



Proposal

DECREE-LAW N.º ____/2021 FROM ____

PROCEDURE FOR IMPORT LICENSING

Over the last few years and through successive Governments, Timor-Leste has sought to sediment the bases of its democracy by solidifying national institutions and developing the legal bases necessary for the full functioning of the State, the flourishing of the national private sector and the attraction of foreign investment.

Several institutional reforms have already been carried out to adapt the domestic legal system to the requirements of a globalised economy and to simplify existing procedures so as to encourage international trade and attract the resulting benefits for the development of the economy.

Timor-Leste, as a small insular State, strategically located in one of the most commercially dynamic areas of the world, has also made diplomatic efforts with a view to become a member of both ASEAN and WTO.

In this field, the VIII Constitutional Government is committed to continue working on the process of accession of Timor-Leste to the WTO, which represents, from the internal point of view, an opportunity for the reinforcement and capacity building of the institutions as well as a boost to deepen the legislative reforms in certain areas, aimed at promoting the alignment of the national legislation with the international requirements and standards in terms of free trade.

With regard to imports, Timor-Leste have not had a uniform legal regime, although it does impose certain rules and restrictions arising from sectoral licensing regimes in force.

Therefore, the present diploma aims to standardise these sectoral procedures, by creating a single special procedure for licensing the import of certain goods, the control of which is

justified by sanitary, phytosanitary, public health, food safety, environmental protection, etc., issues.

The objective is to simplify and clarify the applicable legal regime, ensuring that the licensing procedure, when required, is not used in a manner contrary to the principles and obligations arising from the future accession of Timor-Leste to the WTO, particularly imposed by the Agreement on Import Licensing Procedures.

(...),

Thus:

The Government decrees, pursuant to Article 115 (1)(e) and Article 116 (d) of the Constitution of the Republic, to be valid as law, the following:

CHAPTER I GENERAL PROVISIONS

Article 1 Object

The present document approves the special administrative procedure applicable to the licensing of imports of goods identified in Attachment I to the present document, which is an integral part of it.

Article 2 Scope of the Procedure

1. Without prejudice to the provisions of this statute and of the customs legislation, the import of goods and merchandise is not subject to any type of sectorial licensing.
2. The procedure for import licensing is an exceptional administrative procedure consisting in the presentation of an application, accompanied by the corresponding documentation legally required and aimed at the issuance of an import license by the competent licensing authorities, under the terms foreseen in the applicable sectorial legislation for the importation of goods identified in Attachment I of this statute.

Article 3 Purpose of the procedure

1. The purpose of the import licensing procedure is:
 - a) Control the origin and quality of imported goods and merchandise, namely from a sanitary, phytosanitary, food safety, public health, national security and environmental protection point of view, among others;
 - b) Ensure the enforcement of legally imposed restrictions on the entry of goods and commodities in strict compliance with the law;
 - c) To ensure the existence of a transparent import system in accordance with the main international trade standards.
2. The import licensing procedure shall not be implemented in a manner that has trade restrictive or distortive effects on imports and constitutes a barrier to international trade.

Article 4 **General principles**

The implementation of the import licensing procedure shall obey the following general principles:

- a) Principle of simplicity - the implementation of the procedure for import licensing shall be simple, unbureaucratic and aimed only at the control necessary for compliance with the sectoral legislation in force.
- b) Principle of transparency - all the rules and principles applicable to imports and any alterations thereto are duly approved under the terms foreseen by law and must be published 21 days in advance before they come into force.
- c) Principle of data protection - public entities are obliged to keep confidential the applicant's data as well as commercial information, business secrets or other relevant information that they have access to by virtue of the import licensing procedure.
- d) Principle of cooperation - in implementing the import licensing procedure, public entities shall act in close cooperation with each other and with private parties, providing them with the information and clarifications they require, and receiving their suggestions and information.

Article 5 **Publicity**

1. Any alteration to the procedure established in the present diploma or in the applicable sectorial legislation shall enter into force on the 21 subsequent to its publication.
2. Any amendment to the existing import quotas or the import quantities allowed shall enter into force on the 21st day following its publication.

Article 6

Interpretation

This decree-law and respective applicable sectorial legislation shall be interpreted in accordance with the provisions of the World Trade Organization Agreement on Import Licensing Procedures.

Article 7

Deadlines

1. In the absence of any special provision to the contrary, the timeframe for performing any act provided for in the present statute is ten business days.
2. The sectorial legislation may exceptionally impose the adoption of a longer term, within the strictly necessary for the observation and compliance with the legal requirements imposed.

Article 8

Variations in value, weight or quantity

1. Imports that have been licensed may not be refused due to insignificant variations in value, quantity or weight in relation to values designated in the license whenever such variations are compatible with trade usages.
2. Insignificant variations are understood as those that do not differ, either upwards or downwards, by 5% of the value, weight or quantity designated in the respective license, unless justified and proven by the economic operator.

CHAPTER II

IMPORT LICENSING PROCEDURE

SECTION I

PROCEDURE

Article 9

Initiation

1. The procedure starts with a request to be presented by the importer to the competent authorities accompanied by all the documents and information foreseen in the applicable sectorial legislation and that are strictly necessary to ensure compliance with the technical standards in force.
2. The application may be presented at any time in person or by electronic means and shall obey the forms approved in the applicable legislation.
3. The applicant is responsible for the truthfulness and exactness of the information contained in the import application.
4. Licensing applications shall be duly registered by the licensing entity and shall be considered in the order in which they are received.

Article 10 Instruction

1. Once the application has been received, the licensing authority shall analyse it and may request, once only, the submission, correction of deficiencies or the presentation of additional clarifications.
2. No fees shall be charged for the filling of deficiencies or the provision of additional clarifications.
3. The non-submission of missing documentation or information determines the automatic suspension of the procedure, for 60 days, after which it will automatically expire.
4. During the instruction period and before a final decision is taken, the license application may be altered, corrected or cancelled at the request of the applicant, and the provisions of the previous article shall apply, with the necessary adaptations.
5. It is the duty of the licensing authority to obtain prior opinions, to consult with public entities with which it is legally required to comply or to carry out any inspection or any other prior procedure imposed by law.

Article 11 Rejection

1. The grounds for refusal of a license are set forth exhaustively in the applicable sectorial legislation.
2. The licensing entity shall notify the applicant in writing of the rejection of the license, indicating the applicable factual and legal grounds.
3. The rejection of a licence may be appealed against through an hierarchical appeal or an optional appeal for protection, without prejudice to judicial appeal under the general terms.

Article 12 **Issue of license**

1. The period for issuing a license shall be 30 business days counted from the date of submission of the application or from the date on which the information provided for in Article 10.1 has been provided.
2. The license shall be issued for the period defined in the applicable sectorial legislation.
3. The licence shall be sent to the applicant in the same way as the application was processed, with a copy to the customs authority.
4. The licence shall not be transferable.

Article 13 **Fees**

The fees to be charged for the import licensing procedure are those foreseen in the sectorial legislation, based on the actual cost of the services rendered and published 21 days prior to its entry into force.

SECTION II **VICISSITUDES OF THE LICENCE**

Article 14 **Changes**

1. The import license may be altered at any time upon request to be submitted by the applicant accompanied by the documents and information provided for in the applicable sectorial legislation.
2. The provisions of this statute, with the necessary adaptations, shall apply to the alteration of licenses.

Article 15 Termination

1. The import license expires in the following cases:
 - a) upon expiry of its term;
 - b) In case of death of the natural person who is its titleholder;
 - c) In case of extinction of the legal person that holds it.
2. The licence may be revoked at any time:
 - a) at the request of the beneficiary;
 - b) Officially, by the licensing entity, for non-compliance with the legal provisions in force.
3. Revocation of a licence under the terms provided for in sub-paragraph b) of the preceding paragraph shall be preceded by a prior hearing of its holder and shall be duly justified.
4. Revocation shall not terminate the obligation to pay the fees due for the licensing, nor shall it exclude the application of the penalties corresponding to the offences committed.
5. The revocation of a license may be appealed against hierarchically or on a discretionary basis without prejudice to judicial appeals under the general terms.
6. The revocation shall be communicated ex officio to the customs authority.

CHAPTER III SANCTIONING REGIME

Article 16 Sanctioning Regime

Without prejudice to the provisions in the applicable sectorial legislation, the non-compliance with the provisions contained in the present document constitutes an administrative infraction punishable under the terms of the provisions in this chapter.

Article 17

Administrative Offences

1. The following constitute a very serious administrative infraction:
 - a) The provision of false or inaccurate information or the omission of relevant information with a view to misleading the authorities or non-compliance with the sectorial legislation in force;
 - b) The provision of false statements in license applications, with regard to the characteristics of merchants and other mandatory information, practiced with lucrative or speculative intent and aimed at obtaining material benefits;
 - c) The speculative practice of under-pricing the goods to be imported.
2. The sectorial licensing entities are competent to initiate the procedure of countermanding.
3. The administrative offences provided for in the preceding paragraphs, where other sanctions are not specifically provided for, shall be processed and punished under the terms of the legal framework for administrative offences.
4. In the event of repeated and repeated offences, the following accessory sanctions may be applied:
 - a) The suspension of up to 1 year of the import licence;
 - b) The cancellation of the import licence with the stipulation of the impossibility of starting a new procedure for a period of 3 years.

CHAPTER IV

LICENSING ENTITIES

Article 18

Proceedings

The licensing authorities under the terms of the sectorial legislation in force are responsible for processing the import licensing procedure set out in this Decree Law.

Article 19

Competence

1. It is incumbent upon the sector licensing authorities to define by separate statute:
 - a) The documents to be submitted and the information to be provided when submitting the application for import;
 - b) The definition of the limits of the quantities to be imported, when applicable;
 - c) The definition of import quotas with indication of quantity, value, and respective origin, when applicable;
 - d) The other technical requirements to be complied with.
2. In determining quotas, licensing entities shall consider the past performance of importers, as well as the need to distribute a reasonable number of licenses to new importers.
3. It is also incumbent upon the licensing entities in their respective sectorial areas:
 - a) Maintain an up-to-date database on import licences granted, indicating the importer's country of origin, value and volume imported;
 - b) To provide, free of charge, to imports any relevant information about the legal regime applicable to imports and its procedure;
 - c) Perform the other competences foreseen in the sectorial legislation that are in conformity with the present diploma.

CHAPTER V FINAL AND TRANSITORY PROVISIONS

Article 20 Adaptation

Sector licensing entities have 180 days to adapt their respective sectorial legislation to the present decree-law.

Article 21 Omissions

In cases of omissions, the provisions set out in the Administrative Procedure Code shall apply.

Article 22 Transitional regime

1. The special administrative procedure provided for in this statute shall apply to licensing applications filed after it comes into force.

2. Import licenses granted prior to the entry into force of the present statute shall remain valid and shall automatically expire at the end of their period of validity.
3. In the cases provided for in the preceding number, the applicant who intends to issue a new license shall be obliged to initiate the procedure under the terms set forth in this statute.

Article 23
Entry into force

The present Decree-law shall come into force days after its publication.

Approved by the Council of Ministers on ____ , ____ 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. José Ramos Horta

ANNEX I
PRODUCTS SUBJECT TO THE IMPORT LICENSING PROCEDURE
(referred to in Article 1)

- Live animals, animal product, plants, plant products, organisms, seeds, genetically modified organisms or seeds, microorganisms, soil, animal ration;
- Medicines for human use and pharmaceutical products;
- Commercial explosive products;
- Light passenger and mixed motor vehicles for commercial purposes;
- Products with hydrochlorofluorocarbon.