

DEMOCRATIC REPUBLIC OF TIMOR-LESTE

GOVERNMENT

**Decree-Law No. 3 /2003
Of 10 March**

**ON THE ESTABLISHMENT OF THE PORT AUTHORITY AND ON THE
APPROVAL OF THE BYLAWS THEREOF**

Considering the need to establish a systematized corpus of rules and principles to be followed in the structure and organisation of the maritime ports of Timor-Leste, particularly the institutional model thereof.

Considering that it is essential that the new institutional entity be supplied with by-laws indispensable to its operation.

Considering that, through the present legal instrument, conditions will be put in place for the exercise of public authority and the exercise of administering the national ports, thereby ensuring its orderly development.

Under the terms of paragraph d), section 116, of the Constitution, the Government enacts the following that shall have the force of law:

**Section 1
Establishment and nature**

1. The Port Authority of Timor-Leste, hereinafter referred to as PATL, is hereby established as a public institute vested with corporate entity, administrative and financial autonomy, and property of its own, which shall be under the tutelage and supervision of the Minister for Transport, Communications and Public Works.
2. PATL shall govern itself by the present decree-law and by the bylaws thereof attached to the present instrument, of which they are an integral part.

**Section 2
Property**

1. PATL-owned property shall consist of the universality of movable and immovable assets and rights that at the date of the entry into force of the present instrument are vested in the Directorate of Sea Transportation, Ministry of Transport and Communications.
2. Movable assets that at the date of publication of this legal instrument are in the service of functional areas that remain within that Directorate shall remain assigned to the Directorate of Sea Transportation, Ministry of Transport, Communications and Public Works.

3. The listing of assets and rights comprising PATL's initial property shall consist of a list to be submitted, within 90 days from the entry into force of the present instrument, to the Minister for Planning and Finance and the Minister for Transport, Communications and Public Works for approval.

4. PATL shall promote with the competent registries the registration of assets and rights that belong to it and are legally subject to it.

5. For all legal purposes, including those of registration, the list referred to in item 3, once approved in the form of a joint instruction under the terms of the same item, shall constitute an acquisition title, in and of itself, of the assets allotted to PATL by force of the present instrument.

6. Acts relating to the transfer of assets and rights provided for in the present Section are exempt from any taxes and fees.

Section 3 Staff

1. Staff from the staffing table of the Directorate of Sea Transportation on an administrative contract of unlimited duration shall be automatically integrated into PATL, maintaining the same legal and professional status in relation to, namely, the nature of the contractual and retirement regime.

2. Staff from the Directorate of Sea Transportation not covered by the preceding item shall be reassigned to PATL, maintaining the same legal and professional status.

Section 4 Management and secondments

1. Holders of executive and managerial positions who are members of managerial bodies of the Directorate of Sea Transportation shall remain in office until the date of appointment of the PATL Board of Directors.

2. The PATL Board of Directors shall be appointed within 90 days from the date of the entry into force of the present instrument.

Section 5 Transitional clause

Internal rules and regulations shall remain valid within the Directorate of Sea Transportation in all that is not in contravention of the present instrument and the attached Bylaws.

Section 6 Revocatory clause

Rules established within the framework of the Indonesian legal system in the field covered by this instrument are hereby repealed.

Section 7
Entry into force

The present instrument shall enter into force on the day following that of its publication.

Seen and approved by the Council of Ministers on 18 July 2002.

The Prime Minister

[Signed]

(Mari Bim Amude Alkatiri)

The Minister for Transport, Communications and Public Works

[Signed]

(Ovídio de Jesus Amaral)

Promulgated on 15 October 2002.

To be published.

The President of the Republic

[Signed]

(José Alexandre Gusmão, Kay Rala Xanana Gusmão)

ANNEX

(referred to in item 2 of section 1)
Bylaws of the Port Authority of Timor-Leste (PATL)

CHAPTER I
General provisions

Section 1
Nature and seat

1. The Port Authority of Timor-Leste, hereinafter referred to as PATL, is a corporate body established under public law and vested with corporate entity and administrative and financial autonomy and property of its own.
2. PATL shall sit in Dili and may establish or take on any forms of representation in any point of the national territory.

Section 2
Regime

PATL shall govern itself by legal rules especially applicable to it, by the present Bylaws and by the respective regulations.

Section 3
Tutelage and supervision

1. PATL shall carry out its actions under the tutelage and supervision of the Minister for Transport, Communications and Public Works.
2. In addition to other control powers established by law, the following shall be subject to the approval by the Minister for Planning and Finance and the Minister for Transport, Communications and Public Works:
 - a) The work plan and the annual budget;
 - b) The annual management report and accounts relating to the financial year;
 - c) The staff remunerative regime.
3. Career and disciplinary regulations are subject to the approval of the Minister for Transport, Communications and Public Works and of the Minister for Internal Administration.

Section 4
Area of jurisdiction

1. PATL's area of jurisdiction shall comprise all areas of interest to a port, including the ports and slipways of Oecussi, Tíbar, Dili, Dili-Pertamina, Hera, Ataúro, Carabela (Baucau), Com (Los Palos), Betano, Beço and Suai.

2. Without prejudice to third party rights established by third party rights formed at a date prior to 1 January 1975, the entire on-shore area surrounding a port shall be deemed as being of interest to that port, taking into account the longest of the following distances:

- a) The area of effective port activity, demarcated by the adjacent public road or, in the absence of such a road, by the fenced area of a port.
- b) A 50-metre strip toward its interior measured from the low tide line, starting from the two extreme points of a port.

3. All the coastline of Dili, externally demarcated by the coastal road and stretching from the Becora brook, to the east, to Pertamina terminal inclusive, to the west.

Section 5 State Public Domain assigned to PATL

1. Pieces of land situated within PATL's area of jurisdiction that are not owned by individuals, as well as berths, wharfs, maritime approaches, and other maritime works therein are deemed as being part of the State public domain assigned to that Institute.

2. Moveable and immovable property vested in PATL, or being part of its property, existing within the area of the State public domain may only be seized or pledged under the same terms as State assets may be.

Section 6 Object and responsibilities

1. PATL shall administer the ports situated within its area of jurisdiction, with the aim of economically running, maintaining and developing such ports, including the exercise of the competencies and prerogatives of a port authority as entrusted or as may be entrusted to it, and shall have the following responsibilities:

- a) Manage, administer and develop ports and areas of the maritime public domain within its area of jurisdiction, ensuring the required efficiency in the use of spaces, both in the wet area and on the ground;
- b) Ensure the coordination of, and monitor, activities being carried out within its area of jurisdiction, without prejudice to the responsibilities entrusted to other entities by law;
- c) Provide or ensure the provision of services relating to the functioning of ports within and outside the area of its jurisdiction, namely in assisting ships and ensuring safe navigation;
- d) Prepare plans on port organisation and extension of port areas and submit them to the competent Minister for approval;
- e) Conduct surveys, plans and projects on sea and land works in compliance with approved plans and programmes;

- f) Build, acquire, maintain and monitor sea and land works, as well as the floating and land equipment of the ports, and also maintain the bottom of, and the access to, such works;
- g) Design and execute a strategic plan for commercial promotion of the ports under its jurisdiction.

2. PATL officials in charge of supervising or monitoring port services as may be needed shall always be allowed free access on board of ships anchored at the ports or docked at berths within PATL's area of jurisdiction, upon presentation of an identity card issued by PATL accrediting them to carry out such mission.

Section 7 Inspection and control

- 1. It is incumbent upon PATL to promote and monitor the enforcement of laws, regulations, rules and technical requirements applicable within the scope of its responsibilities.
- 2. For the purpose of the preceding item, PATL has authority, either directly or through qualified persons or entities credentialed by it, to proceed with the necessary examinations and verifications.

Section 8 Collaboration with other entities

PATL may, within the scope of its responsibilities and in order to ensure the adequate development of the ports of its area of jurisdiction, participate in partnerships with local authorities and other public or private entities, as well as enter into management agreements with other public entities.

Section 9 Licenses

- 1. Only PATL may grant licenses for the execution of works directly related to its activities and levy taxes on such works within its area of jurisdiction.
- 2. The preceding provision shall not preclude advice from the respective local authorities regarding the grant of licenses for the execution of works, under the terms of the applicable legislation.
- 3. In organising files relating to works or in granting other authorisations or licenses within its area of jurisdiction, PATL shall take into account the interests of the Customs and Naval Defence authorities and the prescriptions that regulate the exercise of the functions of such authorities in this respect.

Section 10 Embargo or suspension of works

In the pieces of land situated within its area of jurisdiction, ongoing works may only be embargoed or suspended:

- a) By PATL, when being executed without a license or in case of violation of the conditions of the license as granted;
- b) By the ministers responsible for the defence, customs monitoring and environment, on grounds concerning the exercise of their competencies.

Section 11 Water plumbing

The construction and maintenance of natural watercourses located within PATL's area of jurisdiction shall be carried out in compliance with the following provisions:

- a) The construction and maintenance of plumbing from tributary natural watercourses in the wet area of jurisdiction, as well as the unblocking of such watercourses, when unplumbed, shall, within the extension covered by the same area of jurisdiction, be entrusted to PATL, except if blockage comes about as a result of unnatural factors, in which case expenses related to the unblocking thereof shall be borne by the person who has caused such blockage;
- b) The maintenance and unblocking of drainage ditches and public drainers used exclusively for allowing water in and out in private buildings shall be the responsibility of the respective owners.

Section 12 Pollutants

1. Where the use of buildings and other facilities to be licensed may result in pollution of any nature, PATL shall obtain prior advice from the entities responsible for environmental protection.
2. Within PATL's area of jurisdiction, the discharge of wastewater from industries and homes in contravention of the legislation in force shall be prohibited.
3. Expenses related to the construction and maintenance of sewers across PATL's area of jurisdiction shall be borne by the services of the State, of the districts or by the concerned individuals.

CHAPTER II Competencies and operation of the organs and services;

Section 13 Organs

PATL shall be comprised of the following organs:

- a) The Board of Directors;
- b) The Chairperson of the Board of Directors;
- c) The Monitoring Committee.

Section 14
Organisation of the services

1. The organisation of the PATL services and internal organic units shall be defined in its own regulation to be approved by the Board of Directors.
2. The organisation of such services shall comply with the criteria of horizontal and vertical specialisation of functions as may prove to be most adequate for the good fulfilment of PATL's responsibilities and the rational use of its resources.

SECTION I
Board of Directors

Section 15
Board of Directors

1. The PATL Board of Directors shall be composed of one chairperson and two voting members, appointed by the Prime Minister and nominated by the Minister for Transport, Communications and Public Works.
2. The term of office of the members of the Board of Directors shall be 3 years renewable.
3. In his or her absence or inability to act, the Board of Directors chairperson shall be replaced by such member as may be designated by the Board.

Section 16
Competencies of the Board of Directors

The Board of Directors shall ensure the management and operation of PATL, and shall be incumbent upon it, in especial:

- a) Approve PATL's overall structure and organisation;
- b) Conduct studies and prepare port organisation and extension plans, including sea and land works and port equipment, and submit them to the competent Minister for approval;
- c) Build, acquire, maintain and monitor sea and land works, and floating and land port equipment, as well as execute plans to maintain the bottom of, and the access to, such works;
- d) Prepare the regulations required for the running of the ports and submit them to the competent Minister for approval;

- e) Conduct or authorise the carrying out of port or directly related activities concerning the movement of ships and goods, storage and provision of other services such as water, power and fuel supply and equipment rental, as well as apply sanctions provided for in the law, without prejudice to the competencies conferred upon other entities;
- f) Prepare and submit, within the deadlines established by law, annual and multi-annual work plans and budgets to the competent Minister for approval;
- g) Prepare and submit to the competent Minister a progress and financial report pertaining to the previous financial year for approval;
- h) Define and submit the remunerative regime, the career regulation, the staff's disciplinary regulation and staffing maps to the competent Minister for approval;
- i) Appoint and dismiss officers in charge of such services, as well as admit, hire and dismiss staff as required for the execution of PATL competencies and exercise upon the staff the necessary disciplinary power, in accordance with the applicable law;
- j) Ensure pilotage services at ports and bars;
- k) Propose to the competent Minister the creation of free zones or duty-free bonded warehouses at the ports under PATL's jurisdiction;
- l) Approve the acquisition or alienation of assets and equities when not provided for in approved annual budgets and within the limits defined by law;
- m) Grant licenses or concessions to use assets of the State public domain within PATL's area of jurisdiction;
- n) Propose to the competent Minister measures concerning concessions to run port facilities or related activities, as well as concessions to use areas intended for industrial or trade facilities co-related to such activities;
- o) Ask port clients for statistical elements, data or forecasts concerning activities carried out within its area of jurisdiction, the knowledge of which may be of interest in assessing or determining the overall movement at the ports or for any statistical purpose related to PATL's activity;
- p) Propose to the competent Minister the measures required to guarantee the safety of the port facilities, promoting the required regulations and using adequate ways and means;
- q) Take insurances as may be deemed necessary under the terms of the applicable legislation;
- r) Acquire, alienate, or rent immovable property located either within or outside its area of jurisdiction, under the terms of the applicable legislation, following a favourable opinion from the Monitoring Committee;
- s) Levy and collect taxes on the operation of the ports and all other taxes that legally belong to it and authorise the return of unduly levied amounts;
- t) Promote the coercive levy of income taxes on their activities;
- u) Promote the expropriation of immovable property for public purposes and exercise administrative and port servitudes or powers as defined for port reserve areas;

- v) Approve internal regulations designed for the execution of the present Bylaws and required for the smooth running of such services and monitor the enforcement thereof.

Section 17

Delegation of competencies and representation

The Board of Directors may:

- a) Delegate to the chairperson, with the authority to sub-delegate to any of the voting members, the competencies provided for in the preceding section;
- b) Represent itself through a solicitor in acts or contracts to which PATL is a party.

Section 18

Competencies of the Board of Directors chairperson

It is incumbent upon the Board of Directors chairperson to coordinate and lead activities of the Board of Directors as a whole and, in special:

- a) To convene and chair the Board of Directors meetings, coordinate its activity and promote the execution of its deliberations;
- b) To coordinate the action of all PATL services, making sure that a convenient administrative unity and the highest efficiency thereof are secured;
- c) Whenever exceptional and urgent circumstances so require and the convening of an extra-ordinary meeting of the Board of Directors is not possible, the chairperson may perform any of the acts of the Board of Directors, which shall, nonetheless, be ratified at the first meeting following the performance of such acts;
- d) Represent PATL, in court or elsewhere, namely before the competent Minister, where other agents have not been designated;

Section 19

Operation of the Board of Directors

1. Board of Directors shall meet ordinarily once a week and extraordinarily when convened by its chairperson, on his or her own initiative or at the request of at least one of its two voting members.
2. Board of Directors may only deliberate when the majority of its members are present.

3. Deliberations shall be taken by an absolute majority of the expressed votes, with the chairperson, or his or her substitute, being entitled to a casting vote.
4. Deliberations of the Board of Directors shall be recorded in the form of minutes, to be signed by the members present at the meeting.
5. PATL shall assume an obligation before third parties through the signature of two members of the Board of Directors, being one of them that of the chairperson or the person substituting him or her in his or her absence or inability to act.

Section 20
Status of the Board of Directors members

1. Members of the Board of Directors shall be subject to the status of public managers and shall earn a remuneration as established by a joint instruction issued by the Minister for Planning and Finance, the Minister for Transport, Communications and Public Works, and the member of the Government in charge of Public Administration.
2. The members of the Board of Directors shall exercise their functions in full time.

SECTION II
Monitoring Committee

Section 21
Monitoring Committee

1. The Monitoring Committee shall be composed of one chairperson and two voting members, one of whom shall be an auditor or accountant, to be jointly appointed by the Minister for Planning and Finance and the Minister for Transport, Communications and Public Works.
2. The term of office of the members of the Monitoring Committee shall be 3 years renewable for equal periods.

Section 22
Competencies of the Monitoring Committee

1. The Monitoring Committee shall ensure that the legal, statutory and regulatory rules applicable to PATL or the activities it carries out are adhered to, being incumbent upon it, in special:
 - a) To examine PATL accounting on a regular basis and monitor its progress through data requested from the services;
 - b) To monitor the execution of multi-annual work and financial plans, of annual work programmes and of annual budgets;

- c) To determine the execution of checks and double-checks to ascertain whether book and property values coincide, including those received as a guaranty, deposit or any other title;
- d) Advise on the criteria for evaluating, depreciating and repossessing assets, for establishing provisions, reserves and funds, and for determining results;
- e) Check the accuracy of the financial statement, of the demonstration of results, of the trading account and of the remaining elements to be submitted by the Board of Directors on an annual basis and advise thereon, as well as on the annual report of the said Board;
- f) Bring to the knowledge of the competent Minister any irregularities found in PATL management;
- g) Advise on the legality or convenience of the acts of the Board of Directors where, under the terms of the law, approval thereof or consent thereto is required;
- h) Advise on any issue of interest to PATL submitted to it by the Board of Directors for consideration;
- i) Advise on the acquisition, alienation or encumbrance of immovable property.

2. For the exercise of the competencies as established in this Section, the Monitoring Committee, through its chairperson, may:

- a) Request information and clarifications from the Board of Directors on the course of PATL's operations or activities;
- b) Propose to the Board of Directors external audits whenever it deems that the intended objectives cannot be achieved by PATL's internal audit;
- c) Obtain from entities that may have carried out operations on behalf of PATL information deemed convenient in relation to the services rendered.

3. The Monitoring Committee chairperson may, on his or her own initiative or at the invitation of the Board of Directors chairperson, take part or be represented through other committee members, without a right to vote, at meetings of the Board of Directors.

Section 23 Operation of the Monitoring Committee

1. The Monitoring Committee shall meet ordinarily once a month and extraordinarily as and when called by the chairperson, on his or her own initiative or at the request of any other of its members.

2. Members of the Monitoring Committee shall not be entitled to a monthly remuneration while exercising their term of office within the scope of their normal functions as public servants.

CHAPTER III Staff

Section 24 Regime

PATL staff members shall be covered by an individual labour agreement.

Section 25 Mobility

1. PATL workers may, regardless of the nature of their contract, perform functions in other entities, on secondment, reassignment or requisition, in accordance with the law.
2. Public Administration functionaries or agents, as well as workers of public or private businesses or public companies, may perform functions in PATL, on reassignment, requisition or secondment.
3. Functions performed under the preceding items shall be carried out with security of tenure of his or her place of origin and without prejudice to any rights, such functions being considered, for the purpose of counting the years of service, as having been performed in the place of origin.

Section 26 Powers of authority

1. PATL staff members performing inspection and monitoring functions shall hold the required powers of authority and, in the exercise of such functions, shall enjoy the following prerogatives:
 - a) To access and inspect at any time and without a need for prior notice premises, equipment, services and documents of the entities subject to inspection and monitoring by PATL;
 - b) To requisition equipment and documents for review;
 - c) To identify people who are in flagrant violation of the rules whose observance is incumbent upon it to monitor, in case it is not possible to call in the police authority in time;
 - d) Call in administrative and police authorities when deemed necessary for the performance of its functions.
2. The contents of paragraphs a), b) and d) of item 1 shall also be applicable to authorities and agents credentialed by ATPL for the exercise of monitoring functions, under item 2 of Section 7 of the present Bylaws.

3. Workers and agents credentialed by ATPL, the holders of the prerogatives provided for in this Section, shall use a specific identity card, the specimen of which is to be approved by the Board of Directors, and shall wear it visibly while performing their duties.

CHAPTER IV Ownership and financial regime

Section 27 PATL's revenues

1. PATL's revenues shall comprise:
 - a) Amounts resulting from taxes due on the provision of services provided for in the tariff regulation;
 - b) Other amounts due in relation to the direct provision of services;
 - c) Amounts due in relation to the concession of services, concession or licence to use areas within its jurisdiction, buildings, and the rental of equipment, devices and vessels not covered by the tariff regulation;
 - d) Amounts from fines applied as a result of any breach of the provisions of port regulations;
 - e) Financial contributions, subsidies and grants from the State, from administrative bodies or from other public or private entities;
 - f) Bank deposit interest and other revenues derived from capital investment;
 - g) Proceeds from the alienation or encumbrance of assets belonging to it;
 - h) Proceeds from compensations for breakdowns or damage caused to its property;
 - i) Inheritances, legacies or grants as may be given to it;
 - j) Any other revenues as may be allocated to it in accordance with the law;
2. Appropriations and transfers from the State Budget and financial contributions or transfers and subsidies from any other public entities shall also be part of PATL's revenues.

Section 28 Financial management tools

PATL's financial management shall be disciplined by forward management tools, by reports and by financial statements provided for in the general law applicable to public bodies vested with financial and administrative autonomy.

Section 29
Financial control and accountability

1. PATL's financial activity shall be subject to the control exercised by the Monitoring Committee, directly or through independent entities commissioned to conduct audits, as well as to other control systems provided for in the law.
2. Once approved by the competent Minister, PATL's accounts shall be referred to the Audit Court for judgment.

Section 30
Exemption from taxes

PATL shall be exempt from any taxes, charges and fees in proceedings of any nature, notarial acts and others in which it may take part.

Section 31
Subsidiary regime

In all matters not explicitly provided for in the present Bylaws, the financial regime for Public Administration bodies vested with financial and administrative autonomy shall be applicable to PATL.