

## UNOFFICIAL TRANSLATION

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### RULES RELATING TO ACCESS TO OFFICIAL DOCUMENTS

There are no legal rules in Timor-Leste that regulate the aspects related to documents produced by public entities, namely their nature and access.

In this sense, the need arises to approve a legal regime on official documents that guides the treatment to be given to them, in terms of the confidentiality of the matters and regulates their access by the public.

Bearing in mind the right of the interested parties to the information and the right of the open administration, provided for in Decree-Law No 32/2008 of 27 August approving the Administrative Procedure, it is provided for the public to have access to official documents, Provided that they do not integrate confidential matters.

As for documents that integrate confidential matters, due to strong reasons for the defense of State Security and public interest, which also merit constitutional protection, the interested parties can only access them when duly authorized.

The approval of the present regime allows the adoption of uniform criteria by public entities for the relationship with those interested in accessing official information and for the adequate protection of matters whose knowledge may affect the interests of the State constitutionally protected.

The provisions of this statute do not preclude the application of special regimes governing the matters of State Secret or Justice.

Like this,

The Government decrees, in terms of paragraph b) of paragraph 1 of article 115 of the Constitution of the Republic, to validate as law, the following:

### Chapter I General provisions

#### Article 1 Subject matter and scope

1. The present decree-law establishes the rules to be

Access to official documents.

2. This diploma shall apply to:

- A) To the organs and services of the Direct Administration of the State
- B) To the organs and services of the Indirect Administration of the State;
- C) To the Municipalities;
- D) Public companies;
- E) To other entities in the exercise administrative functions or public powers

3. This decree-law is without prejudice to the system of of documents that deal with matters subject to State or Justice secrecy.

#### Article 2

##### Definition

For the purposes of this Directive, the official document means any information medium in written, visual, sound, electronic or other material form in possession

of the bodies and entities referred to in paragraph 2 of the previous article.

Official documents include the following:

- A) Internal normative orders;
- B) Circulars;
- C) Guidelines or Guidelines;
- D) Instructions,
- E) Service orders;
- F) Memoranda;
- G) Minutes;
- H) Opinions;
- I) Offices;
- (J) Protocols;
- K) Reports;
- L) Contracts;
- (M) any other documents or communications which Administrative framework or interpretation of law.

3. Official documents for the purposes of this Directive shall not include the following:

- A) Personal notes;
- B) Outlines;
- C) Notes and other records of a similar nature.

#### Article 3 General Principles

1. Access to official documents shall be ensured in accordance

Of the present law in accordance with the following principles:

- A) Transparency;
- B) Equality;
- C) Impartiality;
- D) Protection of Personal Data.

2. Access to official documents includes consultation, or reproduction of information on its existence and content, without prejudice to the access restrictions defined in this law.

3. The restriction on access to official documents that are confidential in nature obeys the following principles:

- A) the necessity;
- B) Proportionality;
- C) Adequacy;
- D) Subsidiarity

4. The provisions of this law shall not affect the right of all to be informed, by law, of the law on the progress of the processes in which they are directly interested and to know the definitive resolutions that are taken on them.

Article 4 Language of official documents 1. Official documents may be accessed by the public, under the terms and conditions defined in this statute. All official documents must be written in case they are not confidential. Tetum or Portuguese or in the Indonesian or English language when this proves necessary.

2. Communications with international entities may be made in the official languages or in the language of the entity where this is strictly necessary.
3. The use of languages other than official languages and working languages does not preclude definition as an official document under the terms of this diploma.

## Chapter II Access regime to official documents

### Article 5 Access regime

Can be accessed by the public with the express authorization of the member of the competent Government who directs the organs and services integrated in the Direct Administration of the State or, in the other organs and services, by the maximum leader of the service or entity, or whom these delegate.

### Article 6 Confidential Matters

Without prejudice to the principle of open administration, access to official documents may be refused in the cases provided for in the following articles:

A) Those related to State Defense and Security, in accordance with definitions of the legislation in force, whose knowledge may endanger or may cause damage to the defense or internal and external security of the State;

B) Those that reveal commercial, industrial, scientific, Technical, financial or economic secrets;

(C) those containing matters relating to industrial relations or contractual obligations established with the State, the knowledge of which undermines the privacy of private life or the disclosure of personal data;

(D) Those relating to the preservation of fundamentally constitutional interests of the State, namely, the integrity of the territory, national sovereignty, patrimony, protection of the population, financial and economic stability and national development;

(E) those relating to the strategy to be adopted by the State within the Negotiations with other States or international organizations;

(F) those transmitted, on a confidential basis, by Foreigners or international organizations;

(G) Those relating to the preservation and security of economic and energetic resources.

### Article 7

The official documents can be accessed by the public in the terms and conditions defined in the present diploma if they are not confidential nature.

Documents that integrate confidential matters can only be accessed by the public with the express authorization of the competent government member who directs the agencies and integrated services in the direct administration of the state or in the other bodies and services by the maximum leader of the service or entity, or whom they delegate

### Article 8 Restrictions on the right of access

1. The refusal of access to official documents must be based on the nature of the matters referred to in Article 6 and on the risk weighting of access to the security of the State and the protection of the public interest, taking account of the principles laid down in paragraph 3 Of Article 3.
2. The total or partial refusal of access to documents must be justified to the applicant in writing.
3. Access to documents preparatory for a decision may be deferred until the decision is taken, the proceedings are closed or after one year after they have been drawn up.
4. Access to investigations and investigations takes place after the expiry of the period for any disciplinary proceedings.
5. A third party may only have access to documents on an identified or identifiable natural person, appraisal or value judgment, or information covered by the privacy reserve, if it has a written authorization from it or demonstrates a direct, personal and legitimate interest sufficiently relevant in accordance with the principle of proportionality.
6. A third party may only have access to documents containing trade, industrial secrets or the internal life of an undertaking if it has received a written authorization from it or demonstrates a direct interest in accordance with the principle of proportionality.
7. Documents of a confidential nature shall be communicated in part where it is possible to purge the information relating to the subject matter.

### Chapter III Authorization procedure

#### Article 9 Form of access

1. Access to documents is done in the following ways:
  - A) Free consultation at the place where the Documents;
  - B) Photocopy, in a copy, or any other technical means that allows the reproduction of the document;
  - C) Issuance of Certificate.
2. The reproduction or issuance of a certificate shall ensure the intelligibility of the document.
3. The entities that hold the documents may charge administrative fees for the reproduction or issuance of certificates whose value is not disproportionate to the costs incurred by the services and does not exceed the average value charged by the corresponding service.
4. The value of the administrative costs of the services integrated in the Direct and Indirect Administration of the State is defined by Government Diploma.
5. Administrative charges should be posted in a place accessible to the public.

#### Article 10 Requirement of access

All interested parties, without having to invoke any interest, must to the competent government official or to the director of the entities referred to in Article 1, in order to access the content and information of official documents must file an application.

2. The application referred to in the preceding paragraph shall mention, under penalty of refusal, the following elements:
  - A) Identification of the document to be accessed;
  - B) Identification of the form of access to the document, in Pursuant to paragraph 1 of the preceding article;
  - C) Identification of name, address, contact and signature of the applicant.
3. In the cases provided for in Article 8 (5) and (6), the parties concerned shall attach their authorizations to the application.
4. Public entities must provide the necessary support to the public for the best and correct identification of the document to be consulted.

#### Article 11 Reply to application

It is the responsibility of the member of the competent government or the top officer of the department or entity, or in whom they delegate, within 10 working days, to respond to the requests submitted under the terms of the previous article, being able to:

- A. To reject the request in the first instance, pursuant to paragraph 2 of the preceding article;
- (B) invite the applicant to refine the application for lack of clarity of the document or identification of the document;
- (c) Authorize access, through the issuance of a certificate, reproduction of the document or marking of date, time and place for consultation;
- (d) Refuse access to the document, explaining the grounds of the same, under the terms of this decree-law.

#### Article 12 Re-use of documents

The re-use of documents is subject to the express authorization of the entities referred to in Article 1, and Articles 9 to 11 of this law shall apply *mutatis mutandis*. Documents whose access has been authorized pursuant to the present law may be reused for purposes other than the public service, without prejudice to the obligation to maintain the meaning and the information contained therein and the mention of the source and with respect for the protection of personal data and reservation Privacy.

. Documents which are not subject to reuse

Covered by copyright or related rights.

The registered documents can only be reused with the authorization of a title.

#### Article 13 Responsibility

Each entity referred to in Article 1 shall designate someone responsible for monitoring and evaluating compliance with the regime established in this law.

### Chapter IV Counter-Orders

#### Article 14 Counter-Orders

1- The following acts constitute a misdemeanor:

- (A) the re-use of confidential documents without

Authorization referred to in Article 7 (2);  
(B) the re-use of documents without authorization  
Provided for in Article 8 (5) and (6);  
(C) the re-use of documents without the presentation of  
Application pursuant to Article 10 (1);  
D) The re-use of documents without observing the remaining conditions of re-use  
defined in article 12.9,  
(E) the collection of personal data and life information  
Subject to Article 16.

2. The offenses referred to in points a), b) and e) of the number  
Shall be punishable by the following fines:

A) From \$ 300.00 (three hundred dollars) to \$ 5,000.00 (five thousand  
Dollars) in the case of natural persons;  
B) From \$ 700.00 (seven hundred dollars) to \$ 30,000.00 (thirty thousand  
Dollars), being a legal person;

3. The offenses referred to in paragraph 1 (c) and (d) shall be  
With the following fines:

A) From \$ 50.00 (fifty dollars) to \$ 2,500.00 (two thousand and five hundred  
dollars), in the case of natural persons;  
B) From \$ 300 (three hundred dollars) to \$ 15,000.00 (fifteen thousand  
Dollars), being a legal person.

Article 15 Application and proceeds of fines

1- The investigation and enforcement of the administrative offense proceedings  
shall be the responsibility of the competent services of the entities referred to in  
Article 1 which are aware of the infringement.

2- The product of the fines reverts to the state coffers.

Chapter V Final provisions

Article 16 Collection and access to personal data and privacy

1. The collection of personal data and life information  
Including health data, shall be expressly authorized by the persons to whom the  
information relates.

2. Information can only be collected by professionals  
Duly authorized and certified for that purpose.

3. The information collected is confidential, and the collected data can not be  
inserted in any publications or provided to any person or entity, nor can it be passed  
a certificate.

4. The duty of confidentiality referred to in the preceding paragraph binds all parties  
involved in the process of collecting, filing and filing data.

5. Individual data may not be disclosed without the express written consent of the  
persons concerned and the communication of data shall be made through an  
authorized or certified professional if the applicant so requests.

6. The data provided for in accordance with this Article may only be accessed by the person to whom the information relates and the professionals duly authorized and certified for that purpose.

#### Article 17 Archive Security

1. The physical or digital file of the official documents must safeguard the security and protection of the same, under the terms of the regulation to be approved.
2. The physical support of confidential documents shall be stored in a place that is not accessible to the public and to persons of the service who are not authorized to access

#### Article 18 Confidentiality

1. Holders of political offices or persons in the exercise of public functions and any other persons who, by virtue of their functions, have access to confidential documents or information, are bound by the obligation of secrecy and to comply with all measures and Established in respect of official documents.
2. Failure to comply with the provisions of the previous number shall give rise to civil, disciplinary and criminal liability under the law.

#### Article 19 Guarantees

Acts of refusal of access to official documents of a confidential nature are subject to a hierarchical and judicial appeal in accordance with the law.

#### Article 20 Regulation

The rules for the preparation of official documents are approved by Government Decree. .

#### Article 21 Entry into Force

This Decree-Law shall enter into force on the day following the Publication.

Approved by the Council of Ministers on August 2, 2016.

The Prime Minister,

Dr. Rui Maria de Araújo

Promulgated on 10-13-2016

Post it.

The President of the Republic,

Taur Matan Ruak

Series I, No. 404 Friday, October 14, 2016