



**REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE
VIII GOVERNO CONSTITUCIONAL**

Draft

**DECREE-LAW NO. (...) /2022
of (...) of (...)**

**First Amendment to Decree-Law No. 34/2017, of 27 September,
Licensing of Economic Activities**

The approval of Decree Law No. 34/2017, of September 27 was an important milestone in the creation of conditions for a better business environment in Timor-Leste, within the framework of "a set of reforms aimed at reviewing the regulatory framework for the exercise of economic activities, making it simpler and less bureaucratic without neglecting. However, the certainty and security necessary for legal trade," as stated in its preamble, these reforms essentially projected a simplified, less burdensome and less bureaucratic licensing procedure for economic activities, channeling all the public administration services required to carry out economic activities to a single entity, SERVE, I.P., operating as a single window.

Five years later, considering the various positive impacts seen in terms of the processing of requests for the exercise of economic activities, which are now concentrated in SERVE, I.P., it is time to reform the system once again in an ambitious manner.

If it is true that Decree-Law no. No. 34/2017, of September 27 came to regulate the licensing of economic activities in the country's legal system, on the other hand, it also revealed a gaping legal framework regarding licensing, which it designated as "sectoral", which has caused some constraints not only to the individual but also to the Administration itself, which, lacking legislation in force, clear and unambiguous on the most varied licensing regimes for medium and high risk economic activities, ends up being hampered in its efforts to contribute to a business environment more conducive to the development of the national economy.

Thus, once the model recommended by Decree-Law No. 34/2017, of 27 September has been consolidated, it must be acknowledged that the current reality calls for a new intervention by the legislator, so the Government now intends to put an end to the authoritative type regime currently in force, whose bureaucratic procedures no longer find a reason to exist, towards greater efficiency of services and a true freedom of initiative and business management of the private sector and the cooperative and social sector, as enshrined in Article 138 of the Constitution of the Democratic Republic of Timor-Leste.

Noting that there is indeed room to make the licensing process more predictable, transparent and simple, the VIII Constitutional Government, in a joint effort, proceeded to review and simplify it. Thus, following inventories of existing practices and work carried out since 2019, with the technical

assistance of the International Finance Corporation (IFC), the Government decided to proceed with the consolidation of the reform of the licensing of economic activities initiated five years ago, clarifying its procedures and aiming to further shorten the time and reduce the burden of opening businesses in the country. It also relied, to that end, on a technical working group set up in January 2020 to plan and monitor such reform, comprising representatives of various relevant public departments and entities in the process of licensing and operation of companies but also representatives of the private sector and civil society.

Considering the recommendations and proposals presented, in the end, by the referred working group and decided upon by superior, the measures to improve this process of licensing economic activities to be adopted, are evidenced, namely, in the need to continue and strengthen the training of the services involved in the referred process in order to ensure the proper implementation of the already existing legislation and also in the importance of reviewing Decree-Law no. 34/2017, of 27 September, clarifying and simplifying procedures as much as possible and paving the way for detailed sectoral regulation that can be more transparent for those involved in the business environment.

It is in this context that the present diploma amends the above-mentioned Decree-Law, maintaining the original option of basing itself on a risk analysis that justifies the creation of sectorial licensing regimes for medium and high-risk activities and establishing a "zero licensing" system for low-risk economic activities. It is also argued that there is a need for a legal and regulatory detailing of the requirements for obtaining the respective sectoral licences, as well as the publication of checklists for the inspections that precede the issuing of these licences and the commencement of activities. These prior inspections may, in cases permitted by sectorial legislation, be substituted by prior declarations by the interested parties who, in this way, become responsible for carrying out the activity in question in accordance with the requirements imposed by law.

Thus,

The Government decrees the following under the terms of paragraph e) of article 115 and paragraph d) of article 116 of the Constitution of the Republic, to be valid as law:

Article 1 **Object**

The present diploma proceeds with the first amendment to Decree-Law No. 34/2017, of 27 September, on the licensing of economic activities, with a view to its simplification and transparency.

Article 2 **Amendment to Decree-Law No. 34/2017, of September 27**

Articles 1, 2, 4, 5, 6, 7, 14, 15, 16, 17, 19, 23 and 26 of Decree-Law No. 34/2017, of 27 September are amended to read as follows:

"Article 1 **Object**

1. (...).
2. The licensing of economic activities comprises the procedure for the issue of sectorial licenses for medium and high-risk activities, under the terms defined in this Decree-Law and other special legislation.

Article 2

Scope

1. This Decree-Law applies to the low, medium and high-risk economic activities identified in Exhibits I, II and III of this Decree-Law, exercised by natural or legal persons, whether national or foreign, even if the facts relating thereto are not subject to commercial registration.
2. (...).
3. (...).

Article 4

Low-risk economic activities

1. The exercise of low-risk economic activities is not subject to licensing. 2.
1. 2 (revoked).

Article 5

General principles

- (...)
- a) Principle of necessity - a given economic activity shall be subject to licensing when, for technical, safety, health, salubrity or other reasons, the existence of a licensing regime proves to be indispensable and the public interest purposes to be pursued cannot be achieved through a less restrictive administrative means.
 - b) (...).
 - c) (...).
 - d) (...).
 - e) (...).
 - f) Principle of legality - the licensing regimes for economic activities, identified in annexes II and III of this decree-law, and the formalities inherent to them exist in the terms in which they are clearly and unequivocally provided for by law.

Article 6

Duty to communicate

1. The holder of a licence to exercise an economic activity is obliged to communicate to SERVE:
 - a) Any change in the exercise of the licensed economic activity that results in non-compliance with or fulfillment of the legal requirements that justified the granting of the license in question;
 - b) The change of the location of the establishment to exercise the licensed economic activity;
 - c) The cessation of the exercise of the licensed economic activity.
2. The time limit for the communications provided for in the preceding paragraph shall be 10 business days.

3. Every week, SERVE shall unofficially communicate to AIFAESA the list with the holders of licenses for the exercise of economic activities, for the purposes of inspection and surveillance, under the terms of Decree-Law no. 26/2016, of 29 June.
4. (...).

Article 7 **Electronic means**

1. All requests, declarations, communications and notifications between individuals and SERVE may be made in person or by the electronic means available for the purpose.
2. The electronic one-stop shop of SERVE, made available on a website, which enables the use of electronic means for the purposes of the previous paragraph, is hereby created, allowing electronic access to SERVE.
3. The electronic one-stop shop provides clear, unequivocal and up-to-date information on the requirements applicable to the licensing of economic activities, namely as regards the procedures, formalities and conditions for access to the activity and respective exercise and the list of documents to be submitted in original form, authenticated, certified copy or translation, or with recognition of handwriting and signature, or only signature.

Article 14 **Request**

1. The application for a sectorial license for medium and high risk economic activities is addressed to SERVE, which, of its own motion, will forward it immediately to the government entity responsible for the sectorial licensing that may take place.
2. On receipt of the communication referred to in the preceding paragraph, the competent entity for issuing the sectorial licence will inform SERVE of the date on which the respective sectorial licence will be sent, under the terms of this Decree-Law and the deadlines laid down in the applicable sectorial legislation.
3. On receipt of the licence, the SERVE will give it a registration number and deliver it immediately to the holder.
 - a) (Revoked);
 - b) (Revoked).

Article 15 **Prior inspection**

1. Medium and high-risk activities may be subject, under the terms of the provisions of the applicable sectorial licensing legislation, to a prior inspection to ensure that the technical, safety, health and other requirements necessary for the exercise of the activity to be licensed are met.
2. (...).
3. (...).

Article 16 **Period of validity and renewal**

1. Licences for the exercise of medium and high risk economic activities shall be valid for the period inscribed therein, in accordance with the provisions of the respective applicable sectoral licensing law.
2. Licences may be renewed if the interested party expressly so requests, up until the tenth day prior to the expiration date of the licence, by means of an application addressed to SERVE, in which the interested party declares on his honour and under penalty of criminal liability, that the conditions that governed the initial licensing have been maintained, as well as the compliance with the provisions set forth in this Decree-Law.
3. Licenses shall expire upon expiration of the respective term or for any other cause prescribed by law, unless they are subject to renewal.
4. The provisions laid down in article 19/nº3 shall apply to the expiration of a license.

Article 17 **Fees**

1. The issuance of a license for medium and high-risk economic activities may be subject to the payment of fees, provided that such fees are expressly established in the legislation applicable to the licensing in question.
2. Fees shall be charged as consideration for a public service, for the use of an asset in the public domain or for the removal of a legal obstacle and shall be calculated with reference to the costs incurred by the State, the social benefit enjoyed, in compliance with the principle of fair distribution of resources.

Article 19 **Suspension, revocation and expiry of licenses**

1. The suspension, revocation, and forfeiture of licenses shall occur in the cases provided for in the legislation applicable to the licensing to which it applies, in addition to the cause of forfeiture, relative to the expiration of the license term, provided for in article 16, paragraph 1.
2. The suspension or revocation shall be communicated by the competent sectorial entity to SERVE, which shall notify the licence holder of the administrative act in question, requesting him/her to hand over the licence within five days counted from the date of notification.
3. Failure by the titleholder to surrender the licence voluntarily shall be communicated to AIFAESA and the competent sectorial entity, for all due legal purposes.
4. Complaints and appeals against the decision to suspend or revoke shall follow the general terms.

Article 23 **Administrative Offences**

1. It is a serious administrative infraction, without prejudice to civil or criminal liability, or to the concurrence of other administrative infraction regimes
 - a) (repealed);
 - b) (...);

- c) Failure to voluntarily surrender the licence, as provided for in Article 19, paragraph 2, of this statute law.
- 2. It shall constitute a very serious administrative offence, without prejudice to civil or criminal liability or to the concurrence of other national administrative offences:
 - a) The exercise of medium and high-risk economic activity subject to licensing without the respective license, unless, by virtue of a legal provision contained in the applicable licensing scheme, the case is subject to a more serious penalty;
 - b) (...);
 - c) (revoked).
- 3. (...).
- 4. (...).
- 5. (...).
- 6. Depending on the seriousness of the offence and the culpability of the offender, the following ancillary sanctions may be applied in the event of repeated offences or recidivism of the offender:
 - a) (...);
 - b) (...).
- 7. The offences under paragraph 1 of this Article shall be punishable with fines of 25 (US dollars) to 500 (US dollars) and the offences under paragraph 2 of this Article shall be punishable with fines of 400 (US dollars) to 2500 (US dollars).
- 8. Where the offence is committed by legal persons, the minimum and maximum amounts of the fines provided for in the preceding paragraph of this Article shall be increased, respectively, to 500 (US dollars) and 20,000 (US dollars), 2500 (US dollars) and 30,000 (US dollars).

Article 26

Regulation

This Decree Law is regulated by a Government Decree, which approves, namely, the model of application to be submitted to SERVE under the terms of Article 14."

Article 3

Authorizations and licenses issued

All authorizations and licenses issued prior to the entry into force of this Decree-Law shall remain valid until they expire.

Article 4

Re-publication

Decree-Law No. 34/2017, of September 27 is republished in the annex to the present decree-law, of which it is an integral part, with the wording introduced by the present decree-law.

Article 5

Revocation law

Articles 8, 9, 10, 11, 12, 13, 18, 20 and 21 of Decree-Law 34/2017, of September 27 are hereby revoked.

Article 6
Entry into Force

1. This Decree-Law shall enter into force 180 days after its publication.
2. The ministries, public bodies and public services, within the scope of their attributions and competencies, shall promote and collaborate in the production of the necessary legislation for the creation of legal regimes for licensing medium and high-risk economic activities, in order to ensure the existence of the corresponding and necessary legal provisions when this decree-law comes into force.

Approved by the Council of Ministers on ____ of ____ of 2022.

The Prime Minister,

Taur Matan Ruak

The Coordinating Minister for Economic Affairs

Joaquim Amaral

Promulgated on ____ of ____ of ____

To be published.

The President of the Republic,

Dr. Francisco Guterres Lú Olo