

## **GOVERNMENT DECREE No. 2/2009**

**of 25<sup>th</sup> of March**

### **FORMS THE AGENCY FOR THE MANAGEMENT OF FINANCIAL INTERESTS IN GAMBLING ACTIVITIES– AGPJ**

Whereas the legal regime covering traditional gambling activities and the franchise for the operation and sale of lottery tickets, set out under the terms of Decree-Law no. 6/2009 of 15<sup>th</sup> January, establishes the constitution of a legal person in the public interest, the main object of which is to manage the revenue from the generated social contribution.

This is the objective of this diploma. To constitute and regulate this public legal person, which is responsible for managing and undertaking the social allocation from public, non-fiscal revenue, which is of the responsibility of the State through the franchise of the exploration of gambling activities.

The reason why it was decided to use the form of an Agency was based on reasons related to simplicity, participation of the corporate sector and government coordination.

Any public body may feel the need to be organised under a decentralised structure without however being considered as covered by the concept of indirect administration. The organisational decentralisation of a public body is not a sufficient requirement to qualify it as autonomous and even less so if we make reference to the State. This is added to the fact that this type of legal person, formed to pursue public aims, would be difficult to include in the legal and economic regime of a public company, institute or foundation.

However, the idea of converting AGPJ into an entity of indirect administration, with financial autonomy, namely under the form of a public foundation some time in the future is not to be ignored. But for this to occur, there would have to exist fairly solid management conditions and proven capacities.

Whereas the participation of the Ministry of Social Solidarity at the highest level of decision making in the AGPJ and the participation of the Finance Ministry in the Finance Committee is essential to guarantee the aims of a transparent and appropriate redistribution of the extra-fiscal public revenue in question.

Bearing in mind the benefits resulting from inter-ministerial participation and the principle of co-accountability in the definition of eligibility criteria of the beneficiaries and priorities of the respective programmes and projects and corresponding implementation,

The Government, therefore, decrees, under the terms of the provisions set out in article 115, no. 3 of the Constitution, and through the development of the terms of Decree-Law no. 6/2009 of 15<sup>th</sup> January, that the following regulation be established as the legal regime covering gambling activities:

#### **CHAPTER 1 GENERAL PROVISIONS**

##### **Article 1 Scope**

1. This Government Decree shall establish the legal person under public law, known as the Agency for the Management of Financial Interests in Gambling Activities (AGPJ) and shall regulate the regime governing the management and social allocation of public, non-fiscal income, known as social contribution (SC), which is of the responsibility of the State through the franchise of the exploration of gambling activities.
2. The AGPJ shall be managed by the Ministries of Tourism, Trade and Industry and Social Solidarity.

##### **Article 2 Constitution and legal nature of the AGPJ**

1. The Agency for the Management of Financial Interests in Gambling Activities (AGPJ) shall be constituted as a non-profit, legal person of public interest, provided with technical and administrative autonomy, as well as legal personality and legal capacity.

2. The mission of the AGPJ is to promote the proper financial management of the revenues which are allocated it by law, to define the criteria and appropriate procedures required for the transfer of public non-fiscal revenue, as defined under the terms of the previous article, in favour of a needy population and for sports, cultural and tourist activities, in the most effective and rational manner possible.

3. The statutes shall be governed by the legal provisions applicable to associations and foundations, as set out under the statutory terms of Decree-Law no. 5/2005 and are included in the attachment to this legal diploma.

### **Article 3 Accountability**

1. The AGPJ shall be accountable to the Ministry of Tourism, Trade and Industry, and shall be audited by the Finance Ministry.

2. The Ministry of Tourism, Trade and Industry shall be responsible for:

a) Establishing AGPJ strategic guidelines, upon consultation with the Minister for Social Solidarity and other relevant authorities;

b) Approving the AGPJ management's budget, annual plans and financial reports;

c) Approving the rules of procedure;

d) Approving the opening or closure of APGJ branches;

e) Approving cooperation agreements with foreign counterparts;

f) Approving AGPJ staff;

g) Chairing the Board of Directors;

h) Appointing and discharging members of the AGPJ Supervisory Board.

### **Article 4 Duties**

The duties of AGPJ are to:

a) Guarantee the implementation of policies and strategies established at the highest level, by carrying out the objectives of the corresponding annual plan;

b) Propose measures to ensure the regulations and procedures be correctly applied by the concessionaires and betters in order to guarantee due collection of the social contribution;

c) Guarantee that actions carried out to deliver moneys or goods to the populations or needy groups reach their destination and are properly used for the end established, by resorting to the administrative structures or resources that they have at their disposal or which they hire;

d) Draw up a list of priorities, to be included or amended to every annual plan and to form a data base on allocations of resources funded through the SC to their corresponding needs;

e) Carefully manage the funds provided by the SC, State Budget, including subsidies, donations and other income established in the statutes;

f) Perform other duties established by law and the regulations.

### **Article 5 Financial Provisions**

1. The AGPJ shall be provided with funds to allow it to be installed and to start its activities, These funds shall be provided through the State budget, public subsidies and other funds from the Tourism and Social Solidarity budgets, under the terms to be set out by the Ministers of the respective Ministries.

2. The AGPJ shall benefit from a yearly allocation from the State Budget until it accomplishes a level of financial self-sufficiency, through a balance between its own revenues and expenses.

3. The AGPJ shall enjoy the use of public goods and rights allocated to it in order to carry

out its activities.

4. The following shall be considered as AGPJ revenues:

a) Allocations from the State Budget and public subsidies allocated to it;

b) Those from the social contribution (SC), from lotteries and other games of fortune and participation in fines;

c) Allocations and subsidies from other entities;

d) Those from the publishing and sale of its publications;

e) Any others allocated to it by law, agreement, contract or any other legal instrument.

5. The AGPJ is exempt from notary, registration and legal costs in the event it is acting with a view to accomplishing its public objectives.

#### **Article 6**

##### **Allocation of revenues for social purposes**

1. The funds allocated to the AGPJ and used for the improvement of social well being shall be distributed indicatively, without prejudice to the Governing Board unanimously and on due grounds deciding on other percentages or allocations, in accordance with unforeseen priority needs in the area of social support:

a) 20% devoted to the financing of initiatives in the area of the prevention of social risks, notably those aimed at particularly vulnerable populations and orphans, through the participation of the eligible authorities;

b) 15% devoted to the development of actions, facilities and services which are geared towards the improvement of the living conditions of the elderly, namely homes for the elderly and monitoring of people with disabilities, through the participation of the eligible authorities;

c) 15% devoted to the financing of initiatives to promote vocational training in tourism;

d) 10% devoted to sports and cultural activities;

e) 5% devoted to vaccination actions, distribution of prostheses and other eligible initiatives, in coordination with the Ministry of Health;

f) 5% devoted to other subsidies and aid to be distributed to Timorese people and organisations, knowingly active and reliable, and requesting such funds.

2. The remaining 30% of the AGPJ revenues shall be composed of a reserve fund, managed by the Governing Board, upon deduction of AGPJ operating costs.

#### **Article 7**

##### **Staff**

1. The status of public servant shall be applicable to AGPJ staff.

2. The AGPJ can and should provide its staff with training, including courses and apprenticeships abroad in counterpart organisations.

3. AGPJ permanent staff shall be approved by joint ministerial diploma by the Ministry of the Interior and the Ministry of Tourism, Trade and Industry.

#### **Article 8**

##### **Rules and Regulations**

The rules and regulations which reveal to be necessary for the enforcement of this Decree shall be approved by joint ministerial order by the corresponding minister and the minister of Social Solidarity.

#### **Article 9**

##### **Entry into Force**

The present legal diploma shall come into force on the day following the date of its publication.

Approved in Council of Ministers on 25<sup>th</sup> of February, 2009.

To be published

The Prime Minister

**Kay Rala Xanana Gusmão**

Minister of Social Solidarity

**Maria Domingos Alves**

Minister of Tourism, Trade and Industry

**Gil Alves**

## ANNEX

### **Statutes for the Agency for the Management of Financial Interests in Gambling Activities (AGPJ)**

#### **Article 1 Head offices and duration**

1. The head offices of the AGPJ shall be situated in the premises of the Ministry of Tourism, Trade and Industry, in the Fomento building in Díli, and may meet at any other location when convened to do so for this purpose.

2. The AGPJ, as a non-profit, legal person under public law with the purpose of pursuing social aims, shall be constituted for unlimited period of time in all national territory.

#### **Article 2 Governing Bodies**

1. The governing bodies of the AGPJ shall be the Governing Board and the Supervisory Board, consisting of three full members each.

2. The Governing Board shall be chaired by the Minister of Tourism, Trade and Industry (MTTI) and deputy chaired by the Minister of Social Solidarity (MSS).

3. The Inspector General of Gaming, a representative of the concessionaires or a representative of a socially relevant authority may be convened to the meetings in the

capacity of Consultants, with no voting rights.

4. The Supervisory Board shall consist of two members appointed by the two Ministers mentioned above and a third member, appointed by the Finance Minister.

5. The members appointed by the Ministers may be individual experts or national or foreign companies, specialists in the area of auditing and accountancy.

6. The Supervisory Board shall be the body responsible for the management accounts and assets.

#### **Article 3 Incompatibilities**

1. The members of the management bodies of the AGPJ may not enter into personal agreements with nor be guarantors on behalf of the Agency, as a legal person under public law.

2. The members of the Governing Body and the Supervisory Board may not abstain from being involved in the decision making process and shall be accountable for such decisions, unless they have disagreed with the decision and have noted down their disagreement in the respective minutes of the meetings.

#### **Article 4 Governing Board**

1. The duties of the Governing Board of the AGPJ are as follows, to:

a) Guarantee the implementation of policies and strategies established by carrying out the objectives of the corresponding annual plan in accordance with Government policy;

b) Propose measures to ensure the correct application of the regulations and procedures by the concessionaires and betters in order to guarantee due collection of the social contribution;

c) Guarantee that actions carried out to deliver moneys or goods to the populations or needy groups reach their destination and are properly

used for the end established, by resorting to the administrative structures or resources that they have at their disposal or which they hire;

d) Draw up a list of priorities, to be included or amended in every annual plan and to form a data base on allocations of resources funded by the SC to their corresponding needs;

e) Approve the budget and management account;

f) Approve the rules of procedure;

g) Approve and vote on the proposals with regard to the application of the profits of the previous fiscal year;

h) Cautiously manage the funds from the SC, subsidies, allocations and other revenues set out in the statutes and render them profitable;

i) Decide on amendments made to the statutes;

j) Perform any other duties established by law and by the rules and regulations.

2. The Governing Board shall be represented by its Chairman or Vice-chairman, should the former be unable to attend.

### **Article 5**

#### **The Secretariat and its duties**

1. The Governing Board shall be provided with a Secretariat, headed by a General Secretary who is assisted by an Executive Secretary, which are the equivalent to the National Director and the Head of Department respectively and for all legal effects, and who shall be appointed by and discharged by the Governing Board.

2. The Secretariat is divided into Sections, corresponding to gaming modalities as set out by law, two specific sections to support the Governing Board and the Supervisory Board and one related to human and financial resources.

3. The Secretariat shall be responsible for preparing the internal budget for the following

year by 30<sup>th</sup> September of each civil year, to be submitted for approval to the Supervisory Board by 10<sup>th</sup> October and presented to the Governing Board.

4. The Annual Plan shall be drawn up by the Secretariat and presented to the Governing Board by 15<sup>th</sup> October of each civil year, with reference to the following year.

5. The Financial Annual Plan shall be included and annexed to the Annual Plan.

6. The rules of procedure shall be presented by the Secretariat to the Governing Board within a time limit of two months from the date of the first ordinary meeting.

7. The rules of procedure shall include the AGPJ structure, the descriptions of functions, in addition to those set out in these statutes, work organisation, code of ethics and disciplinary rules.

### **Article 6**

#### **Duties of the Supervisory Board**

The duties of the Supervisory Board are to:

a) ascertain the financial legality of all movements deliberated and effected;

b) monitor the implementation of the budget and the activity plans, by auditing AGPJ accounts on a monthly basis;

c) pronounce on the budget, balance sheets and financial statements, by giving its seal of approval;

d) pronounce on the assessment of assets and constitution of reserves;

e) issue a yearly report on the performance and financial management of the AGPJ;

f) collaborate with the pertinent inspection departments;

g) perform other functions under the terms of the law and these statutes.

**Article 7**  
**Financial Management**

1. The financial management shall comply with the annual plans and possible multi-annual plans which should illustrate the progress of the revenues and expenses, as well as the forecast and funding sources.
2. The accounts shall be organised in such a way as to allow for permanent budgetary control and the easy verification of the movements under the terms of the applicable law.

**Article 8**  
**Formal and other meetings**

1. Meetings shall be convened by the chairmen of the Governing Board and Supervisory Board by letter, telephone call or personally, at least three working days before the date set for the meeting, together with the agenda of the meeting and the items to be discussed.
2. Ordinary meetings shall take place during the first week of every month and the extraordinary meetings whenever convened by the chairmen of the Boards.

**Article 9**  
**Deliberations**

1. The members of each body shall have one vote for the purposes of deliberation.
2. Should any of the members of the Supervisory Board be unjustifiably absent, the remaining two members may validly deliberate as long as they are in agreement.
3. An absence notified up to the actual day of the meeting and before the meeting begins shall be considered as justified.

**Article 10**  
**Transformation of AGPJ into Public  
Foundation**

Semester studies shall be undertaken, to be submitted by AGPJ bodies and services and by the MTTI and MSS on the convenience,

qualification and advantages of transforming the Agency into a public Foundation or other form of legally admissible indirect administration.