorisation for payment in instalments shall depend on the provision of a guarantee, cash deposit or surety or bank guarantee, to be provided by the applicant and worth the total amount of the outstanding tax instalment.
3. Payment in instalments may be applied for at any stage of the process and, once accepted, such application shall suspend the tax execution of the assets owned by the debtor.
4. Failure to pay any of the instalments implies the expiry of the remaining ones.
5. The guarantee shall be withdrawn when the total amount of the debt has been settled.

Chapter II

Provisions common to customs tax offences and accessory penalties

Article 12

Measure and graduation of penalties- aggravating and mitigating circumstances

1. A penalty shall be measured according to the gravity of the offence, the degree of culpability of the offender and his or her economic status.
2. A penalty shall, where feasible, exceed the economic benefit that the offender obtained from the commission of such offence.
3. Where the goods that are the object of a customs offence are prohibited from import or export or are subject to selective excise tax, such circumstances shall be considered aggravating for the purposes of determining the amount of the penalty that shall be applied at double the amount.
4. The maximum and minimum limits of the penalties established in this decree-law shall be doubled whenever applied to a legal person or a person with a similar status.
5. Where the goods that are the object of an offence are subject to selective excise tax and where the offender is a legal person, the maximum and minimum limits of the applicable penalty to such a case shall be quadrupled.
6. Where the goods that are the object of an offence consist, in whole or in part, of items of a considerable historical and artistic interest whose value exceeds US\$ 1,000.00, the maximum limit of the penalty applicable to such a case shall be tripled.
7. Where the goods are typified in the Annex to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the maximum limit of the penalty applicable to such a case shall always be tripled.
8. Where the object of any of the offences provided for in this decree-law are goods whose value is below US\$ 50.00, a fine of not less than US\$ 10.00 nor more than US\$ 100.00 shall apply, without accessory penalty.
9. Goods and means of conveyance that are the object of an offence in connection with the smuggling of arms, narcotics, toxic waste, including food items, adulterated vaccines or medicines that are improper for consumption or harmful to public health, shall be forthwith seized; the case shall be referred to the Court and such goods and means of conveyance shall be disposed of in accordance with article 30.

Article 13
Accessory penalties

In addition to the penalty determined in accordance with the legal type of customs offence, one or more accessory penalties may be applied to the offender under articles 14 to 19.

Article 14
Temporary prohibition

1. The Minister of Planning and Finance may, following a well-founded proposal by the Customs Controller, prohibit the entities below from carrying out certain activities:
 - (a) official forwarding agents, their assistants and practitioners, private forwarding agents and customs agents involved in customs offences;
 - (b) aircraft captains or crew, and captains, masters, skippers, owners or crews of ships involved in customs offences;
 - (c) owners of road transport vehicles involved in customs offences.
2. The prohibition of practicing a profession or carrying out an activity may only result from avoidance of customs duty and shall not exceed three (3) months counted from the date on which a final decision was rendered.

Article 15
Temporary prohibition of participating in trade fairs, markets or public auctions of goods

1. The Ministers of Planning and Finance may prohibit participation in trade fairs, markets or auctions of goods, following a well-founded proposal by the Customs Controller.
2. The duration of the prohibition referred to in the preceding subarticle may not exceed six (6) months counted from the date on which a final decision was rendered.
3. The decision may restrict such a prohibition to certain trade fairs, markets and auctions or to certain territorial areas.

Article 16
Suspension of and limitation on tax benefits

1. A person who is convicted of any of the offences provided for in this decree-law may be punished with a suspension of his or her customs tax benefits, notably customs tax exemptions, and be impeded from obtaining or renewing any other benefits.
2. The duration of the penalties referred to in subarticle 1 shall not exceed six (6) months counted from the date on which the final decision was rendered.
3. The decision may restrict such a suspension to certain customs tax benefits or regimes and shall be rendered by the Minister of Planning and Finance, following a well-founded opinion by the Customs Controller.

Article 17
Revocation of licenses of concessions and suspension of authorisations

The Minister of Planning and Finance may, following a well-founded proposal by the Customs Controller, order that a license or concession be revoked or that an authorisation relative to the approval or granting of a suspensive or streamlined regime be suspended, including any authorisation relative customs bonded warehouses, where the offence has been committed while using such a customs license, concession or authorisation.

Article 18
Closure of bonded warehouses or depots

1. A person convicted of any of the offences provided for in this decree-law may be punished with the closure of customs warehouses or depots for a period not exceeding six (6) months, by a decision of the Minister of Planning and Finance, following a well-founded proposal by the Customs Controller.
2. Assignment of a bonded warehouse or depot or cession of rights of any nature relating to the use of the former, undertaken after or prior to the initiation of a case, but after the offence was committed, shall not preclude the application of the accessory penalty provided for in the preceding subarticle, except where, in the latter case, the acquirer has acted in good faith.

Article 19
Accessory penalties against legal persons and persons with a similar status

The accessory penalties referred to in the previous article shall apply, under the terms stated therein and with the necessary adaptations, to legal persons and persons with a similar status.

Part II
Specific Customs Tax Offences

Chapter I
Classification

Article 20
Avoidance of customs duty

1. To any unlawful act or conduct aimed at avoiding the payment, in whole or in part, of the customs tax debt under article 4, or to clear any goods through, or remove them from, customs without submitting such goods to the required customs clearance procedures, or through false statements, a fine of not less than US\$ 100.00 nor more than US\$ 3,000.00 shall be applied.
2. The same fine shall be applicable where, under the same conditions:
 - (a) the legal discipline of suspensive customs regimes is breached and such behaviour should not be considered as a crime;

- (b) goods have been put to a use other than that indicated in the applicable customs regime;
 - (c) special provisions that expressly establish the act as the avoidance of customs duty have been breached;
 - (d) goods have been unlawfully used or modified before being cleared from customs or have been stored at a place other than the unloading site authorised by the regime, with an intent of preventing or hindering customs action;
 - (e) there is a lack or excess of goods stored under the suspensive regime, below or above the set limits;
3. In the case of goods worth less than US\$ 50.00, the competent entity may limit itself to warning the offender.
4. Where the acts described in the preceding subarticles are ascribable to negligence, a fine of not less than US\$ 100.00 nor more than US\$ 500.00 shall apply.

Article 21

Irregular circulation of goods

1. A person who by any means holds or puts goods into circulation within the national territory in breach of the customs laws relative to the circulation of goods without having processed the forms and other documents required by law or without having affixed stamps, marks or other signs thereto as required by law, a fine of not less than US\$ 100.00 nor more than US\$ 1,000.00 shall apply.
2. Once it has been proved by producing supporting documents, within two business days, that the goods proceed from the customs territory or that these had already been regularised, the penalty described in the previous subarticle is removed, and only a fine not exceeding US\$ 100.00 shall apply.

Article 22

Offence relating to the transport of goods under suspensive regime

1. To a person who, in the course of the transport of goods released under a suspensive regime:
- (a) subtracts or replaces goods being transported under such a regime;
 - (b) alters or renders the customs sealing, security or identification systems ineffective, with the aim of breaching the law;
 - (c) fails to follow set itineraries, with the aim of avoiding or shunning inspection, a fine ranging from US\$ 1,000.00 to US\$ 3,000.00 shall apply, without prejudice to the provisions of article 12.
2. To attempted offences shall apply one half of the fine limits.

Article 23

Fraudulently obtaining customs tax benefits

1. To a person who in bad faith, that is, maliciously, obtains for himself or herself or for another person a tax benefit or advantage by breaching the customs laws and, under such circumstances, by any means misleads the customs shall apply a fine of not less than US\$ 200.00 nor more than US\$ 1,000.00

2. The limits for the fines provided for in the preceding subarticle shall double where applicable to offences committed within the scope of the following special regimes:

- (a) import of motor vehicles owned by private entities;
- (b) import, with any exemptions, of goods intended for social, cultural or philanthropic purposes, when these are rerouted for sale or other purposes, in breach of the respective social regime;
- (c) in the case of goods subject to selective excise tax, under the terms of article 12.

Article 24

Refusal to deliver, exhibit or show documents and goods

1. Refusal to deliver, exhibit or show the bookkeeping, accounting, statements and documents or refusal to show goods to authorities with competence to investigate and process the offences provided for in this decree-law, where such offences do not constitute a crime, a fine of not less than US\$ 100.0 nor more than US\$ 500.00 shall apply.

2. The same fine shall be applicable to a person who by any means prevents or hinders any verification or examination of goods by a competent official as ordered.

3. Where the acts referred to in the previous subarticles are ascribable to negligence, a fine of not less than US\$ 50.00 nor more than US\$ 200.00 shall apply.

Article 25

Destruction of customs tax guarantees

1. A person who, being the owner, depository or carrier of any goods seized under the terms of this legal regime, destroys, causes damage to or renders such goods unusable upon seizure or at a later stage shall be punished with a fine of not less than US\$ 1,000 nor more than US\$ 2,000.00.

2. The same penalty shall be applicable to a person who, after becoming acquainted that an inquiry or action has been initiated against him or her or against a co-offender, in connection with an offence provided for in this decree-law, destroys, disposes of or encumbers any goods that have been either seized or arrested as a guarantee of payment of the outstanding amount of the customs tax debt, even if such a debt is due only by the other co-offender or liable person.

Article 26

Frustration of credits

1. A person who, after an inquiry or action has been initiated in connection with any of the offences provided for in this legal regime, and in order to frustrate, in whole or in part, the coercive collection of any amount owed to the State for the commission of any such offence and the payment to which he or she may be found liable for having by any means sold, disposed of or encumbered his or her property, shall be liable to pay a fine of not less than US\$ 500.00 nor more than US\$ 2,000.00.

2. A person who, having become acquainted that an inquiry or action has been initiated against him or her in connection with a crime or offence, signs acts or contracts that amount

to the conveyance or encumbrance of property with the intent and for the purposes referred to in the preceding subarticle shall be subject to a fine of the same of amount.

3. A fine shall not be applied where, notwithstanding the acts described in this article, the amounts due are paid off in the course of the action and within a deadline set for that purpose.

Article 27 **Negligent acquisition**

1. A person who, without checking the legal provenance of the goods, acquires or receives, in any capacity, goods that, based on their quality or the condition of the person offering them or on the amount proposed for such goods, cause him or her to reasonably suspect that such goods are the object of a customs tax offence, shall be punished by a fine of not less than US\$ 50.00 nor more than US\$ 500.00 shall be applied, where a heavier penalty is not applicable.

2. The applicable fine shall be doubled where the goods have been smuggled.

Part III **Seizure, forfeiture and arrest**

Article 28 **Seizure**

1. The goods that are the object of a customs tax offence as well as the means of conveyance, weapons and other instruments that have been used for committing such offences or that were intended to be used for that purpose shall be seized and stored under the terms of article 34.

2. Seizure of any means of conveyance may be replaced by a guarantee, surety or cash deposit in an amount equivalent to the value of such means of conveyance.

3. Where the owner of the seized means of conveyance fails to provide a guarantee, surety or cash deposit and then does not pay the customs debt and the imposed fine, within 30 days of notification, the means of conveyance may be assigned for use by public services or others of public interest, and no compensation shall be granted to the defaulters.

4. The goods and means of conveyance shall not be restored to their owners until the customs debt and the fine, where applicable, are paid.

5. In the case that the accused in a case or the owner of seized goods fails to provide a valid guarantee and does not pay the customs debt and the imposed fine, within 30 days of notification, such goods may be assigned for use and consumption by public services or others of public interest, priority being given to philanthropic and charitable services, and no compensation shall be granted to the defaulters.

6. For the purposes of the preceding subarticle and without prejudice to subarticle 34.2, the goods shall be forthwith donated to public or private institutions of a social and charitable nature in the case of perishable goods or rapidly deteriorable natural foods, where a guarantee, surety or cash deposit is not provided within one business day from the date the goods were seized.

7. Forfeiture of means of conveyance, weapons and other instruments that have been used for committing an offence may only be declared by a court order.

Article 29
Restoration

1. With the exception of the case referred to in the previous article and others where the law prohibits restitution, goods and means of conveyance and other instruments that have been used for committing an offence shall be restored to their owners:
 - (a) as soon as the court renders a final decision to absolve the accused or as soon as the Public Prosecution Service refrains from bringing forward formal accusation or the customs entity with competence to pursue the offence decides to dismiss the case and it becomes clear that no customs tax instalment is due.
 - (b) as soon as storage, custody and transport expenses are paid, and the customs tax debt due is likewise guaranteed or paid, in addition to the fine, if any.
2. In the cases provided for in the preceding subarticle, the Customs Service shall decide upon the customs tax debt and a possible authorisation for re-exporting the goods.

Article 30
Arrest and guarantee

1. Goods, luggage or any other items that, though not in conformity with the procedure, the accused have in customs, in bonded or free depots or at any other place under tax action, or of which the accused are recipients or consigners, where they are the owners of such goods, luggage or items, are considered to have been arrested as a guarantee of payment to the State and may not be delivered until the value thereof has been guaranteed or secured.
2. Likewise, goods whose bills of lading, consignment notes or any title deeds have been endorsed by the accused or liable persons after having been notified of the accusation or similar decision shall not be restored until the guarantee referred to in the previous subarticle is proved to have been provided.

Part IV
Procedure

Chapter I
Reporting of offences, and storage and disposal of goods

Article 31
Inspection and preventive measures

1. Customs officials may inspect, as well as examine books and documents and take preventive measures, notably searches and verification of goods, in any means of conveyance or in any establishment, shop or warehouse or roofed space other than a residential house.
2. In the case of suspicion of a crime, searches, checks and seizures shall be carried out under the terms and within the limits established by the criminal law.
3. Where such action initiates before dusk, it may proceed at night for the duration required to complete it.

4. Any action referred to in subarticle 1 may be conducted at night, but within the normal working hours of such establishments, shops, warehouses, parks or roofed spaces.
5. In the case of means of conveyance, any action referred to in subarticles 1 and 2 may be conducted at any time, provided that such means of conveyance are in circulation.
6. Except in case of proved urgency or *in flagrante delicto*, prior authorisation from the immediate supervisors of the officials shall be required.
7. Where inspection is conducted in foreign aircraft or ships doing scheduled flights or trips, such inspection shall be assisted by the consular representative of the respective nationality, if any, except where such assistance is waived by the aircraft or ship captain or where the consul, having been duly convened, fails to attend or to send a representative.
8. A routine customs visit to cargo ships that have just called at port shall, as provided for in customs legislation, not require consular presence.
9. Officials taking such action are accountable for any abuse committed and may incur the penalty of suspension or of dismissal where it is proved that they have taken action without a good cause and just out of bad faith on their part.

Article 32

Reporting and notification of offences

1. Officials from the Customs Service, the Revenue Service and the Police, as well as any law-enforcement agencies or agents, shall, where they notice a customs offence, seize the goods, means of conveyance or instruments that have been used for committing the offence and shall, where such offence carries a prison sentence, arrest the offender *in flagrante delicto* and bring him or her to the competent court as soon as possible, preparing in either case the relevant report with a copy to the nearest customs office or to the Customs Service of Timor-Leste.
2. Any of the officials referred to in the previous subarticle, who becomes acquainted with any acts that may, in his or her opinion, constitute a tax offence, must report it to the Customs Service.
3. Both the report and the notification shall contain, where feasible, a thorough indication of the acts, date, time and place where these have been committed and the surrounding circumstances, the reasons on which the reporting or notifying official bases himself or herself to believe that such acts constitute a tax offence, the name, marital status, occupation, age, place of birth and residence or any other elements that may help identify the person who has committed such acts or the person to whom accountability can be ascribed; the persons who are aware of and may bear witness to such acts, the quality, quantity, value and presumable destination of the goods, means of conveyance, weapons and other instruments relating to the presumed offence and all other elements that may contribute to uncovering the offence and punishing the offender.
4. Where action is initiated on the basis of a document other than the report of the offence and without prejudice to the provisions of article 36 regarding the waiver of processing and inquiry, investigation and processing are indispensable for collecting elements that might help prove the actual commission of the offence, its constitutive elements and the degree of culpability of the offender.

Article 33
Time limit and decision on proceedings

1. A proceeding for a customs tax offence provided for in this decree-law shall be time-barred by statute of limitation after the periods that follow have elapsed:
 - (a) Three years for an offence punishable with a maximum fine equal to or higher than US\$ 500.00;
 - (b) Two years for the remaining cases.
2. The time limit on a fine entails the time limit on an accessory penalty yet to be executed.
3. A decision in favour of or against the application of a fine shall be rendered within 20 business days counted from the presentation of the plea or rebuttal by the accused, except in very complex cases or in those awaiting an expert investigation or any other kind of action.

Article 34
Storage of goods in customs facilities and immediate sale

1. Goods, means of conveyance, weapons and other instruments that have been used for committing an offence shall be stored in customs facilities, unless the latter cannot receive them for lack of space.
2. Where the goods referred to in the previous subarticle are deteriorable, perishable or where public interest or public health so justifies, the Court, in respect of crimes, and the Customs Service, with respect to other offences, may authorise the destruction, sale, or donation, in whole or in part, of such goods to a charitable institution.
3. Sale operations shall be carried out by customs authorities under the terms of applicable laws and proceeds from sales shall be deposited to the order of the respective proceeding.
4. If the court decides against the forfeiture of the goods and the owner thereof is acquitted, the aggrieved party shall be given the proceeds from the sale.
5. The previous subarticle shall apply where no fine is imposed in a customs proceeding.

Article 35
Other forms of deposit

1. Where goods, means of conveyance, weapons or other instruments that have been used for committing the offence cannot be immediately moved to customs facilities or these cannot receive them, such items shall be listed and described taking into account their quality, quantity and value, and shall be entrusted to a competent depository, with the exception of weapons, which shall remain in custody of law-enforcement agents, and a delivery note shall be prepared and signed by the seizers, witnesses, if any, and the legal depository, the duplicate of the delivery note being held by the latter.
2. Should there be no competent depository in the area, the goods and other seized items shall remain in custody of law-enforcement agents.
3. In the case of seizure of cattle the owner or carrier of which is unknown, or if the former refuses to act as a legal depository, responsibility for the seized animals shall be left with the nearest authority.

Chapter II
Acts and competencies in customs proceedings

Article 36

Waiver and obligation to process and investigate in customs proceedings

1. There shall be neither processing nor investigation in connection with offences committed in the course of customs clearance procedures and formalities, or proved therein, where either of such procedures or formalities contain the elements required for a decision to be taken.
2. Likewise, there shall be neither processing nor investigation where the report or notification of an offence contains:
 - (a) the acts that constitute the offence and these have been witnessed by the reporting or notifying official;
 - (b) elements sufficient to determine who committed the offence and the civilly liable persons, if any, as well as to ascertain the respective liabilities.
3. No decision may be taken before the accused is heard and assured of the possibility of contesting and adding any evidentiary value deemed relevant, and also advised that he or she may immediately apply for the voluntary payment and the assessment provided for in articles 41 and 42.
4. Where processing is required and where the accused fails to immediately apply for the voluntary payment of the customs debt and fine, he or she shall be notified that he or she has five (5) business days to submit the rebuttal and, upon receipt thereof, the competent entity shall decide whether or not to accept the evidentiary value of the report or notification of the offence and shall, accordingly, either dismiss or confirm that the accused pay a fine, in which case the payment shall be made within five (5) business days.
5. The decision shall be well-founded, explicating the reasons why it was taken and shall be rendered not later than twenty (20) days after the date on which the rebuttal was filed; and this deadline may be extended in highly complex cases.

Article 37

Entities competent to apply fines

1. Without prejudice to the power of the hierarchically superior entity to order the remittal of the case, before a decision thereon is rendered, the following entities shall be competent to process any of the offences provided for in this decree-law and to apply the respective fines:
 - (a) the Customs Controller at ports and international airports across the customs territory, who may delegate this competency and also that relating to customs tax offences in cases ordered to be remitted to him or her from customs, where a final decision is yet to be made;
 - (b) the directors of customs and heads of customs posts in their respective jurisdictions.
2. Territorial competence is determined by the place where the goods are seized or, in the absence thereof, by the place where the customs tax offence was committed or, if this is not known, by the seat of the entity who first became acquainted with the offence.
3. The Customs Controller shall decide upon the application of fines and accessory penalties to customs bonded warehouses for fuels and, in general, to those storing energy

products essential to the country, and such a decision may be appealed against to the Minister of Planning and Finance.

Chapter III Appeals

Article 38 Appeals to a superior authority and judicial appeals

1. Decisions on the application of fines, by directors of customs or heads of customs posts, may be appealed against, within five (5) business days of notification for payment under the terms of subarticle 36.4, to the Customs Controller who shall decide, in the final analysis, upon the application of fines not exceeding US\$ 2,000.00.
2. Appeals against decisions issued by the Customs Controller, regarding accessory penalties or fines exceeding US\$ 2,000.00, shall be lodged with the Minister of Planning and Finance, within the same deadline as indicated in the previous subarticle.
3. Appeals to a superior authority shall suspend neither the payment of customs duties and other taxes due and payable, to be levied by the Customs Service, nor the payment of a fine.
4. However, immediate payment may, with respect to the application of a fine, be replaced by the provision of the respective guarantee through a cash deposit, bank guarantee or surety, to the order of the customs administrative proceeding.
5. The entity with whom the appeal is lodged may also be requested to immediately suspend the application of an accessory penalty, where the appellant adds to the proceeding evidence that customs duties and other taxes have been paid and that the fine has been either paid or guaranteed.
6. Judicial appeals shall be governed by the general law.
7. The appeal shall be lodged with the office of the respondent authority, who is the one that has decided upon the application of the fine.

Chapter IV Processing of fines

Article 39 Breakdown of fines

1. The amount of a fine shall be broken down and distributed as follows:
 - (a) 70% for the Treasury;
 - (b) 30% for the Customs Fund of the Customs Service of Timor-Leste to be regulated by Ministerial Order of the Minister of Planning and Finance.
2. The portion of the fine pertaining to the Treasury shall be forthwith converted to actual revenue.

Article 40 Breakdown of proceeds from sales

1. Amounts deriving from the sale of goods, means of conveyance and any other items shall, whatever their provenance, accrue to the benefit of the Treasury.

2. Where it has not been paid, a fine or penalty shall be deducted from the proceeds from the sale of the goods and distributed under the terms of the previous subarticle.
3. The portion of the fine pertaining to the Treasury shall be forthwith converted to actual revenue.

Chapter V

Voluntary payment and assessment request

Article 41

Voluntary payment

1. Voluntary payment shall be accepted for fines corresponding to the offences provided for in this decree-law.
2. The offender may make a voluntary payment to the authority processing the case, either immediately or within five (5) business days after the receipt of notification to depose or to contest.
3. Voluntary payment shall be 25% of the maximum applicable fine, without prejudice to the payment of the customs tax debt.
4. Where voluntary payment of a fine is made under the conditions established in this article, there shall only be an accessory penalty in connection with an offence whose maximum amount of the fine applicable to the case is equal to or higher than US\$ 1,000.00, and the competent entity shall have discretion to apply such fine or not.
5. With the voluntary payment of the fine, either immediately or within 2 business days after the date the request is filed, and once the customs tax debt is settled, the seized goods shall be restored to the owner, or his or her legal representative, exception made to weapons and other import-prohibited goods, under the terms of this decree-law.

Article 42

Discharge request

1. With respect to the customs offences provided for in this decree-law, the accused may, at any stage of the proceeding, but before a final decision is made, request the assessment and payment of all amounts for which the accused is liable, and the competent entity shall, after the accused is heard, forthwith render his or her decision, either determining a penalty or acquitting the accused.
2. The proceeding may be pursued in connection with other accused or liable person.

Article 43

Revocation

1. All transitional or subsidiary provisions that conflict with those of this decree-law are hereby repealed.

2. Proceedings that were pending upon the entry into force of this decree-law shall, until such a time as a final decision is rendered, continue to be governed by the legislation applicable thereto on the date the offence was committed.

Article 44
Entry into force

The present decree-law comes into force 45 days following the date of its publication.

Approved by the Council of Ministers on 31 March 2004.

The Prime Minister

[Signed]
(Mari Bim Amude Alkatiri)

The Minister of Planning and Finance

[Signed]
(Maria Madalena Brites Boavida)

Promulgated on 11 May 2004.

To be published.

The President of the Republic

[Signed]
(Kay Rala Xanana Gusmão)