

DECREE LAW No. 51/2011

of 21 December 2011

LEGAL REGIME OF ADVERTISING ACTIVITIES

This Decree-Law provides the legal system of Timor-Leste with a set of rules regulating advertising.

Advertising has an undeniable importance, both in the field of economic activity and as a privileged instrument to foster competition, always beneficial to companies and their customers.

As a vehicle that stimulates its potential and diversity, advertising activity enters the daily life of citizens with increased importance and is also worthy of attention in the field of consumer protection and safeguard of their legitimate expectations.

Considering that the coexistence of a special advertising regime for the Radio and Television of Timor-Leste, Public Enterprise (RTTL, E.P.) and another for all the other operators and intervening in the advertising activity is not justified;

Taking into account the Resolution of the National Parliament no. 13/2004, of 29 December, which Ratifies the Framework Convention on Tobacco Control, in particular article 13, on tobacco advertising,

Thus,

The Government decrees the following under the provisions of Article 115(1)(e) and Article 116(d) of the Constitution of the Republic, to be enforced as law:

**CHAPTER I
GENERAL PRINCIPLE**

**Article 1
Scope**

1. This Decree-Law establishes the general rules to which the dissemination of advertising messages must conform.
2. Advertising activity shall be deemed to be the set of operations related to the dissemination of an advertising message to its recipients, as well as the legal relationships arising therefrom between advertisers, advertising agencies and entities that exploit the advertising media or that carry out the advertising activity.
3. For the purposes of the provisions of this statute, the communications of Public Administration that take the form of unofficial notes or messages from the holders of sovereign bodies to the population shall not be considered commercial advertising messages.
4. RTTL, E.P. program services shall transmit the unofficial notices requested by the President of the Republic, the Speaker of the National Parliament and the Prime Minister, as well as the airtime allocated to political parties, under the terms and conditions defined by law, free of charge.

Article 2

Concepts

For the purposes of this law

- a) **Advertising agency:** shall mean a commercial company whose sole object is the exercise of advertising activity;
- b) **Advertiser:** the natural or legal person in whose interest the advertising is carried out;
- c) **Advertising operations:** means all those aimed at the design, creation, production, planning and distribution of advertising;
- d) **Advertising or Advertising Activity:** means any dissemination aimed at directing the attention of the public to a particular good or service of a commercial nature, with the aim of promoting its acquisition, as well as the legal and technical relations arising therefrom between advertisers, advertising agencies and entities exploiting the advertising media or carrying out such activity;
- e) **Advertising medium:** means any medium used for transmitting the advertising message.

Article 3

General requirements

1. The advertising message must be easily understood, lawful, identifiable and true and respect the principles of free and fair competition and consumer protection.
2. It is understood that the advertising message is easily understood by the recipients when expressed in one of the official languages of Timor-Leste or, when expressed in another language, reserve a reasonable space for the inscription of the words in Tetum and/or in Portuguese.

Article 4

Principle of legality

Advertising which, by its form, object or purpose, offends against constitutionally established principles, institutions or fundamental values of the community shall not be permitted.

Article 5

Principle of identifiability

The nature of the advertising message must be unequivocally identifiable as such, whatever the medium used for its dissemination.

Article 6

Principle of truthfulness

1. The advertising message must respect the truth and not mislead its recipients.
2. Statements concerning the origin, nature, composition, properties and conditions of acquisition of the goods or services advertised must be substantiated at all times before the inspection authorities and competent bodies.

Article 7

Consumer protection

1. Advertising must not cause any moral, mental or physical detriment to the consumer as a result of a lack of information and must not mislead the consumer as to the conditions of purchase, in particular as to:

- a) the value or price to be paid for the good or service;
 - b) in the case of payment in instalments of the price, the initial and subsequent instalments, the particular features of the credit and other conditions of payment;
 - c) the conditions of delivery, replacement of the goods or termination of the contract;
 - d) the gratuitousness of the goods or services advertised, unless the consumer is not required to pay any cost, including postage, freight or tax.
2. The use of formulas and suggestions considered legitimate, in accordance with the prevailing concepts of commerce, shall be excluded from the provisions of the preceding paragraph.

Article 8
Quality of life

Advertising which harbors messages instigating pollution, including noise, as well as that leading to the degradation of fauna, flora and other natural resources, shall not be permitted.

Article 9
Advertising

Consumer health and safety

1. Advertising which encourages behavior prejudicial to the health and safety of consumers, in particular because of a lack of information about the danger of the product or because of the particular caution in accidents resulting from its use, shall be prohibited.
2. The provisions of the preceding paragraph shall be particularly observed in the case of advertising which is especially aimed at children, adolescents, the elderly or the disabled.

CHAPTER II
ADVERTISING RESTRICTIONS

SECTION I
PROHIBITED ADVERTISING

Article 10
Prohibited means of advertising

1. The use of disguised images or other dissimulating means is prohibited when exploiting the possibility of transmitting advertising without the recipients realizing the advertising nature of the message.
2. For the purposes of this statute, disguised advertising is considered as advertising that, through the use of any technique, may provoke in the addressee sensory perceptions of which he is not aware.
3. Without prejudice to the provisions of this legal diploma or other supervening legal prohibitions, advertising that:
 - a) use, detrimentally, institutions, national or religious symbols, historical characters or that make them appear without due dignity;
 - b) may favor or stimulate violence and illegal or criminal activities;
 - c) attacks the dignity of the human person;

- d) contains any discrimination on grounds of race or sex;
 - e) uses obscene language;
 - f) encourages behavior prejudicial to the protection of the environment.
 - g) has as its object ideas of union, political or religious content, unless of authorship, duly announced and identified by the entities themselves.
4. It is also forbidden the advertisement that:
- a) has a hidden or criminal character;
 - b) is based on fear, ignorance or superstition of the recipients;
 - c) uses pornographic, obscene or in any way violates the dominant public morals;
 - d) concerns radio and television advertisements for alcoholic beverages or tobacco in accordance with Article 26;
 - e) does not alert to special care with regard to the prevention of accidents, when such care is required for the handling or use of the goods advertised.

Article 11 **Specific prohibitions**

1. May not be the subject of advertising:
 - a) lending or pawn brokerage;
 - b) firearms;
 - c) pornographic material;
 - d) games of chance not authorized by law.
2. The activity of rendering and "pawnbrokers" may be disclosed in classified lists, commercial yearbooks and other similar publications.
3. The presence of children and adolescents in advertising for tobacco or alcoholic beverages is prohibited.
4. Without prejudice to the provisions of paragraph a) of no. 3 of the previous article, national constitutionally established symbols as well as party symbols, with emphasis on the flags of legally constituted political associations and parties, may not be the object of commercial advertising.

Article 12 **Privacy**

1. All forms of advertising which, without the permission of the interested party, use or suggest his/her image, house, family, acts or words are prohibited.
2. All forms of advertising that violate the rights to honor and privacy shall be subject to applicable civil and criminal sanctions.

Article 13 **Misleading advertising**

1. The use of forms of advertising which, directly or indirectly, by reason of a lack of truth, omission, exaggeration or doubtfulness, mislead the consumer as to the characteristics of the good, service or price and which might harm a specific competitor shall be prohibited.

2. In determining whether a message is misleading, account shall be taken of all its features, and in particular of any information relating thereto:
 - a) the characteristics of the goods or services, such as their availability, nature, execution, composition, method and date of manufacture or provision, fitness for purpose, use, quantity, specification, geographical or commercial origin, the results to be expected from their use, or the results and essential characteristics of tests or checks carried out on the goods or services;
 - b) the price and the manner in which it is fixed or paid, and the conditions of supply of the goods or services;
 - c) the nature, characteristics and rights of the advertiser, such as identity, qualifications, industrial, commercial or intellectual property rights or the awards and distinctions received;
 - d) the rights and duties of the recipient and the terms of the provision of guarantees.
3. In the cases foreseen in the previous paragraph, the competent authority for the investigation of the respective crime or administrative offence proceedings may require the advertiser to provide evidence of the material accuracy of data or truth of the facts contained in the advertising.

Article 14

Discrimination between sexes, children and adolescents

1. The message cannot induce the idea of the inferiority of one gender over the other.
2. The advertising message addressed to children and adolescents must consider their psychological vulnerability and cannot:
 - a) contain any statement, visual aspect or other element that may cause physical, mental or moral harm to them;
 - b) make implicit an inferiority for the child or adolescent in case he or she does not consume or use the advertised good or service.
3. Children or adolescents may only be the main actors of the main messages when there is a perceptible and direct relationship between them and the good or service advertised.

Article 15

Advertising in educational establishments

The advertising of alcoholic beverages, the distribution of tobacco or any pornographic material inside or outside educational establishments within a 100-metre radius, and in publications, programs or activities particularly aimed at minors, shall be prohibited.

SECTION II

CONDITIONAL ADVERTISING

Article 16

Advertising for alcoholic beverages, tobacco, health care establishments and medicinal products

1. Advertising for alcoholic beverages, tobacco, health care establishments and medicines shall be conditioned, while that for tobacco and alcoholic beverages in radio and television media shall be prohibited, in accordance with the terms of this legal diploma.
2. Advertising conditional on alcoholic beverages and tobacco shall not be permitted when:

- a) rescuing the presence of minors, or inciting them to consumption;
 - b) encouraging excessive consumption;
 - c) undervaluing non-drinkers;
 - d) suggesting the success of any order associated with consumption, the warning of moderate consumption being mandatory.
3. Advertising for alcoholic beverages may not be associated with the act of driving a vehicle or suggest the existence of therapeutic properties or stimulating or sedative effects in alcoholic beverages.
 4. Advertising relating to private hospitals or clinics, medicines, pharmaceutical products, prostheses, medical or paramedical treatments and objects or methods presented as having beneficial effects for health must be previously authorized by the Ministry of Health.

Article 17

Advertising to motor vehicles

1. No advertising shall be permitted for motor vehicles which:
 - a) contains suggestions for the use of the vehicle which may endanger the personal safety of the user or others;
 - b) infringes the provisions of the Road Code, in particular with regard to unauthorized overtaking, speeding or other dangerous maneuvers, non-use of safety accessories and disregard for signs or pedestrians;
 - c) encourages their use in an environmentally disturbing manner.
2. Motor vehicles shall mean all power-driven vehicles intended for travel by their own means on public roads, including motorcycles.

Article 18

Advertising of buildings

1. Advertising for the sale of real estate, houses and apartments shall comply with the following conditions:
 - a) Delivery times and conditions of sale shall be clearly stated;
 - b) The name of the owner or the construction company must be disclosed;
 - c) The useful area of the units intended for sale must be mentioned;
 - d) Any additional or cumulative charges or expenses to the buyer arising from the sale must be stated, as well as the nature and legal status of the land;
 - e) In the case of residential apartments as well as offices and floors, where the units shown in the advertisement have different prices per floor, this fact shall be mentioned and the price referred to shall clearly identify what is being offered;
 - f) Photographs or graphic images in advertising of real estate shall faithfully reproduce where they stand and shall not mislead the recipients of the message by deceptive prospect or optical illusion;
 - g) The number of the work license must be indicated.
2. In advertising broadcast by means of television and sound broadcasting, the requirements of points (c), (d), (e) and (g) shall not apply.
3. Advertising measures aimed at raising capital, either by resorting to real estate investment or by offering securities with any characteristics, shall comply with the requirements set forth in paragraph

1, to the extent applicable to them, and may not, in addition, mislead the public with regard to the guarantees offered, the values, income or capital appreciation proposed and the special payment schemes.

Article 19
Travel and tourism

1. The advertising message on travel and tourism will necessarily indicate precisely the:
 - a) entity responsible for the trip;
 - b) means of transport and class used;
 - c) intended destinations and routes;
 - d) exact duration of the journey and the time spent in each locality;
 - e) total minimum and maximum prices of the journey and all details of the services included in that price, including hotel classification of accommodation, meals and excursions included;
 - f) conditions of reservation and cancellation.
2. In advertising broadcast by television and sound broadcasting means the requirements of the preceding paragraph shall not be applicable.

Article 20
Comparative Advertising

1. Only comparative advertising of goods or services which uses comparisons based on demonstrable characteristics or which contrast them with other similar characteristics shall be permitted.
2. The burden of proof on the truth of comparative advertising rests with the advertiser.

CHAPTER III
MEANS OF PUBLICATION

SECTION I
PHYSICAL DISPLAY OF ADVERTISING MESSAGES

Article 21
Referral

The posting of advertising messages, fixed or removable (banners), their measures and safety conditions, obeys the rules established in the previous chapter and is subject to prior licensing, to be regulated by a joint ministerial decree of the MTCI and the Ministry of State Administration and Territorial Planning (MAEOT), without prejudice to the possibility of depending on a favorable opinion from other specific authorities.

Article 22
Licensing criteria for the display of advertising on a physical medium

1. The criteria to be established in advertising licensing shall take into account that advertising media may not:
 - a) cause obstruction of panoramic perspectives or affect the aesthetics or the environment of places or landscape;
 - b) impair the beauty or framing of classified monuments and buildings;
 - c) cause damage to third parties;

- d) affect the safety of persons or things, particularly road traffic;
 - e) present arrangements, formats or colors which may be confused with those of road signs;
 - f) in the case of tobacco and alcoholic beverages, they may not exceed certain maximum dimensions and must include warnings on health damage and moderate consumption, respectively;
 - g) prejudice the movement of pedestrians, in particular disabled people.
2. The advertising materials referred to in Article 21 which are displayed shall be subject to licensing, but shall not charge:
- a) in the commercial or industrial establishments themselves and exclusively concerning their own names and activities;
 - b) by their legitimate owners or tenants, either inside or inserted in their properties and complying with the other legal requirements established.

Article 23

Cumulative licensing and removal of advertising messages

1. If the display of advertising requires the execution of works of construction subject to license, this has to be obtained cumulatively in accordance with the applicable legislation, as well as the environmental authorization, being applicable.
2. The competence to order the removal of advertising messages and to embargo or demolish work when contrary to the provisions of this statute, rests with the Ministry of the offended tutelage, after the deadline for the removal that has been set for the persons who have installed them has expired.
3. The owners or advertising agencies legitimately owning the buildings, structures or supports where any advertising messages have been improperly posted without their authorization, in violation of the provisions of the law, may destroy them or in any way render them unusable.
4. The costs of removing advertising material, even if carried out by public services, shall fall to the entity responsible for displaying them or, when this cannot be determined, to those identifiable through the messages displayed, unless they prove that the display is not attributable to them.

SECTION II

TV ADVERTISING

Article 24

TV advertising periods

1. TV advertising shall be inserted between programs so as not to run counter to their integrity.
2. Advertising may not interrupt or be inserted, either in footnotes or subtitles, during the transmission of religious services.
3. In programs with a duration of more than 30 minutes, between two interruptions of the same program, for the broadcast of advertising, a period of 20 minutes or more shall be allowed.
4. The transmission of audiovisual works scheduled to last more than 45 minutes, namely feature films and films made for television, with the exception of series, serials, entertainment programs and documentaries, may be interrupted only once for each full period of 45 minutes.

Article 25

Sponsors

1. Sponsorship, for the purposes of this document, means the participation of natural or legal persons in the financing of any audiovisual works, programs, reports, editions, items or sections, hereinafter abbreviated to programs, regardless of the means used for their dissemination, with a view to promoting their name or image, as well as their activities, goods or services.
2. Television news and political information programs may not be sponsored by any type of undertaking.
3. Sponsored programs shall be clearly identified as such by the indication, at the beginning and end of the program, of the name, brand or logo of the sponsor.

Article 26

**Prohibition of radio and television advertising for
alcoholic beverages and tobacco**

1. All forms of advertising for tobacco or alcoholic beverages shall be prohibited, irrespective of the medium used in radio and television broadcasts.
2. This prohibition shall not apply to brands but only to alcoholic or tobacco products, irrespective of the producer or trader, who may advertise other beverages or products not containing alcohol or tobacco.

CHAPTER IV

ADVERTISING ACTIVITIES

Article 27

Advertising Creation

1. Unless otherwise agreed, ownership rights in advertising shall be presumed to have been assigned exclusively to their intellectual creator.
2. The use of advertising creations without the authorization of the authors holding the respective rights is unlawful.

Article 28

State advertising campaigns

State advertising should preferably be carried out by advertising agencies certified by the advertising authorities or by those in whose interest the advertising is carried out.

Article 29

Civil liability

1. The owners of the advertising media shall be liable to the advertising agent and the advertiser jointly and severally for any damage caused to third parties as a result of the dissemination of unlawful advertising messages or accidents caused by physical or movable structures.
2. The advertiser may be exempted from the liability set out in the preceding paragraph if he proves that he had no prior knowledge of the advertising message broadcast or because he hired the advertising agent to post it on structures belonging to him.

Article 30

Criminal liability

1. Offences of a criminal nature committed through the dissemination of advertising messages shall be subject to the rules of criminal law.
2. For the purposes of this legal diploma, the authors shall be considered to be the advertiser, the owner or owner of the advertising medium and the advertising agent, when they are responsible for the distribution of the illicit message, being aware of the illicitity.

Article 31

Infringements

1. Infringements of the provisions of this law, when not a crime, shall be prosecuted and punished in accordance with the provisions of the Administrative Infringements against the Economy and Food Safety Scheme approved by Decree-Law no. 23/2009 of 5 August.
2. The competent entity for the supervision, investigation and enforcement of fines is the Food and Economic Inspection (IAE), under the terms of the Decree-Law referred to in the previous paragraph, without prejudice to the powers legally attributed to other services.
3. In case of advertising that is prohibited, misleading or that, by its object, form or purpose, causes or may cause risks to the health and safety of consumers, the IAE may propose to the Minister precautionary measures for the cessation, suspension or prohibition of such advertising, regardless of the evidence of actual loss or damage.
4. The precautionary measures for the cessation and prohibition referred to in the previous paragraph shall be applied, whenever possible, after the hearing of the advertiser, who has five days for that purpose.
5. The act applying the precautionary measure of suspension of advertising must expressly state its duration and the time limit for the defendant to restore legality, which may not exceed 30 days.
6. The entities referred to in paragraph 2 may, at the request of the advertiser, grant a period to remove the illicit elements of the advertising.
7. For the purposes of the imposition of fine, prohibited advertising and the violation of the rules on conditioned advertising shall be assimilated to misleading advertising, as provided for in Article 24 of Decree-Law No. 23/2009 of 5 August.

Article 32

Liability for the payment of fines

The advertiser, the owner or holder of the advertising medium and the advertising agent shall be jointly and severally liable for the payment of the fines referred to in the preceding article.

**CHAPTER V
FINAL ARRANGEMENTS**

**Article 33
Repeal**

Government Decree no. 3/2010, of June 16th, which regulates the advertising broadcast by *Rádio e Televisão de Timor-Leste, Empresa Pública*¹ (RTTL, E.P.), is hereby revoked.

**Article 34
Entry into Force**

This law shall enter into force 30 days after the date of its publication.

Approved by the Council of Ministers on September 14, 2011.

The Prime Minister,

Kay Rala Xanana Gusmão

The Minister of Tourism, Commerce and Industry,

Gil da Costa A. N. Alves

Enacted on 15 / 12 / 2011

Be it published.

The President of the Republic,

José Ramos Horta

¹ *Rádio e Televisão de Timor-Leste, Empresa Pública (RTTL, E.P.)* - Radio and Television of Timor-Leste, Public Company