

DEMOCRATIC REPUBLIC OF TIMOR-LESTE

GOVERNMENT

**DECREE-LAW No. /2005
OF**

THE STATUTE OF OFFICIAL CUSTOMS BROKERS

Considering that customs brokers should carry on their business in the form of representation, on their own behalf, though for the account of someone else, with all the consequences arising therefrom, namely joint and several liability for the payment of the customs debt together with the person for whose account the declaration of goods is made;

For this reason, the Customs Authority must take special precautions when identifying these representatives either through the issuance of professional licenses or by requiring them to provide a security to guarantee the superior interests of the state in the collection of public revenue;

Considering that, under the previous legal framework, a clearing agent acting for the account of someone would provide customs brokerage services without any liability defined by law;

Considering that the system for access to the customs brokerage business and career concerns not only the Government but also the very class of customs brokers and importers at the institutional, trade and industrial levels;

On the other hand, the degree of professionalism and technicality required calls for the establishment of a regime capable of ensuring that customs brokers are duly qualified and recognisably competent professionals. Individuals without the minimum qualification are not allowed to intervene in the declaration and physical clearance of goods, to approach customs services in connection with their goods, or to charge or correctly pay customs duties;

Considering that it would be neither fair nor appropriate to make the intervention of an official broker mandatory or compulsory, excluding the owners or consignees of the goods, any professional proxies or staff employed by companies, including in this category those firms dedicated to forwarding goods, the so-called forwarding agents, and shipping agents;

As it is imperative to re-define the code of professional ethics for customs brokers and their disciplinary regime;

Pursuant to paragraphs 115.1(e) and 116(d) of the Constitution of the Republic, the Government enacts the following that shall have the force of law:

Chapter I

Power to declare goods

Article 1

Entities qualified to clear or declare goods

1. Applying to the Customs Service of Timor-Leste for a customs or tax declaration of goods or any other declaration, as well as for the processing of any documents, shall be the exclusive responsibility of:

- (a) the owners or consignees of the goods, whether they present themselves in person or through a duly qualified employee of their own with power of attorney to do so or holding a private customs broker's licence;
- (b) official brokers to whom power of attorney to act on behalf and for the account of the owners or consignees of the goods has been granted by the latter.

2. Owners or agents of maritime or air shipping companies may, with regard to sea vessels or aircraft owned by or consigned to them, intervene in all acts and procedures necessary for the designated "clearance of sea vessels and aircraft";

3. Unrehabilitated insolvent businessmen or those prohibited from carrying on the business of declaring goods to Customs, including official brokers while serving a disciplinary penalty of suspension, may not declare goods to Customs.

4. Separately filed applications for tax exemption or benefit, as well as for permission to use a suspensive customs regime, shall, at all times, be accompanied by a power of attorney issued by the respective beneficiary.

Article 2

Security

1. Customs directors shall require of every person carrying on the business of declaring goods to Customs an irrevocable security in an amount of no less than \$US 2,000 (two thousand Dollars) to be deposited with the customs office within the jurisdiction where the person's tax domicile is situated, as an obligation to be fulfilled prior to commencing business.

2. Customs directors may determine that the security be deposited in an amount exceeding the minimum referred to under subarticle 2.1 above, up to a maximum of \$US 20,000 (twenty thousand Dollars) for natural persons or of \$US 30,000 (thirty thousand) for official brokerage firms, depending on the type of goods, the amounts involved, and the number of customs or tax declarations presented, as well as in the event of recurrent breach of customs legislation.

3. Representatives of persons from whom a security has been required, as an obligation to be fulfilled prior to commencing the business of declaring goods to Customs, shall also be covered by the said security.

4. Owners or consignees of goods who wish to present a customs declaration directly to Customs, but are not holders of the licence referred to in article 7, shall produce proof of their tax and civil identity, and they shall be granted the status of recipient, sender or consignee of goods on the basis of the documentation to be attached to the declaration form.

5. In the case of a corporate body, the natural person who, in accordance with the articles of association or minutes of the general meeting of the former, has been granted power to represent the corporate body and produces proof that he or she is the owner or consignee of such goods, is considered to be qualified to make the customs declaration.

6. Where the owner or consignee of goods has applied for the issuance of a licence, he or she becomes subject to a specific process of selection, approval and licensing, and the customs office in the area where the applicant's tax domicile is located shall subsequently proceed with the registration of that person and communicate to the Customs Service of Timor-Leste all the particulars in its possession.

Chapter II

Eligibility and Appointment as Official Broker

Article 3

Admittance to competitive selection process

1. The announcement of the launch of a competitive selection process shall be determined by the Minister of Planning and Finance and affixed to the premises of the Ministry and of the Customs Service, on the habitual boards for a 30-day period prior to the commencement of the training course.

2. Admittance to the business of official customs broker depends on the submission of an application for that purpose, the successful completion of a training course in the second phase, and a competitive selection process that shall consist of an examination to test the applicant's knowledge in the third and final phase.

3. The application shall be submitted alongside the following supporting documents:

- (a) photocopy of the civil identity card or of the certificate of business registration and the tax identification number (TIN);
- (b) proof of age above 21 years;
- (c) certificate of academic qualifications, at least 9 years of compulsory schooling or equivalent;
- (d) at least 10 customs declarations submitted to, and confirmed by, the customs office, to be counted from the date the competitive selection process is launched;
- (e) criminal record certificate.

4. Paragraph 3.3(c) does not apply to applicants holding a university degree and producing proof thereof, provided that they meet all the other requirements set out in this decree-law.

5. The list of applicants admitted to the training course shall also be issued by the Minister of Planning and Finance and affixed to the premises of the Ministry of Planning and Finance and of the Customs Service.

6. The need and timeliness for the launch of a competitive selection process for the admittance of new official brokers shall be determined by the Minister of Planning and Finance.

Article 4

Training course

1. Applicants who have been admitted to the first phase of the selection process may enrol in a special training course that will give them access to the business of official broker, provided that they cumulatively meet the following conditions:

- (a) have been included on the list of selected applicants for the training course phase;
- (b) proof of payment of all taxes due to the state;
- (c) have not been convicted for a criminal offence or tax offence carrying a term of imprisonment exceeding one year or a maximum fine exceeding \$US 1,000 (one thousand Dollars).

2. The training course shall last sixty hours at least and its timeframe shall be included in the decision of the Minister Planning and Finance approving the list of selected applicants referred to in subarticle 3.5.

3. There shall be a selective examination at the end of the course to test the applicants' knowledge, in which they shall be individually assessed and ranked, and the names of the applicants selected for the final phase shall be published.

Article 5

Competitive selection process and jury

1. Applicants selected in the second phase shall not be required to register for the competitive selection process, and shall be considered to be fit to take the final examinations for official brokers.

2. The examinations of the competitive selection process shall be sat in Dili within 30 days of the date of publication of the list referred to in article 4 and shall touch upon practical customs issues, and shall always include a hands-on module on issues relating to customs tariff classification.

3. The jury shall be composed of three members, and shall be presided over by the Customs Controller, who shall designate the two other members.

4. The Government may authorise the establishment of a single Chamber representative of official brokers, in which case the said Chamber may nominate a fourth member of the jury, and the Customs Controller shall have authority to either accept or reject such a nomination.

5. In the case referred to in subarticle 5.4, the president of the jury shall have a casting vote in addition to his or her own vote while all the three other members shall have one vote each.

6. The final marking of the candidates shall be published in the Official Gazette, on a list to be approved by the Minister of Planning and Finance and affixed to the premises of the Ministry and of the Customs Service.

Article 6

Appointment

A person is considered to have been appointed as an official broker who, having obtained a pass mark as indicated on the list referred to in subarticle 5.6 and deposited a security prior to commencing business as referred to in article 2, receives his or her licence from the Customs Service of Timor-Leste.

Chapter III

Identifying official brokers and those authorised to declare goods

Article 7

Official broker's licence

1. Any person who regularly carries on the business of declaring goods to Customs shall have to be the holder of a broker's licence, which shall serve as identification before the Customs Service.

2. The Customs Service shall withdraw and cancel the license and identity card of any person who no longer meets the requirements who enabled him or her to obtain it.

3. The issuance of a license to owners or consignees of goods, as well as to any other persons who declare goods before Customs on their own behalf, is dependant upon the production of the following documents if they are not official brokers:

- (a) photocopy of the civil identification card, or of the business registration certificate, and of the tax identification number;
- (b) articles of association of the corporate body or the minutes of its general meeting designating the persons with power to bind it;
- (c) criminal record certificate that shall, in the case of a corporate body, be that of its managers or directors;
- (d) certificate issued by the department of finance in the area of residence or in the jurisdiction where the corporate body is headquartered, attesting to its tax status;
- (e) proof of residence or of uninterrupted settlement in Timor-Leste.

4. Where the persons referred to in subarticle 7.3 are corporate bodies, the license shall be issued to the natural person who represents the corporate body or to a person designated by the latter, provided that he or she is a member, manager or director of the corporate body working exclusively for it.

Article 8
Issuance of licences and registration of licence holders

1. Licences shall be issued by the Customs Service of Timor-Leste, after the security referred to in article 2 has been deposited.
2. Customs offices shall ensure the registration of licence holders, which may include any other relevant particulars, and licence holders are required to report to the customs office concerned any change in their particulars.
3. A customs office may at all times require that an official broker produce proof of service on behalf and for the account of the owner or consignee of goods.

Chapter IV
On the Chamber of Official Brokers

Article 9
Representativeness

1. The Chamber of Official Brokers is an independent legal person representative of holders of a broker's licence.
2. Registration with the Chamber of Official Brokers is a must and a sine qua non for a person to carry on the business of customs broker.
3. The statute of the Chamber of Official Brokers, including any amendments thereto, shall be approved by a ministerial order to be issued by the Minister of Planning and Finance and published in the Official Gazette.

Article 10
Competencies of the Chamber of Official Brokers
and disciplinary action on all Official Brokers

1. The structure of the Chamber of Official Brokers, to be based on the country's territorial division, including the definition of its organs, competencies, functioning and composition, shall be laid down in its statute.
2. The Chamber of Official Brokers may charge official brokers a membership fee, on a monthly, half-yearly or yearly basis, after approval of such a fee by the Minister of Finance, and may also acquire and manage its own property.

Article 11
Carrying on the business of broker individually or collectively

1. Official brokers may carry on their business individually or through a firm of official brokers of which they are members.

2. The sole purpose of a firm of official brokers is to carry on the business of customs broker.
3. Firms of official brokers shall take the form of a limited company, and their respective memorandum of incorporation shall be previously approved by the Chamber of Official Brokers.
4. Firms of official brokers currently in operation shall continue carrying on their business until such a time as they are liquidated; however, shares may be assigned to official brokers alone.
5. The management of the firms referred to in the foregoing subarticles shall fall under the exclusive responsibility of members thereof who are official brokers.

Article 12

Entry into force

This decree-law shall come into force on the 30th day following the date of its publication.

Approved by the Council of Ministers on 20 October 2005

The Prime Minister

[Signed]
(Mari Bim Amude Alkatiri)

The Minister of Planning and Finance

[Signed]
(Maria Madalena Brites Boavida)

Promulgated on 13 December 2005.

To be published.

The President of the Republic

[Signed]
(Kay Rala Xanana Gusmão)