

GOVERNMENT DECREE No. 9/2008
of 16 April 2008
REGULATES THE PROVISION OF
TELECOMMUNICATIONS SERVICES ON THE MOBILE NETWORK

The Government has devoted a great deal of attention to the issue of telecommunications, particularly through the development of various projects, which have already begun to bear very visible fruit.

Among them, mobile telecommunications services stand out, which are assumedly a success story in Timor-Leste.

Talking about the success of mobile services also means that the regulatory framework under which the services have been developed has proved to be able and appropriate to enable the interests of businesses, consumers and public authorities to be reconciled in pursuit of the public interest.

The Government believes that the regulatory framework must evolve in such a way as to enable all objectives to be better achieved, and therefore resolves to introduce new rules for mobile phone operators so that the values and interests to be protected are safeguarded and rebalanced.

The Concessionaire was heard, in accordance with paragraph 3 of clause 12 of the Telecommunications Service Concession Contract.

The Government decrees, under the terms of paragraph c) of no. 2 of Article 4 of Decree-Law no. 11/2003, of 27 August, to apply as regulation, the following:

Article 1
Subject matter and Scope

1. This decree regulates the contracts for the adhesion, acceptance and use of SIM cards, of the telecommunications service in mobile network.
2. The provisions of this legal diploma shall apply to all subscription contracts for SIM cards issued by a telecommunications service operator in the mobile network.

Article 2
Definitions

For the purposes of this decree, the following definitions shall apply:

- a) **User** - any natural or legal person who has the services provided by the operator;
- b) **Operator** - any concessionary or licensed entity, which provides telecommunications service in the mobile network, by means of a subscription contract, through a SIM card;
- c) **SIM card** - an instrument for connection to the mobile network, usually presented in the form of a plastic card, with magnetic stripe and/or chip, associated with a number, which is provided by the operator to enable access and control by the customer to telecommunications services on the mobile network;
- d) **Mobile network telecommunications service** - the provision of voice telephony addressed transport in real time from the termination points of the mobile telecommunications network, allowing any user to use the equipment connected to the termination point to communicate with another termination point;

- e) **Traffic data** - the functional data necessary to establish a connection or communication and the data generated by the use of the network (identification of outgoing and incoming calls, duration of use, date and time);
- f) **Misuse** - Any use of the SIM card outside the conditions of use set out in the contract between the user and the operator;
- g) **ARCOM** - Communications Regulatory Authority.

Article 3

Contract

1. The relationship between the operator and the user of the SIM card shall be regulated by a written contract, and it shall be mandatory to observe the rules of engagement set forth in articles 4 and 5 of this decree.
2. The contract shall be written in Tetum and Portuguese, using accessible language and graphic presentation that allows easy and understandable reading.
3. The contract must observe:
 - a) The identification of the parties, with the name, place of residence and number of the document referred to in Article 4 being the requested user;
 - b) General conditions of use;
 - c) Particular conditions of use, when contracted;
 - d) Description of the contracted services;
 - e) Period of validity and form of revalidation of the SIM card;
 - f) Reasons for contract rescission;
 - g) Clauses fixing all fees, tariffs or other legal costs;
 - h) Clause that declares the annexes part of the contract.
4. The contract shall be deemed to have been concluded upon receipt by the user of the SIM card and a copy of the contractual conditions accepted by him/her.

Article 4

Documents required

1. The contract to be concluded with natural persons shall identify the user by presenting an updated document with a photograph attached, a copy of which shall be attached to the contract.
2. The contract to be concluded with legal persons shall identify the user by means of presentation of the registration certificate or equivalent document proving the existence of the company, a copy of which shall be attached to the contract.

Article 5

Obligations of the Parties

For the purposes of Article 3(3), the contract between the user and the operator must include the rights and obligations of the contracting parties:

- a) The operator's obligation to maintain a customer service enabling the user to contact him directly or his representative twenty-four hours a day, by means of the telephone number indicated in the contract or by any other means available;

- b) The user's obligation to notify the operator of the loss, theft, robbery or falsification of the card immediately upon becoming aware of such facts;
- c) The obligation for the user to notify the operator of transmission of possession of the SIM card to another user in any capacity;
- d) The provision ensuring that the user is not liable for any misuse of the SIM card as a result of the facts referred to in b) and c) after notification to the operator;
- e) The provision providing that the operator, once notified by the user of the loss, theft, robbery or falsification of the card, undertakes to cancel the SIM card immediately, failing which he shall be liable for the costs of communications made after the notifications referred to in (b);
- f) The provision that the user shall be responsible for all communications made via the SIM card up to the time indicated in the operator's records of the card's loss, theft, robbery or falsification when notified;
- g) The provision that the user is responsible for all communications by means of the SIM card if he fails to comply with the obligations set out in points (b) and (c);
- h) The obligations referred to in Article 6(3) and (4).

Article 6

Data collected

1. The operator, in the course of its activity, shall keep on file, by electronic or physical process, for a minimum period of five years from the date of conclusion of the contract, the user identification details as stipulated in Articles 3 and 4,
2. Data collected and generated under the provision of the mobile telecommunications service, including traffic data, shall be processed automatically in accordance with current legislation and the conditions defined by ARCOM.
3. The operator must respect the legislation on the protection of user data privacy and process such data only for contractual purposes, as well as ensure that the data collected will be treated with appropriate levels of security and secrecy, failing which it will incur liability, under the terms of the law.
4. The data referred to in the previous paragraphs are intended for the provision of the service, management and evaluation of the contractual relationship with the user, adaptation of the service to the needs of the user, payment for interconnections, for network operation and maintenance, statistical purposes, information actions for the user and ARCOM, marketing or telemarketing of the operator, as well as inclusion in the subscriber directories, and the operator is prohibited from using such data for any other purposes.

Article 7

Traffic data

1. Traffic data processed in connection with the provision of the mobile telecommunications service shall comprise such data as are necessary for user billing or information purposes.
2. Billing by the operator to the user for the services provided shall include the name and residence of the user, the SIM card number, the numbers associated with the SIM card for communications made and received, the service identification, the date, time and duration of the call and the type of tariff charged.

3. For information purposes, the identification of traffic data inherent in the volume of data transmitted, to the IMEI (International Mobile Equipment Identity), to the identification of the network cell in which the user's mobile equipment is located at any given time, shall be subject to judicial authorization.
4. For the purposes of the above paragraphs, traffic data must be retained by the operator for a minimum period of one year from the date on which it originated.

Article 8

Collaboration with judicial authorities

1. Information on traffic data may be requested as part of the judicial proceedings.
2. The information referred to in the previous article must be provided by the operator, within the time limit set by the judge, on pain of liability under the law, provided that the request is individual, sufficiently concrete and with references to the respective judicial proceedings.
3. When the request is formulated by the Public Prosecution Service agent in charge of the judicial process, it must be accompanied by written authorization from the competent judge.

Article 9

Information to ARCOM

1. The operator shall report monthly to ARCOM information of users who have made improper use, fraud or falsification in the provision of a service related to telecommunications by means of SIM cards.
2. The communication referred to in the previous paragraph shall contain:
 - a) Full name of the user;
 - b) Type and Number of Identification Document;
 - c) Description and type of event practiced.

Article 10

Transitional provision

1. ARCOM shall set the operator a deadline for the regularization of all its contracts, in accordance with the provisions of this law.
2. To this end, the operator shall notify users with the necessary publicity, by the means it deems most appropriate, in order to be received by all users.
3. Failure to regularize the contract within the stipulated period shall imply the immediate suspension of the membership contract, without prejudice to the contract being resumed as soon as the fault is remedied.
4. The obligations arising from the application of the provisions of this statute shall be the sole and exclusive responsibility of the operator, and the user may not be charged any fees or charges.

Article 11.

Entry into force

The present Decree enters into force on the day following its publication.

Approved by the Council of Ministers on 5 March 2008.

Be it published.

The Prime Minister,

Kay Rala Xanana Gusmão

The Minister of Infrastructure,

Pedro Lay da Silva