

***[DISCLAIMER : This is an unofficial translation and provided for reference only. The official version was published in the Official Gazette of the Democratic Republic of Timor-Leste, on 17 May 2017, 1<sup>st</sup> Series, No. 19, and it is also available online here [http://mj.gov.tl/jornal/public/docs/2017/serie\\_1/SERIE\\_I\\_NO\\_19.pdf](http://mj.gov.tl/jornal/public/docs/2017/serie_1/SERIE_I_NO_19.pdf)]***

## **DECREE-LAW 16/2017**

**of 17 May**

### **BUSINESS REGISTRATION**

Following the innovations resulting from the Business Registration and Verification Services (SERVE), business registration in Timor-Leste was divided between two different organisational and legal frameworks. On the one hand, entities formed up to 2012 had their registrations effected with the National Directorate of Registries and Notaries, recorded in an independent database not linked to the one created by SERVE, in 2012, when it gained exclusive jurisdiction over the initial business registration. On the other hand, business registration was simultaneously governed by two laws, which do not complement each other and have several incompatibilities, namely the Business Registration Code, approved by means of Decree-Law 7/2006, of 1 March, and Decree-Law 35/2012, of 18 July, which created SERVE.

The Business Registration Code has the advantage of being a comprehensive framework, oriented towards the principles of business registration, but it provides for the registration of entities whose substantive regime has never been, nor is expected to be set up in Timor-Leste's legal framework (such as Individual Limited-Liability Establishments and Complementary Groups of Companies); it makes reference to securities that do not exist in Timor-Leste; it is too complex for current Business Registration needs by characterising and providing for different requirements and documents for each stage of registration; and it sets forth demanding rules to correct already existing registers. In turn, the law governing business registration at SERVE succeeded in its purpose to simplify and speed up the business registration process; however, it forgoes some technical stringency, and lead to certain practical registration problems. In particular, it is not prepared to deal with registration of facts subject to registration under Commercial Companies' Law; it does not provide for means to challenge decisions taken by the registration services nor to correct already existing registers, with necessary protection to third-party rights (a mere reference to the Business Registration Code does not suffice); and it has technical errors which need to be corrected. Having two systems is particularly burdensome as it creates doubt where there should be legal certainty, to the detriment of users of public business registration services.

This draft<sup>1</sup> Decree-Law for Business Registration uses the foundation of SERVE's simplified registration system, providing it depth and technical stringency, consistent with the Timorese legal system. It aims to do away with all that is unnecessary and to simplify everything that is complex in both frameworks. Thus, in addition to deal with the aforementioned problems, the rules for the incorporation of companies established by SERVE are simplified, particularly by waiving the need for a business name certificate, and by simplifying rules applicable to translations

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<sup>1</sup> TN: The original refers to "draft" although this is the final version published in the Official Gazette.

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required for the incorporation of companies. It further provides for the possibility of introducing an electronic registration, in line with Public Administration modernisation and improvement of the business environment the Government aims to implement. It should be noted this draft<sup>2</sup> Decree-Law is in keeping with the Guide for Economic Reform and Growth currently followed by the Government, and with the draft Decree-Law establishing SERVE as a Public Institute<sup>3</sup>, and the Commercial Companies' Law proposal<sup>4</sup>.

Thus, pursuant to Article 115(1)(e)(n) and (o) of the Constitution, the Government decrees the following to have the force of law:

**CHAPTER I  
GENERAL PROVISIONS**

**Article 1  
Scope**

This Decree-Law establishes the business registration framework.

**Article 2  
Purpose of registration**

The purpose of the business registration is to disclose the legal status of sole traders, commercial companies, civil companies operating as commercial companies, State-owned enterprises and permanent representations, to ensure legal certainty in trade.

**Article 3  
Competence**

Facts subject to registration related to sole traders, commercial companies, civil companies operating as commercial companies, State-owned enterprises and permanent representations shall be registered at the Business Registration and Verification Services, P.I., hereinafter referred to as SERVE.

**Article 4  
Rule of law**

The staff of SERVE shall always and only abide by the law, and may not compel users of the service to perform any act or comply with any requirement related to business registration that is not provided for under this Decree-Law or in other applicable law or regulation.

**Article 5  
Public nature of the register**

Any person may obtain oral or written information about the legal status of entities registered with SERVE, as well as updated business registration certificates and certificates of documents on file without having to justify such a request, subject to the payment of fees imposed under the law.

**CHAPTER II  
REGISTRATION PROCESS**

**SECTION I  
SCOPE OF THE REGISTRATION**

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<sup>2</sup> TN: Same as previous note.

<sup>3</sup> TN: The original refers to a "draft" although the Decree-Law that established SERVE as a Public Institution (Decree-Law 7/2017, of 22 March 2017) was published and in force by the time this Decree-Law was approved.

<sup>4</sup> TN: The original refers to a "proposal" although the Commercial Companies' Law (Law 10/2017, of 17 May 2017) was published on the same date as this Decree-Law.

**Article 6****Compulsory registration and no registration without law**

1. The registration of facts listed in this section is mandatory.
2. Only facts that are subject to business registration pursuant to law may be registered with SERVE.

**Article 7****Documentary evidence**

1. Only facts supported by legal documentary evidence can be registered.
2. Without prejudice to the provisions in this section, registrations are effected based on legal acts, resolutions, court judgments, certificates, reports or projects which substantiate them, pursuant to law.

**Article 8****First registration**

No fact related to sole traders, commercial companies or civil companies operating as commercial companies, State-owned enterprises or permanent representations may be registered without simultaneously registering the respective entity.

**Article 9****Sole traders**

1. Without prejudice to other legal provisions, a natural person who carries on a business in his/her own name is required to register the following facts:
  - (a) Commencement, changes and termination of the business;
  - (b) Business name and changes to said name;
  - (c) Changes to his/her marital status and matrimonial property regime;
  - (d) Changes to habitual residence or main place of business.
2. Non-compliance with the provisions of the preceding paragraph is punishable with a fine from USD 50 (fifty) up to USD 500 (five hundred).

**Article 10****Documents to register sole traders**

1. To register the commencement of a sole trader's business, the following documents are required:
  - (a) Trader's identity document and, if married, proof of matrimonial property regime;
  - (b) Taxpayer identification number;
  - (c) Map showing location of the trader's habitual residence or place of business;
  - (d) Statement regarding the economic activity carried out.
2. To change marital status or matrimonial property regime, the respective civil registration certificate is required.
3. To change habitual residence or main place of business, a statement made by the trader, attached with a new location map, is sufficient.

**Article 11****Commercial companies and civil companies operating as commercial companies**

1. Without prejudice to other facts determined by law, the following facts related to commercial companies, as well as to civil companies operating as commercial companies as applicable, are subject to registration:
  - (a) Company incorporation;
  - (b) Appointment and termination of duties, for any reason other than having reached the end of their term, of directors and internal auditors, company secretary, legal representative and external auditor;
  - (c) Merger, demerger, transformation and winding up of companies, as well as increase or reduction of equity capital, change of objects and any other change to the articles of association;
  - (d) Merger or demerger project;
  - (e) Approval of merger or demerger project;
  - (f) Change of company's name;
  - (g) Authorisation to keep in a company's name the name or surname of an equity holder who has retired or died;
  - (h) Suspension of company's business;
  - (i) Change of address of the registered office;
  - (j) Setting-up of branches, agencies, offices or other forms of local representation, in domestic or foreign territory;
  - (k) Approval of company's accounts;
  - (l) Termination of liquidation proceedings or resuming of business;
  - (m) Resolution of the General Meeting, should it be required by law, for the acquisition or transfer of assets by a company.
  
2. In particular, the following facts related to private limited companies<sup>5</sup> are subject to registration:
  - (a) Unification, division and transfer of quotas, as well as change in their value;
  - (b) Cancellation of quotas;
  - (c) Creation and transfer of usufruct, pledges, interim orders of forfeiture, judicial listing and permanent seizure of quotas or of rights in said quotas, as well as any other acts or liens that affect their unrestricted disposal;

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<sup>5</sup>TN: Under the New Commercial Companies' Law, incorporation of limited liability companies must be made under one of two types of companies: *Sociedade por Quotas* (or Lda.), or *Sociedade Anónima* (or S.A.).

*Sociedade por Quotas* (Timorese private limited liability company) is the legal form most suitable for small and medium companies with a limited number of equity capital holders (and thus cannot be listed). The company's capital is not divided into shares but into quotas, each quota representing a certain percentage of the capital of the company. Consequently, each equity investor holds one quota, in proportion to his/her/its capital investment in the company. In this translation, "private limited company" is used to refer to this type of company.

*Sociedade Anónima* (Timorese joint stock company) is the most common corporate form for medium and large corporations with significant investments. The company's capital is divided into shares, granting, unless provided otherwise, the same rights and obligations. Articles of association may provide that the share capital is divided into different classes of shares, with each class granting different rights and duties. It may also issue securities or financial instruments. In this translation, "joint stock company" is used to refer to this type of company.

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- (d) A promise to transfer quotas or a pre-emption right in quotas, when such promise or right has “*erga omnes*”<sup>6</sup> effect.
3. In particular, the following facts related to joint stock companies are subject to registration:
- (a) Project for incorporating a company through public acquisition of shares, and the public offering for the acquisition of shares by the promoters;
  - (b) Resolution for redemption of shares;
  - (c) Issuance of bonds and issuance of each series of bonds.
4. In particular, the following facts related to affiliated companies are subject to registration:
- (a) Beginning and ending of relationships whereby one of the companies holds equity interests in the other, relationships with reciprocal equity interests, relationships of control and group relationships, pursuant to the Commercial Companies’ Law.
  - (b) Resolution for transfer of quotas or shares of a controlled or subordinate company;
  - (c) The external auditor’s report justifying the takeover offer leading to full control, and the acquisition of equity shares belonging to independent equity holders of a subordinate company by the holding company.
5. Registration of facts listed in paragraph 1(g)(h)(i)(k) and (m) of this article are exempt of fees.
6. Non-compliance with the provisions of paragraphs 1 through 4 of this article is punishable with a fine from USD 50 up to USD 500 US dollars for natural persons, and from USD 500 up to USD 5,000 for legal persons.

**Article 12****Documents required to register commercial companies and civil companies operating as commercial companies**

1. To register incorporation of companies, the following documents are required:
- (a) Memorandum of association, adopting a pre-approved model or a set drawn up by the parties pursuant to law;
  - (b) Identity documents of equity holders and, if married, proof of their matrimonial property regime;
  - (c) Taxpayer identification numbers of equity holders;
  - (d) Identity documents of members of the governing bodies;
  - (e) Appointment of members to the governing bodies, pursuant to law;
  - (f) Statement of acceptance of office signed by each of the members appointed to the governing bodies;
  - (g) Documents confirming paid-up equity capital, by means of proof of deposit at a credit institution in favour of the company’s management or by means of statements of paid-up capital signed by the equity holders;
  - (h) Map showing location of the registered office;

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<sup>6</sup> TN: Borrowed into English from Latin, “*erga omnes*” is a phrase that, in legal terminology, means rights or obligations owed toward all and enforceable against anybody infringing that right.

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- (i) Authenticated copies of original prior authorisations required to engage in activities included in the company's objects, pursuant to law.
- 2. Registration of the approval of the company's accounts, pursuant to paragraph 1(k) of the preceding article, consists of entering in the register a reference to the lodging, for filing purposes, of minutes resolving to approve the company's accounts, attached with approved documents, pursuant to law.
- 3. To register the setting-up of a branch or other forms of local representation, in domestic or foreign territory, of a commercial company with registered office in Timor-Leste, the following documents are required:
  - (a) Resolution setting-up a branch or other forms of local representation, stating its location;
  - (b) Resolution appointing the respective representative, stating the powers granted;
  - (c) Identity document of the representative and, when applicable, of other members of the governing bodies;
  - (d) Statement of acceptance of office signed by the appointed representative.

**Article 13**  
**State-owned enterprises**

- 1. In addition to other facts set forth by law, the following facts related to State-owned enterprises are subject to registration:
  - (a) Incorporation of a State-owned enterprise;
  - (b) Merger, demerger and any other change to the articles of association;
  - (c) Extinction of State-owned enterprises and termination of liquidation proceedings.
- 2. Business registration of State-owned enterprises is based on the respective law, as published in the Official Gazette.

**Article 14**  
**Permanent representations**

- 1. Without prejudice to other legal provisions, companies with registered office and main management abroad, which operate permanently in Timor-Leste, are subject to the following registration obligations:
  - (a) Setting-up and extinction of permanent representation;
  - (b) Appointment and removal from office of legal representative;
  - (c) Resolution allocating funds to the business carried out by the permanent representation;
  - (d) Appointment of the legal representative as manager or attorney, when applicable.
- 2. Provisions of the preceding paragraph shall apply to branches, agencies and other forms of representation established in Timor-Leste by commercial companies with registered office abroad.
- 3. Non-compliance with this article is punishable with a fine from USD 50 (fifty) up to USD 500 (five hundred) US dollars for natural persons, and from USD 500 (five hundred) up to USD 5,000 (five thousand) for legal persons.

**Article 15****Documents required to register permanent representations of foreign companies**

To register a permanent representation in Timor-Leste of a company with registered office abroad, the following documents are required:

- (a) Proof that the commercial company exists, pursuant to the laws of the country of origin;
- (b) Most recent articles of association;
- (c) Resolution setting-up a representation in Timor-Leste, stating funds allocated and location of said representation;
- (d) Resolution appointing the respective representative;
- (e) Identity document of the representative and, if applicable, other members of the governing bodies;
- (f) Map showing location of permanent representation in Timor-Leste.

**Article 16****Legal proceedings and judgments subject to registration**

1. Without prejudice to others set forth by law, the following legal proceedings and judgments are subject to registration:
  - (a) Proceedings to interdict or disqualify a sole trader, or to withdraw said interdiction or disqualification;
  - (b) Proceedings with the main or ancillary purpose of declaring, recognising, establishing, modifying or extinguishing any of the rights referred to in articles 9 and 11;
  - (c) Proceedings to declare the nullity or to cancel a memorandum of association;
  - (d) Proceedings to declare the nullity or to cancel corporate resolutions, as well as interim proceedings for their suspension;
  - (e) Proceedings to declare the nullity or to cancel a register;
  - (f) Insolvency proceedings of entities subject to registration;
  - (g) Unspecified interim measures filed in relation to proceedings referred to in the preceding sub-paragraphs;
  - (h) Final judgments handed down in the aforementioned proceedings and interim proceedings.
2. Registration of proceedings referred to in the preceding paragraph shall be written as a note to the respective register entry.
3. Registrations requested by the Public Prosecutor are fee-exempted.

**SECTION II****APPLICATION FOR REGISTRATION****Article 17****Initiative and eligibility**

1. Business registration must be requested by an interested party, except for registrations effected on the registrar's own initiative by power of law.

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2. Any person who has an interest in the registration of a certain fact is entitled to request it, except when otherwise provided by law.
3. Only the following persons are entitled to request the registration of, namely:
  - (a) Commencement, changes and termination of a sole trader's business – sole trader or his/her representative;
  - (b) Company incorporation – directors, company secretary, legal representative or any equity holder;
  - (c) Project articles of association of a joint stock company to be incorporated through public acquisition of shares – respective promoters;
  - (d) Incorporation of State-owned enterprises – whomever is appointed for this purpose in the law setting up said State-owned enterprise or the Board of Directors.
4. The Public Prosecutor is entitled to request registration of proceedings he/she initiates and their respective final judgments.
5. The representative of an insolvent estate is entitled to request all registrations of interest to the insolvency proceedings, under the law.

**Article 18**  
**Representation**

1. In addition to those entitled to request registrations pursuant to paragraph 2 of the preceding article, attorneys-in-fact authorized by power of attorney may also request registrations.
2. For registrations that can only be requested by certain persons, only attorneys-in-fact with special powers granted for such purpose can request them.

**Article 19**  
**Deadlines**

1. Registration of company incorporation must be requested within 15 days from the date of its memorandum of association.
2. Registration of other facts subject to registration must be requested within 30 days from the date on which they occurred, unless other deadlines have been provided for by law.
3. Proceedings to declare the nullity or to cancel a memorandum of association of commercial company or civil company operating as commercial company, as well as of corporate resolutions, shall not continue after the pleadings are closed, until proof of their registration request has been lodged.
4. The judgement in interim proceedings for suspension of corporate resolutions shall not be handed down until the proof referred to in the preceding paragraph has been lodged.
5. Voluntary application for registration after the deadlines provided for in this Decree-Law have lapsed shall give rise to an increase in the fee imposed pursuant to the terms to be defined in the fees regime.

**Article 20**  
**Registration request**

1. Registration requests must be submitted using prescribed forms available at SERVE's offices or on its website.



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2. Registration request prescribed forms shall be approved by Ministerial Diploma from the Government member supervising SERVE.
3. Registration requests and respective documentary evidence shall be lodged personally at SERVE, without prejudice to the possibility of being sent electronically pursuant to the terms to be established by government decree.

**Article 21**  
**Language and translations**

1. All documents submitted for registration purposes must be written in Portuguese or Tetum.
2. Documents in a foreign language must be attached with a translation that has been certified by one of the following entities:
  - (a) Diplomatic representation of Timor-Leste abroad;
  - (b) Diplomatic representation accredited to Timor-Leste;
  - (c) National Institute of Linguistics, pursuant to law;
  - (d) Notary or sworn translator, pursuant to law;
  - (e) Practising lawyer registered in Timor-Leste.
3. Certification of translations by lawyers, pursuant to sub-paragraph e) of the preceding paragraph, is only valid for business registration purposes and must comply with the requirements provided for in the Notaries Regulation and in the Legal Regime for Notarisations, with the necessary changes, and be attached with identification and professional credentials of the translator-lawyer as well as a statement of personal liability for the contents of the translation.

**Article 22**  
**Documents and copies**

1. Documents that substantiate facts submitted to registration shall be kept on file at SERVE.
2. In addition to original documents and copies certified under the notaries law, copies of original documents that, upon request of the interested parties, SERVE agents extract and certify as being in accordance with the original, shall also be accepted to support registrations and for filing purposes.

**SECTION III**  
**ENTRY IN THE REGISTER**

**Article 23**  
**Assessment of registration request**

1. The registrar is responsible for assessing the suitability of the registration request considering applicable laws, documents submitted and previous registrations, checking especially the legitimacy of interested parties, formal accuracy of deeds and validity of their contents.
2. Should the registrar be absent or unavailable, the employee with the highest ranking in the same department shall perform his/her duties, pursuant to law.

**Article 24**  
**Priority of the registration**

1. The right entered in the register first shall prevail over subsequent rights related to the same facts or assets, in the order in which they were lodged.
2. If a registration is refused, the registration effected following a successful complaint or appeal has the same priority as the registration that was refused.

**Article 25**  
**Deadline**

Registrations are effected within five business days from the date of lawful submission of a request.

**Article 26**  
**Publication**

1. Once a registration is effected, the registrar orders the publication of its summary or, should it be subject to mandatory publication, of the full text, within one business day.
2. Publications are made available on a dedicated website for publication of registrations run by SERVE, in one of the official languages.

**Article 27**  
**Effects of registration**

Registration creates a presumption that the registered legal status exists in the exact terms as entered in the register.

**Article 28**  
**Enforceability**

1. Facts subject to registration, even if not yet registered, may be invoked amongst the parties or their heirs, without prejudice to the provisions of the Commercial Companies' Law regarding the memorandum of association and respective amendments.
2. Facts subject to registration shall only be effective with respect to third parties after the date of their registration, unless it can be proven that the third party was aware of said fact.
3. Facts subject to registration and to mandatory publication shall only be effective against third parties after the date of publication, unless it can be proven that the third party was aware of said fact.
4. Lack of registration may not be invoked against interested parties by their legal representatives, who are required to request it, nor by the heirs of said legal representatives.

**Article 29**  
**Refusal to register**

1. The registrar refuses registration:
  - (a) In the absence of any documents which should be filed pursuant to law, or when it is evident that the fact is not substantiated in the documents submitted;
  - (b) In the event the applicant is ineligible;
  - (c) In the event the applicant has no or insufficient powers of representation;

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- (d) In the event the fee due for the registration is not paid, when due pursuant to law;
  - (e) When the nullity of the fact being registered is evident;
  - (f) When the fact indicated in the document has already been registered or is not subject to registration.
2. The registrar may request a judicial review of the company, pursuant to law, whenever the contents of documents submitted for registration indicate the existence of irregularities which, after being notified to the management, have not been remedied.
  3. Registration based on a final court judgment of which the Public Prosecutor has been notified, cannot be refused unless it clearly results in a conflict with the legal status of the asset resulting from previous registrations.
  4. Refusal to register shall be justified in writing and can be challenged as provided for by this Decree-Law.

**SECTION IV  
PROVISIONAL REGISTRATION**

**Article 30  
Provisional registration due to doubts**

A registration is granted as provisional due to doubts when there is an issue that, not being cause for refusal, prevents it from being effected as originally requested.

**Article 31  
Provisional nature**

Notices of refusal and of provisional registration due to doubts are written in a concise but duly justified manner, and sent to the applicants.

**Article 32  
Addressing shortcomings**

1. Whenever possible, shortcomings in the registration process should be addressed using the documents submitted or already on file at SERVE, as well as by using available electronic means.
2. Without prejudice to the normal operation of the department, for purposes of the preceding paragraph, SERVE shall notify the applicant, by any means, to address, if he/she so wishes, the shortcomings of the registration process within 5 business days at the most.
3. After lodging an application and prior to the registration being effected, the interested party may add documents via a supplementary application to remedy shortcomings which do not encompass a new registration request, nor constitute cause for refusal pursuant to article 29.

**Article 33  
Conversion**

1. If there are discrepancies, but not contradictions, between the registration request and the lodged documents, the registration is effected according to the qualification resulting from those documents.
2. When different registrations are requested and lodged regarding a fact or facts that should be entered in a single register, the registration shall be effected with reference to the number of the first application, and the remaining are deemed converted.

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3. If a single registration is requested and lodged encompassing facts that should to be entered in separate registers, SERVE shall proceed with the required applications, and effect the registrations accordingly.

**Article 34**  
**Withdrawal**

When there are shortcomings that are cause for refusal, or if a document is lodged proving the fact to be registered no longer exists, it is possible to withdraw such registration as well as those which are reliant upon it.

**Article 35**  
**Provisional registration by nature**

The following registrations are provisional by nature:

- (a) Registration of legal transactions that can be cancelled, or ineffective due to lack of consent, prior to the defect being remedied or the right to challenge it being forfeited;
- (b) Those effected pending challenges to a decision taken by the registrar or while the deadline for filing a challenge has not passed;
- (c) Registration of legal transactions entered into by manager or by attorney with insufficient powers, prior to ratification;
- (d) Registration of legal proceedings provided for in article 16(1)(a) through (f).
- (e) Registration of permanent seizure or interim orders of forfeiture of quotas of private limited companies or of the rights referred to in article 11(2)(c), as well as their confiscation in insolvency proceedings, should an acquisition registration remain over said assets in favour of someone other than the judgment debtor, the person whose assets have been seized or the insolvent person;
- (f) Those reliant upon any other provisional registration.

**CHAPTER III**  
**INFORMATION, CERTIFICATES AND ARCHIVES**

**Article 36**  
**Information**

1. SERVE shall provide information orally or in writing, in response to oral or written requests, respectively.
2. Information provided by SERVE may only be related to entities subject to registration and their records, including who their equity holders and members of governing bodies are. However, information on the individual legal status of any equity holder or other members of governing bodies cannot be provided.
3. SERVE may charge fees for providing written information, including photocopies without probative value, relating to the entries in the register of a certain entity, pursuant to law.
4. For the purposes of paragraph 1, only SERVE employees can access folders and documents.

**Article 37**  
**Certificates**

1. SERVE provides Business Registration Certificates and certificates of documents it has on file, upon request.
2. The Business Registration Certificate refers all registrations in effect at SERVE related to the relevant entity, and it mandatorily includes:

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- (a) Company's name;
  - (b) Unique business number;
  - (c) Address of the registered office;
  - (d) Company's objects;
  - (e) Equity capital;
  - (f) If the Business Registration Certificate is related to a private limited company, name and taxpayer identification number of equity holders and their respective equity holdings;
  - (g) Name and identity document number of directors and legal representative of the company;
  - (h) Issuance date of the Business Registration Certificate.
3. The Business Registration Certificate is issued in one of the official languages and in English, in a prescribed model and with translations approved by Ministerial Diploma from the Government member supervising SERVE.
  4. Whenever a fact or set of facts are submitted for registration, an updated Business Registration Certificate is issued and provided free of charge.
  5. Other certificates are provided to the applicant within one business day from the date a request and payment of applicable fee are received.
  6. All certificates bear the embossed white seal in use at SERVE and are valid for a period of one year from the issuance date.
  7. Refusal to issue a certificate may be object of complaint and appeal.

**Article 38****Unique Business Number**

1. A unique business number is a number that identifies a sole trader, company, State-owned enterprise or permanent representation when interacting with the public administration, and it corresponds to that entity's Taxpayer Identification Number.
2. A unique business number is issued when entities that are required to register complete their first registration. It is issued pursuant to the Taxpayer Identification Number rules, using the access system SERVE shares with the Tax Administration.
3. SERVE issues Taxpayer Identification Numbers for sole traders, equity holders, legal representatives or members of the governing bodies who do not have one yet.

**Article 39****Tax debt certificate**

SERVE issues tax debt certificates required to support registrations in accordance with the information available in the access system it shares with the Tax Administration.

**Article 40**  
**SERVE's physical and digital archives**

1. Each sole trader, commercial company or other entity subject to business registration shall be assigned a folder where all their documents shall be filed with the most recent copy of their respective registration.
2. Documents on file at SERVE are scanned and archived electronically in a digital database.
3. SERVE keeps paper documents in a physical archive for a period of 10 (ten) years, after which the paper documents may be destroyed.

**CHAPTER IV**  
**NON-COMPLIANCE**

**Article 41**  
**Non-compliance with obligation to register**

1. A natural person who carries on a business in his/her own name and is not registered as a sole trader may not benefit from the legal effects of such status against third parties, but he/she may also not invoke the lack of registration to avoid responsibilities and obligations which come with said status.
2. The Public Prosecutor shall request compulsory liquidation of an unregistered company that has been operating for more than three months to the court, without the need to seek a declaratory relief.
3. The court may order the termination of business and liquidation of assets located in Timor of companies permanently operating in Timor-Leste but which do not have their registered office or main management here, and which do not comply with registration obligations, pursuant to Commercial Companies' Law.
4. When lack of registration suggests the existence of irregularities, which, following a notice sent to the management, are not remedied, the registrar shall notify the Public Prosecutor to request a judicial review of the company, pursuant to law.

**Article 42**  
**Penalties**

1. Offences provided for under this Decree-Law are processed and punished pursuant to the legal regime for administrative offences, unless other penalties are specifically established.
2. The Inspection and Supervisory Authority for Economic, Health and Food Activities, created by Decree-Law 26/2016 of 29 June, has the authority to initiate administrative offence procedures and to apply the respective penalties.
3. Whenever a registrar becomes aware of an offence established under this Decree-Law, he/she shall inform the competent authority to initiate an administrative offence procedure.
4. With offences related to commercial companies or civil companies operating as commercial companies, the offender is the natural person required to apply for a company's first registration or, once registered, the company itself.
5. With offences related to permanent representations, the offender is the foreign company which establishes the permanent representation, with joint liability of the legal representative or any director of that foreign company.
6. In case of repeated and recurrent offences, the competent authority may apply the following ancillary penalties:
  - (a) Suspension of up to three years of the right to participate in public acquisitions;

- (b) Suspension or cancellation of the economic activities license, and temporary or permanent closure of the establishment.

## **CHAPTER V REGISTRATION IRREGULARITIES**

### **Article 43 Inaccuracies**

1. A registration is inaccurate when it is effected differently from the deed on which it was based or when it has shortcomings arising from said deed which are not grounds for nullity.
2. Inaccurate registrations are corrected per article 45.

### **Article 44 Nullity of the registration**

1. A registration is deemed null and void:
  - (a) When it is false or has been effected based on false deeds;
  - (b) When it has been effected based on deeds that are not sufficient legal evidence of the fact being registered;
  - (c) When there are omissions or inaccuracies that lead to doubt regarding the persons or the object of the legal relationship to which the registered fact relates;
  - (d) When it has been effected in violation of rules of succession in title.
2. Nullity of the registration cannot be remedied with the passage of time and is declared by means of a reasoned decision taken by the registrar whenever he/she becomes aware of the documents or facts that justify the nullity of the registration, or by a final court judgement.
3. A declaration of nullity of the registration does not jeopardise rights acquired by a third party, in good faith, against a consideration, if the registration of the corresponding facts is prior to the registration of the nullity proceedings.
4. Registrations deemed null and void under paragraph 1(b) through (d) may be corrected if no nullity proceedings are pending.
5. If there is evidence that a crime has been committed, the registrar shall send the necessary documents and copies to the Public Prosecutor for possible initiation of criminal proceedings.

### **Article 45 Correction**

1. Inaccurate and null and void registrations that are correctable may be corrected by the registrar or upon request of any interested party.
2. Inaccuracies arising from discrepancies with the deed are corrected on the registrar's own initiative in light of the documents on which the registration was based, and written as a note to the respective register entry. However, if there is damage to rights of registered holders, consent from all interested parties or a court judgment is required.
3. Correction of null and void registrations per paragraph 4 of the preceding article may only be effected by the registrar once all interested parties have been notified and have given their consent, or by court judgment.

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4. If, within 30 days after being notified, an interested party does not object, in any form, to the correction, his/her consent shall be deemed given.
5. The registrar may convene a meeting to clarify the interested parties and to obtain their respective consent to correct the registration.
6. Correction of registrations does not jeopardise rights acquired by a third party, in good faith, against a consideration, if the registration of the corresponding facts is prior to the registration of the correction or the respective process is pending.

**CHAPTER VI  
TERMINATION OF EFFECTS OF REGISTRATION**

**Article 46  
Expiry**

1. Registrations expire by power of law or once the business duration period has elapsed.
2. Registrations of interim orders of forfeiture, permanent seizures, pledges, consignments of income, confiscation, judicial listing and other interim measures expire 10 years from the date of registration, without prejudice to the term of expiry established under procedural law.
3. Registrations of usufruct and pledge of holdings expire 50 years from the date of registration, without prejudice to the possibility of being renewed for periods of equal duration.
4. Registrations under article 35 expire 10 years from the date of registration, without prejudice to the term of expiry established under procedural law.
5. Expiry should be written as a note to the respective register entry.

**Article 47  
Cancellation**

1. A registration ceases to have effect once cancelled.
2. Registrations are cancelled based on the extinction of rights, liens or encumbrances therein established, per enforcement of an administrative decision, in cases provided for by law, or per a final court judgment.
3. Cancellation of a registration should be written as a note to the respective register entry.

**Article 48  
Cancellation of sole trader registration**

1. A registered sole trader who has not carried on business for over two years shall be notified to declare, within 90 days, whether he/she intends to keep the registration active.
2. If a sole trader does not declare his/her intention to keep the registration active within the period stipulated in the preceding paragraph, the registrar shall cancel it.

**Article 49  
Winding up and liquidation of commercial company**

1. The registrar or SERVE agent shall notify a company to express its opinion on its winding up when:
  - (a) It has not carried out any activity for over two years, but its activity is not suspended and its winding up has not been initiated,



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- (b) It has not lodged its annual tax return for three consecutive years,
  - (c) It has suspended or renewed the suspension of its activity more than four years ago and its winding up has not been initiated.
2. Should a company not respond and not rectify the situation within 90 days, the registrar shall:
- (a) On his/her own initiative, request its compulsory winding up to the court; or
  - (b) Declare the company to be wound up and order, on his/her own initiative, registration of the winding up and termination of liquidation proceedings when, in accordance with information gathered from the legal representatives, Tax Administration and other relevant entities, and 30 days after a notice has been on public display at the registered office of the company, no assets or liabilities have been duly shown to be outstanding.
3. The notice referred to in sub-paragraph (b) above should mandatorily include:
- (a) Full identification of the company;
  - (b) Name of the directors;
  - (c) Reference to this article;
  - (d) Description of details that must be included in a statement on the company's outstanding assets or liabilities, namely, identification of its debtor or creditor, amount in question and respective supporting documents;
  - (e) E-mail address or physical address or where the aforementioned statement should be delivered;
  - (f) Date of display of notice;
  - (g) Registrar's signature.
4. The registrar's decision, pursuant to paragraph 2(b), may be challenged under the terms of this Decree-Law.

**Article 50**  
**Notification from Tax Administration**

1. A sole trader or commercial company that does not submit an annual income tax return to the Tax Administration pursuant to law is deemed to not be carrying on a business activity.
2. For the purposes of this section, the Tax Administration shall notify SERVE whenever:
  - (a) A sole trader does not submit an annual income tax return for two consecutive years;
  - (b) A commercial company does not submit an annual income tax return for three consecutive years.

**CHAPTER VII**  
**REVIEW**

**Article 51**  
**Reviewable decisions**

1. Explicit or implied refusal to effect a registration as requested, to issue certificates or documents, to correct a register entry or other decisions that affect the rights of persons may be reviewed through lodging of:
  - (a) Complaints;

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- (b) Administrative appeal;
  - (c) Court appeal.
2. A complaint must have been lodged beforehand in order to make an appeal.
  3. An administrative appeal is optional and must be made to the National Director of Registries and Notaries.
  4. A court appeal is made to the administrative court or, there not being one, the civil court of first instance.
  5. Lodging of a court appeal precludes the right to an administrative appeal and is equivalent to withdrawing pending administrative proceedings.

**Article 52**  
**Complaints**

1. A complaint must be written and addressed to the registrar within 30 days after the interested party is notified of the reviewable decision or, when refusal is implied, from the end of the deadline for the registrar to perform the relevant action.
2. A complaint must set out the reasons for review and include an express request with the complainant's claim.
3. Complaints shall be assessed and decided by the registrar who refused to perform the relevant action, or his/her alternate, within 15 days, and the complainant shall be notified.
4. A decision taken regarding a complaint must be justified, clearly stating if the decision under review stands or if the complainant's claim was fully or partially accepted.
5. Rejection of the complainant's claim is deemed implied when a registrar's decision is not issued within the legal deadline.

**Article 53**  
**Administrative appeal**

1. Should a complainant's claim, pursuant to the preceding paragraph, be explicitly, implicitly or partially rejected by the registrar, the interested party may appeal from the decision refusing to perform the action with the National Director of Registries and Notaries.
2. An administrative appeal is made by lodging an application with SERVE, attached with the documents the appellant deems necessary, within 30 days after he/she is notified of the rejection his/her complaint claim or from the end of the deadline for the registrar to decide such claim.
3. The application for appeal must:
  - (a) Indicate which decision is being appealed and the reasons for rejection of the complaint;
  - (b) Fully specify the grounds on which the appeal is based;
  - (c) Be attached with documents the applicant deems necessary to support his/her reasoning;
  - (d) Request that the registrar be ordered to perform the relevant action.
4. Once an application for appeal has been received, the registrar shall send a copy of the main file and the complaint to the National Director of Registries and Notaries, as well as other documents he/she deems necessary, within five days.

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5. Once an application for appeal has been received, the Director shall request a technical opinion from the Legal Department, issue a decision and notify SERVE within 30 days.
6. If an appeal is favourably decided, the registrar, on his/her own initiative, must mandatorily perform the action that had been previously refused, otherwise being subject to disciplinary proceedings pursuant to law.

**Article 54**  
**Court appeal**

1. Should a complaint or administrative appeal be totally, partially or implicitly rejected, the interested party may lodge a court appeal aimed at performing the action previously refused.
2. An appeal must be made to the relevant court, pursuant to procedural law, within 30 days after the appellant is notified of total or partial rejection of his/her complaint or administrative appeal, or from the end of the deadline for deciding such complaint or administrative appeal.

**CHAPTER VIII**  
**NAMES**

**Article 55**  
**Unique and Exclusive**

1. Sole traders and commercial companies are required to adopt only one name, which sets them apart and identifies them.
2. Names are registered simultaneously with the first business registration, and grant their holders exclusive use rights in national territory.

**Article 56**  
**Sole Trader**

1. Business name of a sole trader comprises his/her full or shortened name, as required to identify the person, and may include expressions suggesting what type of business it is, followed by the acronym “ENIN”.
2. Business names of sole traders are non-transferable between living people.

**Article 57**  
**Companies**

1. Names of companies must be chosen in accordance with the rules of Commercial Companies’ Law for each type of company, without prejudice to the provisions of this Decree-Law.
2. When, for any reason, a natural person, whose name is included in the company’s name, disposes of his/her equity interest, said company’s name shall be changed within one year, unless the equity holder or his/her heirs – in case of equity holder’s death, consent, in writing, to his/her name being kept in the company’s name.

**Article 58**  
**Other designations**

1. Designation of a State-owned enterprise is followed by the words “Empresa Pública” or the initials “E.P.”, and it shall comply with the applicable rules for choosing names.
2. Designation of a permanent representation in Timor-Leste of a company with registered offices abroad shall comply with the rules for choosing names, and it may include the name of the foreign company followed by the words “Representação Permanente” or the initials “R.P.”.

**Article 59**  
**Veracity**

1. Elements that are part of a name must be true and cannot be misleading with regard to the identification, nature or business of its holder.
2. Characteristic elements of names, even when composed of fictional names, acronyms or composite names, cannot allude to a business outside the scope of its objects clause.
3. Without prejudice to rights acquired prior to this Decree-Law coming into effect, names may not include, in particular:
  - (a) The expression “Timor-Leste”, except for State-owned enterprises or companies where the government of Timor-Leste holds an equity interest, without prejudice to rights acquired prior to this rule coming into effect;
  - (b) Expressions that disrespect or illegitimately use national symbols, prominent figures or institutions whose name or meaning is to be preserved for historical, patriotic, scientific, institutional, cultural or other noteworthy reasons. Expressions that are misleading as to the legal characterisation of a commercial company, including expressions commonly used to identify public bodies, non-profit organisations, or forms of business cooperation, even if not typified in Timor-Leste’s legal framework, such as “consortium”, “joint partnership”, “complementary group of companies” or “joint venture”.

**Article 60**  
**Novelty**

1. Names should be distinctive and not misleading or easily confused with names of renowned institutions or with other names already registered in Timor-Leste, even when the law allows for the inclusion of elements used by other already registered names.
2. When deciding on the distinctiveness and misleading or confusing features of a name, one shall consider the legal nature of the person, geographical proximity of domicile or registered office, similarity of business, and prior existence of establishment names, trademarks or symbols that may be misleading as to who owns the names or distinctive signs.
3. Inclusion of prior distinctive signs in the name is only permitted for those who own them, whom must provide evidence of their registration or repeated use in trade.

**Article 61**  
**Distinctiveness and lawfulness**

1. Names made up exclusively of commonly used words which identify or are related to a business, technique or product, or words that indicate a geographical origin are not permitted.
2. Names may not have expressions that are prohibited by law, offensive of moral or public decency, or incompatible with respect for rights and freedoms enshrined in the Constitution.

**Article 62**  
**Transfer of establishment**

1. A purchaser of a commercial establishment, by any means between living people, may acquire the name of the prior owner of the establishment if that owner consents in writing, without prejudice to the provisions laid down for sole traders.
2. Should the prior owner of the establishment acquired be a company with a name that includes the name of an equity holder, consent from the latter is also required.

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3. Acquiring a name without the respective establishment is prohibited.

**Article 63**  
**Validity of the name**

1. Compliance with formal rules for choosing a name is checked upon registration, namely by searching the electronic database of names, without prejudice to the provisions of article 65.
2. Holders of industrial property rights may apply for registration of the respective deeds in the electronic database of names for purposes of the provisions of the preceding paragraph.

**Article 64**  
**Certificate of Name Availability**

1. An applicant may request that SERVE do a prior search in the electronic database of names to confirm that no prior incompatible rights exist, by paying the applicable fee, and obtain a certificate of name availability within two business days.
2. The issuance of a certificate of name availability is only valid for 3 (three) months and grants the right to exclusive use.

**Article 65**  
**Loss of the right to use a name**

1. The registrar, on his/her own initiative or upon request of an interested party, shall declare the loss of the right to a name and cancel its registration under the following circumstances:
  - (a) When the name does not comply with the provisions of this Decree-Law;
  - (b) When the name infringes third-party rights;
  - (c) When a sole trader who owns the name has not conducted any business for two years;
  - (d) Termination of liquidation proceedings of a company or termination of a sole trader's business.
2. For purposes of sub-paragraphs (a) through (c) of the preceding paragraph, the registrar shall notify the owner of the name in advance of his/her intention to declare the loss of the right, so as to allow the latter to respond within one month.
3. Loss of the right to a name on the grounds of paragraph 1(a) and (b) of this article may only be declared if no more than three years have passed since the registration or since the third party became aware of the infringement, respectively.
4. The registrar's decision may be appealed under the terms laid down in this Decree-Law.
5. Persons required to adopt a name shall lodge an application for registration of a new name within one month after the final declaration of loss of the right to the name.
6. Provisions of this article do not limit the possibility of lodging an application for review of the name through judicial channels.

**CHAPTER IX**  
**TRANSITIONAL AND FINAL PROVISIONS**

**Article 66**  
**Publication**

Until the web page dedicated to the publication of registrations comes online, publication of registrations is effected by publicly displaying a summary of the registration on the wall at SERVE for 15 days, without prejudice to the possibility of anyone being able to obtain information or certificates of registrations on file at SERVE at any time, pursuant to law.

**Article 67**  
**Re-registration**

1. All sole traders, commercial companies and civil companies operating as commercial companies, State-owned enterprises and permanent representations that are registered with the National Directorate for Registries and Notaries are required to re-apply for business registration with SERVE, pursuant to this Decree-Law.
2. Re-registration is fee-exempt if effected within one year from the date this Decree-Law comes into effect.

**Article 68**  
**Changes to unlawful names**

1. Commercial companies holding a previously registered name that breaches the provisions of article 59(3)(c)<sup>7</sup> shall apply for a change to the respective name with SERVE within 1 (one) year from the date this Decree-Law comes into effect, under penalty of it being null and void.
2. Registrations effected under the terms and within the deadline established in the preceding paragraph are fee-exempt.

**Article 69**  
**Repeal - Special Regime for Immediate Incorporation of Companies**

Decree-Law 18/2010, of 1 December, which creates the Special Regime for Immediate Incorporation of Companies, is repealed.

**Article 70**  
**Repeal - Decree-Law on Business Registration and Verification (SERVE)**

Decree-Law 35/2012, of 18 July, on the Business Registration and Verification Service (SERVE), is repealed, except with regard to the rules on business licensing, for which purpose particularly articles 1, 19, 20, 28, 35, 36, 59 and the Annexes remain in effect.

**Article 71**  
**Repeal - Business Registration Code**

Decree-Law 7/2006, which approves the Business Registration Code, is repealed, except with regard to Cooperatives, which are registered with the Legal Persons Registry, for which purpose particularly article 5, article 9(d) and (m), and articles 36, 34 and 56 of Annex I of Decree-Law 7/2006, of 1 March, remain in effect.

**Article 72**  
**Repeal - Notaries Regulation**

Article 64(2) of Annex I of Decree-Law 25/2009, of 26 August, which approves the Notaries Regulation, is repealed.

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<sup>7</sup> TN: Article 59(3), as published in the Official Gazette, does not have a sub-paragraph (c).

**Article 73****Repeal - Fee Regime for Registries and Notaries**

1. Articles 35, 37 and 38 of Decree-Law 46/2011, of 19 October, which approves the Fee Regime for Registries and Notaries, are repealed.
2. Article 34(1), article 35, article 36(1)(a)(b)(d) and (e), article 41(1), and article 42(2) of Decree-Law 46/2011, of 19 October, are repealed.

**Article 74****Amendment to the Legal Regime of Notaries**

Article 70 of Decree-Law 3/2004, of 4 February, on the Legal Regime of Notaries, shall read as follows:

**“Article 70  
Effects**

1. [...]:
  - a) [...];
  - b) registration at the motor vehicle ownership department and at SERVE;
  - c) [...];
  - d) [...];
  - e) [...].
2. [...].”

**Article 75****Entry into effect**

This Decree-Law shall enter into effect on the date the new Commercial Companies’ Law comes into force.

Approved in Council of Ministers on 14 March 2017

The Prime Minister,

**Dr. Rui Maria de Araújo**

The Minister of State, Coordinator of Economic Affairs,

**Eng. Estanislau da Silva**

The Minister of Justice,

**Ivo Valente**

The Minister of Commerce, Industry and Environment,

BUSINESS REGISTRATION Decree-Law

**Constâncio Pinto**

Promulgated on 12 - 05 - 2017

To be published.

The President of the Republic,

**Taur Matan Ruak**