

Legal Regime governing Incompatibilities and Disqualifications of Political Officeholders and Senior Public Officeholders

Law 64/93 of 26 August 1993,
as amended by Law no. 39-B/94 of 27 December 1994 ¹
(Declaration of Rectification no. 2/95 of 15 April 1995),
Law no. 28/95 of 18 August 1995 ², Law no. 12/96 of 18 April 1996 ³,
Law no. 42/96 of 31 August 1996, Law no. 12/98 of 24 February 1998 ⁴,
Executive Law no. 71/2007 of 27 March 2007, Law no. 30/2008 of 10 July 2008,
and Organic Law no. 1/2011 of 30 November 2011

In accordance with Articles 164(d), 167(l) and 169(3) of the Constitution the Assembly of the Republic hereby decrees the following:

Article 1 ⁵ Scope

1. The present Law regulates the regime governing the exercise of functions by officeholders of the entities that exercise sovereignty and other political officeholders.
2. For the purposes of the present Law the following are considered to be political officeholders:
 - a) *Revoked*;
 - b) Members of Regional Governments;
 - c) The Ombudsman;
 - d) The Governor and Assistant Secretaries of Macau;
 - e) *Revoked*;
 - f) Mayors and full-time municipal councillors;
 - g) Members of the European Parliament.

Article 2 Extended application

The regime set out in the present Law is also applicable to senior public officeholders.

Article 3 Senior public officeholders

1. For the purposes of the present Law the following are deemed to be holders of senior public or equivalent offices:
 - a) *Revoked*;
 - b) *Revoked*;

¹ Article 8(5) of Law no. 39-B/94 of 27 December 1994, as rectified by Declaration of Rectification no. 2/95 of 15 April 1995, stated that: *the innovative part of the legal regime governing incompatibilities and disqualifications set out in Law no. 64/93 of 26 August 1993 is not applicable to accumulation situations that validly arose while the previous Law was in force.* Paragraph (6) of the same Article and Law said that the latter's provisions: *have effect from the date on which Executive Law no. 413/93 of 23 December 1993 came into effect.*

² Article 4 of Law no. 28/95 of 18 August 1995 stated that: *the present Law shall enter into effect on the date of its publication, and shall be applicable to the officeholders of the entities that exercise sovereignty and other elected political officeholders from the beginning of any new term of office or exercise of functions.*

³ Law no. 12/96 of 18 April 1996 was repealed by Law no. 2/2004 of 15 January 2004.

⁴ Article 2 of Law no. 12/98 of 24 February 1998 says that: *the present Law is applicable to mayors, municipal councillors, and the members of parish councils referred to in Article 12 of Law no. 11/96 of 18 April 1996, from the beginning of the term of office that resulted from the elections held on 14 December 1997.*

⁵ Article 3 of Law no. 28/95 of 18 August 1995 stated that: *the reference to political officeholders made in Law no. 64/93 of 26 August 1993 is hereby deemed to also refer to officeholders of entities that exercise sovereignty.*

c) Members of independent public entities that are provided for in the Constitution or the law who serve full-time and under an on-call regime.

Article 4 Exclusivity

1. Without prejudice to the provisions of the Statute of Members of the Assembly of the Republic and the provisions of Article 6, holders of the offices provided for in Articles 1 and 2 shall exercise their functions under a regime that requires exclusivity.
2. Holding the offices referred to in the previous paragraph is incompatible with any other professional functions, remunerated or not, as well as with membership of governing bodies of any for-profit legal persons.
3. Functions or activities derived from the office itself and those whose exercise is inherent therein are exceptions to the provisions of the previous paragraph.

Article 5 Regime applicable after ceasing functions

1. For a period of three years counting from the date on which the respective functions cease, officeholders of entities that exercise sovereignty and political officeholders may not hold positions in private enterprises which do business in the sector that was subject to their direct oversight if, during the officeholder's term of office, the enterprises were the object of privatisation operations or benefited from financial incentives or from fiscal incentive and benefit systems of a contractual nature.
2. Returning to the enterprise or to the activity that was being exercised when the officeholder took office is an exception to the provisions of the previous paragraph.

Article 6 Members of local authorities

1. Even if they serve under an on-call regime and whether they serve full or part-time, mayors and municipal councillors may exercise other professional activities. When they exercise such activities on an ongoing basis, they must communicate the nature and details thereof to the Constitutional Court and the municipal assembly. The communication to the latter must be made at its first meeting after the beginning of the mayor or municipal councillor's term of office, or before he takes up his functions in the non-local-authority activities in question.
2. The provisions of the previous paragraph do not repeal the regimes governing incompatibilities and disqualifications which other laws lay down with regard to the exercise of professional positions or activities

Article 7 General regime and exceptions

1. Holding senior public office implies incompatibility with any other remunerated functions.
2. Higher education teaching activities and research activities are not incompatible with holding senior public office, nor are the inherent functions that are exercised without charge.

Article 7-A Register of interests

1. A register of interests is hereby created at the Assembly of the Republic. The creation of such a register at local authorities is optional; in such cases the local authority assembly has the competence to decide whether a register is to exist and to regulate its composition, operation and control.
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2. Registers of interests shall consist of the recording in a specific book of all the activities that are capable of generating incompatibilities or disqualifications and any acts that might lead to financial gains or conflicts of interest.

3. The register of interests that is created at the Assembly of the Republic shall comprise the records regarding Members of the Assembly of the Republic and members of the Government.

4. For the purposes of the provisions of the previous paragraph the following facts shall especially be recorded:

- a) Public or private professional activities, to include commercial and entrepreneurial activities, as well as the exercise of a liberal profession;
- b) Membership of corporate governing bodies, even when without charge;
- c) Financial or material support or benefits received for the exercise of the respective activities, particularly from foreign entities;
- d) Entities to which remunerated services of any kind are provided;
- e) Companies in whose capital the holder has equity in his own right or that of his spouse or children.

5. Registers are public and may be consulted by whoever asks to do so.

Article 8 Disqualifications applicable to companies

1. Enterprises in which an officeholder of an entity that exercises sovereignty, a political officeholder or a senior public officeholder holds more than ten per cent of the capital are disqualified from taking part in calls for tenders for the supply of goods or services, in pursuit of commercial or industrial activities, in contracts with the state or other public-law legal persons.

2. The following are subject to the same regime:

- a) Enterprises in whose capital the officeholder's spouse, when not separated from bed and board, his forebears or descendants to any degree and his collateral relations to the second degree, and any person with whom he lives under the conditions set out in Article 2020 of the Civil Code, hold the same percentage;
- b) Enterprises in whose capital the officeholder directly or indirectly, in his own right or jointly with the family members referred to in the previous subparagraph, holds a stake of not less than ten per cent.

Article 9 Arbitration and expert testimony

1. Political officeholders and senior public officeholders are disqualified from serving as arbiters or expert witnesses, whether without charge or for remuneration, in any lawsuit in which the state or any other public-law legal person is a party.

2. This disqualification shall be maintained until the end of a period of one year after the respective functions cease.

Article 9-A Previous activities

1. Without prejudice to the applicability of the appropriate provisions of the Code of Administrative Procedure approved by Executive Law no. 42/91 of 15 November 1991, as amended by Law no. 6/96 of 31 January 1996, officeholders of entities that exercise sovereignty, political officeholders and senior public officeholders who, in the three years prior to the date on which they were installed in the office, held, under the terms of Article 8, the percentage referred to therein of the capital of any enterprise, or belonged to a governing body of any for-profit legal person, may not intervene:

- a) In calls for tenders for the supply of goods or services to the state or other public-law legal persons, to which that enterprise or legal person is responding;
- b) In contracts which the state or any other public-law legal person enters into with that enterprise or legal person;
- c) In any other administrative procedure in which that enterprise or legal person is intervening and which is capable of raising doubts as to the impartiality or rectitude of the conduct of the aforementioned officeholders, particularly procedures regarding the grant or modification of authorisations or licences, or acts of expropriation, or the grant of benefits with an asset-related content or the donation of property.

2. The disqualification provided for in the previous paragraph does not exist in cases in which the aforesaid participation in the governing body of a legal person occurred because the officeholder was appointed thereto by the state or another public-law legal person.

Article 10 **Review by the Constitutional Court**

1. Within the sixty days following the date on which they take office, political officeholders must deposit a declaration of absence of incompatibilities and disqualifications with the Constitutional Court, which declaration shall list all the professional offices, functions and activities exercised by the declarer, together with any shareholdings he possesses.

2. The Constitutional Court has the competence to analyse and review the declarations made by political officeholders and impose sanctions.

3. Infractions against the provisions of Articles 4, 8 and 9-A imply the following sanctions:
a) For holders of elected offices except the President of the Republic, loss of the respective office;
b) For holders of unelected offices except the Prime Minister, removal from office.

Article 11 **Review by the Attorney General's Office**

1. Within the sixty days after they take office, senior public officeholders must deposit a declaration of absence of incompatibilities and disqualifications with the Attorney General's Office, which declaration must contain all the elements needed to verify compliance with the provisions of the present Law, including those referred to in paragraph (1) of the previous Article.

2. In cases in which doubts are raised by the text, the Attorney General's Office may ask the depositors for clarification of the content of their declarations.

3. Failure to clarify doubts or insufficient clarification thereof shall be reported to the organs with the competence to verify the existence of infractions and impose sanctions.

4. The Attorney General's Office shall also consider whether declarations comply with the formal requirements and the time limit on their deposit, and shall report irregularities or failures to meet the time limit to the organs with the competence to verify the existence of infractions and impose sanctions.

Article 12 **Applicable regime in cases of failures to comply**

1. In cases in which the declaration provided for in Articles 10(1) and 11(1) is not submitted, the entities with the competence to receive its deposit shall notify the officeholder to whom the present Law applies that he must submit it within a time limit of thirty days, failing which, and in the case that there is fault in the failure, he shall be subject to loss of seat, removal from office, or judicial removal from office.

2. For the purposes of the previous paragraph the competent departments or services shall communicate the dates on which the officeholders to which the present Law applies begin their functions, to the Constitutional Court or the Attorney General's Office as appropriate.

Article 13 **Sanctionary regime**

1. The present sanctionary regime is applicable to senior public officeholders.

2. Infractions against the provisions of Articles 7 or 9-A constitute cause for judicial removal from office.

3. The competence to judicially remove officeholders from office pertains to the administrative courts.

4. Infractions against the provisions of Article 5 shall cause a ban on the exercise of the functions of senior political offices and senior public offices for a period of three years.

Article 14
Nullity and bans

Infractions against the provisions of Articles 8, 9 or 9-A shall cause any acts practised to be null and void and, in the case of Article 9(2), a ban on the exercise of the functions of senior public offices for a period of three years.

Article 15
Repeal

Law no. 9/90 of 1 March 1990, as amended by Law no. 56/90 of 5 September 1990, is hereby repealed.