

DEMOCRATIC REPUBLIC OF TIMOR-LESTE

GOVERNMENT

DECREE-LAW NO. /2004

OF

**ON THE JURIDICAL REGIME OF PROPERTY: OFFICIAL ALLOCATION
AND LEASING OF PRIVATE PROPERTY OF THE STATE**

The Government has the duty to secure the protection and consolidation of State property. It must do so, namely, by administering the State property in an effective, reasonable and systematic manner so that the latter may fulfill its economic and social function.

There are countless private properties of the State, thus constituting State property, which are currently either not being used properly, or are vacant, or are illegitimately occupied. It is thus necessary to make laws on the applicable procedures to such cases.

Part I: Ownership over the Property of Law No. 1/2003 of 10 March on the Juridical Regime of Property provides that the disposal of the private property of the State, as well as the regime for leasing and administering such properties, shall be regulated by a decree-law.

In this connection, pursuant to Sections 115.1(e), 115.1(k) and 115.1(o) the Constitution, the Government enacts the following that shall have the force of law:

**CHAPTER I
SCOPE AND DEFINITIONS**

**Section 1
Scope**

The present decree-law shall regulate acts of official allocation and leasing of private properties of the State.

Section 2
Public Properties

1. Public properties of the State may not be surrendered for the exclusive use by private individuals, except through a legal provision expressly allowing its leasing, granting, or temporary exploration.
2. The juridical regime for such assets shall be subject to a specific legislation.

Section 3
Private Properties of the State

1. Urban and rural private properties of the State of Timor-Leste subject to the administration of the State means urban and rural property that are part of the property of the State of Timor-Leste as provided for in Law No. 1/2003 of 10 March (Juridical Regime of Property), the use and control of which may be transferred in accordance with the law.
2. The National Directorate of Land and Property (NDLP) shall include, within the cadastre system, an inventory and a classification of the private properties of the State.

Section 4
Acts of Official Allocation and Leasing of Properties

1. All temporary allocations of properties to be used by the services of the State free of charge shall be considered as official allocations of private properties of the State.
2. The leasing of a State property shall assume the form of a contract through which the Government authorizes the specific use of an immovable asset to the private domain of the State through the payment of rents during a given period of time. The leasing contract shall only grant rights of use and under no circumstances shall it affect ownership rights.
3. All allocation and leasing shall be executed by the National Directorate of Land and Property under the scrutiny and authorisation of the Minister of Justice, and it shall always be done in accordance with the legal provisions and the corresponding administrative guidelines.

CHAPTER II
ALLOCATION OF STATE PROPERTY

Section 5
Official Allocation of Properties for State Services

1. All allocations of State property to official entities shall be preceded by an official application by the interested entity.
2. The National Directorate of Land and Property shall submit the corresponding technical opinions to the Minister of Justice for a decision according to the options for property use.
3. Where the Minister decides to authorise the allocation of a property to an applicant entity, the National Directorate of Land And Property shall draft an allocation and use agreement in four copies, of which one shall be given to the occupant entity, one to the archives of its central office, one to the archives of its district office, and one to the archives of the Office of the Minister of Justice.
4. The deadline for the allocation of properties for use by official Government institutions shall be proposed by the National Directorate of Land and Property.

CHAPTER III LEASING OF STATE PROPERTY

Section 6 Principles

The leasing of the State's property shall be undertaken in accordance with the following principles and objectives:

- a) To facilitate temporary housing for citizens who do not have own housing;
- b) To facilitate national and foreign investors access to land and property by providing legal security and clear rules;
- c) To facilitate the regularisation of illegally occupied State properties;
- d) To support the economic reconstruction process of Timor-Leste;
- e) To facilitate the economic production of the State's private properties that are being utilized in commerce and industry;
- f) To generate revenues for the State.

Section 7 Obligations of the State

The State shall have the following obligations, under the present decree-law, in its capacity as proprietor:

- a) To surrender the property in good condition, unless otherwise agreed to;
- b) To ensure the use and enjoyment of the property by the respective tenant during the agreed contractual term.

Section 8

Obligations of the Tenant

The tenant shall have the following minimum obligations under the present decree-law:

- a) To pay the agreed rent on a timely basis and in accordance with the terms of the leasing contract;
- b) To use the property in accordance with the terms of the leasing contract;
- c) Unless otherwise agreed, to be liable for the necessary repairs to the property which are required over the course of time normal use of the property;
- d) To attend to the maintenance of the property, being liable for the damages caused by misuse of the property;
- e) To surrender the property at the end of the leasing contract under the conditions laid down in the leasing contract and, where conditions have not been laid down, the property shall be surrendered in the exact same conditions as those existing at the time of allocation of the State property, except for the normal wear and tear caused by its use.

Section 9 Requirements and Procedures

1. Any individual or corporate body, whether national or foreign, legally residing in Timor-Leste and civil capacity to enter into a contract and assume an obligation may enter into a leasing contract with the State.
2. Parties interested in leasing a State property shall submit an application to the competent national or district office of the National Directorate of Land and Property containing the following data:
 - a) Full name, age, nationality, residential address and registration number of the commercial activity, where applicable;
 - b) Identification of the property the party intends to rent;
 - c) Where the parties are corporate bodies, by-laws and legal approval of their establishment, identifying their legal representatives;
 - d) An explanation on whether the property is to be used for residential, commercial, industrial, agricultural or other purposes;
 - e) For agricultural, commercial or industrial purposes, the applicant shall submit an operating license, where applicable, the plan of activities, as well as justify the investment amount and make a temporal estimate for the duration of the business or industry;
 - f) Period of time requested, within the limits established by law.

Section 10 Types of Use

1. Private properties of the State may be leased, depending on the case, preferably in accordance with the following order of priority and for the following purposes:
 - a) Private residence of individuals;
 - b) Diplomatic Missions, humanitarian agencies, international organisations and Religious Denominations;
 - c) Small commerce or industry belonging to citizens and to national and/or foreign companies;
 - d) Medium or large-scale commerce or industry belonging to citizens and to national and/or foreign companies;
 - e) Agricultural production;
2. Depending on the use for which it has been applied, the National Directorate of Land and Property shall co-ordinate the information and request technical reports from the competent entities.

Section 11

Technical Criteria for Determining the Rental Value

1. To determine the rental value, the National Directorate of Land and Property shall apply the referential values laid down in a general framework prepared by the same and approved by Ministerial Statute.
2. The general framework referred to in item 1 above shall determine the general and referential minimum values in accordance with the following variables:
 - a) Dimension and type of land;
 - b) Location of the buildings (Sectorialisation);
 - c) Existing services in the building;
 - d) Volumetry and state of the buildings;
 - e) Proposed property use.
3. The general framework shall establish a specific treatment for national citizens.
4. In situations of special complexity or for humanitarian purposes, an extraordinary procedure, established by a Ministerial Statute, may be applied.

Section 12

Awards of Commercial and Industrial Rents

1. In the leasings provided for in Section 10.1 (d), after receiving the application or identifying an available State property which may be the object of leasing, the National Directorate of Land and Property shall initiate the awards process by drafting the technical framework of the property, which shall contain:
 - a) The corresponding technical data;

- b) Special contractual conditions;
 - c) Applicant eligibility;
 - d) The minimum rental amount;
 - e) The minimum contractual period;
 - f) The specific purpose of the property in exceptional cases;
 - g) Guarantees and other special contractual conditions.
2. The technical framework shall be submitted to the Minister of Justice for appreciation and approval, except where a delegation of powers exists in the National Directorate of Land and Property.
3. Following approval, a public notification shall be prepared as follows:
- a) A notification shall be sent to the *Suco Chief* where the property is located;
 - b) A notification shall be affixed at the national and district offices of the National Directorate of Land and Property where the property is located.
4. Interested parties may submit proposals, in closed envelopes, to the district office of the National Directorate of Land and Property until 17.00 hours of the fourteenth day from the date of notification. A note confirming receipt of the proposals shall be issued.
5. The awards process shall be carried out as follows:
- a) On the working day immediately after the deadline referred to in item 4 above has elapsed, the proposals shall be opened in public by the Rent Committee, which shall be composed by:
 - i. The representative of the National Directorate of Land and Property at the district level;
 - ii. The sub-district administrator or his/her representative;
 - iii. The local *Suco Chief* where the property is located or his/her representative.
 - b) The Rent Committee shall review the proposals and prepare a table of the proposals accepted, in order of preference, giving priority to the best offer in terms of pricing, deadline and other conditions;
 - c) The awarded rent shall be given to the first person in the table, in order of preference, and, in the case of renunciation or impediment of the latter, the awarded rent shall be given to the successive person therein;
 - d) The Rent Committee shall draw up the minutes of the opening and awards process.
6. It shall be incumbent upon the Minister of Justice to sign the leasing contract with the beneficiary, and the former may delegate this power upon other employees.

7. The National Directorate of Land and Property shall provide the Minister of Justice with a monthly report on the leasing contracts made, along with a copy of the corresponding minutes.

Section 13 **Form of Contracts**

1. All leasing contracts of the State shall necessarily be made in writing in four copies, one of which shall be given to the tenant, one to the property registry of the National Directorate of Land and Property, one to the district office of the National Directorate of Land and Property, and one to the Office of the Minister of Justice.
2. The competent services of the National Directorate of Land and Property may provide certified copies of the leasing contracts whenever requested to do so.

Section 14 **Lease Period**

1. The lease period for a State property shall depend on its use and, where applicable, on the amount of investment made on it.
2. The maximum time limits for each type of leasing contract shall be as follows:
 - a) For private residential use, up to FIVE YEARS (5);
 - b) For private small-scale commercial and industrial enterprises, up to TEN YEARS (10);
 - c) For humanitarian agencies, NGOs, up to TWENTY YEARS (20);
 - d) For medium-scale commercial and industrial enterprises, up to THIRTY YEARS (30);
 - e) For large scale commercial, industrial and agricultural enterprises, up to FIFTY YEARS (50);
 - f) For international organizations and diplomatic missions, up to FIFTY YEARS (50).
3. Where there is a favorable opinion by the competent Ministry or Secretariat of State, the Minister of Justice may, in special cases, authorize lease periods longer than those specified in item 2 above.
4. The leasing contracts may be renewed following an express agreement by the parties to that end.
5. The tenant may terminate the leasing contract prior to the completion of the lease with an advance notice of at least six months.
6. All leasing contracts shall provide for the possibility and form of periodical review of the rent amount to be undertaken, without which the rent cannot be altered.

Section 15
Transfer of Tenant Status

1. Where the leasing contracts is for industrial, commercial, or agricultural activities, tenants may transfer their contractual status provided they have fulfilled their contractual obligations and provided the new use of the property is authorised by the Minister of Justice.
2. Such transfer shall be for the remaining duration of the original contract and in accordance with the terms agreed upon with the Ministry of Justice. To this end, an addendum to the initial contract shall be signed.
3. Where the leasing is for residential use by the tenant, the tenant status, following his or her death, shall be automatically transferred in accordance with the following order of preference:
 - a) Surviving partner or any person with a similar status;
 - b) Direct line descendants.

Section 16
Dissolution of Contracts

1. The following shall constitute causes for the dissolution of contracts:
 - a) Failure to pay the rent as stipulated in the contract;
 - b) Various uses of the property or lack of its use for more than six consecutive months;
 - c) Damages to, or destruction of, the property for lack of care by the tenant;
 - d) Property transfer to a third party without fulfilling the legal procedures for property transfer through the National Directorate of Land and Property.
2. The failure to comply with the contract for any of the above-mentioned reasons shall be certified by the National Directorate of Land and Property and shall bring about an administrative eviction pursuant to Law no. 1/2003, of 10 March (The Juridical Regime of Real Estate).
3. Tenants who are notified of the administrative eviction within the legal period and who pay the rents in arrears, accruing the equivalent to 50% of such amounts as a penalty, may continue to enjoy the contract.
4. The administrative eviction procedures and their respective appeals shall be regulated by Law No. 1/2003 of 10 March (The Juridical Regime of Real Estate).

Section 17
Sub-Leasing

1. Leasing contracts of State properties shall allow the sub-leasing provided there is an expressly written authorisation from the Minister of Justice.

2. In such cases, the sub-leasing shall fulfill two conditions in order for it to be authorised by the Minister:
 - a) Only part of the property may be sub-leased and the original tenant must occupy the biggest part of the property for the authorised use;
 - b) The sub-leasing amount shall be less than the rent amount the tenant agreed to pay in the contract with the National Directorate of Land and Property.
3. Where the entire property is sub-leased, or where the sub-leasing amount is higher than the amount fixed by the National Directorate of Land and Property, the latter may, at any time, put an end to the contract with the main tenant.

Section 18 Paid-Up Benefits

There shall be no compensations for paid-up benefits in the leasing contracts regulated under the present decree-law, but, at the end of the leasing contracts, tenants shall have the right to remove such benefits provided this does not adversely affect property use.

Section 19 Revenues

1. Rents charged by the National Directorate of Land and Property shall be deposited by the tenants directly to the bank account of the National Treasury established in the contract.
2. The Minister of Justice shall approve the table of administrative fees for special technical services, namely, for property assessments, topographic surveys, and facilitation of aerial photographs, maps and registration of land directly to the tenants.
3. The regime provided for in item 2 above shall be applicable to other cases in addition to negotiating or contracting the leasing of State property where the National Directorate of Land and Property is requested to provide technical services.
4. The amounts received for the provision of services referred to in items 2 and 3 above and 20% of the payment proceeds arising from the penalties referred to in Section 16.3 above, shall accrue on behalf of a fund to be regulated by a specific statute.

CHAPTER IV GOVERNMENTAL ADMINISTRATION OF ABANDONED PROPERTY

Section 20 Definition of Abandoned Private property

Abandoned private property shall refer to any unoccupied, occupied, or illegally appropriated property pursuant to Sections 5 and 6 of Law No. 1/2003 of 10 March (Juridical Regime of Immovable Goods) identified by the National Directorate of Land and Property as belonging to private individuals up until September 1999.

Section 21

Temporary Administration of Abandoned Private property

It is incumbent upon the National Directorate of Land and Property to temporarily administer, pursuant to the present law, the abandoned property up until the final settlement of the issue of ownership of the same assets.

Section 22

Leasing Contract

1. Private property identified by the National Directorate for Land and Property as being abandoned may be leased through a contract legally made.
2. In the case of abandoned property, the National Directorate for Land and Property may only make contracts for a maximum period of three years, renewable exclusively through a new contract of similar duration and as long as the owner recognized by the State has not claimed its posse.
3. The procedure provided for in Section 10 of the present law shall be applied to the leasing of abandoned property.

Section 23

Validity of Contracts for abandoned Property

1. Owners of abandoned property whose rights of property are returned by a court or by any other legally competent administrative authority to assign registered property title deeds must respect the terms of the contracts made by the National Directorate of Land and Property in relation to their property.
2. Owners shall be entitled to receive all of their contract benefits from the date of their identification up until the end of the contracts, namely, they may collect directly the rents from the restitution of their property rights.
3. At the end of the leasing contract, where tenants do not intend to handover the property, the National Directorate for Land and Property, at the request of the owner, may undertake the administrative eviction as provided for in Law No. 1/2003 of 10 March.
4. Rents paid to the State during the period of abandonment up until the restitution of the property rights to owners shall be considered as compensation for the administration expenses and shall revert for the State.

CHAPTER V TRANSITIONAL PROVISIONS

Section 24

Validity of Previous Contracts

Temporary use agreements on abandoned properties entered into prior to the entry into force of the present decree-law shall be legally binding and shall be in force until the end of the contractually-established periods, and the regime provided for in Section 9 above shall apply.

Section 25

Alternative Requirements

1. The requisite to submit documentation laid down in Section 9(c) shall be necessary where a government organ with competence to grant such documentation exists.
2. The National Directorate of Land and Property may require other documents, namely documents attesting to the legal constitution of corporate bodies in the country of origin, in the case of corporate bodies.
3. The qualification requirement for small, medium or major commercial or industrial enterprise shall be necessary when the competent Ministries and Secretariats of State implement the respective classification, and the National Directorate of Land and Property shall be responsible for making the necessary classifications in conformity with the investment amount.

Section 26

Exception to the Awards Process

Where illegal occupants of State or abandoned properties exist, in accordance with Law No. 1/2003 of 10 March (The Juridical Regime of Real Estate), the National Directorate of Land and Property may negotiate leasing contracts directly with the occupants when dealing with cases that happened prior to the entry into force of the present decree-law, in which case the procedure provided for in Section 10 of the present decree-law shall not apply.

Section 27

Commercial Use of Special Beach Areas

The Government shall, by a specific statute, regulate the allocation of authorized beach areas to private individuals for special and limited use.

Section 28

Other Acts of Disposal of State Property

A specific law shall regulate other acts of disposal of State property such as the purchase, sale, and other forms of administration and management.

Section 29
Revocations

All legislation contrary to the present decree-law shall hereby be revoked.

Section 30
Entry Into Force

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

Approved by the Council of Ministers on 27 October 2004.

The Prime Minister
[Signed]
(Mari Bim Amude Alkatiri)

The Minister of Justice
[Signed]
(Domingos Maria Sarmento)

Promulgated on 17 December 2004

To be Published.

The President of the Republic
[Signed]
(Kay Rala Xanana Gusmao)