

DEMOCRATIC REPUBLIC OF TIMOR-LESTE

GOVERNMENT

DECREE-LAW N° 07 /2006

CODE OF BUSINESS REGISTRATION

The commitment made by the Government to achieve the national development goals has led to the preparation and approval of a set of laws that are especially relevant to the business sector, the most prominent of which are the Law on Trading Companies, the Law on National and Foreign Investment, the Regime for Insurers, the Regime for Cooperatives, and the laws on the oil and mineral resources sector, among others.

The establishment of a business environment allowing for direct national and foreign private investment and responsive in an effective and quick manner to the needs of private operators, both national and foreign, requires a consistent legal base for the safety of business activities.

However, the absence of a sound legal system providing for clear and transparent administrative procedures for the incorporation and registration of trading companies or cooperatives would encourage business operators to carry out their activities outside the formal system, thereby paving the way to the emergence of a parallel economy, which would hold back the development of Timor-Leste.

Accordingly and taking into consideration the fact that the main laws applicable in Timor-Leste and which are closely related to business registration, i.e., the Law on Trading Companies, the Regime for Notarial Offices, the Law on Cooperatives, the Law on Public Companies, and the law on not-for-profit corporate entities, require that the establishment of business corporations, cooperatives, associations or foundations, NGOs, public companies and other legal entities is to be registered with the National Directorate for Registration and Notarial Offices, which is under the Ministry of Justice, it is important to approve as soon as possible a legal regime for business registration so that the provisions of the said laws are fully complied with.

This draft Decree-Law on the Code of Business Registration has been prepared following a comparative analysis of legal regimes inspired by the Roman law and taking also into account suggestions put forward during several meetings with a number of international consultants assigned to the Ministry of Development and the Ministry of Justice.

The most important guidelines contained in this draft Decree-Law on the Code of Business Registration are as follows:

- the Decree-Law is more comprehensive and elaborate about matters regulated by business registration and this purpose is achieved through an improved legal systematisation and through the contents of definitions on legal concepts provided for in the instrument, thereby making its analysis and interpretation easier. Examples of this can be found in definitions on clearly distinct legal concepts as “ *sole ownership operator*”, “ *sole ownership of limited liability*”, “ *trading companies*”, “ *cooperatives*”, “ *public companies*”, “ *company subsidiary groups*” and “ *corporate name*”;
- the Decree-Law allows for the registration of future sole ownership operators, groups of establishments and corporate names; it also provides for the regulatory framework related to the business environment that the Government is planning to approve soon such as the special regime for sole ownership operators and the regime for intellectual property and patent rights, among others;
- the Decree-Law provides for the establishment of a computer-based name file to be jointly accessed online by the Ministry of Justice and the Ministry of Development to quickly and efficiently certify in real time the legality and admissibility of corporate names, patents, legal names and logos, by both business operators and public services responsible for such certification and control;
- Another important feature of this instrument is the fact that it does not *ab initio* demarcate the territorial competences of Business Registration Offices, thereby eliminating the negative consequences the inexistence of registration services would bring to business operators; it rather leaves to the Ministry of Justice the responsibility for organizing its own registration and notarial services, on the one hand, and on the other it gives business operators the possibility to register themselves wherever business registration offices are available, irrespective of the seat of a company's or business establishment's main office;

This arrangement contributes towards the creation of a better business environment as it allows a business operator to approach any one-stop type public office with a registration and notarial service;

Once a computer-based system for business registration and notarial services is in place information on registration can be transmitted online and in real time to the Ministry of Justice, thereby avoiding completely the red tape, the financial costs and the intensive human resources element involved in the principle of the territorial-competence demarcation for business registration offices.

This Decree-Law therefore provides for the use of computer facilities in organizing business registration as an arrangement to be implemented in the future for online registration;

Finally, drawing on the most modern models of legal systematization and codification, the Decree-Law itself regulates in its Chapter VI matters related to challenging and disputing decisions by a registrar, making it unnecessary to have additional separate legislation dealing with this issue; this is intended to simplify the *right of access* by those citizens targeted by the code of business registration and to guarantee at the same time their *right to counsel* against possible legal errors by a registrar.

Under the terms of the provisions of paragraphs e), k), and o), Item 1, Article 115, and paragraph d), Article 116, of the Constitution of the Republic, the Government enacts the following to have the force of law:

#### **Article 1**

The attached Code of Business Registration is hereby approved and it shall be part and parcel of this Decree-Law.

#### **Article 2**

This Decree-Law and the Code of Business Registration shall enter into force ninety (90) days after its publication.

#### **Article 3**

1. UNTAET Regulation n°. 2002/4, of 23 April, on the Registration of Businesses is hereby revoked.

2. Any rules contained in legislation that provides for arrangements contrary to those adopted in the attached Code of Business Registration, namely Directive n°. 2001/4, of 17 May, on the Registration of Charities, are also revoked by this Decree-Law.

Approved by the Council of Ministers on 21 December 2005.

The Prime Minister

[SIGNED]

(Mari Bim Amude Alkatiri)

The Minister of Justice

[SIGNED]

(Domingos Maria Sarmento)

The Minister of Development

[SIGNED]

(Abel da Costa Freitas Ximenes)

Promulgated on 3 February 200[6].

To be published.

The President of the Republic

[SIGNED]

(Kay Rala Xanana Gusmão)

**ANNEX**  
**CODE OF BUSINESS REGISTRATION**

**CHAPTER I**  
**NATURE AND RELEVANCE OF REGISTRATION**

**Section I**

**Purpose and object of registration**

**Article 1**

**Purpose of registration**

1. Business registration is aimed at publishing the legal status of sole ownership operators, trading companies, non-trading companies of a business nature, sole ownerships of limited liability, cooperatives, public companies, and company subsidiary groups, for the sake of business legal security.
2. The registration of cooperatives, public companies, company subsidiary groups, sole ownerships and corporate bodies subject to registration by law shall be governed by the provisions of this Code, except where provided otherwise.

**Article 2**

**Sole ownership operators**

The following matters related to sole ownership operators shall be subject to registration:

- a) Corporate name;
- b) The beginning, change and termination of activities;
- c) Change of marital status and property regime;
- d) Change of home address or main business office address;
- e) Any amendment to information provided for in paragraphs a) and d) above.

**Article 3**

**Trading companies and non-trading companies of a business nature**

1. The following facts related to trading companies and non-trading companies of a business nature shall be subject to registration:
  - a) A deed for the incorporation of a company, including its articles of association and amendments to such articles;
  - b) Change of a company's main office and establishment of branches;
  - c) A decision by a general meeting to purchase assets, where it is required by law.
  - d) The merging, demerging and transfer of shares of a limited liability company and equities of a limited partner in a limited partnership;
  - e) A commitment to dispose of, or impose an encumbrance on, parts of the capital of a general partnership or a limited partnership, or to dispose of or impose an encumbrance on shares of limited liability company, as well as preference pacts, where it has been agreed to grant such pacts actual effectiveness, and preference obligation to which, in a last will provision, the testator has granted equal effectiveness;
  - f) Transfer of equities of a general partnership, equities of full partners in a limited partnership, establishment of actual benefit or guarantee rights on them, as well as transfer, modification and termination of such rights, including the withholding of entitlements to profits and liquidation shares;
  - g) Establishment, benefit transfer, pledge, attachment, inventory and sequestration of shares or entitlements to such shares, and any other act or provision affecting free disposal of such shares;
  - h) Dismissal and exclusion of partners in a general partnership or limited partnership, and termination of equities as a result of death of a partner and the acceptance of new limited liability partners;
  - i) Authorization to keep in the corporate name the individual name or surname of a partner who has withdrawn or died;
  - j) Amortization of shares and exclusion or dismissal of a partner in a limited partnership;
  - k) A decision on the amortization, conversion and remission of shares;
  - l) Issuance of bonds through public offer and public subscription;
  - m) Designation and cessation of functions, for any cause other than time elapsed, by members of governing and auditing bodies of a company, including the functions of a company secretary;
  - n) Reports on financial accounts of a public limited company, a limited company with shares, a limited partnership and general

partnerships - where there is a requirement for deposit-, as well as reports on consolidated accounts of a company under the obligation to do so;

- o) A plan to merge or demerge companies and the decision approving such a plan, as well as a decision to reduce the share capital of a company;
- p) The extension, merging, demerging, transformation and dissolution of companies, as well as an increase in, reduction in or reintegration of share capital and any other change in a company's incorporation charter;
- q) The designation and cessation of functions, prior to the closing of liquidation, by a company's liquidator, and acts to change the legal or contract powers of a liquidator;
- r) The closing of liquidation or the return of a company into business;
- s) A decision to maintain total control over a company by another in a group relationship, including the duration of such status;
- t) A subordination agreement, its modifications and its duration;
- u) Issuance of autonomous warrants on the basis of own real estate values placed through special subscription by an entity that does not have real estate values admitted for negotiation on the national regulated market, and issuance placed through public subscription outside the national market.

2. If the issuance of autonomous warrants on the basis of own real estate values is subject to registration with the entity overseeing the monetary and exchange market, a statement proving such registration shall be deposited in the company's records on a self-effecting basis when such statement is received from the business registration office.

#### **Article 4**

##### **Sole ownerships of limited liability**

The following facts related to sole ownerships of limited liability shall be subject to registration:

- a) The incorporation of a company;
- b) The beginning of a company's activities;
- c) Change of the location of a company;
- d) The establishment of branches of a company;
- e) An increase or reduction in a company's capital;

- f) The transfer of a company following an act by living people and the company's leasing;
- g) The establishment, following an act by living people, of benefits and pledge over a company;
- h) Annual accounts;
- i) Changes to a company's incorporation charter;
- j) The entry of a company into liquidation and the closure of such liquidation;
- k) The designation and cessation of functions, prior to closure of liquidation, of a company's liquidator where he or she is not the company's owner;
- l) Any change to elements indicated in the previous paragraphs.

**Article 5**  
**Cooperatives**

The following facts related to cooperatives shall be subject to registration:

- a) The establishment of a cooperative;
- b) The appointment and cessation of functions, for any cause other than time elapsed, of directors, representatives and liquidators;
- c) The pledge, attachment, inventory and sequestration of parts of the capital of a limited liability cooperative;
- d) Extension, transformation, merger, demerging and any other change to articles of association;
- e) Dissolution of a cooperative and closure of its liquidation.

**Article 6**  
**Public companies**

The following facts related to public companies shall be subject to registration:

- a) The incorporation of a public company;
- b) The issuance of bonds and equity securities;
- c) The grouping, merger, demerger and any other change to articles of association;
- d) The termination of a public company, the designation and cessation of functions, prior to closure of liquidation, of a liquidator and the closure of such liquidation.



**Article 7**  
**Company subsidiary groupings**

The following facts related to company subsidiary groupings shall be subject to registration:

- a) The incorporation of a grouping;
- b) The issuance of bonds;
- c) The appointment and dismissal of administrators and managers;
- d) The entry, dismissal and exclusion of members of a grouping;
- e) Changes to an agreement;
- f) Dissolution of a grouping and closure of its liquidation.

**Article 8**  
**Other facts subject to registration**

The following shall also be subject to registration:

- a) A written trading mandate, its modifications and termination;
- b) The establishment, change and closure of permanent representative offices of a company or other corporate bodies abroad, as well as the designation, granting of powers and cessation of functions of such representative offices;
- c) Reporting on the accounts of a company headquartered abroad and having a representative office in Timor-Leste;
- d) An agreement of an agency or trading representation, if entered into in writing, its modifications and termination;
- e) Any other facts declared by the law as being subject to business registration.

**Article 9**  
**Acts and decisions subject to registration**

The following shall be subject to registration:

- a) An act to ban and disqualify a sole ownership operator and the lifting of such an act;

- b) An act whose main or accessory purpose is to declare, make public, establish, modify or terminate any of the rights referred to in Articles 3, 4, 5, and 7;
- c) An act to declare the nullity or cancellation of the charter of a registered company or company subsidiary grouping;
- d) An act to declare the nullity or cancellation of the incorporation of a cooperative or sole ownership of limited liability;
- e) An act to declare the nullity or cancellation of a ruling by a decision-making body and a restraining order to suspend such a ruling;
- f) An act to reform, declare null and void or cancel registration records;
- g) A non-specified restraining order required in connection with actions referred to in the preceding paragraphs;
- h) A final court ruling made in connection with restraining orders and procedures referred to in the preceding paragraphs;
- i) Special action for the recovery of a company and the decision for the action subject to registration by law to proceed;
- j) Proceedings of a meeting of creditors that has approved or rejected the provisions for the recovery of a company, as well as the decisions to endorse or reject such provisions;
- k) Decisions that during the course of special actions for the recovery of a company declare as expired the effects of a decision for such actions to proceed;
- l) Decisions putting an end to action for the recovery of a company;
- m) Final court judgement declaring the bankruptcy of a sole ownership operator or a trading company, as well as the insolvency of a cooperative or a company subsidiary grouping;
- n) Final court judgement on the lifting of bans and rehabilitation of a bankrupt or insolvent company.

## **Section II**

### **Effects of registration**

#### **Article 10**

##### **Assumptions derived from registration**

Final registration shall constitute an assumption that the registered entity has a legal status under specific terms in which such status is defined.

#### **Article 11**

##### **Registration priority**

1. The right registered first shall prevail over those that come after it in relation to the same facts or assets, according to the order of submission.
2. Registration converted to its final status shall maintain the priority it enjoyed as a provisional one.
3. In case of rejection, registration made following a claim or appeal considered as valid shall maintain the priority of the rejected act.

#### **Article 12**

##### **Effectiveness among parties**

1. Facts subject to registration may be evoked by parties to such facts or by heirs thereto.
2. The provisions of this article shall not apply to incorporation of companies and changes thereto, which shall be subject to the provisions of the Law on Trading Companies.

#### **Article 13**

##### **Applicability to third parties**

1. Facts subject to registration shall only be applicable to third parties after the date of registration of such facts.
2. Facts subject to registration and mandatory publication in official gazettes shall only be applicable to third parties after the date of publication.
3. Failure to register a fact cannot be imputed to an interested party or their heirs by legal representatives and such representatives shall have the obligation to promote the missing registration.

#### **Article 14**

##### **Non-compliance with the obligation to register**

1. Sole ownership operators who are not registered shall not benefit from the legal effects of registration in relation to a third party, neither can

they claim lack of registration to eschew responsibilities and obligations related to registration.

2. A company and its affiliate branches shall not be transferred between living people, placed under lease or encumbered if it is not registered.

#### **Article 15**

##### **Challenging registered facts**

1. A fact proven to be registered shall not be challenged in court unless its cancellation is simultaneously requested.
2. A case in which no request is made for cancellation as provided for in the preceding item shall not be moved forward once the related case records have been drawn up.

#### **Article 16**

##### **Deadlines**

1. Registration of facts referred to in Article 3 shall be requested within 15 days from the date they have occurred.
2. Registration of facts referred to in Articles 2, 4, 5, 6, and 7 shall be requested within one month from the date they have occurred.
3. Acts to declare the nullity or cancellation of the incorporation charter of a trading entrepreneur, a trading company or other corporate bodies, as well as rulings by decision-making bodies shall not be moved forward once the records of a case have been drawn up, unless evidence is produced to indicate that registration has been requested.
4. In restraining procedures to suspend a ruling from a decision-making body, no decision is to be made unless evidence referred to in item 3 above is produced.
5. Registration of decisions made in connection with orders and injunctions referred to in the preceding items shall be requested within 90 days from the date of a final court judgement on the matter.

#### **Article 17**

### **Expiration**

1. Registration shall expire by operation of law or when the duration of a business has elapsed.
2. Provisional registration shall expire if it is not converted into final registration or renewed while it is still valid.
3. Provisional registration shall be valid for one year, except if provided otherwise.
4. Expiration shall be added to the document of registration as a marginal note.

### **Article 18**

#### **Special deadlines for expiration**

1. Registration of attachment, sequestration, pledge, garnishment of earnings, seizure, inventory and other restraining orders shall expire after 10 years from the date it was made.
2. Registration of benefits from interests, pledge over equities and trading mandate shall expire after 50 years from the date it was made.
3. Registration referred to in the preceding items may be renewed for periods of the same duration.

### **Article 19**

#### **Cancellation**

1. Registration shall be cancelled when rights, encumbrances or burdens as defined in deposited documents have been terminated, to enforce an administrative decision, if provided for by the law, or to enforce a final court ruling.
2. Cancellation of registration shall be added to the document of registration as a marginal note.

### **Article 20**

#### **Cancellation of registration of a sole ownership operator**

1. Where a registrar realizes that a registered sole ownership operator has been out of business for more than two years, the registrar shall notify him or her to indicate within 90 days whether he or she wishes to maintain the registration.
2. If the sole ownership operator does not indicate within the timeframe referred to in Item 1 above whether or not he or she wishes to maintain the registration, the registrar shall proceed with its cancellation.
3. A sole ownership operator who stops his or her business may, at any moment, request the cancellation of his or her registration.

**Section III**  
**Registrations**

**Article 21**  
**Inaccuracies**

1. Registration shall be deemed inaccurate if it shows that it was made without complying with the deed on which it was based or if it displays shortcomings arising out of such deed and which are not a motive for nullity.
2. Inaccurate registration shall be rectified in accordance with Article 84.

**Article 22**  
**Nullity**

1. Registration shall be null and void if:
  - a) It is forged or it has been made on the basis of forged deeds;
  - b) It has been made on the basis of a deed that is not sufficient legal evidence of the registered fact;
  - c) It displays omissions or inaccuracies resulting in uncertainties about the subjects or objects of the legal relationship referred to by the registered fact;
  - d) It has been signed by a person not qualified to do so, except in cases provided for in special legislation;

- e) It has been drawn up without prior production of a succession agreement or by violating the rules of succession.
2. Null and void registration can only be rectified as provided for by the law if the nullity declaratory act is not registered.
  3. However, null and void registration can only be evoked after it has been declared as such in a final court ruling.
  4. A declaration of nullity of registration shall not affect rights acquired against a fee and in bona fide by a third party if registration of the facts concerned occurred before registration of the act to render null and void.

## **CHAPTER II ORGANIZATION OF REGISTRATION**

### **Article 23 Competence for registration**

For facts subject to business registration under the terms of the law, competence shall rest with the Business Registration Office.

### **Article 24 Computer facilities**

Business registration shall be supported by computer facilities.

## **CHAPTER III REGISTRATION PROCESS**

### **Section I General Provisions**

### **Article 25 Initiation of legal proceeding**

Registration shall be carried out at the request of the interested parties, except in those cases where the law provides for self-effecting registration.

### **Article 26**

### **Eligibility**

1. Every person who has an interest in a fact subject to registration shall be eligible to request such registration, except where provided for otherwise in special legislation.
2. For the registration of acts related to sole ownership operators, sole ownerships of limited liability and corporate bodies subject to registration those entities themselves or their representatives shall be eligible to apply for registration.
3. Registration of the beginning, change and termination of the activities of a sole ownership operator and registration of a sole ownership of limited liability, as well as a change of residence address and main office may only be requested by those entities themselves or by their representatives.
4. For the registration of a preliminary draft in corporation charter of a public limited company with a call for public subscription to shares or for the registration of a planned merger or demerger of companies only the respective promoters shall be eligible to request such registration.
5. The Public Prosecution Office shall be eligible to request the registration of acts it proposes and related final decisions.

### **Article 27**

#### **Representation**

1. Registration may be requested by a legally appointed attorney, by a person with representation powers to act upon the respective deed, or by a lawyer having an office in Timor-Leste and with valid power of attorney.
2. Challenging a registrar's decision shall require specified power of attorney, except if such challenge is backed by a representative with general forensic powers or by the lawyer who has requested the act being challenged.



3. Representation shall include powers to request urgency for registration and it shall imply joint liability by the representative to meet fees involved.

#### **Article 28**

##### **Principle of succession agreement**

Final registration of acts changing ownership over sole ownerships of limited liability, trading companies, limited liability companies, joint-stock or equity companies, as well as rights over them shall require an intervention by the respective owner as stated in the records or by a duly appointed representative, except where the fact concerned is a consequence of another fact registered previously.

#### **Article 29**

##### **Admissibility of a corporate name**

1. A business operator who wishes to register or change his or her corporate name may request a registration office to certify whether the corporate name is legally admissible.
2. An applicant shall indicate the corporate purpose of the company and may attach any documents he or she deems fit to the application for certification to substantiate the request for the admissibility of the corporate name.
3. Applicants shall be requested on a self-effecting basis to attach evidence necessary to verify requirements provided for in the law.
4. Failure to submit evidence within established deadlines, which shall not be less than 10 days, shall result in the dismissal of a request.
5. A certificate shall be issued within 10 days.
6. If a corporate name is considered as legally inadmissible, the certificate shall be duly substantiated and it may be challenged under the terms of this Code.
7. The validity of a certificate on the admissibility of a corporate name shall be dependent upon verification, at the time of registration, of

conditions expressed therein, namely the corporate purpose and partners declared therein.

8. A certificate on the admissibility of a corporate name shall expire after 60 days from the date of issuance.
9. An error in the issuance of a certificate on the admissibility of a corporate name shall exempt its applicant from paying emoluments or fees arising out of the issuance of a new certificate, its rectification, if necessary, and acts of registration that have to be rectified because of the error.

### **Article 30**

#### **Means of control over the legality of the adopted corporate name**

1. For control over the legality of a corporate name, the Business Registration Office and appropriate services of the trade and industry sectors shall maintain an updated file of corporate names, patents, legal names and logos of companies with reciprocal access supported by computer facilities.
2. For the purpose of the preceding provisions, the Business Registration Office shall maintain a name file supported by computer facilities.

### **Section II**

#### **Documents for registration**

### **Article 31**

#### **Documental proof**

1. Only facts contained in documents legally proving such facts may be registered.
2. Documents submitted shall be written in one of the official languages of Timor-Leste.
3. Documents referred to in paragraphs 1 and 2 above, which are written in a foreign language, shall only be accepted when accompanied by a translation certified under the terms of the Notarial Legal Regime approved by Decree-Law n.º3/2004, of 4 February.

4. Documents issued outside Timor-Leste shall, *mutatis mutandis*, be subject to the provisions of the Notarial Legal Regime referred to in paragraph 3 above.

### **Article 32**

#### **Supplementary statements**

Statements supplementary to deeds shall all be admitted in those cases provided for by the law, namely for a full identification of the parties, managers, administrators, directors, liquidators and other representatives of corporate bodies, without prejudice to the requirement for proof of marital status.

### **Article 33**

#### **Sole ownership operator**

1. Registration of the beginning, change and termination of a sole ownership operator's activities, as well as registration of a change in his or her personal details, shall be made on the basis of a statement by the interested party indicating the following:
  - a) Full particulars and, where married, the property regime adopted;
  - b) The adopted corporate name;
  - c) Indication of the company's corporate purpose.
2. A request to change the marital status or property regime of a sole ownership operator shall be submitted with a deposit of the respective documental proof.

### **Article 34**

#### **Companies**

1. For the registration of the incorporation of a company the following documents shall be required:
  - a) A copy of the company's incorporation charter and its articles of association as contained in a specific document or public deed, under the terms of Article 7 of the Law on Trading Companies;

- b) A list with the name and home address of each partner, the name of his or her spouse and their property regime when married or, when single, an indication that they are minors or adults;
  - c) A list with the names and home addresses of administrators, the sole auditor, members of the audit council and the company secretary, where applicable, as well as a copy of a signed statement from each of them accepting the positions to which they have been appointed;
  - d) Documental proof showing that a deposit has been made with a banking institution for an amount equivalent to the cost of realizing the share capital of the company, as provided for in Article 16 of the Law on Trading Companies.
2. For the registration of a company whose incorporation is dependent upon prior authorization as clearly provided for in the law, submission of the respective original evidentiary document shall also be necessary for deposit.
  3. Provisional registration of a draft incorporation charter of a public limited company with a call for public subscription to shares shall be made upon submission of the said full draft incorporation charter, with certified signatures of all interested parties, a document proving the release of shares subscribed by them and, where necessary, authorization for public subscription to or issue of shares under the terms of the Law on Trading Companies.
  4. The provisions of paragraph 3 above shall apply, mutatis mutandis, to the provisional registration of a plan to merge or demerge companies under the terms of the Law on Trading Companies.

### **Article 35**

#### **Sole proprietorships of limited liability**

1. The registration of a sole proprietorship of limited liability shall be made upon submission of a document listing its basic assets, accompanied by a statement by the sole owner operating the business, with the following indications:

- a) Particulars of the sole ownership operator, including his or her registration number and an indication of the capacity in which he or she operates the establishment/company;
  - b) Particulars of the owner, where he or she is not the one referred to in sub-paragraph a) above;
  - c) Name of the establishment/company, where appropriate;
  - d) The type of business and the location of the establishment/company.
2. The document referred to in paragraph 1 above shall contain the detailed value of essential assets belonging to the sole ownership of limited liability.

### **Article 36**

#### **Cooperatives and other corporate bodies**

The provisions of Article 34 shall, mutatis mutandis, apply to the registration of the incorporation of cooperatives and other corporate bodies similar to any of those covered by this Code.

### **Article 37**

#### **Public companies**

The registration of the incorporation of a public company shall be made against the legal instrument that determined its establishment.

### **Article 38**

#### **Relocation of main office outside Timor-Leste**

1. Registration of relocation of a trading company's main office outside Timor-Leste shall be made against a report containing the corporate decision approving such relocation.
2. The provisions of paragraph 1 above shall, mutatis mutandis, apply to other corporate bodies similar to any of those covered by this Code.

### **Article 39**

#### **Corporate representative offices**

The registration of permanent representative offices of a company that has its main and actual office abroad shall be made against documents proving the existence of a corporate body in accordance with appropriate law and the contents of the respective updated contract, as well as against a document to substantiate the decision to establish a representative office in Timor-Leste and to designate its representative officers.

**Article 40**  
**Accountability**

1. Registration of accountability shall only consist of the submission, for deposit purposes, of a report indicating the approval to enforce conclusions, accompanied by the following documents:
  - a) Management report and proposal to enforce conclusions, where appropriate;
  - b) Balance sheet, profit and loss account, and attachments;
  - c) Advice from the auditing body, where appropriate.
2. Photocopies of the documents provided for by paragraph 1 above shall not require certification.

**Article 41**  
**Amendments to Articles of Association**

1. If amendments are made to the articles of association of a business corporation or other corporate bodies, apart from the decision that approved the amendment, the full updated text of the articles of association showing the amendments made shall also be submitted for deposit.
2. The full text of the articles of association to be deposited under the terms of paragraph 1 above shall be certified by the clerk of the company concerned or, if no clerk exists, by an administrator or, in the case of other corporate bodies, by a person performing similar functions.

**Section III**  
**Submission**

**Article 42**  
**Recording of submissions**

1. Submission of documents for registration shall be made in person.
2. Documents shall be recorded according to the order in which they are submitted.

**Article 43**  
**Elements to be recorded upon submission**

Upon submission of documents the following details shall be recorded:

- a) Serial number and submission date;
- b) Name of applicant or his/her position, in the case of an official entity;
- c) The fact to be registered;
- d) The serial number of the business operator or company that is the subject of the request;
- e) The type of documents submitted and related number.

**Article 44**  
**Rejection of an application**

An application shall be rejected if:

- a) The application is not made on the appropriate form, when required;
- b) The application is submitted outside the legal opening period to assist the public;
- c) Documents submitted are not written in one of the official languages of Timor-Leste or if they are not accompanied by a certified translation under the terms of the Notarial Legal Regime.

**Section IV**  
**Consideration of an application for registration**

**Article 45**  
**Principle of legality**

It shall be incumbent upon a registrar to assess the validity of an application for registration, in accordance with applicable legal provisions, documents submitted and previous registration applications, and the registrar shall

especially verify the eligibility of the parties, the formal correctness of deeds and the validity of acts contained therein.

#### **Article 46**

##### **Tax obligations**

1. No act subject to taxation shall be finally registered without proof of tax payment or assurance that duties shall be met.
2. It shall be incumbent upon the interested parties to prove that taxes have been paid by producing a receipt of payment issued by the appropriate services of the Ministry of Planning and Finance.

#### **Article 47**

##### **Rejection of registration**

1. Registration shall only be rejected in the following cases:
  - a) If some of the documents have not been deposited as provided for by the law, or where it becomes clear that the fact whose registration is requested is not contained in the documents submitted;
  - b) If it becomes clear that the fact whose registration is requested is null and void;
  - c) If a fact has already been registered on a provisional basis because of doubts and such doubts have not been cleared;
  - d) If it is found that the fact contained in the documents is already registered or is not subject to registration;
  - e) If no copy of the declaration on the beginning of business submitted for tax purposes is produced.
2. Registration requested on the basis of a judicial decision made following a final court judgement notified to the Public Prosecution Office may not be rejected, unless such registration would result in clear inconsistency with the legal status of the asset concerned because of previous registration applications.
3. Apart from those cases provided for in paragraphs 1 and 2 above, a request for registration shall only be rejected if, for lack of elements or by the nature of the related act, registration cannot be made on a provisional basis on grounds of doubts.



4. Rejection shall be recorded by reference to the submission number and date, with a serial number matching the registration number and a summary of the rejected act.

#### **Article 48**

##### **Provisional registration on grounds of doubts**

Registration shall be made on a provisional basis on grounds of doubts if there is a motive that prevents an act to be registered as requested, but which is not ground for rejection.

#### **Article 49**

##### **Provisional registration on grounds of nature**

1. Registration of the following shall be provisional on grounds of nature:
  - a) Incorporation of a company dependent upon special authorization, before such authorization is granted;
  - b) Provisional incorporation of a public limited company with a public invitation to subscribe for shares;
  - c) Increase in capital by issuing bonds convertible into shares, before such bonds are issued;
  - d) Incorporation of a public limited company by merging or demerging other companies;
  - e) Agreement with creditors, bankruptcy or declaration of insolvency where registration is requested before a final court judgement or endorsement;
  - f) Transfer of a company or shares by a court judgement, before a deed is issued;
  - g) Acquisition of a company, shares or equities by judicial decision, before a final court judgement;
  - h) Bailment or transfer of shares and equities, before a contract is converted into a deed;
  - i) Legal business that can be cancelled or rendered ineffective for lack of consent, before the fault is redressed or the right to challenge it expires;
  - j) Legal business entered into by a manager or attorney without sufficient powers, before ratification;

- k) Sequestration, attachment or seizure in a bankruptcy or insolvency case, once enforcement has been ordered but not yet carried out;
- l) An inventory or other restraining orders before a decision has been made in a final court judgement;
- m) Judicial action.

2. Registration of the following shall also be provisional on grounds of nature:

- a) Sequestration or attachment of shares of a limited liability company or rights referred to by the final section of sub-paragraph g) and sub-paragraph h) of Article 3, as well as seizure of the same assets in a bankruptcy or insolvency case, where they are bound by registration of acquisition in favour of a person other than the debtor, the garnishee, the bankrupt or the insolvent person.
- b) Sequestration or seizure of a company in a bankruptcy case where the company is bound by registration of acquisition or recognition of property right in favour of a person other than the debtor or the bankrupt person;
- c) Registration carried out while a challenge of the registrar's decision is still pending or when time has not elapsed for the decision to be appealed against;
- d) Registration dependent upon any other provisional registration.

### **Article 50**

#### **Time of validity**

- 1. Registration of facts referred to in sub-paragraphs e), i), k) and m) of Article 1, where it is not provisional on any other ground, shall remain valid for a period of three years, which is renewable for the same period subject to the production of evidence substantiating the continued provisional nature of registration.
- 2. Registration of facts referred to in sub-paragraphs a) and b) of Article 2 shall remain valid for the period of one year, unless extended by

registration of a declaratory act as provided for in Article 83, and shall expire if such declaratory act is not registered within 30 days from the date a notice was served on the registered holder.

3. Registration dependent upon any other provisional registration shall remain valid for the duration of the registration on which it depends, unless it expires earlier for any other reason; conversion of registration on a final basis shall determine self-executing conversion of related registration.
4. Registration made while a challenge of its rejection is still pending or within the deadline for being appealed against shall remain valid for a period of three years, which shall be renewable for periods of the same duration, subject to the production of evidence that the reason for provisional registration still exists.

#### Article 51

##### **Decisions on rejection and provisional registration**

1. A decision to reject registration or make it on a provisional basis on grounds of doubt shall be made in a concise but duly substantiated manner and shall be notified to the applicants within 5 days by registered letter.
2. Notification referred to in paragraph 1 above shall be served on the party's lawyer where the request for registration has been delivered to the registration office by the lawyer.

#### Article 52

##### **Correction of faults**

1. Whenever possible, faults in the registration process shall be corrected on the basis of documents submitted to or deposited with the registration office, as well as by using the available computer facilities.
2. For the purposes of paragraph 1 above and without prejudice to the smooth operation of services, the registration office shall communicate with the applicant by any means so that he or she may correct, if he or

she so wishes, faults in the registration process before the date of its validation.

3. Once an application has been submitted and before registration is made, an applicant may submit additional documents to correct faults as long as such submission does not imply a new registration request nor does it constitute grounds for rejection under the terms of Article 47.

### **Article 53**

#### **Consolidated registration**

1. Where it becomes clear that there are discrepancies not amounting to contradictions between a request for registration and submitted documents, registration shall be made in accordance with details contained in the documents.
2. Where registration is applied for and a request is submitted in connection with a fact or facts for which only one single registration is to be made, such registration shall be made by mentioning the number of the first submission, and the others shall be considered consolidated.
3. Where registration is applied for and a request is submitted in connection with facts that require the drawing-up of separate registration, the Registration Office shall act upon the required submissions and proceed accordingly for registration purposes.

### **Article 54**

#### **Forgoing registration**

Forgoing registration and the recording of related facts shall be permitted in case of faults giving grounds for rejection or where a document proving the termination of the fact is attached.

## **CHAPTER IV**

### **ACTS OF REGISTRATION**

#### **Section I**

##### **General Provisions**

### **Article 55**

#### **Deadlines and order of registration**

1. Registration shall be made within a maximum period of 15 days following the order of submission or the hierarchy of acts.
2. In case of urgency evoked by an applicant in a request, the registrar may proceed with registration of documents without following the order of submission but without prejudice to the hierarchy of acts and he or she shall substantiate his or her decision.

### **Article 56**

#### **Scope and date of registration**

1. Registration shall comprise:
  - a) Deposit of documents proving the fact to be registered or a certified copy of such documents;
  - b) Licence, enrolments and updates regarding operators of ownerships, corporations, cooperatives, public companies, company subsidiary groupings and sole ownerships of limited liability;
  - c) Publication in official gazettes.
2. Registration dates shall be the date on which an application was submitted or, where such date is not binding, the date on which registration is made.

### **Article 57**

#### **Computer and document support**

1. Computer facilities shall be used in all acts for business registration.
2. A folder system shall be established for the deposit of supporting documents for registration.

### **Article 58**

#### **Folders**

1. Each operator of a sole ownership, corporation, corporate body or sole ownership of limited liability shall have a folder for the deposit of all

documents related to them and a computer-generated copy of their respective registration.

2. Each folder shall feature a table of contents on all the documents filed in it, with a clear indication of facts registered, dates of registration and dates of deposit.

#### **Article 59**

##### **Registration terms**

1. Registration shall be made by simple and summarized statement containing relevant details regarding a sole ownership operator, corporation, other corporate body or sole ownership of limited liability.
2. Publications shall be annotated on a self-effecting basis into related records as soon as they are issued.
3. For the purposes of paragraph 2 above, registration offices shall take a subscription to all periodicals published in Timor-Leste.
4. Registration shall be updated by addendum whenever there is a deposit of documents changing the information contained in the records.

#### **Article 60**

##### **Validation**

1. Once registration has been made, the registrar shall proceed with its validation by introducing a restricted access code.
2. After validation, a computer-generated copy shall be produced to be filed in the corresponding folder.

#### **Article 61**

##### **Deposit**

1. No act subject to registration shall be drawn up if required documents are not deposited and filed in the corresponding folder.

2. Omission or fault in enrolments or addenda shall not affect the effects given by the law to registration, as long as the required documents have been deposited.
3. For the purposes of changing the constitutive act of a corporation or other corporate body the full text regarding the changed act in its updated wording shall be submitted for deposit and such text may, in case of partial change, be prepared and signed by the corporation's secretary, where there is one, or by a manager or an official representative.
4. Where the text to be deposited is related to a limited liability company such text shall indicate the current shareholders and the new nominal amounts of shares changed as a result of a merging, demerging or amortization.

**Article 62**  
**Nature of deposits**

Deposits shall be made by entering the registered facts into a register.

**Article 63**  
**First registration**

1. No fact related to the operator of a sole ownership, a corporate body subject to registration or sole ownership of limited liability shall be registered without simultaneous registration of the person operating the corresponding business.
2. Registration of a fact related to a business operator or corporation shall only be made where either of them has been previously registered; exception is made of an agreement with creditors, bankruptcy, pledge, sequestration, attachment, inventory of shares of a limited liability company, pledge on equities of a general or limited partnership, as well as attachment of a corporation.
3. The first registration shall generate the license for a sole ownership operator, corporation, other corporate body or sole ownership of limited liability.

**Article 64**  
**Elements of a license**

A license transcript shall contain the full name of a sole ownership operator and his/her tax registration number or the corporate name or the name of the corporate body, of a sole ownership of limited liability and the tax identification number of the corporate body or similar entity.

**Article 65**  
**Enrolments**

Enrolments resulting from a license transcript shall contain the full name of a sole ownership operator and his or her tax registration number, or corporate name or the name of the corporate body, of a sole ownership of limited liability and the number of tax identification of a corporate body or similar entity.

**Section II**  
**Special requirements for enrolment**

**Article 66**  
**Sole ownership operator**

Registration of a sole ownership operator shall especially contain the serial number allocated to him or her and the elements referred to in the subparagraphs of paragraph 1, Article 33.

**Article 67**  
**Business establishment of limited liability**

1. Registration of a business establishment of limited liability shall especially contain the serial number allocated to the establishment and the indications referred to in the subparagraphs of paragraph 1, Article 35.
2. The provisions of paragraph 1 above shall, mutatis mutandis, apply to registration of branches.

**Article 68**  
**Companies and other corporate bodies**



1. Registration of companies shall especially contain the following:
  - a) The serial number allocated to the company;
  - b) The corporate name;
  - c) The main office, corporate purpose and share capital, where appropriate;
  - d) The name and address of the partners or founding members, as well as the name of spouses and property regime, if married, or an indication whether they are minors or adults, if single;
  - e) The name and address of the administrators and secretary of the company, where appropriate.
  
2. The provisions of paragraph 1 above shall, mutatis mutandis, apply to other corporate bodies.

#### **Article 69**

#### **Corporate representative offices**

Registration of a permanent representative office of a company or other corporate body in Timor-Leste, where such company or corporate body does not have its main office in Timor-Leste, shall especially contain the following:

- a) The serial number allocated to the representative office;
- b) The corporate name;
- c) The main office, corporate purpose and allocated capital;
- d) The names and addresses of representatives in Timor-Leste.

#### **Article 70**

#### **Amendments to enrolments**

Enrolments may be updated or amended by addendum.

#### **Article 71**

#### **Facts registered by addendum**

1. The following facts shall be registered by addendum to the original registration:

- a) Sequestration, attachment, inventory and other acts or injunctions over loans guaranteed by pledge or attachment of earnings;
- b) Transfer or use of loans referred to in sub-paragraph a) above;
- c) Transfer of a company, shares or equities for the purposes of transferring property as a whole;
- d) Transfer and use of the right of one or some of the holders of registration of assets integrated into indivisible inheritance, as well as sequestration, attachment, inventory, seizure and other acts or injunctions over such right;
- e) Handover of a contractual right regarding transfer of companies, shares or equities;
- f) Conveyance of benefits related to companies, shares or equities;
- g) Judicial attachment of income on shares or equities that are the subject of sequestration registration;
- h) The lifting of an interdiction and the rehabilitation of a bankrupt or insolvent entity;
- i) Change of location of a sole ownership of limited liability, relocation of the main office of a corporation or other corporate body and change of address of a sole ownership operator;
- j) Change, waiver or revocation of powers for managers or attorneys of a corporation or sole ownership of limited liability;
- k) Reappointment or resignation of administrators, representatives and liquidators of a corporation or sole ownership of limited liability;
- l) A decision to approve a plan to merge or demerge;
- m) The issuance of each series of bonds.

2. The following shall be registered under the same terms:

- a) Conversion of attachment into sequestration;
- b) Final decisions on listed shares;
- c) Final conversion, in part or as a whole, of provisional registration;
- d) Renewal of registration;
- e) Appointment or non-appointment of a third party in an appropriate contract;
- f) Total or partial cancellation of registration records.

3. Addenda referred to in paragraph 1 above may be made on a provisional basis on grounds of doubt.

4. Final conversion of the original registration of a fact whose records have been modified or terminated, or where registration is declared null and void or cancelled, shall determine a self-effecting addendum of such modification or cancellation.
5. Registration of acquisition of pledged property in an execution case shall determine self-effecting and free-of-charge addendum of cancellation of registration as ordered by a court.
6. Judicial decisions made as a court final judgment as provided for in this Code...

### **Section III**

#### **Publicity**

#### **Article 72**

#### **Mandatory publications**

1. Publication of the following registration acts shall be mandatory:
  - a) Acts provided for in paragraph 1 of Article 3, where they deal with a limited liability company, a public limited company or a limited partnership with shares, as long as they are subject to mandatory registration, except for sub-paragraphs d), f), g), i) and j);
  - b) Acts provided for in sub-paragraphs a) to g) of Article 4;
  - c) Acts provided for in Article 5, except for sub-paragraph c);
  - d) Acts provided for in Article 7;
  - e) Acts provided for in sub-paragraphs b) and d) of Article 8;
  - f) Acts provided for in sub-paragraphs c), d) and h) of Article 9.
2. Publications referred to in paragraph 1 above shall be made in the Official Gazette of the Republic.
3. Registration acts provided for in sub-paragraph a) of paragraph 1 above, where they deal with a limited liability company or a public limited company, shall also be published by transcript in a newspaper of the location or region where the main office is headquartered.
4. Publications referred to in paragraph 3 above and related translations, if any, shall be filed in the respective folder.

### **Article 73**

#### **Self-effecting publication**

1. Once registration has been made, the registrar shall promote its publication within 30 days at the expense of the interested party.
2. Publications shall be made on the basis of certificates issued by the Registrar's Office, by notarial services or by a judicial court and, for the two latter cases, such certificates shall be attached to the application for registration.

### **Article 74**

#### **Modalities for publication**

1. Publications shall contain the mandatory registration details.
2. The contract or statutes governing a corporate body and amendments to such contracts or statutes, as well as accountability documents of a public limited company with public subscription and the report on the closing of the liquidation of such companies shall be published in full.
3. Regarding other acts, publication may be made in full by transcript or by making reference to the filing of such publication in the respective folder, according to the preference of the interested party.
4. Publication of a partial amendment to a contract or articles of association shall make reference to the filing of the full text in its updated version.

### **Article 75**

#### **Failure to publish**

1. Facts subject to registration shall only be effective on a third party after the date of publication unless the entrepreneur concerned proves that the third party was aware of the registered fact.
2. If an act has been published only in one official language and there is an interested party that only uses the other, the act shall only be

effective on such party after publication of a translation where it is made mandatory by the law.

#### **Article 76**

##### **Self-effecting publications in the Official Gazette of Timor-Leste**

By order of the Registrar a list shall be published on a monthly basis in Series II of the Official Gazette of Timor-Leste on all trading entrepreneurs who during the previous month have registered or who have had their details amended regarding address or head office, corporate purpose or share capital, merging, demerging, transformation, bankruptcy, dissolution, termination or closure, and such list shall contain for each trading entrepreneur the corporate name, home address or head office, capital and registration number.

#### **Section IV**

##### **Proof of registration**

#### **Article 77**

##### **Public nature of registration**

1. Any person may request certificates of registration acts or filed documents, as well as seek verbal or written information on the contents of such acts and documents.
2. For the purposes of paragraph 1 above, only employees of the Registrar's Office may check folders and documents in accordance with requests made by interested parties.
3. Whenever possible, certificates shall be in the form of photocopies or fax on which an imprint of its certification shall be stamped.
4. Photocopies may be given the value of a certificate of information, registration, decisions and any other documents, and such photocopies shall be handed over to the interested party within a maximum period of three working days.
5. Information referred to in paragraph 4 above shall not be used for judicial purposes or for the performance of a public act.

**Article 78**  
**Means of proof**

1. Registration shall be proved by a certificate.
2. The period of validity required for certificates may be extended for successive periods of similar duration, through confirmation by the Registrar's Office.
3. In the case of public services, a certificate may be substituted by a photocopy requested by such services and issued by the Registrar's Office, and such certificate shall contain the registration details or documents.

**Section V**  
**Certificates and photocopies**

**Article 79**  
**Request**

1. Certificates shall be requested through the official form to be submitted to the Registrar's Office or sent by post or fax, and they shall be issued within five days.
2. Photocopies with the value of certificates of registration, decisions and any filed documents may be requested verbally.

**Article 80**  
**Contents of certificates**

1. Certificates or photocopies shall transcribe all registration acts regarding a sole ownership operator, corporate body or sole ownership of limited liability, except if such certificates and photocopies have been requested with reference to some registration acts only, in which case the request shall be substantiated.
2. Certificates requested in reference to some acts only shall be issued in such a way not to be misleading in terms of registration contents and position of its holders, and such certificates shall indicate the facts

registered or the title deeds submitted for the purposes of filing and changing the request.

3. A registration certificate showing an inaccuracy or fault that has not been corrected shall mention such fact.

#### **Article 81**

##### **Issuance or rejection**

1. Certificates shall be issued within a period of five working days and they shall mention the date of issuance and be initialled by the issuing officer on all of the pages, which shall also be duly numbered.
2. No fees or emoluments shall be charged for certificates requested by an entity enjoying exemption from such fees or emoluments.
3. The issuance of a certificate shall only be rejected if the application for it does not contain the necessary elements for its issuance or if related fees have not been paid.
4. Rejection of an application for a certificate shall be substantiated and notified to the interested party within the deadline for its issuance.

### **CHAPTER V**

#### **SUBSTITUTION FOR, AMENDMENT AND REINSTATEMENT OF REGISTRATION**

##### **Section I**

##### **Substitution**

#### **Article 82**

##### **Substitution in relation to a succession agreement**

1. A person who acquires the property or the benefits of a partnership, sole ownership of limited liability, limited liability company or joint share company and does not have a document to prove his or her right, as well as managers or directors of a company may, for the purposes of registration act on behalf of registered holders on the basis of justification an actor deed from notarial services.

2. When it is not possible to prove the payment of taxes related to justified transfer, where this fact has been certified by appropriate services of the Ministry of Planning and Finance, appreciating the tax compliance of such transfers shall be dispensed with.

### **Article 83**

#### **Substitution in case of attachment, sequestration or seizure**

1. Where there is provisional registration of attachment, sequestration or seizure in a bankruptcy or insolvency lawsuit against a limited liability company or rights related to equities registered under the name of a person other than the debtor, the garnishee or the insolvent person, the judge shall summons the registered holder to declare within 10 days whether the company, share or equity belongs to him or her.
2. In case of unknown whereabouts or death of the registration holder he or she or his or her heirs shall be summonsed by edict, whether or not they are able to act upon the summons, by notices published in two of the major newspapers of Timor-Leste and by posting edicts during a period of one month at the Registrar's Office.
3. If the summonsed person declares that a company, share or equity does not belong to him or her or if he or she does not make a declaration at all, a certificate on such fact shall be sent to the Registrar's Office for the registration to be converted on a self-effecting basis.
4. If the summonsed person declares that a company, share or equity belongs to him or her, the judge shall refer the interested parties to common procedural means and a certificate on the fact shall also be released with the date on which the declaration was notified for annotation into the registration records.
5. Registration of a declaratory act while provisional registration is still in force shall be added to the provisional registration records, which shall be extended for the validity period of the registration.
6. If the declaratory act is lawful the interested party shall request the conversion of registration within a period of eight days from the date of the final court judgement.



**Section II**  
**Amendment**

**Article 84**  
**Initiative**

1. Inaccurate or wrongly made registration may be amended on the initiative of the Registrar or at the request of any interested party, whether or not registered.
2. Registration invalidated for violating succession agreement principles may be amended by remarking the invalidated registration if the declaration of nullity is not registered.

**Article 85**  
**Discrepancies with a title deed**

1. Inaccuracies resulting from discrepancies with a title deed shall be amended on a self-effecting basis against documents on which registration was based.
2. However if such amendment is likely to affect the rights of registered holders consent of all holders or a court decision shall be required.

**Article 86**  
**Faulty title deeds**

1. Inaccuracies resulting from faulty title deeds may only be amended with the consent of all interested parties or by a court decision, provided the faults are not a reasonable cause for nullity.
2. Amendment that does not affect registered holder, provided it is based on a valid document, may be done at the request of any interested party and does not require consent from the other interested parties.

**Article 87**  
**Registration made incorrectly**

Registration made incorrectly and deemed null and void under the terms of sub-paragraph b), paragraph 1, of Article 22, may be cancelled following consent by all interested parties or a court decision in an amendment lawsuit.

#### **Article 88**

##### **Effects of amendments**

Amendment of registration shall not affect rights acquired against a fee and in bona fide by a third party if registration of the facts concerned was made prior to registration of the amendment or the outstanding status of the respective lawsuit.

#### **Article 89**

##### **Forms of amendment**

Amendment of registration may be carried out following an agreement by all registered interested parties or a court decision.

#### **Article 90**

##### **Amendment by agreement**

1. Once the inaccurate nature or the nullity of registration made incorrectly has been raised and if amendment is not requested by all interested parties, the Registrar on his or her own initiative or at the request of any of the interested parties shall convene, by registered mail with reception notice, a general meeting in order to discuss the amendment, on the understanding that failure to appear or to oppose by the date of the conference shall mean consent to the amendment.
2. A request for an amendment shall be submitted in conjunction with the required documents and if the amendment is outstanding such fact shall be added to the corresponding registration records in all cases.
3. The meeting referred to in paragraph 1 above shall be convened within a maximum period of 15 days from the date on which the latest letter was dispatched.
4. If no-one raises an objection and the Registrar and all other interested parties present agree with the amendment, a report on such agreement shall be prepared.

**Article 91**  
**Judicial amendment**

1. If any of the notifications provided for in paragraph 1 of Article 90 is not effected or if no agreement is reached, judicial amendment may be requested by any interested party.
2. If an amendment is not requested within 8 days, the Registrar shall promote a self-effecting amendment when he or she realizes that registration is inaccurate or it was incorrectly made, or he or she shall otherwise cancel the addendum referred to in paragraph 2 of Article 90.

**Article 92**  
**Petition and referral to court**

1. A petition, which does not require to be laid down in articles, shall be addressed to the competent court of first instance for civil matters and shall specify the cause of action and the identity of the people concerned.
2. If an amendment is not promoted on a self-effecting basis, the petition and the documents shall be handed over to the Registrar's Office, following appropriate submission procedures.
3. The case shall be referred to a court, with a recommendation from the Registrar, within 5 days and the outstanding nature of the amendment shall be simultaneously annotated into the registration records if it has not been done earlier.

**Article 93**  
**Summonses**

1. The judge shall give orders for the interested parties to be summoned in order to submit their disagreement within 10 days.
2. If disagreement is expressed, the terms of a common declaratory civil lawsuit shall be followed as a summary process.

3. If no disagreement is expressed, the judge shall give instructions for action to be taken as he or she deems necessary and he or she shall decide upon the merits of the request.

**Article 94**  
**Execution of judgement**

1. Once a court has delivered its final judgement it shall send to the Registrar's Office a certificate on the contents of the judgement and the documents that the applicant may have attached to the lawsuit.

2. The Registrar shall, on a self-effecting basis, carry out the amendment or the cancellation of the addendum on the outstanding nature of the amendment if such amendment has been rejected or the request has been withdrawn.

**Article 95**  
**Appeal**

1. A judgement may be appealed against with the Supreme Court of Justice and such appeal shall have a suspensive effect.

2. Besides the parties, the Office of the Public Prosecutor may also appeal against a judgement.

3. An appeal shall be examined and tried under the terms of the civil procedural law.

**Article 96**  
**Exemptions**

1. Amendment lawsuits shall be exempt from fees and taxes provided the related application is deemed lawful and amendment is promoted by the Registrar.

2. Registration of an amendment or its outstanding nature shall be free of charge.

**Section III**  
**Reconstitution**

**Article 97**

**Reconstitution methods**

1. Registration records entered into computer facilities or existing in misplaced or damaged folders may be reconstituted by reproducing new ones from security archives or by preparing new registration on the basis of corresponding documents.
2. The reconstitution date shall be entered into the corresponding registration records.

**Article 98**

**Absence of security archives**

If no security archives exist and for the purposes of registration reconstitution certified copies and photocopies filed with a public institution or archive shall have the same value of proof as registration records kept in security archives.

**Article 99**

**New preparation of registration**

1. Registration reconstitution may also be carried out by new preparation of such registration on the basis of documents kept in archives or submitted by the interested party.
2. Documents required for a new preparation of registration shall be requested from the competent services and such request shall be exempt from taxes and emoluments.

**CHAPTER VI**

**CHALLENGING A DECISION MADE BY A REGISTRAR**

**Section I**

**General provisions**

**Article 100**

**Challengeable decisions**

1. A decision by a registrar to reject, even if tacitly, the performance of registration under the required terms or to register an act on a provisional basis on grounds of doubt, or to proceed with initiated registration, as well as rejection to issue certificates or other documents that should be issued by the Registrar's Office or the rejection to issue registration fees may be challenged in accordance with one of the procedures provided for in this Code.

2. Rejection to amend a registration record shall only be considered in an appropriate case as regulated by this Code.

**Article 101**  
**Means of challenge**

1. A decision by a registrar as provided for in paragraph 1 of Article 100 may be challenged as follows:

- a) Claim addressed to the registrar;
- b) Appeal to higher authority;
- c) Litigious appeal.

2. A claim shall be directly addressed to the registrar and an appeal to higher authority shall be addressed to the Minister of Justice.

3. A litigious appeal shall be addressed to the administrative court.

**Article 102**  
**Eligibility**

Applicants and interested parties who are directly affected by a decision by a registrar shall be eligible to challenge such a decision.

**Section II**  
**Claims**

**Article 103**  
**Deadlines and formalities for claims**

1. A claim shall be addressed to the Registrar within 30 days from the date on which a notice was served on the interested party about the decision claimed against.

2. In the case of a challenge against a rejection to issue a certificate a claim shall be submitted within 8 days.

3. If an application for registration has been made by post or if a decision thereon has been made beyond the deadline established by the law, the deadline to submit a claim shall count from the date on which a notice of such decision was served.

4. A claim shall be in writing and substantiated, and the interested party shall demonstrate the unlawful motives of the decision claimed against and conclude by requesting its redress.

#### **Article 104**

##### **Consideration of a claim**

1. Within five days the incumbent Registrar or his or her replacement shall, although the decision has not been made by them, consider the claim and make a substantiated decision thereon in order to redress or maintain the previous decision.

2. The Registrar's decision shall always be notified to the claimant within 48 hours.

3. If the Registrar does not make a decision within the timeframe referred to in paragraph 1 above the request of the claimant shall be considered as rejected.

#### **Section III**

##### **Appeal to higher authority**

#### **Article 105**

##### **Appeal to higher authority**

1. A decision to reject a claim shall be appealed against with the Minister of Justice.

2. The deadline for the submission of an appeal to higher authority shall be 30 days from the date on which a notice on the decision referred to in paragraph 1 of Article 104 was served.

3. An appeal shall be deemed as submitted upon the filing of an application with the Registrar's Office.
4. Within three days, the Registrar shall refer the whole case with the claim, a copy of the rejection decision and any other documents deemed necessary attached to the National Directorate for Registration and Notarial Services.

#### **Article 106**

##### **Petition for appeal to higher authority**

An application for appeal to higher authority shall be submitted with documents that the applicant deems necessary and it shall:

- a) Identify the act to which the appeal is related;
- b) Specify fully the grounds on which the appeal is based;
- c) Request the performance of the act to which the appeal is related or the amendment of the decision appealed against.

#### **Article 107**

##### **Consideration of an appeal to higher authority**

1. An appeal to higher authority shall be decided upon within 30 days by the Minister of Justice and, if he or she deems it appropriate, he or she may request expert advice from the Inspection Office for Registration and Notarial Services or from the National Directorate for Legal Counsel and Legislation of the Ministry of Justice.
2. If expert advice is requested, the service approached shall issue such advice within a maximum period of 20 days.
3. If the decision by the Minister of Justice is different from the expert advice such decision shall be substantiated.

#### **Article 108**

##### **Notification on a decision**

A decision shall be notified to the claimant by registered mail and shall be made known to the officer claimed against.



**Article 109**  
**Effects of a decision**

A decision to grant an appeal to higher authority shall make it mandatory to carry out, on a self-effecting basis, the act rejected by the Registrar.

**Section IV**  
**Litigious appeal**

**Article 110**  
**Filing a litigious appeal**

1. A final decision on an appeal to higher authority may be appealed against on a litigious basis by an interested party with the administrative court.
2. A litigious appeal shall be filed with the administrative court within 30 days from the date on which a notification was served about the ruling that found for the unlawfulness of the appeal to higher authority or, if such a ruling has not been made, after the deadline to carry out the requested act has expired.
3. The provisions of Article 106 concerning an appeal to higher authority shall, mutatis mutandis, apply to a litigious appeal.
4. Without prejudice to the provisions of the preceding paragraphs, a litigious appeal shall be examined and tried under the terms of civil procedure laws.

**Article 111**  
**Referral of a case to court**

Once it has received an appeal, a court shall notify the Registrar to forward to the court within 24 hours the records of the claim and the appeal to higher authority related to the claimant.

**Article 112**  
**Self-effecting notifications**

Once a final decision has been made on a litigious appeal the clerk of the court shall send a transcript of the decision to the Registrar's Office; if there has been a withdrawal or waiver of the appeal or if it has been idle for more than 30 days as a result of lack of action on the part of the claimant, such fact shall also be notified.

## **CHAPTER VII OTHER ACTS**

### **Article 113 Legalization of books**

1. Legalization of trader's books, when determined by the law, shall be carried out by the competent Business Registration Office.
2. Legalization shall be carried out within forty-eight hours and it shall consist of an indication of the licence number and the signing of the opening and closing notices, as well as the initialling of all pages.
3. Signatures and initials referred to in paragraph 2 above may be made by officers competent to sign transcripts.

### **Article 114 Appointment of auditors and chartered accountants**

1. Whenever the law requires the appointment of experts or auditors and chartered accountants, and if such appointment cannot be made by a company but is accepted as an extrajudicial arrangement, the interested entity shall make a request to the competent Business Registration Office to designate those experts under the terms of paragraph 1 of Article 113.
2. As soon as a request has been submitted, the Registrar shall, within 2 days, send a letter to the Chamber of Chartered Accountants or, if such entity is not legally competent, to the body representing such experts if there is one, or otherwise the letter shall be sent to the chamber of commerce mentioned by the applicant asking for the names and addresses of the accountants to be appointed.
3. Once the requested details have been provided, the Registrar shall certify within three days whether there is a legal burden in the registration

records filed with his or her office or in his or her possession against the designated accountant.

4. If there is a direct or indirect legal burden against the designated accountant the Registrar's office shall request the designation of another accountant under the same terms and within the same deadlines.

5. If there is no legal burden the Registrar shall appoint the designated accountant forthwith by a decision written on the very application and shall notify the fact to the interested party within twenty-four hours.

## **CHAPTER VIII MISCELLANEOUS PROVISIONS**

### **Article 115 Liability of the state**

The State shall be liable for damages that its agents may cause in their official capacity to a third party and shall ensure the right of reparation against the defaulting agent in case of malicious aforethought or guilt.

### **Article 116 Official forms**

Official forms for supporting documents and other forms provided for in this Code shall be approved by the Minister of Justice.

### **Article 117 Supplementary legislation**

The organization and operation of the Business Registration Office and the organization of the computer system for the registration process shall be dealt with in separate legislation.