



**Law n° 3/2004 of 15 January  
Framework Law on Public Institutes**

Pursuant to article 161, paragraph c. of the Constitution, the Assembly of the Republic adopts and enacts as follows:

TITLE I

**Object and scope of implementation**

Article 1

**Object**

1. The present law establishes the principles and norms governing public institutes.
2. Norms laid down in the present law are mandatory and shall prevail over existing special norms, except as otherwise expressly provided for herein.

Article 2

**Scope of implementation**

1. Public institutes shall function within the indirect State administration and the administration of the Autonomous Regions.
2. The present law shall be applicable to public institutes falling under the scope of the State administration. Likewise, it shall be applicable to public institutes in the autonomous Regions of the Azores and Madeira accompanied by the necessary adaptations set out in a regional legislative decree.

Article 3

**Classification**

1. For the purposes of the present law and irrespective of their designation, public institutes shall mean services and trust funds of entities referred to in article 2 hereinafter enjoying legal status.
2. Both personalized services and trust funds are also known as public foundations may be organized into one or more establishments. That applies to universalities made up of staff, property, rights, and obligations as well as the contractual status of the institute that shall have been assigned to the production of goods or delivery of services within the ambit of the institute at a certain place.
3. Public corporate entities provided for by Decree-Law n° 558/99 of 17 December shall not fall under the purview of the present law.
4. Companies and associations or foundations set up as private law corporate bodies by the State, the Autonomous Regions, or local



authorities shall not be bound by the present law. Setting up of said corporate bodies shall always be authorized by a piece of legislation.

## TITLE II

### **Rationale**

#### Article 4 **Concept**

1. Public institutes are public law corporate bodies with separate organs and property.
2. Public institutes shall as a rule meet the requirements governing financial as well as administrative autonomy.
3. As a duly justifiable exception, public institutes may be set out with administrative autonomy only.

#### Article 5 **Management Principles**

1. Public institutes shall abide by the following management principles:
  - a) Delivery of quality services to users as required by law;
  - b) Economic efficiency of costs incurred and of solutions put forward for the delivery of such services;
  - c) An output-oriented management with proper quantification and a timely output-based assessment;
  - d) Compliance with general principles of an administrative decision, whenever public management is at stake.
2. Governing bodies of public institutes shall ensure that public resources made available are managed efficiently and advisedly and shall always adopt or propose the least costly action methods and organizational solutions so as to carry out their functions effectively.

#### Article 6 **Legal basis**

1. Public institutes shall be governed by provisions contained in the present law and legislation applicable to corporate bodies in general and public institutes in particular, and by the respective by-laws and rules of procedure.
2. Irrespective of the specificities contained in their by-laws, and the management treatment, public institutes shall be governed by the following rules of law allowing for derogations laid down in Title IV hereinafter:



- a) The Code of Administrative Procedure as to public management activity involving the exercise of authority, public service or public domain management, or the implementation of other legal and administrative regulations;
- b) The Legal Statute of Civil Service or the individual labour contract in line with the exiting staff regulations;
- c) The State property and financial treatments;
- d) The Public Works Contracts Regulations;
- e) The public expenditure and public contracting regulations;
- f) The system of disqualifications for civil servants;
- g) The State civil liability system;
- h) The rules of administrative proceedings whenever administrative decisions and contracts are at stake;
- i) The financial control and jurisdiction of the Audit Court.

#### Article 7

#### **Supervising ministry**

1. Each institute shall be subject to a ministerial department known herein as the supervising ministry to be indicated in the organic law.
2. In the event the supervising authority over a given public institute is exercised by or shared by more than one minister, said institute shall be deemed to be subject to the ministry of which the member of government exercises the supervisory power over the institute in question.

#### Article 8

#### **Objectives**

1. Public institutes shall only be created with a view to achieving outputs for which, given the inherent technical specificity, namely as to the production of goods and delivery of services, it is advisable to implement management not subject to Government direction.
2. Public institutes shall not be created for:
  - a) Activities which under the purview of the Constitution shall be carried out by direct State administration bodies;
  - b) Embodying study or concept services, or coordination, support, and control of other administrative services.
3. Each public institute shall only achieve the specific outputs for which it shall have been created.

#### Article 9

#### **Modalities of setting up**

1. Public institutes may be set up by a legislative decree.



2. The legislative decree setting up a public institute or embedding its organic law shall also indicate its designation, head-offices and jurisdiction, the objectives or attributions, the supervising minister, the staffing legal basis, property and financial resources allotted. In addition, said piece of legislation shall include specific legal regulations deemed necessary to cover issues not provided for in this framework law and other laws generically applicable to the new institute.
3. Public institutes may start operating under a first outlay legal basis according to the existing general law.

#### Article 10

### **Setting up procedures and requirements**

1. The setting up of a public institute shall comply concurrently with the following requirements:
  - a) The need to create a new body to achieve targeted goals;
  - b) The need for incorporation and the resulting lack of directing powers from the Government to achieve the outputs at issue;
  - c) The financial resources typical of autonomous funds and services whenever it enjoys financial autonomy;
  - d) As the case may be, the requirements set out for the specific category of institutes in which the new body shall be integrated.
2. The setting up of a public institute shall always be preceded by a study on the need and the financial impact, and the consequences upon the sector in which it is to operate.

#### Article 11

### **Performance Appraisal**

In addition to measures provided for by the budget formation and execution act dealing with the control of public expenditure a performance appraisal focussing on output achievement may be determined by a joint order from the finance minister and the supervising minister. Said performance appraisal shall be conducted by outside auditors or by official supervisory bodies.

#### Article 12

### **By-laws**

1. Provisions relating to the structure and organisation of public institutes and that must be subject to regulation shall be embedded in by-laws approved by a joint order from the finance minister and the supervising minister. All other provisions shall be contained in the rules of procedure proposed by institute bodies and approved by an implementing order from the finance minister and the supervising minister.
2. In the case of statutory autonomy and pursuant to the Constitution or any other specific legislation, by-laws are drafted by the institute itself,



although subject to government approval or confirmation contained in an implementing order.

#### Article 13

### **Setting up of or participation within private law entities**

1. Public institutes shall not create private law entities or participate in the formation of such entities unless otherwise stated in the law or the by-laws and if it is vital for the achievement of its outputs, in which cases prior authorisation must be obtained from the finance minister and the supervising minister. Said authorisation shall be renewed annually.
2. The proviso contained in the preceding number shall not impede public institutes duly authorised by law to carry out the business of trust fund make safe investments in line with its normal business.

#### Article 14

### **Speciality rule**

1. Without prejudice to the compliance with the legality rule as to public management and unless otherwise stated, the legal capacity of public institutes shall cover all legal acts, the enjoyment of all rights and compliance with all obligations needed for the attainment of their goals.
2. Public institutes shall not carry out their business or exercise their powers outside the scope of their mission, nor shall they allot their resources to missions they were not assigned.
3. More particularly, public institutes shall not commit themselves vis-à-vis third parties to fulfil the obligations assigned to other legal entities either private or public, unless they are so authorised by law.

#### Article 15

### **Territorial organisation**

1. Save for the ambit of the Autonomous Regional Administration, state public institutes shall have a national scope barring instances provided for by the law or the by-laws.
2. Public institutes may de-concentrate services as provided for or authorised by their respective by-laws.
3. Districts, where de-concentrated services have been set up, shall, whenever possible, match the districts where peripheral services of the corresponding ministry operate.



Article 16

**Re-structuring, merging and disbandment**

1. Provisions governing re-structuring, merging and disbandment of public institutes shall also govern settlement and staffing issues.
2. Public institutes shall be disbanded:
  - a) Whenever their useful line is over;
  - b) Whenever the goals set out have been achieved, or achievability becomes impossible;
  - c) Whenever the rationale no longer exists for incorporation of the service or trust;
  - d) Whenever the State shall have to fulfil the obligations taken up by the institute bodies because of insufficiency of assets.
3. The re-structuring, merging or disbandment of public institutes shall be subject to an order bearing the same or higher value than the incorporation order.

TITLE III

**Common treatment**

CHAPTER I

**Organisation**

SECTION I

**Bodies**

Article 17

**Statutory bodies**

1. Without prejudice to article 45, the following shall be the statutory bodies of public institutes:
  - a) The executive board;
  - b) The single auditor
2. By-laws may provide for other bodies, namely of an advisory nature or for the participation of users in the institute's business.



## SECTION II

### **The executive board**

#### Article 18 **Duties**

The executive board is a collegiate body in charge of defining the way the institute carries out its business as well as managing its services in line with the law and government instructions.

#### Article 19 **Composition and appointment**

1. The executive board is a collegiate body composed of a chief executive body and two to four directors, or a chief deputy executive officer instead of one of the directors.
2. In case of impediment or absence from work, the chief executive officer shall be substituted by the chief deputy executive officer, should there be one, or by the director he shall have appointed, or in the event of his absence, by the senior director.
3. Members of the board shall be appointed by a joint order from the Prime Minister and the supervising minister who in turn shall have proposed them.
4. The appointing order shall be accompanied by a note on both the educational and professional curricula of the appointees.
5. No members of executive boards shall be appointed after the dismissal of government or convening of elections for the Assembly of the Republic. Likewise, no members of executive boards shall be appointed prior to parliamentary confirmation of the newly appointed Government.

#### Article 20 **Term of office**

1. Members of the board are appointed for a three-year term renewable for equal time spans.
2. The chief executive officer shall not be appointed for more than three tenures and he shall only fill in the same vacancy within the institute after three years have elapsed.
3. Members of the board may be freely discharged by the appointing entity, and discharge may be grounded on sole service reasons.
4. Whenever it is not grounded on the term of office, on a justifiable cause or dismantling of the governing body, and when no immediate executive



position of the same or higher grade is held, the discharged member shall be entitled to compensation amounting to the basic or equivalent remuneration claimable until the end of the tenure, with a maximum limit of 12 months.

5. The claimable compensation shall be reduced to the amount corresponding to the difference between the basic or equivalent remuneration as a member of the executive board and the basic remuneration corresponding to the primitive office at the time the executive tenure ended.
6. For the purposes of n<sup>o</sup> 3, the justifiable cause shall mean:
  - a) Serious dereliction of duty for not complying with the law or the by-laws of the institute;
  - b) Serious breach of duties assigned in the capacity as a member of the executive board.
7. In the event of a justifiable cause, the member of the board shall be heard as to the reasons put forward, yet no proceedings shall be instituted.
8. The executive board may be dissolved by a stated order from the members of Government in charge of the appointment on a justifiable cause, namely:
  - a) Failure to comply with guidance, recommendations or ministerial directives within the framework of supervisory powers;
  - b) Failure to comply with objectives defined in the action plan approved, or a significant deviation from allotment issued, barring motives not attributable to the body;
  - c) Serious or repeated breach of regulations governing the institute;
  - d) Failure to comply with management principles set out herein;
  - e) Failure to comply with legal obligations which lawfully justify dismantling of the bodies.
9. Dissolution implies the immediate end of tenure for all members of the executive board.
10. In the event of the end of tenure, members of the executive boards shall remain in office until effective substitution, although they may waive tenure at least three months prior to the date when they intend to end their tenure of office.

#### Article 21 **Powers**

1. As far as guidance and management of the institute are concerned, it falls upon the executive board:





- a) To guide its business;
  - b) To draft annual and pluri-annual business plans and to ensure implementation thereof;
  - c) To monitor and appraise in a systematic way business carried out, namely by calling the various services to account for use of resources made available and outputs achieved;
  - d) To draft the progress reports;
  - e) To prepare the social audit report in line with the existing law;
  - f) To exercise powers relating to staff direction, management and discipline;
  - g) To carry out all staff-related decisions as provided for by the law and the by-laws of the institute;
  - h) To approve draft regulations contained in the by-laws as well as those needed for the achievement of planned outputs;
  - i) To carry out all other management acts deriving from the implementation of the by-laws and needed for the smooth running of services;
  - j) To appoint representatives of the institute to external agencies;
  - l) To exercise the delegated powers;
  - m) To deliver opinions, studies and provide the information requested by the supervising minister;
  - n) To appoint authorised agents before the courts or outside the courts including powers of substitution;
  - o) To appoint a secretary in charge of certifying decisions and proceedings.
2. As far as property and financial management is concerned, it falls upon the executive board:
- a) To form the annual budget and ensure budget execution;
  - b) To collect and manage revenue and authorise expenditure;
  - c) To prepare the revenue and expenditure account;
  - d) To manage the property;
  - e) To accept donations, estates, and legacies;
  - f) To ensure the conditions needed for the appropriate agencies to carry out financial and budget control;
  - g) To exercise all other powers provided for by the by-laws and not assigned to other bodies.
3. Public institutes are represented namely in court proceedings or legal transactions by the chief executive officer or by two members of the board, or else by agents appointed to that effect.
4. Without prejudice to paragraph n), number 1, the executive board may choose to be represented in court by the Public Prosecutor who shall then stand for the interests of the institute.
5. Administrative decisions from the executive board may be contested before administrative courts pursuant to the administrative proceedings.



Article 22  
**Operation**

1. The executive board shall meet once a week. Extraordinary meetings may also take place upon convening by the chief executive officer or requesting by the majority of its members.
2. Abstentions shall be ignored when counting votes, yet there may be explanations of vote.
3. The minutes of the proceedings shall be approved and signed by all members present. Dissenting members may give explanations of the vote in the minutes.

Article 23  
**Chief executive officer's competence**

1. The chief executive officer shall namely be competent for:
  - a) Presiding over, and conducting business to be transacted and ensuring implementation of proceedings;
  - b) Liaising with supervising bodies and other public agencies;
  - c) Requiring opinions from the supervisory body and the advisory body if the case may be;
  - d) Exercising powers delegated to him by the executive board.
2. The chief executive officer may delegate or sub-delegate powers to the deputy chief executive officer or one of the directors as the case may be.

Article 24  
**Accountability of members**

1. Members of the executive boards are jointly and severally accountable for decisions within their functions.
2. Members who shall have attended the meeting where proceedings have been adopted and who shall have expressed their dissent in writing as well as members who shall not have attended the meeting but shall have expressed their dissent in writing shall not be accountable.

Article 25  
**Status of members**

1. Members of the executive board shall be subject to treatment set out in this law and secondarily to provisions contained in the legal status of Public Administration senior directing staff.
2. Remuneration of members of the executive board shall be subject to a specific statute, which may provide for differentiation among the various



types of institutes namely allowing for the activity sector and management complexity.

### SECTION III

#### **Supervisory body**

##### Article 26

##### **Function**

The single auditor shall be in charge of monitoring legality, regularity and sound property and financial management of the institute.

##### Article 27

##### **Appointment, tenure of office and remuneration**

1. The single auditor shall be appointed by a joint order from the finance minister and the supervising minister among certified public accountants or certified public accounting firms.
2. The single auditor shall be appointed for a three-year term renewable only once by a joint order from the above-mentioned ministers.
3. In the event of termination of office, the single auditor shall remain in office until effective substitution or ministerial order stating the end of the tenure.
4. Remuneration of the single auditor shall be approved by a joint order from the finance minister and the supervising minister and published in the Portuguese Official Gazette.

##### Article 28

##### **Competences**

1. It shall fall upon the single auditor:
  - a) To monitor and check periodically the compliance with existing laws and regulations, the budget execution, the economic, financial and property situation and examine the accounts;
  - b) To deliver an opinion on the budget and budget reviews and changes as well as on the action plan and the requirements thereof;
  - c) To deliver an opinion on the financial statement and the income and expenditure account including the documents for legal certification of accounts;
  - d) To deliver an opinion on the acquisition, letting, alienation and encumbrance of immovable property;
  - e) To deliver an opinion on acceptance of donations, estates or legacies;
  - f) To deliver an opinion on money borrowing provided the institute is duly authorised;



- g) To keep the executive board informed on findings and checking;
  - h) To draft reports on his audit activity including an annual audit report;
  - i) To suggest external audits to the supervising minister or the executive board whenever such audits are deemed necessary or useful;
  - j) To advise on issues submitted by the executive board or the Audit Court and by entities belonging to the strategic control within the internal audit system of the State financial administration.
2. The deadline for delivery of opinions referred to in the preceding number shall be of 15 days as from receipt of documentation thereto.
3. For the purposes of exercising his powers, the single auditor shall be entitled to the following:
  - a) Information and clarifications provided by the executive board and deemed necessary;
  - b) Free access to all services and documentation of the institute along with the possibility to request that officers in charge be present and request all clarifications he thinks fit;
  - c) To take or suggest action which in his view are essential.
4. The single auditor shall not have carried out remunerated functions for the last three years prior to taking office as an auditor and shall not carry out remunerated functions in the public institute he shall have audited for the three successive years after his functions ended.

## SECTION IV

### **Advisory body**

#### Article 29 **Function**

Should there be an advisory body, its function shall consist of advising supporting and participating in the definition of the overall business guidelines of the institute and decision-making of the executive board.

#### Article 30 **Composition**

1. The advisory body is namely composed of representatives from entities or organisations representing those interested in the activity of the institute, by representatives from other public bodies as well independent technicians and experts as provided for by the by-laws.
2. The advisory body may include representatives from the users and beneficiaries of the activities or services in question, the supervising minister being responsible for defining the styles of representation.



3. The chief executive officer is indicated by the by-laws, designated pursuant to said by-laws or appointed by an order from the supervising minister.
4. Offices held within the advisory body shall not be remunerated, without prejudice to the payment of the cost of living allowances whenever applicable.

#### Article 31

#### **Competence**

1. The advisory body shall deliver opinions on the following issues:
  - a) The annual and pluri-annual action plans and progress reports;
  - b) The rules of procedure of the institute.
2. The advisory body shall also state its views on all issues submitted by the executive board or the chief executive officer thereof.
3. Complaints and information from the public may be lodged with the advisory body as to the overall organisation and operation of the institute. In turn, the advisory body may submit to the executive board suggestions or proposals aimed at fostering or improving the activities of the institute.

#### Article 32

#### **Operation**

1. The advisory body shall hold ordinary meetings at least twice a year and extraordinary meetings whenever so convened by its chairman, upon his own initiative or upon the request from the executive board or from one-third of its members.
2. Any person or entity whose presence is deemed necessary to clarify items on the agenda may attend the meetings without voting rights upon calling from the chairman and upon a proposal from the executive board.
3. The advisory body may operate by units.



CHAPTER II

**Services and staff**

Article 33  
**Services**

1. Public institutes shall be endowed with the services fundamental to the achievement of outputs. The organisation and functioning thereof shall be governed by the rules of procedure.
2. The internal organisation adopted shall have a flexible and streamlined hierarchy and matrix structures shall prevail.
3. Public institutes shall resort to the contracting out of services for the achievement of outputs whenever this shall ensure more efficient control of costs and quality of services delivered.

Article 34  
**Staff**

1. Public institutes may resort to private working contracts for the whole or part of the establishment, without prejudice to resorting to the civil service staff regulations whenever appropriate.
2. The staff of public institutes shall have a job attachment with the respective institute.
3. Staff recruiting shall always meet the following requirements:
  - a) Vacancies must be publicised in the most appropriate manner;
  - b) Equal conditions and opportunities shall be given to applicants;
  - c) The decision made must be justifiable.
4. Pursuant to article 269 of the Constitution, adoption of a private working contract shall not dispense with the requirements and limitations inherent in the pursuance of public interest, namely as to disqualifications and plurality of functions provided for by the law with regard to civil servants and administrative officers.
5. Public institutes shall have establishment plans approved by a joint order from the finance minister and the supervising minister and published in the Portuguese Official Gazette. The establishment plan shall indicate the positions, job descriptions and pay packet. Any job attachment or public employment relationship violating the statutory ceilings shall be null and void.
6. The executive bodies of the institute shall propose adjustments to the staffing plan so that they can always fulfil their obligations vis-à-vis the staff in view of resources available and the missions assigned.



CHAPTER III

**Property, economic and financial management**

Article 35

**The financial regime and budgeting**

1. Public institutes are subject to budget treatment and financial regime of autonomous funds and services, save for public institutes with no financial autonomy which shall be subject to financial regulations applicable to services with administrative autonomy, without prejudice to specific provisions contained in this law.
2. The budget execution act shall annually determine the bodies where the administrative and financial autonomy or the single administrative autonomy shall be modified.

Article 36

**Property**

1. Separate property owned by public institutes enjoying patrimonial autonomy is made of assets, rights and obligations of economic value and subject to private legal business and assigned by the State to the institute at the time of setting up, or acquired later on by the bodies of the institute, and also of the right of use and undisturbed possession of assets from the government property assigned to institutes.
2. Public institutes may acquire government property that is transferred by an order from the finance ministry on account of the public interest.
3. An order from the finance ministry may transfer to public institutes the public State property assigned to public interest and falling under the domain of said institutes as well as Government property that must be subject to use and undisturbed possession. Said transfer may be terminated at any time by an order from the supervising minister.
4. Property owned by public institutes which shall be deemed to be unnecessary or inappropriate for the achievement of their outputs shall become Government property, barring alienation. Integration in Government property shall be determined by a joint order from the finance minister and the supervising minister.
5. Public institutes shall keep a yearly updated inventory of assigned property and rights (either separate or Government property) with reference to 31 December. Likewise, public institutes shall prepare a statement thereto.
6. Separate property of public institutes shall be lien to their obligations. Yet, once distraint has been levied upon the entire property of the public



institute, or once the institute has been disbanded, creditors may institute legal proceedings against the State to recover debts.

7. In the event of disbandment, property of public institutes and Government property subject to the administration of such institutes shall revert to the State, save for cases of merger or re-structuring in which case that property and the Government property shall revert or be assigned to the new institute, on the condition that such possibility is expressly provided in the piece of legislation setting out the merger or re-structuring.

#### Article 37

##### **Income**

1. Public institutes shall be entitled to the types of income provided for in existing legislation for autonomous funds and services and, if the case may be, in social security legislation barring those institutes with administrative autonomy only.
2. Allotments may be issued to public institutes, which do not enjoy financial autonomy upon duly justified motives and a joint order from the finance minister and the supervising minister.
3. Public institutes shall not resort to loans, save for exceptional situations provided for in the budget execution act.

#### Article 38

##### **Expenditure**

1. Expenditure of public institutes comprises those costs resulting from pursuance of their mission.
2. As far as authorised expenditure is concerned, the executive board shall have the powers conferred by law to senior officers of bodies enjoying financial and administrative autonomy, although the public institute may only enjoy administrative autonomy as well as that delegated by the supervising minister.
3. Powers to authorise expenditure pursuant to the law can only be authorised by the supervising minister shall be deemed as delegated powers vis-à-vis of the executive boards of public institutes, without prejudice to the fact that the supervising minister may at any time repeal or limit that delegation of powers.

#### Article 39

##### **Accounting, accounts and cash**

1. Public institutes shall be subject to the National Public Accounting Plan the implementation of which shall be complemented with cost accounting so as to assess activity-based results.





2. Rendering of accounts shall mainly be governed by the following enactments and regulations:
  - a) The Budget Execution Act;
  - b) The State Financial Administration Regime;
  - c) The Law on Organisation and Proceedings of the Audit Court;
  - d) The Instructions issued by the Audit Court;
  - e) Annual enactments dealing with budget execution.
3. Public institutes shall be subject to Treasury treatment and in particular to the rule and regulations of centralisation of funds.
4. The institute shall prepare an annual accrual basis accounting statement with notes to the statement indicating the Government property falling under its administration.
5. Whenever the institute holds shares in other corporate entities, a note shall indicate such share capital. Likewise, the institute shall present the consolidated accounts along with the entities it controls directly or indirectly.

#### Article 40

#### **Performance indicators**

1. Public institutes shall adopt a system of coherent performance indicators so as to reflect the set of goals and the outcomes achieved.
2. The system shall include economic, efficiency and effectiveness indicators and also quality indicators in the event of direct delivery of services to the public.
3. It shall fall upon the respective sectoral control bodies to validate such system and to assess annually the outputs achieved by public institutes allowing for the means available. These control bodies shall report to the supervising minister.

#### CHAPTER IV

#### **Supervision, superintendence and accountability**

#### Article 41

#### **Supervision**

1. Public institutes shall be subject to Government supervision.
2. The following shall need approval from the supervising minister:
  - a) The business plan, the budget, the business report and the accounts;
  - b) All other remaining decisions provided for by the law and the by-laws.



3. The following shall need prior approval from the supervising minister:
  - a) The acceptance of donations, estates, and legacies;
  - b) The setting up of geographically de-concentrated delegations;
  - c) Other decisions provided for by the law and the by-laws.
4. The following shall need approval from the finance minister and the supervising minister:
  - a) The rules of procedure;
  - b) The establishment plan;
  - c) Other decisions provided for by the law or the by-laws.
5. The following shall need prior approval from the finance minister and the supervising minister:
  - a) The negotiation of agreements and collective agreements;
  - b) The setting up of private law entities, the participation if their setting up, the holding of shares in such entities whenever so stipulated by law or the by-laws and whenever vital to fulfilment of its functions;
  - c) Other decisions provided for by the law or the by-laws.
6. The law or the by-laws may stipulate that certain decisions shall depend on the authorisation or approval by other bodies than those stated.
7. Failure to apply for prior authorisation or approval shall nullify those decisions, which are subject to approval.
8. In the realm of disciplinary matters, the supervising ministry shall:
  - a) Exercise disciplinary action upon members of executive bodies;
  - b) Order inquiries or investigations on the services within the institute.
9. The supervising minister enjoys supervisory authority to carry out decisions legally claimed in the event of serious inertia from the competent body.

#### Article 42

### **Superintendence**

1. The supervising minister may issue guidelines, directions or request information from the executive boards of public institutes on the outcomes to be achieved within the framework of the institute management and the priorities to address to in attaining said outcomes.
2. In addition to the superintendence powers of the supervising minister, public institutes shall be subject to government directions issued by the finance minister and the member of Government in charge of public administration in the realms of finance and staff respectively.



3. It shall fall upon the supervising minister to control the performance of public institutes, namely as to compliance with the objectives and purposes set out and as to the use of staff and material resources made available.

Article 43  
**Accountability**

1. Executive officers of public institutes and all other staff, and employees shall bear civil, criminal, disciplinary and financial liability for actions and omissions in the line of duty pursuant to the Constitution and other existing legislation.
2. Financial liability shall be effected through the Audit Court pursuant to legislation thereof.

Article 44  
**Web page**

Public institutes shall make a web page available with all relevant data, namely:

- a) Governing enactments, by-laws and rules of procedure;
- b) The Composition of governing bodies including vital statistics as referred to in n<sup>o</sup> 4, article 19;
- c) The business plans and progress reports for the past three years;
- d) The budgets and accounts for the past three years including the statements;
- e) The staff establishment.

TITLE IV

**Special regimes**

Article 45  
**Institutes with a simplified organisation**

1. Institutes with a lesser degree of complexity justifying a simplified organisation shall have a director as a single executive body. They may also have a deputy director and an administrative board.
2. Both the director and the administrative board shall be empowered as per the overall statute for the administration of autonomous trust funds and services and as per the organic law and the by-laws.



Article 46

**Legal statute of civil service**

1. Whenever the specificities of the body or the positions so justify, the piece of legislation setting up public institutes may implement for all or part of the staff the legal statute of civil service.
2. In the event the legal statute of civil service is adopted as a transitional regime, said regime shall only be applicable to staff serving under such statute at the time it was adopted.

Article 47

**Institutes with co-management**

In public institutes where constitutional or legislative provisions impose a third party co-management, adaptations needed to that effect shall be carried, namely as to the composition of the governing body.

Article 48

**Institutes enjoying a special regime**

1. The following types of public institutes shall enjoy a special regime with derogation of the common treatment insofar as it is strictly needed to their specificity:
  - a) Universities and polytechnic higher education schools;
  - b) Public institutions of solidarity and social security;
  - c) Establishments of the National Health Service;
  - d) Tourism regions;
  - e) The Bank of Portugal and trusts operating along with it;
  - f) Independent administrative entities.
2. Each one of these categories of public institutes may be governed by a specific piece of legislation.
3. The Institute for the Financial and Property Management of the Ministry of Justice and the Trust Fund of the Ministry of Justice, which is run by the former shall also enjoy a special treatment with derogation of the common treatment insofar as it is strictly needed to their specificity.

TITLE V

**Final and transitional provisions**

Article 49

**Data base on public institutes**

1. The General Directorate for Public Administration shall build a computerised data base on public institutes indicating, among others, for



each one of them: the style, the implementing regulations, date of setting up, and possible re-structuring as well as the composition of governing bodies.

2. The data base referred to herein shall be made available on-line on the web page of the General Directorate for Public Administration including the links to the web page of each institute referred to in art. 44.

#### Article 50

#### **Review of existing public institutes**

1. The present law shall only be applicable in the future, save for provisions contained in articles 20, 24, 41, 42, 43, 44, 46, n<sup>o</sup> 2, and 52 to 54 which shall be applicable as of the date of entry into force of this law.
2. All institutes existing at the date of entry into force of this law shall be subject to review in the light of requirements contained therein for the purposes of a possible restructuring, merger or disbandment.
3. For the purposes of the preceding proviso, a committee shall be set up reporting directly to the finance minister and the member of the Government in charge of Public Administration. Said committee shall be composed as follows:
  - a) Two representatives from the finance minister and the member of Government in charge of Public Administration for budgetary and financial issues and for public administration;
  - b) One representative from each one of the ministers participating only in the review of public institutes under his supervision.
4. Each one of the existing public institutes shall submit to the committee a report justifying its setting up and focussing also on changes to be made so that it can comply with the treatment provided for in this law.
5. The committee shall submit within the imparted deadline to the finance minister and members of government referred to in n<sup>o</sup> 3 a report and a proposal for each one of the existing public institutes.

#### Article 51

#### **Use of the name «Instituto, IP» or «Fundação, IP»**

1. Within the framework of central administration, public institutes falling under the purview of this law shall use the name «Instituto, IP» or «Fundação, IP».
2. The name «Fundação, IP» shall only be used for public institutes aiming the social interest and with separate property, of which the income is mainly composed of profits.

#### Article 52



### **Establishments**

1. In the event an institute has one or more establishments, its governing body shall indicate in a note to the Portuguese Official Gazette (2<sup>a</sup> Série do Diário da República) the staff plan within the establishment and the applicable legal statute of staff.
2. The governing body of the institute may, by means of prior authorisation from the finance minister and the supervising minister decommissioning the establishment for delivery of service, transfer or temporarily assign to third parties the business of establishments, which are part of the property.
3. The transfer or assignment of business shall be made in writing and shall state all rights and obligations undertaken to run the establishment. Selection of the purchaser or the assignee shall be subject to the same formalities existing for the public expenditure of an amount equal to the profits obtained.
4. In the event of transfer or assignment of business, the legal status of the employer, as well as the rights and obligations of the institute as to the staff serving within the establishment either under public or private law shall be transferred to the purchaser, unless otherwise agreed between the assignor and the assignee. The nature and content of the establishment shall not be changed.

#### Article 53

### **Assignments**

1. The governing bodies of the institute may by means or prior authorisation from the supervising minister, assign to private entities a number of its functions and delegate necessary powers to that effect for a limited time span and for a consideration or periodic royalties. The assignees shall operate at their own risk.
2. The terms and conditions of the assignment shall be embedded in an administrative contract published in the Portuguese Official Gazette and the selection of the assignee shall be subject to the same formalities governing public-private partnering within public administration.
3. In the event the assignment is accompanied by the discontinuance of business, existing legislation shall be applicable.

#### Article 54

### **Delegations of public service**

1. The governing bodies of the institute may by means of prior authorisation from the supervising minister, delegate to private entities the fulfilment of a number of functions and the appropriate powers for a limited time span and with or without consideration. The delegatee shall



undertake to fulfil such obligations or collaborate in the achievement of outputs under guidance from the institute.

2. The terms and conditions of public service delegation shall be embedded in and administrative contract published in the Portuguese Official Gazette. The selection of the delegatee shall be subject to the same formalities governing public-private partnering within public administration.

Article 55  
**Effectiveness**

The present law becomes effective as of the first day of the month following its publication.

Approved on 27 November 2003.

The President of the Assembly of the Republic, *João Bosco Mota Amaral*.

Promulgated on 30 December 2003.

Good for publication.

The President of the Republic, JORGE SAMPAIO.

Countersigned on 30 December 2003.

The Prime Minister, *José Manuel Durão Barroso*