

DEMOCRATIC REPUBLIC OF TIMOR-LESTE

GOVERNMENT

DECREE-LAW No. 17/2004

OF 3 NOVEMBER 2004

ON THE BASES FOR POSTAL SERVICES

The 1st Constitutional Government of Timor-Leste has chosen, from amongst its objectives, to organize and regulate the telecommunications and postal services sector.

From amongst the structuring measures intended to materialise this objective, five are pointed out: to draft a Decree-Law on the Bases for the Postal Services; to establish a Public Postal Company; to draft a Decree-Law on the Bases for Telecommunications; to grant to a private operator, for a definite period of time, the public telecommunications service, under the BOT regime; and, in order to guarantee an adequate regulation and oversight of this sector, to establish a Communications Regulatory Authority (ARCOM).

The present Decree-Law is specifically meant to materialise the first of the aforementioned actions.

The postal services sector contributes, in a significant manner, to the promotion and growth of a country's economy, and to the development of its social fabric, by assuring its citizens access to communications and information through a multiplicity of means, thus correcting regional asymmetries and reducing geographic isolation between people.

The legislation applicable to the sector must be adapted by promoting a legislative reform consistent with the current reality of Timor-Leste, the main objective of which being, on the one hand, the building and development of infrastructure in the country, and, on the other, the provision of a range of postal services to the general public, with quality and at affordable prices; and specific conditions that will make this operation feasible must be provided for.

The communications sector shall be expanded to new services that are increasingly technologically more advanced, with the Government being responsible for promoting the creation of the conditions of access to such services by an ever-increasing number of users, and, at the same time, for intervening at the level of coordination and supervision of the postal services sector, and for guaranteeing respect for the principles proclaimed herein.

Thus, pursuant to section 116(d) of the Constitution, the Government enacts the following:

CHAPTER I

General Provisions

Article 1

Object and Scope

The object of the present decree-law is to define the general bases for the establishment, management and operation of postal services in the national territory, as well as international services originating in or having the national territory as their destination.

Article 2

General Principles

1. The present decree-law and the legal regime arising herefrom shall ensure the satisfaction of the essential needs for postal services of people and entities, public and private, from the various sectors by setting up the appropriate conditions for developing and diversifying services of this nature.
2. The pursuit of the objective set in the preceding subarticle shall conform to the following basic principles:
 - (a) ensure the existence and availability of a universal service consisting of a range of essential postal services provided nationwide, on a permanent basis, and in accordance with quality standards, and at prices that every user can afford;
 - (b) ensure the economic and financial feasibility of a universal service offer through the allocation of an exclusive area in the provision of certain postal services and the establishment of a compensation fund;
 - (c) assure postal services providers equal access to the market by respecting the rules for protecting competitiveness;
 - (d) assure users, in identical circumstances, equal treatment in the access to and use of postal services.

Article 3

Essential Requirements

1. The following essential requirements, among others, shall be safeguarded while operating postal services:
 - (a) the inviolability of and secrecy with regard to mail, with the limitations and exceptions set forth in the penal code and other applicable legislation;
 - (b) the security of the postal network;
 - (c) the protection of data, with the limitations and exceptions set forth in the penal code and other applicable legislation;
 - (d) the confidentiality of transmitted or stored information;
 - (e) the protection of one's private life;
 - (f) country and town planning, protection of the environment and of property;
2. The secrecy with regard to mail and the protection of data alluded to in the previous subarticle consist in:
 - (a) prohibiting the reading of any mail even if not put inside sealed envelopes and the mere opening of sealed mail;

(b) protecting the content of any message or information one may have become acquainted with, duly or unduly, from disclosure to third parties, including disclosure of relationships between senders and addressees and of their addresses.

Article 4

Definitions and Classifications

1. Postal service is construed to mean the activity that involves operations of acceptance, processing, transport and distribution of postal items.

2. For the purpose of applying the preceding subarticle, postal item is construed to mean an object addressed in a definitive way following the physical and technical specifications that will allow it to be processed in the postal network, namely:

(a) mail - written communication in a physical format of any nature and destined to be carried and delivered at the address indicated on the item itself or on its envelope, including addressed advertisements;

(b) books, catalogues, newspapers and other periodicals;

(c) postal parcels- small volumes containing goods or item whether they have commercial value or not, the weight of which not exceeding 20 kg.

3. The following postal items are construed to mean as follows:

(a) registered mail are postal items with a guaranty of compensation of the monetary value set against risks of loss, theft, pilferage or deterioration and that provides the sender, at his or her request, a proof of the deposit or delivery thereof to the addressee;

(b) declared-value mail are postal items with a guaranty of compensation of the monetary value of the content up to the amount declared by the sender, in case of loss, theft, pilferage or deterioration;

(c) addressed advertisements are pieces of mail with an identical message sent to a significant number of addressees exclusively for advertising, marketing and promotional purposes;

(d) international postal services are postal items received from a third country or destined therefor, originating in Timor-Leste;

(e) postal orders are special payment orders that allow funds to be transferred;

(f) mail sorting centres are places where users may do self-distribution through the mutual exchange of postal items, have their own boxes, and form a group of adherents to that effect, through a subscription to such a service.

4. Postal network is construed to mean a range of human and material resources retained, organized and operated by a universal service operator.

5. Public postal network refers to a postal network established, managed and operated by a universal service operator.

6. Points of access are physical places, including post-boxes at the disposal of the public, whether on the street or at other places, public or private, where users may deposit postal items in the postal network.

7. Postal service operations include:

(a) acceptance, which is a set of operations relating to the admission of postal items into a postal network, namely the collection of postal items at the corresponding points of access;

- (b) processing, which consists in preparing postal items, at the operator's premises, for the transportation thereof to the distribution centre in the area such postal items are destined for;
- (c) transportation, which consists in carrying postal items, through proper technical means, from the point of access to the postal network and on to the distribution centre in the area such postal items are destined for;
- (d) distribution, which consists in operations starting with the sorting of postal items at the distribution centre in the area such postal items are destined for and ending with the delivery thereof to their addressees.

CHAPTER II

Universal Service

Article 5

Universal Service

1. It is incumbent upon the State to ensure the existence and availability of a universal service deemed to be a permanent offer of postal services with a specified quality, provided nationwide at prices that every user can afford, with a view to satisfying the communication needs of people and of social and economic activities.
2. It is therefore incumbent upon the State to make sure that the density of the points of contact and access corresponds to the users' needs.

Article 6

Scope of the Universal Service

1. The universal service referred to in the previous article comprises a postal service for sending out letters, books, catalogues, newspapers and other periodicals weighing up to 2 kg, and postal parcels weighing up to 20 kg, including a registered mail service and a declared-value mail service.
2. The preceding subarticle covers both the domestic and international postal service.

Article 7

Provision of a Universal Service

1. A universal service may be provided by:
 - (a) the State;
 - (b) a public legal person;
 - (c) a private legal person, by way of a contract.
2. The contract alluded to in paragraph (c) of the previous subarticle takes the form of concession of a public service where it involves the provision of reserved services and the establishment, management and operation of the public postal network.
3. The concession of the public service alluded to in the previous subarticle entrusts the operator with the duty of providing postal services operated under a competitive regime as part of the universal service, with no other title being required, and entails the possibility of the operator running other postal services.

4. The legal regime applicable to the universal service shall consist of specific legislation.

Article 8

Quality of universal service

1. In addition to fulfilling the obligations arising from the legislation alluded to in subarticle 7.4, the provision of the universal service shall ensure, in special, the satisfaction of the following basic requirements:

- (a) compliance with adequate quality standards, notably with regard to delivery deadlines, density of points of access, regularity and reliability of the service;
- (b) provision of the service on an equal and non-discriminatory basis;
- (c) continued provision of the service, except in the case of force majeure;
- (d) progressive advancement of the service, depending on the technical, economic and social setting and the users' needs;
- (e) fulfilment of the obligations inherent in the provision of the universal service that, arising from international obligations, the State might adopt into its domestic law in the future;
- (f) information to the public regarding the conditions and prices for services.

2. The universal service provider shall ensure a door-to-door collection and distribution, at least once a day, every working day.

3. Where this is not feasible by reason of any exceptional geographic circumstances or conditions, as recognized by ARCOM as the postal regulatory entity, such services are to be provided in appropriate facilities, to be defined by a regulatory decree.

4. The universal service provider shall publicise in a proper manner and provide users with updated and accurate information regarding the features of the universal service being offered, namely regarding the general conditions for access and use of the service, prices, and quality standards.

5. The parameters and minimum quality standards relating to the provision of the universal service, namely those regarding referral deadlines, and the regularity and reliability of the service, shall be established and publicised following an agreement to be entered into between ARCOM, as the regulatory entity, and the universal service provider, in a negotiating process taking place concurrently with that arising from the price regime referred to in article 14.

6. The parameters and quality standards referred to in the previous subarticle shall be consistent with the quality norms, if any, established for international services.

7. As the regulatory entity, ARCOM shall ensure, in a way different from that of the universal service provider, the control of the quality standards of the service that has actually been delivered, the results of which being the subject of a report to be published at least once a year.

Article 9

Universal Service Costs and the Compensation Fund

1. The universal service provider may have access to a costs compensation fund where ARCOM, as the regulatory entity, establishes that unjustified financial and economic charges have originated from the obligations of this service.

2. For the purposes of the preceding subarticle, the universal service provider shall, within the framework of the analytical accounting system to which it is bound by article 19, have to demonstrate costs associated with the provision of the universal service and the charges to be borne by the fund, following approval by ARCOM, as the regulatory entity, under the terms to be determined by a decree regulating the present decree-law.

3. The compensation fund shall be administered by a body that is independent of the beneficiary, under the terms to be defined by a regulatory decree, and shall originate from its revenue:

- (a) contributions from all providers of postal services delivering services in the unreserved area, but within the scope of the universal service;
- (b) proceeds from the sale of postage stamps.

CHAPTER III

Practice of the Activity

Article 10

Postal Services

The principle of gradual and controlled liberalization of the postal services, through appropriate procedures under a regime of general authorisations or individual licences, to be set forth in a regulatory decree, is enshrined herein.

Article 11

Reserved Services

1. Reserved services are those services provided under an exclusive regime by the universal service provider, under the terms established by subarticle 7.2, which comprise the Public Postal Service.

2. Reserved services include:

- (a) the postal service of mail, including addressed advertisements, whether it is delivered through accelerated distribution or not, the price of which being ten times lower than the public tariff for sending out mail of the first weight rate of the fastest, normalised category, provided that its weight is lower than 2 kg;
- (b) The postal service of registered mail and declared-value mail, including citation services by mail and judicial notices, within the price and weight limits referred to in the previous paragraph;
- (c) the issuance and sale of postage stamps and other postal values;
- (d) the issuance of postal orders;
- (e) the installation of street post-boxes intended for the collection of postal items.

3. The provisions of paragraphs (a) and (b) of the previous subarticle cover the postal service of mail, both domestic and international.

4. The scope of the reserved services may be the subject of periodic reviews, under the legal terms to be approved at a later stage, within the framework of the progressive liberalisation of this sector.

Article 12

Competitive postal services

1. The postal services that are not covered by the article 11 are operated under a competitive regime, namely:
 - (a) the operation of mail sorting centres;
 - (b) express mail, provided it exceeds the price and weight limits referred to in subarticle 11.2(a).
2. The provision of postal services operated under a competitive regime may be effected by entities providing the universal service or by natural or legal persons duly qualified to do so.
3. The provision of postal services operated under a competitive regime by the natural or legal persons referred to in the final part of the previous subarticle shall be regulated by the terms established by the regime on access to this activity, to be defined in a regulatory decree.

Article 13

Operational Regulation

The essential requirements set forth in article 3, among others, as well as the obligation of service providers to endow themselves with technical and human resources to ensure respect for the users' rights, shall be safeguarded in an Operational Regulation.

CHAPTER IV

Tariff Principles

Article 14

Price Regime

1. The fixing of prices for each of the services comprising the universal service follows the principles of cost-orientation, non-discrimination, transparency, and of affordability for every user.
2. Rules for price formation with regard to the postal services comprising the universal service are subject to an agreement to be entered into between ARCOM, as the regulatory entity, the Directorate of Trade Services, and the Postal Operator.
3. Prices for all other postal services are freely fixed by their respective operators.

CHAPTER V

Users' rights

Article 15

The Right to Use Postal Services

Every one has the right to use postal services, through the payment of the corresponding prices and tariffs, provided that the applicable legal and regulatory provisions are observed.

Article 16

Claim Process

Postal services operators shall, in the exercise of their activity, ensure transparent, simple and inexpensive procedures for processing users' claims, and shall guarantee a timely and reasoned response to such claims.

Article 17

Right to Consult

The approval of the operational regulation referred to in article 13, as well as the entering into agreements setting the parameters, the quality standards, and the price regime for the universal service, referred to in articles 8 and 14, shall be preceded by consultations with representative consumer organisations.

CHAPTER VI

Regulation

Article 18

Regulatory Entity

1. It is incumbent upon the State to define strategic guidelines and general policies for the postal sector, approve applicable legislation and regulations, and regulate the postal services.
2. In pursuing State responsibilities, it is specifically incumbent upon ARCOM, as the Communications Regulatory Entity, namely in the postal sector:
 - (a) to represent the State in intergovernmental organisations in the area of postal services;
 - (b) to grant titles for the performance of postal activities under a competitive regime;
 - (c) to monitor the quality and prices of the postal services covered by the universal service;
 - (d) monitor compliance, on the part of postal services operators, with legal and regulatory provisions concerning this activity, including the application of the corresponding penalties.

Article 19

Analytical Accounting

1. The universal service provider shall, under the terms to be defined in the decree referred to in subarticle 7.4, have an analytical accounting system that will allow them to determine revenue and expenditure, direct and indirect, of each of the reserved services and of each of the unreserved services, and that will additionally allow them to distinguish between costs associated to the various basic operations that comprise the postal services, as provided for in subarticle 4.1.
2. It is incumbent upon ARCOM, as the regulatory entity, to approve the analytical accounting system mentioned in the previous subarticle, monitor the correct application thereof, and publish, on an annual basis, a compliance certification statement on the analytical accounting system and on the results achieved.

Article 20

Protection of Competitiveness

Postal service operators are prohibited from using any individual or concerted practices that might adulterate the conditions of competitiveness, under the terms established by law.

Article 21

Conditions of Access to the Public Postal Network

The universal service provider shall ensure access to the public postal network under transparent and non-discriminatory conditions, in accordance with the terms to be established by a regulatory decree.

Article 22

Settlement of Disputes

1. Users of the universal service may, individually or in conjunction with their representative organisations, lodge a complaint with ARCOM, as the postal regulatory entity, in cases related to prior claims to which the operator of the postal services has either not responded in a timely and reasoned fashion or that have not been satisfactorily settled.
2. It is incumbent upon ARCOM, as the postal regulatory entity, to review and issue a reasoned opinion on the complaints lodged.
3. ARCOM, as the postal regulatory entity, shall ensure the publication by the universal service provider of information regarding the overall number of claims and the manner in which they have been handled, together with the service report mentioned in subarticle 8.7.

Article 23

Coordination in Emergency Situations

It is incumbent upon the State to ensure, under the terms established by law, proper coordination of the postal services in emergency, crisis or war situations.

CHAPTER VII

Final and Transitional Provisions

Article 24

Safeguard of acquired rights

The provisions of this decree-law does not prejudice any rights acquired by the CTL-Timor-Leste Postal Service -, prior to the date of its entry into force, except to the extent that such rights are deemed inconsistent with the regime arising from the present decree-law and the concession contract to be entered into under subarticle 7.2.

Article 25
Transitional Regime

The provisions relating to the Timor-Leste Postal Service in force since April 2000, as well as the regulatory measures adopted under those provisions, provided they are not inconsistent with the provisions of this decree-law, shall remain applicable until the entry into force of the decrees regulating this decree-law.

Article 26
Provision with Suspensive Effect on Competition for Reserved Services

1. The coming into force of the provision of subarticle 12.1(b) remains suspended until such a time as the universal service provider has met the required conditions for fully providing the reserved services provided for in subarticle 11.2(a).
2. Once the Postal Operator has met the conditions required for fully providing the reserved services, ARCOM shall, as the regulatory entity, inform of the date of entry into force of the above-mentioned provision.

Article 27
Entry into force

The present decree-law shall come into force on the day subsequent to the date of its publication.

Approved by the Council of Ministers on 2 June 2004.

The Prime Minister

[Signed]
(Mari Bim Amude Alkatiri)

The Minister of Transport, Communications and Public Workers

[Signed]
(Ovídio de Jesus Amaral)

Promulgated on 18 October 2004.

To be published.

The President of the Republic

[Signed]
(Kay Rala Xanana Gusmão)