

IV CONSTITUTIONAL GOVERNMENT

DECREE-LAW No. 30/2009 of

Organic Law of the Migration Service

The Organic Law of the Ministry of Defence and Security provides for the establishment of an Migration Service (MS) as a separate entity. When the IV Constitutional Government set out to reform the security sector, it did not deem adequate to maintain the Migration Services as an integral part of PNTL.

The establishment of a Migration Service is thus an opportunity to set up a professional organisation that has the necessary skills and ability to undertake the tasks set forth by the Government with regards to immigration.

Pursuant to the Law on Immigration and Asylum, the Migration Service is tasked with controlling the movement of people arriving in and departing from the country, as well as controlling and monitoring the presence of foreigners in the national territory.

In discharging its responsibilities, the Migration Service must balance the demands that come from it being a security service contributing to an organised and safe society that protects Timor-Leste's citizens and providing efficient and effective immigration procedures; with an understanding of the benefits that may result to the national economy from migratory fluxes, such as those resulting from the arrival and departure from the national territory of tourists, specialised workers and investors; as well as with the social benefits that may result from immigration activities such as family reunion.

The Organic Law of the Migration Service was designed so as to ensure that the service meets the necessary organisational requirements and is supported by a legal framework that allows it to provide a good management of migratory flows.

Thus, pursuant to article 115(3) of the Constitution and article 41(3) of Decree-Law no. 31/2008 of 13 August, the Government decrees the following that shall have the force of law:

CHAPTER I GENERAL PRINCIPLES

SECTION I Nature and functions

Article 1 Nature

1. The Migration Service, hereinafter referred to as MS, is a security service that comes directly under the Secretary of State for Security pursuant to articles 29(d) and 32(1)(h) of Decree-Law no. 31/2008 of 13 August.

2. The MS works within the framework of the overall internal security policy and pursuant to the Law on Immigration and Asylum and its main objectives are to control the movement of people across the borders, the presence and activities of foreigners in the national territory.

3. As a body of criminal police, the MS will take part in procedures pursuant to the criminal procedural law, under the functional direction of the competent criminal police authority, undertaking the activities and acts delegated upon it by such authority.

Article 2 **Functions**

The MS shall perform the following functions:

1. Nationally:

- a) to provide surveillance and monitor the border posts, including the international area of ports and airports and the movement of people. The MS may bar passengers and crew from disembarking from vessels and aircraft if they do not carry appropriate documents or if they have departed from ports and airports deemed to represent a sanitary risk without prior authorisation from the competent sanitary authorities;
- b) to make decisions regarding the arrival or departure of passengers, preventing the arrival in or departure from the national territory of individuals who do not fulfil the necessary legal requirements;
- c) to authorize and check the boarding of vessels and aircraft by individuals;
- d) to control and monitor the presence and activities of foreigners across the national territory, undertaking mobile checks and joint operations with other security forces or services;
- e) to investigate crimes as provided for in the Law on Immigration and Asylum, namely assistance to illegal immigration, human trafficking and associated crimes, without prejudice to the powers of other entities;
- f) to enforce the provisions in the law regarding the entrance, departure, stay and removal (*afastamento*) of foreigners from the national territory;
- g) to issue opinions on requests for visas and on applications for acquisition of nationality;
- h) to make decisions regarding visa requests, extensions of residence permits, asylum requests, family reunions, equality status and emergency requests for travel documents, pursuant to the law;
- i) to collaborate with the competent authorities in supervising and enforcing the law regulating work by foreigners in Timor-Leste;
- j) to initiate the procedures aimed at expelling foreigners who do not have the right to remain in the national territory; to implement court decisions regarding expulsions, escorting foreign citizens who have been the object of a measure aimed at their removal whenever required;

- k) to manage and transmit the data stored in the Border Management System (*Sistema de Gestão de Fronteiras*, SGF), including information on movements of individuals, visa applications and their outcome, as well as on foreigners' stay in the country;
- l) to cooperate with the diplomatic representations and consular offices of other States that are duly accredited in Timor-Leste, in particular with a view to the repatriation of their own nationals;
- m) to ensure cooperation with all the State organs and services, in particular the other security services and forces, as well as with non-governmental organisations who have a legitimate competence in relevant areas, pursuant to their statutes;
- n) to coordinate the cooperation between the national security forces and services and those of other countries with regard to matters pertaining to the circulation of individuals, asylum requests, monitoring of foreigners and investigation of crimes such as assistance to illegal immigration, human trafficking and other related crimes;
- o) to undertake research and to advise to Government on the economic and social impact of immigration policies;
- p) to authenticate the identity of individuals entering the national territory and to maintain a register with data on foreigners;
- q) to prevent and fight infringements to the Law on Immigration and Asylum, namely by detecting and reducing irregular migration, assistance to illegal immigration and human trafficking.

2. Internationally:

- a) to take part and represent the State of Timor-Leste, upon a decision by the Ministry of Foreign Affairs, in international events on topics such as migration, borders and asylum, as well as to take part in working groups on matters under the purview of the MS;
- b) to ensure the international cooperation commitments of the State of Timor-Leste through liaison officers, pursuant to the law;
- c) to collaborate with similar services in foreign countries;
- d) to provide a visa service through the immigration attachés assigned to Timor-Leste's embassies and consulates;

3. To perform any other duties provided for in the law.

Article 3

Definitions

For the purposes of this law, the following definitions apply;

- a) “*Alert List*” shall mean a list of individuals who cannot be admitted into the national territory pursuant to the Law on Immigration and Asylum and any other list of individuals to be searched for or stopped as may be established by law;
- b) “*Biometric data*” shall mean the distinctive physical measurements and behavioural characteristics that allow for identity checks; these may include, *inter alia*, data on facial recognition, fingerprints and iris recognition.

SECTION II

Operational principles

Article 4

Criminal police authority

- 1. The MS is an organ of criminal police for criminal law purposes. Its National Director shall be considered a criminal police authority (*autoridade de polícia criminal*).
- 2. All staff who are part of the immigration career are considered agents of authority (*agentes da autoridade*).
- 3. As an organ of criminal police, the MS shall operate under the guidance of the competent judicial authority, pursuant to the Code of Criminal Procedure.
- 4. The functional relationship referred to in the subparagraph above is without prejudice to the hierarchical structure of the MS.

Article 5

Police measures

Within the framework of its functions and pursuant to the law, the MS shall have the power:

- a) to demand from any person that is present or circulating in a public area or that is under police surveillance that he/her identifies himself/herself;
- b) to keep individuals, buildings and facilities under surveillance for specific periods of time;
- c) to prevent the entry into the country of foreigners who are undesirable or do not have documents;
- d) to start the procedure aimed at expelling foreigners from the country.

Article 6

Right of access

1. The officials mentioned in article 4 above, as long as duly identified and in the exercise of their functions, shall have the right to freely enter public and private construction sites, facilities and rooms used for shows and entertainment, hotels, pensions, restaurants, bars, shops and industrial facilities, offices and departments or services in public administration, prisons, terminals, embarkation and landing facilities, airports, vessels moored in ports and aircraft.
2. The right of access provided for in paragraph 1 of this article is bestowed upon the MS without any prejudice to any provisions in the Code of Criminal procedure, especially with regard to searches and house searches.

Article 7

Identification of individuals

1. The MS may use procedures of civil identification, including the taking of pictures and collection of fingerprints, with a view to establishing or confirming the identity of foreigners or stateless persons.
2. The methods referred to in paragraph 1 above may be filed and used as biometric data.
3. The criminal police authorities referred to in article 4 shall have direct access to the information concerning civil and criminal identification stored in computer files for civil and criminal identification in the Ministry of Justice, as well as to information which may be relevant from a criminal view and which may be stored in files of other regional and international entities by means of memoranda of understanding to be signed with the competent entities, pursuant to a joint ministerial order from the Minister of Justice and the member of the Government overseeing the area of immigration.

Article 8

Duty to cooperate

1. The MS and all entities with a role in the prevention of crimes and criminal investigation have a special duty to cooperate with one another.
2. Public services and State-owned companies have the duty to collaborate with the MS whenever asked to do so.

Article 9

Duty to appear before the authorities

Any individual who has been duly served a notice by the MS in an investigation related to migration issues has the duty to appear before the authorities on the day, time and venue indicated in the notice under penalty of being subject to the sanctions provided in the law.

Article 10 **Privacy and professional secrecy**

1. IS officials are bound by their duty to keep secret any information that has come to their knowledge in the course of the performance of their duties.
2. The duty to keep secret any information referred to in the previous paragraph shall not be an obstacle to the transfer of information to the competent authorities pursuant to the law.
3. Actions aimed at preventing crime, criminal investigations and assistance to judicial authorities are subject to secrecy (*segredo de justiça*), pursuant to the law.

CHAPTER II **ORGANS, SERVICES AND POWERS**

SECTION I **General organisational structure**

Article 11 **Structure**

1. The MS includes the following organ and services:
 - a) Executive Board (*Direcção*);
 - b) Board's Advisory Committee (*Conselho Consultivo de Gestão*);
 - c) Services.
2. The services referred to in the previous paragraph include:
 - a) Operational services that are tasked with investigation, monitoring and the issuance of decisions on immigration matters;
 - b) Ancillary services that are tasked with undertaking activities in support of the operational services.
3. The operational services mentioned in subparagraph a) of the previous paragraph are the Operations Department (*Sector Operacional*), Border Department (*Sector de Fronteiras*), Residing Foreigners Department (*Sector de Permanência de Estrangeiros*) and the Territorial Delegations (*Delegações Territoriais*).
4. All other units are ancillary services, as well as those integrated in the services referred to in the paragraph above which undertake activities as described in subparagraph 11(2)(b).

SECTION II

Executive Board (*Direcção*)

Article 12

Members of the Executive Board

The Executive Board comprises:

- a) the National Director, assisted by a Deputy National Director;
- b) the Legal Affairs, Asylum and Refugees Office;
- c) the Audit Office
- d) the Public Information and International Relations Office.

Article 13

National Director

1. The MS is headed by a National Director that is accountable to the member of the Government responsible for migration issues and is in charge of all aspects related with the performance and the outcome of the activities of the MS.
2. It is incumbent upon the National Director:
 - a) to represent the MS;
 - b) to ensure the cooperation and inter-institutional coordination activities of the MS, namely with the Operational Group on Migration (*Grupo Operacional de Migração*) and the Coordinating Commission for Border Operations (*Comissão Coordenadora de Operações de Fronteira*);
 - c) to preside over the Board's Advisory Committee (*Conselho Consultivo de Gestão*);
 - d) to decide upon and ensure the implementation of all activities related to the organisation, operations, instructions, appeals and administrative services;
 - e) to define a human resources policy and decide on the assignment of staff to the various locations and services of the MS;
 - f) to order inspections, enquiries and internal investigations deemed to be convenient;
 - g) to exercise his/her disciplinary powers pursuant to the disciplinary provisions applicable in the MS;
 - h) to ensure the coordination of the planning, control and evaluation of the outcome of the activities undertaken by the MS;
 - i) to apply fines in the case of administrative offences;

- j) to decide on the inclusion or deletion of individuals' names from the alert list;
- k) to exercise any other powers bestowed upon him/her by law, a regulation or delegation.

Article 14 **Deputy National Director**

1. The National Director is assisted in the performance of his/her duties by a Deputy National Director, who shall exercise the powers bestowed upon him/her by delegation and sub-delegation.
2. The post of Deputy National Director is a post with executive responsibilities which is considered equivalent to that of District Director in accordance with the provisions of article 18(2)(c) of Decree-Law no. 27/2008. The Deputy National Director is appointed by the member of the Government responsible for migration matters.
3. The Deputy National Director shall replace the National Director in his/her absence or when otherwise engaged.
4. Whenever the Deputy National Director is prevented from attending and is not available, one of the Heads of Department may be appointed to replace the Director National once the views of the member of the Government overseeing migration matters have been sought.

Article 15 **Legal Affairs, Asylum and Refugees Office**

1. The Legal Affairs, Asylum and Refugees Office is responsible to provide legal advice as follows:
 - a) to prepare studies, draft legal opinions and prepare information on legal matters, including on international agreements that have a bearing on the area of responsibility of MS;
 - b) to draft laws and other legislation and to prepare instructions with a view to correctly applying and harmonizing foreigners-related legislation;
 - c) to review and revise the internal legislation concerning migration matters in collaboration with the Ministry of Foreign Affairs, with a view to checking its consistency with international treaties to which Timor-Leste is a party;
 - d) to analyze, draft legal opinions and prepare replies to appeals on matters that fall under the area of responsibility of the Office;
 - e) to provide legal advice on all matters submitted to it.

2. The Legal Affairs, Asylum and Refugees Office has the following responsibilities with regard to asylum and refugees' matters:

- a) to organize, prepare and submit asylum applications to the authority that is competent for making decisions on such matters;
- b) to organize and prepare the procedures for the granting of residence on humanitarian grounds;
- c) to issue legal opinions on applications for the resettlement of refugees;
- d) to issue legal opinions on applications for and requests for extension of the validity of travel documents for refugees filed with Timor-Leste's consular services;
- e) to issue identity and travel documents for refugees, as well as to grant residence permits pursuant to the provisions in the Law on Immigration and Asylum and to renew or extend such documents.

3. The Head of the Legal Affairs, Asylum and Refugees Office shall be a civil servant with the rank of senior technician grade B (*técnico superior, grau B*), pursuant to Decree-Law no. 27/2008 and shall be a law graduate.

Article 16 Audit Office

1. The Audit Office has the following auditing responsibilities:

- a) to carry out ordinary and extraordinary inspections in the services, to undertake audits, investigations, enquiries and to open disciplinary procedures;
- b) the ordinary audits shall be carried out annually in all services of the MS;
- c) extraordinary audits shall be carried out whenever the National Director deems such audits to be convenient;
- d) the officials assigned to carry out the tasks provided under paragraph 1 shall be appointed by a decision of the National Director on a proposal of the coordinator of the Audit Office.

2. The Head of the Audit Office shall be a civil servant with the rank of senior technician grade B (*técnico superior, grau B*), pursuant to Decree-Law no. 27/2008 and shall have the relevant and appropriate qualifications.

Article 17 Public Information and International Relations Office

It is incumbent upon the Public Information and International Relations Office:

- a) to ensure that the information concerning the participation of the MS in international organisations is duly collected, updated and disseminated;
- b) to assist in the preparation of the participation of MS representatives at international meetings;
- c) to provide the Executive Board of the MS with technical information on the implementation of cooperation agreements and other bilateral e multilateral instruments involving the State of Timor-Leste and which fall under the scope of the MS, in cooperation with the Ministry of Foreign Affairs ;
- d) to ensure a smooth collaboration between the MS and the liaison officers in international fora;
- e) to prepare and disseminate information deemed to be of public interest on the activities of the MS;
- f) to select and disseminate information published by the media on the activities of MS, deemed to be of interest to the service;
- g) to act as a link between the MS and the media and to undertake activities aimed at promoting and raising the profile of the MS;
- h) to organise social, cultural and sporting activities within the framework of MS's cooperation with its national and foreign counterparts, as well as to coordinate cultural, social and recreational activities aimed at MS staff.

SECTION III Board's Advisory Committee (*Conselho Consultivo de Gestão*)

Article 18 Nature, composition and powers

1. The Board's Advisory Committee is the body supporting the management of the MS. It is incumbent upon this committee to issue non-binding opinions for the benefit of the National Director on operational or administrative policies that have a bearing on the MS; and to monitor the performance of the MS with regard to its financial and management and the management of its assets and property.
2. The Board's Advisory Committee is made up of:
 - a) the National Director, who chairs the Advisory Committee;
 - b) the Deputy National Director;
 - c) the heads of Departments.
3. The National Director may invite senior officials who have special skills or knowledge to take part in the debates of the Board's Advisory Committee.

4. It incumbent upon the Board's Advisory Committee:

- a) to review MS's current operations in order to ensure that objectives are attained while making an effective use of resources and the fulfilment of pre-defined performance levels;
- b) to advise, whenever required, the member of the Government overseeing immigration matters, on the need to make changes to the migration policy;
- c) to assess the administrative and financial activities of the MS, as well as to ensure that the MS complies with the legal, administrative and financial regulations that are in force;
- d) to assess the MS's draft budgets before their submission to the Ministry of Finance;
- e) to monitor on a continuous basis the MS's budgetary situation with regard to expenditure and revenue;
- f) to undertake any other tasks deemed relevant for the strategic management of the MS.

Article 19 Periodicity of meetings

1. The Board's Advisory Committee shall hold ordinary meetings once a month. It shall hold extraordinary meetings whenever such meetings are convened by its chairperson.

2. The Centre for Research on and Planning of Migratory Issues (*Centro de Pesquisas e Planeamento Migratório*) shall provide secretarial support to the Board's Advisory Committee and prepare minutes and summaries of meetings held, as well as keep a register of participants at those meetings.

SECTION IV Services

Article 20 Departments

1. The departments of the MS include:

- a) Operations Department (*Sector Operacional*);
- b) Borders Department (*Sector de Fronteiras*);
- c) Residing Foreigners Department (*Sector de Permanência de Estrangeiros*);
- d) Administrative Support Department (*Sector de Apoio Administrativo*).

2. The aforementioned units shall be considered equivalent to departments, pursuant to article 18(3)(a) of Decree-Law no. 27/2008 of 11 August.

SUBSECTION I **Operations Department (*Sector Operacional*)**

Article 21 **Powers and structure**

1. It shall be incumbent upon the Operations Department to oversee the enforcement of the Law on Immigration and Asylum, by checking and controlling the presence and activities of foreigners in the national territory, so as to ensure compliance with the rules and regulations on migration matters.

2. The Head of the Operations Department shall be an official with the rank of Senior Inspector for Migration (*Inspector Superior de Migração*) and shall be appointed by the National Director.

3. The Head of the Operations Department shall be placed directly under the National Director of the MS.

4. It shall also be incumbent upon the Operations Department:

- a) to undertake activities aimed at detecting and preventing the presence of irregular immigrants, which shall be duly planned and coordinated before deployment;
- b) to undertake the appropriate administrative procedures against irregular immigrants, including fines, serving notices for voluntary departure (*abandono voluntário*) and issuing instructions for expulsion (*expulsão*);
- c) to prosecute people who commit one of the infringements defined in the Law on Immigration and Asylum or related legislations;
- d) to centralize the information relating to visas, movements of individuals and activities that go against the Law on Immigration and Asylum as well as other relevant legislation, and to analyse the data collected, supplying relevant information to appropriate units of the MS, as well as to other authorities as provided by the law;
- e) to provide specialist services for the analysis of travel documents and other documents related to migration cases, generating expert reports to be submitted to the relevant MS services and other authorities;
- f) to pass on to the Public Information and International Relations Office (*Gabinete de Relações Públicas e Internacionais*) any information about the activities of the departments deemed to be of interest to the public;
- g) to undertake any other tasks established by the law.

5. The Operations Department shall comprise:

- a) the Division for Monitoring (*Divisão de Fiscalização*);
- b) the Division of Criminal Investigation (*Divisão de Investigação Criminal*);
- c) the Division of Intelligence (*Divisão de Informações de Segurança*);
- d) the Laboratory for Documentary Analyses (*Laboratório de Peritagem Documental*).

Article 22
Division for Monitoring (*Divisão de Fiscalização*)

1. It shall be incumbent upon the Division for Monitoring:

- a) to monitor the activities of foreign citizens in the national territory;
- b) to monitor the registration of foreigners with hotels and others providing similar services;
- c) to initiate procedures for administrative offences (*processos de contra-ordenação*) pursuant to the Law on Immigration and Asylum;
- d) to serve notices to irregular immigrants regarding their voluntary departure (*abandono voluntário*) from the national territory;
- e) to execute the procedures and decisions regarding expulsion;
- f) to issue *laissez-passer* (*salvos-condutos*) for non-resident foreign citizens.

Article 23
Division of Criminal Investigation (*Divisão de Investigação Criminal*)

It shall be incumbent upon the Division of Criminal Investigation to detect and fight any activities related to the crime of assisting illegal immigration, human trafficking and other associated crimes. In particular, it is incumbent upon the division:

- a) to detect and investigate, under the guidance of the competent judicial authority, crimes of assistance to illegal immigration, human trafficking and other associated crimes;
- b) to provide intelligence and to guide the activities undertaken in the field by the Division for Monitoring and other units within the MS in relation to the activities referred to in subparagraph (a) above.

Article 24
Division of Intelligence (*Divisão de Informações de Segurança*)

1. It shall be incumbent upon the Division of Intelligence to collect and review intelligence concerning the presence of foreigners in the country, and to convey the findings to the relevant units within the MS as well as to other authorities pursuant to the law.
2. The Division of Intelligence is specifically tasked with the following:
 - a) to collect information that is relevant to the activities of the MS and originates in: visa applications; cross-border movements; monitoring and investigation activities; any constraints applicable to passports issued by police and judicial authorities, as well as intelligence provided by other national and international sources;

- b) to record and analyse that data collected in accordance with subparagraph (a) above, and to undertake research that is relevant and useful to the MS and to other authorities pursuant to the law;
 - c) to update the “Alert List” available in the Border Management System (*Sistema de Gestão de Fronteiras*, SGF) to be used by the MS and other authorities pursuant to the law.

Article 25
Laboratory for Documentary Analyses (*Laboratório de Peritagem Documental*)

It shall be incumbent upon the Laboratory for Documentary Analyses:

- a) to collect, analyse and disseminate information regarding relevant documents;
- b) to undertake expert analyses of documents and to prepare reports about the relevant findings;
- c) to process the identification data of foreigners and stateless individuals, namely biometric data, names, fingerprints and photos, as well as to undertake expert analyses and produce reports;
- d) to provide technical advice on the production of new official documents in Timor-Leste.

SUBSECTION II
Borders Department (*Sector de Fronteiras*)

Article 26
Powers and structure

1. It shall be incumbent upon the Borders Department to control the movement of individuals in Timor-Leste’s international border posts, and to issue decisions on the entry into and departure from the national territory pursuant to the law.

2. The Head of the Borders Department shall be an official with the rank of Senior Inspector for Migration (*Inspector Superior de Migração*) and shall be appointed by the National Director.
3. The Head of the Borders Department shall be placed directly under the National Director of the MS.
4. It shall also be incumbent upon the Borders Department:
 - a) to ensure that entry into and departure from the national territory only takes place at authorized border posts;
 - b) to control the movement of individuals arriving at and departing from border posts, having the authority bestowed upon it to prevent passengers or crew from disembarking pursuant to the law;
 - c) to ascertain the identity of all individuals arriving into and departing from the national territory;
 - d) to refer all asylum seekers to the Legal Affairs, Asylum and Refugees Office;
 - e) to issue decisions regarding the arrival and departure of passengers, preventing the arrival in or departure from the national territory of individual who do not fulfil the legal requirements;
 - f) to cooperate with police and judicial authorities in enforcing any restrictions on travel and other impediments as provided by law;
 - g) to issue decisions on applications for visas on arrival with regard to passengers who have not been exempted from obtaining a visa to get admitted into the national territory;
 - h) to collect and duly deposit the fees associated to the issuing of visas at the border posts;
 - i) to keep an adequate register of decisions regarding refusals to admit individuals into the country and allow their departure from the national territory, including the inclusion of their names in the Alert List whenever it is deemed necessary;
 - j) to ensure that an individual who was refused entry into the national territory is restricted to the international area until such time when the company responsible for his/her repatriation makes available means of transportation for his/her removal from the national territory pursuant to the law;
 - k) to cooperate with other agencies who have responsibilities in the provision of services and security at the national borders;
 - l) to undertake any other tasks established by the law.

5. The Borders Department comprises:

- a) the Borders' Technical Division;
- b) the Border Posts

Article 27 Borders' Technical Division

It shall be incumbent upon the Borders' Technical Division:

- a) to investigate and draft technical standards with a view to standardising procedures at border posts and ensuring that they are consisting and effective;
- b) to investigate and identify the necessary equipment for the operation of border posts;
- c) to centralize information regarding the movement of individuals across the borders.

Article 28 Border Posts

1. The establishment or closure of Border Posts shall take place by means of a ministerial order from the member of the Government overseeing migration matters and on a proposal from the National Director of the MS.

2. The existing Border Posts or those to be established by means of a ministerial order from the member of the Government overseeing migration matters may be placed under the responsibility of the Borders Department or of the Territorial Delegation in whose territory they are located.

Article 29 Heads of Border Posts

1. The border posts will be headed by an individual with the rank of Inspector for Migration or higher.

2. The border posts may be headed by a Deputy Inspector for Migration for duly motivated reasons.

Article 30 Airfields and non-permanent international traffic posts

The airfields, ports and border crossing posts that are not used as border posts but where the member of the Government overseeing migration matters may exceptionally grant permission for the arrival or departure of international traffic shall be under the head of the Borders Department.

SUBSECTION III
Residing Foreigners Department (*Sector de Permanência de Estrangeiros*)

Article 31
Powers and structure

1. It shall be incumbent upon the Residing Foreigners Department to issue decisions on applications for residence in the national territory and extensions of residence permits, pursuant to the Law on Immigration and Asylum.
2. The Head of the Residing Foreigners Department shall be an official with the rank of Senior Inspector for Migration (*Inspector Superior de Migração*) and shall be appointed by the National Director.
3. The Head of the Borders Department shall be placed directly under the National Director of the IS.
4. It shall also be incumbent upon the Residing Foreigners Department:
 - a) to assess the applications for residence or stay permits (*pedidos de residência ou permanência*), to make decisions or to recommend decisions to the relevant authorities;
 - b) to collect and deposit the fees associated to the issue of visas by the Residing Foreigners Department;
 - c) to issue technical opinions on applications submitted to the consular services pursuant to the Law on Immigration and Asylum;
 - d) to issue opinions on applications for the acquisition of nationality by marriage or naturalization;
 - e) to ensure that the public has access to and understands the information relating to the policy on visas, its requirements and procedures;
 - f) to undertake any other tasks established by the law.
5. The Residing Foreigners Department comprises:
 - a) the Division of Visas ;
 - b) the Division of Migration Attachés.

Article 32 **Division of Visas**

It shall be incumbent upon the Division of Visas :

- a) to receive and process applications for visas, extensions of stay, residence permits, family reunification and equality status;
- b) to issue opinions on applications for the acquisition of nationality by marriage or naturalization;
- c) to certify the identity cards issued by the Ministry of Foreign Affairs to diplomatic and consular officials and to administrative staff working in diplomatic and consular missions, as well as their relatives, who are duly accredited in Timor-Leste.

Article 33 **Division of Migration Attachés**

1. It shall be incumbent upon the Division of Migration Attachés:

- a) to receive and to process applications submitted to the consular services pursuant to the Law on Immigration and Asylum, as well as to issue technical opinions whenever authorized to do so by the National Director;
- b) to undertake any other tasks established by the law, memorandum of understanding or agreement.

2. The Migration Attachés are under the Consular Services Official in the territory in which they were posted for the purposes of administrative oversight.

3. The Migration Attachés are under the National Director for the purposes of functional oversight.

4. The secondment of Migration Attachés to the Consular Services shall be defined in a memorandum of understanding between the member of the Government overseeing migration matters and the Minister of Foreign Affairs.

SUBSECTION IV **Administrative Support Department (*Sector de Apoio Administrativo*)**

Article 34 **Powers and structure**

1. It shall be incumbent upon the Administrative Support Department:

- a) to provide support to the national Executive Board;
- b) to provide support, registration and processing services to the MS;

- c) to provide human resources support to the MS;
 - d) to provide vocational training and planning services to the MS and to other agencies involved in the provision of migration-related services;
 - e) to provide statistical services to the MS and to other agencies involved in the provision of migration-related services;
 - f) to undertake research and prepare studies under the supervision of the National Director of the MS or of the Commission on Migration Policies (*Comissão para a Política de Migração*);
 - g) to provide assistance to the National Director and the Board's Advisory Committee on strategic planning activities;
 - h) to provide financial and budgetary management services to the MS;
 - i) to provide procurement and logistics services to the MS;
 - j) to provide assets, facilities and equipment management services to the MS;
 - k) to provide car fleet management services to the MS;
 - l) to provide safe warehousing services to the MS;
 - m) to provide assistance and management services to the MS in the realm of information and communication technologies;
 - n) to undertake any other tasks established by the law.
2. The Head of the Administrative Support Department shall be an official with the rank of Senior Inspector for Migration (*Inspector Superior de Migração*) and shall be appointed by the National Director.
3. The Head of the Administrative Support Department shall be placed under the National Director of the MS.
4. The Administrative Support Department comprises:
- a) the Secretariat-General;
 - b) the Division of Human Resources
 - c) the Division of Financial and Assets Management ;
 - d) the Centre for Research on and Planning of Migratory Issues;
 - e) the Division of Information and Communication Technologies.

5. A detailed description of the functions of the Secretariat-General, Division of Human Resources and Division of Financial and Assets Management shall be approved by the National Director by means of a Standard Operational Procedure (*Norma de Procedimento*).

Article 35 **Centre for Research on and Planning of Migratory Issues**

1. The Centre for Research on and Planning of Migratory Issues is placed under the National Director from a functional viewpoint. However, it shall provide services to the agencies dealing with migratory issues that make up the Commission on Migration Policies (*Comissão para a Política de Migração*).

2. It shall be incumbent upon the Centre for Research on and Planning of Migratory Issues:

- a) to identify training needs and to implement training initiatives in migratory issues and curricula and to draft the annual training plan for the MS and other agencies dealing with migratory issues;
- b) to assist the Board's Advisory Committee (*Conselho Consultivo de Gestão*), the Commission on Migration Policies and other commissions dealing with the coordination of migratory issues;
- c) to collect, review and disseminate statistical data related to the migration-related activities of the MS and of other agencies dealing with migratory issues;
- d) to assist in the development of the annual action plan of the MS, under the guidance of the Board's Advisory Committee;
- e) to assist the various services of the MS in the design and development of planning and control activities;
- f) to assist the various services of the MS in the drafting of standard operational procedures with a view of ensuring the consistency of their actions and upholding quality standards;
- g) to coordinate the vocational training and the accreditation of the training courses with the Ministry of Education and the Ministry of State Administration and Territorial Planning.

3. As part of its tasks, the Centre for Research on and Planning of Migratory Issues shall support existing partnerships with the following agencies dealing with migratory issues:

- a) the Division of Consular Affairs;
- b) the National Directorate for Registries and Notaries;
- c) the National Directorate for Labour; and

Article 36
Division of Information and Communication Technologies

1. It shall be incumbent upon the Division of Information and Communication Technologies:
 - a) to manage the information system, including the databases and communication resources;
 - b) to manage the information technologies, including hardware and software;
 - c) to design an ICT plan that includes a schedule for the replacement of ICT equipment on a regular basis and in a planned manner, as well as technical specifications for the equipment to be procured;
 - d) to manage individual security and control systems, ensuring that only accredited officials have access to MS's system, as well as ensuring that access to such system is only for official purposes and to ensure compliance with the rules and standards defined for ICT within the framework of the aforementioned plan;
 - e) to manage and safeguard electronic archives;
 - f) to design handbooks on the use of ICT in collaboration with the operational units, and to ensure that adequate implementation and updating;
 - g) to ensure that estimates for the replacement of ICT equipment and consumables are duly included in the draft budget for every new financial year;
 - h) to initiate the procurement procedures aimed at purchasing, installing or replacing ICT equipment as well as the associated consumables;
 - i) to identify opportunities for improving the system and to submit proposals to the Board's Advisory Committee;
 - j) to manage and ensure the maintenance of the radio network.

SUBSECTION V
Territorial Delegations (*Delegações Territoriais*)

Article 37
Nature and territorial scope

1. Territorial Delegations providing services that fall within the scope of the MS may be established by a ministerial order signed by the member of the Government overseeing migration matters.
2. The Territorial Delegations will undertake the tasks of the MS assigned to them by the National Director.

3. The responsibility for managing the Border Posts in its area of jurisdiction may be delegated to the Territorial Delegation.
4. The organs, services and responsibilities of the Territorial Delegations shall be approved by an order of the National Director within 30 days after the entry into force of the ministerial order referred to in paragraph 37(1).

CHAPTER III **MISCELLANEOUS PROVISIONS**

Article 38 **Career and discipline regulations**

1. The staff of the MS may come from the Migration Service Career (*Carreira de Migração*) or from other regimes in the civil service.
2. The staff regulations of the Migration Service Career shall be adopted by means of a decree-law.

Article 39 **Identification of officials in the Migration Service Career**

1. The National Director, the Deputy National Director and the Officials from the Migration Service Career shall use a specific badge and identification card when performing their functions.
2. The identification card to be used by officials in the Migration Service Career shall state the professional status and powers of its holders.
3. The features of the badge and identification card shall be approved by means of a legal instrument issued by the member of the Government overseeing migration matters.
4. The identification card being provided in this article is without prejudice to provisions regarding other identification documents provided by law.

Article 40 **Standard procedures**

1. The operational and administrative procedures adopted by the MS that do not affect citizens' rights or that are not regulated by specific legislation shall be defined by standard operational procedures.
2. The standard operational procedures shall be mandatory for all the staff of the MS.

Article 41 **Revenue**

1. Besides the budget allocations included in the State Budget, the MS shall have the following own sources of revenue:

- a) The percentage provided by law regarding the fees collected for issuing visas, extensions of stay, issuing and renewing residence permits and issuing travel documents;
 - b) The fees and other charges that are legally in force;
 - c) The revenue resulting from the sale of MS forms;
 - d) The percentage of the fines collected provided by law;
 - e) Any other revenue allocated or to be allocated to the MS by law.
2. The revenue referred to in the paragraph above shall be delivered to the State coffers by means of payment documents to be issued by MS and shall be applied to offset expenditure incurred by the service.
3. The administrative procedures, processing and final destination of the revenue provided in paragraph 1 above shall be the object of a joint legal instrument by the Ministry of Finance and the member of the Government overseeing migration matters.

Article 42 Commemorative date

The day of the MS shall be celebrated on 13 January, in remembrance of the date when the Migration Department was established in 2003.

CHAPTER IV Transitional provisions

Article 43 Transitional provisions regarding staff

1. PNTL officers and agents posted in PNTL's Migration Department at the time when this decree-law comes into force shall be transferred to the staffing tables of the IS pursuant to the transitional provisions to be adopted under the Staff Regulations for the Migration Career (*Estatuto de Pessoal da Carreira de Migração*).
2. Until such time when the staff regulations for the MS is approved, the rules included in PNTL's staff regulations shall apply.
3. During the transitional period referred to in paragraph 43(1) above, the PNTL members posted in the IS shall be directly under the National Director of the MS under the aegis of the member of the Government overseeing migration matters.

Article 44 Transfer of resources

1. The facilities and equipment of PNTL's Migration Department, namely vehicles, electronic ware and databases are an integral part of the facilities and assets of the MS from the day when this decree-law comes into force.

2. The transfer of facilities and assets from PNTL's Migration Department to the IS shall take place by means of hand-over and reception forms (*guia de entrega e recepção*), followed by the decommissioning of those assets by PNTL and the addition of the same to their list of assets by the MS, pursuant to the law regulating the management of facilities and equipment.

3. The internal budget allocated to PNTL's Migration Department by the member of the Government overseeing migration matters, [and transferred] to the MS, shall be considered at the time of the establishment of the service as its budget appropriation for the purpose of the balance to be carried out at the end of the year.

CHAPTER V **Final provisions**

Article 45 **Entry into force**

This decree-law shall enter into force on the day following its publication.

Approved by the Council of Ministers on 23 September 2009

The Prime Minister

[signed]

(Kay Rala Xanana Gusmão)

The Minister of Finance

[signed]

(Emília Pires)

Promulgated on 27 October 2009

To be published.

The President of the Republic

[signed]

(José Ramos-Horta)