



DECREE-LAW NO. 37/2023

PROCEEDS TO THE FIRST AMENDMENT TO DECREE-LAW NO. 16/2017, OF 17 MAY, BUSINESS REGISTRATION, TO THE FIRST AMENDMENT TO DECREE-LAW NO. 7/2017, OF 22 MARCH, BUSINESS REGISTRATION AND VERIFICATION SERVICE, I.P. (SERVE), AND TO THE SECOND AMENDMENT TO DECREE-LAW NO. 16/2004, OF 1 OCTOBER, LAW ON COOPERATIVES

The VIII Constitutional Government assumed in its programme the commitment to invest in three fundamental areas: social capital, infrastructure development and economic development. In order to achieve this last goal, in particular, it is important to strengthen the institutional framework of Public Administration, so as to eliminate the excessive bureaucracy that weighs on the most enterprising citizens, with harmful effects for the entire Timorese business fabric.

The rationalization of public services, in a perspective of simplification and debureaucratization, is of interest not only to the State, but mainly to the entire population that has to resort to the Public Administration to comply with the legal formalities required to carry out their business or economic activity.

In the cooperative sector entrepreneurship is no exception and therefore the Government does not intend to maintain a legal framework that leaves cooperatives outside the scope of the commercial registry.

Under the legal provisions currently in force, cooperatives are not subject to commercial registration, by virtue of the provisions of Decree-Law no. 16/2017, of 17 May, which approved the Commercial Registry and revoked the regime established by Decree-Law no. 7/2006, of 1 March, which had approved the Commercial Registry Code. With regard to the registration of cooperatives, the new regime kept the rules of the former Code in force, prescribing, however, that the registration of cooperatives must be done in the registries of the services of the Ministry of Justice, more precisely in the Conservatory for the Registry of Collective Persons. This option was not in line with the idea of reducing bureaucracy and simplifying the Public Administration as it implies that cooperatives must go to a service of the Ministry of Justice and comply with

their obligations regarding the start-up of activities, which may include the need to request some type of licensing from another service, the Single Counter of the Business Registration and Verification Service, abbreviated to SERVE, I.P.. This happens to the extent that the legislator of the 2017 Commercial Registry did not want to recognize cooperatives as having a legal nature closer to commercial companies, but rather to associations, an idea which, in addition to being controversial, brings, in practice, an increase in bureaucracy and, therefore, in the costs associated with the incorporation and start of activities of those entities.

With this decree-law, the Government aims to reverse this reality, giving back a legal framework that is more conducive to the creation of new cooperatives and the legalization of existing ones which, under the terms of Decree-Law 16/2004, of 1 October, which approved the Cooperative Law, since amended by Decree-Law 76/2022, of 24 October, acquire legal personality with the registration of their constitution (article 16), by submitting them to commercial registration, to be carried out at SERVE, I.P., whose One-Stop Shop, created by Decree-Law No. 7/2017, of 22 March, acts as a "one stop shop" for a series of procedures related to the exercise of economic activities.

Thus, the amendment to the diplomas now operated represents another simplification and debureaucratization measure to be taken by the Government in the context of the Public Administration reform, thus contributing to facilitate the access of interested parties to the public services they need, concentrating in SERVE, I.P., the responsibility for attending the public regarding, namely, the practice of commercial registration acts of cooperatives, which this diploma enshrines.

Thus, pursuant to paragraphs e), n) and o) of no. 1 and no. 3 of article 115 of the Constitution of the Republic, the Government decrees the following to be valid as law:

Article 1

Object

The present diploma proceeds with the first amendment to Decree-Law No. 16/2017, of 17 May, Commercial Registry, the first amendment to Decree-Law No. 7/2017, of 22 March, Business Registration and Verification Service, I.P., and the second amendment to Decree-Law No. 16/2004, of 1 October, Cooperatives Law, revoking paragraph 3 of its article 14.

Article 2

Amendment to Decree-Law no. 16/2017, of 17 May

Articles 2, 3, 8, 12, 17, 37, 38, 42 and 58 of Decree-Law No. 16/2017, of May 17, are amended to read as follows:

"Article 2

[...]

The purpose of the commercial register is to give publicity to the legal status of sole proprietors, commercial companies, civil companies under a commercial form, co-operatives, public companies and permanent representations, the purpose being the legal security of trade.

Article 3

[...]

The facts subject to registration regarding sole traders, commercial companies, civil companies under a commercial form, cooperatives, public companies and permanent representations are registered with the *Serviço de Registo e Verificação Empresarial, I.P.*, hereinafter referred to as SERVE.

Article 8

[...]

No fact pertaining to an individual commercial entrepreneur, commercial company or civil company under a commercial form, cooperative, public company or permanent representation may be registered without the simultaneous registration of the entity to which it pertains.

Article 12

[...]

1. [...]:
 - a) [...];
 - b) [...];
 - c) [...];
 - d) [...];
 - e) [...];
 - f) [...];
 - g) [...];
 - h) [...];
 - i) [...].

2. [...].

3. [...]:

- a) [...];
- b) [...];
- c) [...];
- d) [...].

4. The provisions of subsection 1 shall apply to cooperatives with the necessary adaptations.

Article 17

[...]

- 1. [...].
- 2. [...].
- 3. [...]:
- a) [...];
- b) [...];
- c) [...];
- d) [...];

e) From the constitution of cooperatives, the members of the management body.

- 4. [...].
- 5. [...].

Article 37

[...]

- 1. [...].
- 2. [...]:
- a) [...];
- b) [...];
- c) [...];
- d) [...];
- e) [...];
- f) [...];
- g) [...];
- h) [...].
- 3. [...].
- 4. [...].
- 5. [...].
- 6. [...].
- 7. [...].

8. The provisions of this article shall apply to cooperatives with the necessary adaptations.

Article 38

Unique company or cooperative number

1. The unique number of the enterprise or cooperative is the number by which the sole proprietorship, partnership, public enterprise, permanent representation or cooperative is identified vis-à-vis the public administration and corresponds to the tax identification number, respectively.
2. The unique number of the company or the cooperative is issued at the time of the first registration of the entities subject to registration, according to the rules of the tax identification number, through the access system shared by the Tax Administration with SERVE.
3. [...].

Article 42

[...]

1. [...].
2. [...].
3. [...].
4. In the case of infringements concerning commercial companies, civil companies with a commercial form or cooperatives, the infringer shall be deemed to be the natural person obliged to apply for the first registration of the company or cooperative or, after the registration, the company or cooperative itself.
5. [...].
6. [...].

Article 58

[...]

1. [...].
2. [...].
3. The denomination of cooperatives is followed by the words "cooperatives", "union of cooperatives", "federation of cooperatives", "confederation of cooperatives" and "limited liability" or their abbreviations, as the case may be.

Article 3

Addition to Decree-Law No. 16/2017, of 17 May

Article 12-A is added to Decree-Law No. 16/2017, of 17 May, with the following wording:

"Article 12a
Cooperatives

1. The following facts concerning cooperatives are subject to registration:
 - a) The constitution of the cooperative;
 - b) b) The appointment and termination of functions, for any reason other than the lapse of time, of directors, representatives and liquidators;
 - c) The attachment, seizure, garnishment and pledge of the capital shares of limited liability cooperatives;
 - d) The extension, transformation, merger, demerger and any other amendment of the bylaws;
 - e) The dissolution and closure of liquidation.
2. Failure to comply with the provisions of the preceding paragraph shall be punishable by a fine of between US\$ 50 and US\$ 500, for natural persons, and between US\$ 500 and US\$ 5,000, for legal persons."

Article 4

Amendment to Decree-Law No. 7/2017, of 22 March

Article 3 of Decree-Law No. 7/2017, of 22 March, is amended to read as follows:

"Article 3

[...]

1. SERVE's mission is to implement and promote policies regarding business registration with a view to ensuring the provision of services to citizens, companies and cooperatives in the field of business registration and ancillary acts, increasing legal security and certainty in the commercial, corporate and cooperative fields, and thus facilitating the business environment.
2. [...]:
 - a) [...];
 - b) Promote the provision of quality public services, acting as a one-stop shop for citizens, companies and cooperatives, by providing accessory services to business registration and the licensing of economic activities, including those carried out by cooperatives;
 - c) [...];
 - d) [...];
 - e) [...];
 - f) [...];
 - g) [...];

- h) [...];
- i) [...];
- j) [...];
- k) [...];
- l) [...].

Article 5 Revocation

Article 14(3) of Decree-Law No. 16/2004, of 1 October, as amended by Decree-Law No. 76/2022, of 24 October, is revoked.

Article 6 Republication

Decree-Law No. 16/2017, of May 17, is republished, with the current wording and the necessary grammatical and legal corrections, in an annex to the present diploma, of which it is an integral part.

Article 7 Entry into force

The present diploma enters into force on the day following its publication.

Approved by the Council of Ministers on April 5, 2023.

The Prime Minister, in substitution,

José Maria dos Reis

The Coordinating Minister for Economic Affairs,

Joaquim Amaral

Promulgated on 18 May 2023.

To be published.

The President of the Republic,

José Ramos-Horta