

ASSEMBLY OF THE REPUBLIC

Law nº 6/2008

of the 13th February

The Regime for Professional Public Associations

The Assembly of the Republic hereby decrees the following, pursuant to Article 161 c) of the Constitution:

CHAPTER I

General Provisions

Article 1

Object and Scope

1 — This law establishes the legal regime for the creation, structure and operation of new professional public associations.

2 — Notwithstanding that set forth in Article 36, this law applies to professional public associations established after the date it entered into force.

Article 2

Definition and Establishment

1 — For the intents and purposes of this law, professional public associations are deemed to be public entities of an associative nature which represent professions which, cumulatively, are subject to access and practice controls, the creation of specific technical and ethical standards and an autonomous disciplinary regime.

2 — The formation of a professional public association is an exceptional occurrence and includes the fulfillment of several specific requirements and can only take place in the cases foreseen in the previous paragraph, when the regulation of the profession involves a public interest of particular significance in which the State should not proceed of its own accord.

3 — The creation of new professional public associations is always preceded by a study developed by a body which is recognised for its independence and standing, in regard to the needs and public interest for such an association and the

impact of the regulation on the profession in question.

4 — Each regulated profession can only be represented by a single professional public association.

Article 3

Nature and Legal Regime

1 — Professional public associations are legal persons governed by public law, subject to the public law regime in the performance of their public duties.

2 — In all that is not regulated in this law and in the respective law for their creation, as well as in their statutes, the standards and principles which govern public institutions with regard to their duties and in exercising the public power granted to professional public associations are applicable, with the necessary adaptations, and the standards and principles that govern private law associations are applicable with regard to their internal structure.

Article 4

Duties

1 — Under the terms of the law, the duties of professional public associations are:

- a) To defend the general interest of their users;
- b) To represent and defend the general interests of the profession;
- c) To regulate the access to and practice of the profession;
- d) To exclusively grant professional titles for the professions they represent;
- e) To grant titles of professional specialisations, when they exist;
- f) To prepare and update the professional register;
- g) To exercise disciplinary power over their members;
- h) To be of service to members, with regard to professional practice, namely concerning information and professional training;
- i) To collaborate with other administrative bodies in the pursuit of goals of public interest relating to the profession;
- j) To participate in the development of legislation relating to the professions in question;

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l) To participate in professional accreditation processes and in the assessment of courses which provide access to the profession;

m) Any others that are undertaken by law.

2 — Professional public associations are prevented from exercising or participating in activities of a trade union nature or which concern the regulation

of the economic or professional relations of members.

3 — Professional public associations cannot place limits on the freedom of the profession that are not foreseen in the law, or breach the competition laws in the provision of professional services, pursuant to national and European Law.

4 — Safeguarding the Code of Ethics, professional public associations cannot deliberate on the legal regime of the profession or on the requirements and restrictions in the practice of the profession.

Article 5

Specialty Principle

1 — Notwithstanding the compliance of the principle of legality within the domain of public management, and unless expressly stated otherwise, the legal capacity of professional public associations includes the practice of all legal acts, the exercise of all rights and the subjection to all the necessary obligations in the pursuit of their object.

2 — Professional public associations cannot perform activities or use their powers outside the scope of their duties or dedicate their resources to purposes different from those to which they are legally bound.

Article 6

Creation

1 — Professional public associations are created by law, upon consultation of the associations that represent the profession.

2 — The draft bill for the creation of each professional public association must include, in its preamble, clear reasons for the need for its creation, pursuant to Article 2, as well as the choices that have been made therein.

3 — The law on the creation of public associations sets forth the main details of its regime, namely:

- a) Denomination;
- b) Profession covered;
- c) Duties.

4 — Professional public associations are created for an indefinite period of time and can only be extinguished, merged or divided under the terms foreseen for their creation.

Article 7

Statutes

Article 10

Designation as an «order»

1 — When they are not approved by the Creation Law, the Statutes are approved by Decree-Law in compliance with this law and the law for the creation of the association.

2 — The statutes of professional public bodies may regulate the following matters in particular:

- a) Scope;
- b) Acquisition and loss of membership;
- c) Types of members;
- d) Members' rights and duties;
- e) Internal structure and competencies of the bodies;
- f) Incompatibility in respect to undertaking associative positions;
- g) Elections and the respective election process;
- h) Ethical rules in accordance with the Constitution and the Law;
- i) Professional internships;
- j) The disciplinary process and respective penalties;
- l) The economic and financial regime, in particular that relating to setting, collecting and sharing fees;
- m) Professional specialty colleges, if they exist;

3 — The statutes can also grant professional public associations the powers to propose alterations thereto, however, they must always be approved pursuant to n^o 1 above.

Article 8

Administrative Autonomy

1 — While exercising their public powers, professional public associations undertake the necessary administrative acts for the performance of their duties and approve the regulations set forth in the law and the statutes.

2 — With the exception of the cases set forth in the law, the acts and regulations of professional public associations are not subject to Government approval.

Article 9

Financial Autonomy

1 — Professional public associations possess their own assets and finances, as well as budgetary autonomy.

2 — Financial autonomy includes the power to stipulate the amount of the monthly or annual fee to be paid by members, as well as the rates charged for services rendered, under the terms of the law.

1 — Professional public associations are designated as an “order” when they relate to professions whose practice requires prior academic qualification of a

university degree or higher and «trade association» in the opposite case.

2 — The designations «order» and «trade association» as well as «professional specialty college» can only be used by professional public associations or their bodies, respectively.

Article 11

Cooperation with other entities

1 — Professional public associations are allowed to form private law associations and other forms of cooperation with related entities, in particular within the scope of the European Union and the Community of Portuguese Language Countries.

2 — In order to better perform their duties, professional public associations may form cooperation agreements with other public or private entities, except with those of a trade union or political nature.

CHAPTER II

Internal Structure

Article 12

Geographical Scope

1 — Professional public associations are national in scope.

2 — Notwithstanding that set forth in paragraph 1, professional public associations may include regional and local structures, which they direct to undertake their duties in the field in question, pursuant to the Statutes.

3 — In the case of paragraph 2 above, that statute of each professional association specifies the regional and local offices, as well as their structure and duties.

Article 13

Professional Specialty Colleges

1 — Whenever the law foresees the existence of professional specialisations, the professional public associations in question can organise themselves internally into professional specialty colleges.

2 — The statutes set down the structure and duties of professional specialty colleges.

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4 — The mandates of the members of the bodies of professional public associations may not exceed four years and can only be renewed once.

Article 14

Democratic establishment of the bodies

1 — Professional public associations have their own bodies, including a representative assembly elected by universal suffrage, which is direct, secret and periodic.

2 — Any full member who has his membership in order and is entitled to fully exercise his rights can vote and be elected for the bodies of the respective association.

3 — The Statutes may stipulate that for a person to be eligible for election as President or as a member of the bodies, they are required to have the necessary academic qualifications and have practised the profession for a minimum of 10 years

4 — The bodies of professional public associations are not subject to Government approval.

Article 15

Bodies

1 — Professional public associations comply with the principle of the separation of powers, it being required that they possess the following bodies:

a) An Assembly of Representatives, with general deliberative powers, namely in regard to the approval of the budget and activity plan, proposals for alterations to the statutes, approval of regulations, fees and rates, the creation of specialty colleges or to sign agreements with similar associations;

b) An Executive Collegiate Body, which has executive and management powers, namely with regard to administrative and financial matters, as well as concerning the external representation of the association's interests;

c) A Supervisory Body, which oversees the legality of the activity undertaken by the association's bodies and exercises control, namely in disciplinary matters;

d) A body which audits financial and asset management, which includes a Chartered Accountant.

2 — The statutes of professional public bodies may foresee the existence of a President, as President of the Executive Body or as an autonomous body, with particular duties, namely in representing the association externally.

3 — The statutes may also foresee the existence of other bodies, namely large assemblies, as a congress to deliberate on general matters, as well as technical and consultant bodies.

5 — The name of the bodies is freely chosen pursuant to the statute of each professional public association, with the exception of the title

“*Bastonário*”, which can only be used for the president of “orders”.

6 — The assembly is elected by universal suffrage and the system of proportional representation, within the areas set forth in the statutes, however, it may include the representation of regional structures, if they exist.

7 — When directly elected, the President or *Bastonário* is elected under the terms set forth in the Constitution for the election of the President of the Republic, with the necessary adaptations.

8 — The supervisory body is independent in exercising its duties, being elected by majority vote by the Assembly of Representatives and may include up to a third of persons who do not practice the profession.

9 — The mandatory bodies for regional and local offices are an assembly of the members registered in the particular area and an executive body elected by it.

10 — Permanent executive positions may be paid positions, under the terms of the statutes or the association’s regulations.

Article 16

Regulatory Power

1 — The regulations of professional public bodies are legally binding to all their members, and therefore to all candidates wishing to practice the profession.

2 — The regulations are drawn up in compliance with the procedure set forth in the Code of Administrative Procedure, including that which refers to public inquiry and the participation of interested parties, with the necessary adaptations.

3 — The regulations for the external efficacy of professional public associations are published in the 2nd Series, of the *Diário da República*, notwithstanding their publication in the association’s official magazine or on the association’s website.

Article 17

Disciplinary Power

1 — Professional public associations exercise disciplinary action over their members, pursuant to the respective statutes.

2 — The statutes of each professional public association list the facts that are deemed to be a disciplinary offence as well as the applicable disciplinary sanctions.

3 — The disciplinary sanctions of suspension and expulsion from the professional public association *Diário da República*, 1st Series — N^o 31 — 13th February 2008

2 — As a member of the professional public association such position is incompatible with the

are only applicable in the case of gross violations which have occurred during the practice of the profession and cannot result from the failure to pay fees or any other member’s duty which is of a transitional nature.

4 — The disciplinary sanction of expulsion is only applicable when on account of the nature of the profession, the disciplinary violation has placed a person’s or persons’ life and physical integrity at risk, or is gravely damaging to the honour or property of third parties or equivalent values.

5 — The exercise of the disciplinary duties of professional public associations is the responsibility of or at least as a last resort, the body set forth in Article 15 (1) c).

6 — All that is not regulated in the statute of each professional public association or, when they exist, the respective disciplinary regulations, is governed by the provisions set forth in the Disciplinary Statutes for Employees and Authorities of Central, Regional and Local Administration.

7 — The following can initiate disciplinary proceedings:

- a) The bodies which govern the association;
- b) The ombudsman, when he exists;
- c) The Public Prosecutor’s Office.

Article 18

Ombudsman

1 — Professional public associations may appoint an independent person to defend the users of the professional services provided by their members.

2 — The ombudsman is appointed pursuant to the statutes, he cannot be a member of the professional association and cannot be dismissed, unless he has committed a gross offence in the exercise of his duties.

3 — It is the responsibility of the ombudsman to assess complaints lodged by users and recommend how they should be resolved and in general how to improve the association’s performance.

4 — The position of ombudsman is a paid position, pursuant to the statutes or the association’s regulations.

Article 19

Incompatibility in the Performance of Duties

1 — It is incompatible for executive, disciplinary and auditing duties to be performed together in professional public associations.

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practice of any executive position within public services and any other position where there is a clear conflict of interest.

3 — An exception may be made to the rule set forth in the first part of the previous paragraph and with the necessary grounds it may be amended by the statutes of the respective professional public association.

Article 20

Internal Referendum

1 — The statutes of professional public associations may be subject to referendum, which may be binding or consultative, upon deliberation by the assembly of representatives on questions of particular significance to the association and that are included in their duties.

2 — It is mandatory for an internal referendum to be held for proposals for the dissolution of the association.

3 — The statutes of each professional public association may specify other matters for which it is mandatory for an internal referendum to be held.

4 — Prior to a referendum being held, it is mandatory for its legal or statutory compliance to be confirmed by the supervisory body set forth in Article 15 (1), c).

CHAPTER III

Members

Article 21

Registration

1 — The liberal practice of a profession which is organised under a professional public association is subject to prior registration, unless a different regime is established in the creation law, whereby the law can extend the obligation to register to all professionals, or, at least impose a universal obligation for professional registration.

2 — The requirements for the full registration with a professional public association are strictly set forth in the creation law or by the law which regulates the profession, in compliance with the following principles:

a) The existence of a professional or curricular qualification, which has been officially recognised, which is required by law for the practice of the profession;

b) It may be necessary for professional skills to be assessed by undertaking an internship or probation period;

c) Training and confirmation of knowledge of the profession's Code of Ethics.

3 — Under no circumstances will there be a system of *numerus clausus* in accessing the profession, or in the accreditation of officially recognised courses, by professional public associations.

Article 22

Right to Register

1 — All individuals who fulfill the legal requirements to practice the profession and wish to do so as an independent professional or not, are entitled to register with professional public associations.

2 — In the event that the penalty prohibiting the practice of the profession is applied, registration with the professional public association ceases immediately.

3 — Nationals from other European Member States who hold the academic and professional qualifications legally required to practice the profession in their respective State of origin may register with professional public associations.

4 — Furthermore, nationals from other States, under conditions of reciprocity may register, providing they obtain equivalence under the terms of the law in force.

Article 23

Members' Rights

The rights of members are:

- a) To elect the association's bodies and stand for election, with the exception of the incompatibilities established in the law and the statutes;
- b) To participate in the association's activities;
- c) To benefit from the services provided by the association, without any discrimination.
- d) Others set forth in the law and the statutes.

Article 24

Members' Duties

The duties of members are:

- a) To participate in the life of the association;
- b) To pay the fees;
- c) To contribute towards the good standing of the association;

d) To comply with the other legal and statutory duties.

CHAPTER IV

Employment, financial and auditing framework

Article 25

Personnel

The employees of professional public associations are governed by the legal framework for individual labour contracts, notwithstanding a recruitment procedure identical to that set forth in the labour contract foreseen in the Public Administration, set forth in Law n° 23/2004, of the 22nd June.

Article 26

Budget and Financial Management

1 — Professional public associations have their own budget, which is proposed by the executive body and approved by the representative assembly.

2 — The finances of professional public associations are subject to budget stabilisation and the limitation of debts set forth in a separate law.

3 — Professional public associations are subject to the regulations for public contracting and the public works contract.

4 — Professional public associations are subject to the Official Public Accounting Plan.

5 — The State does not guarantee the financial responsibilities of professional public associations, neither is it responsible for their debts.

Article 27

Revenue

1 — The revenue of professional public associations is comprised of the following:

- a) Members' fees;
- b) The rates collected for services rendered;
- c) Revenue from the respective assets; from inheritances, legacies and donations;
- e) Other revenue set forth in the law and the statutes.

2 — The State may only finance professional public associations in exchange for specific tasks undertaken upon signing an agreement and which are not included within its legal obligations.

3 — Deliberations on setting fees and rates are approved by the representative assembly, by majority vote, proposed by the executive body and based on a study which adequately supports the amounts proposed, in compliance with the

substantive requirements set forth in the general law relating to rates and other Public Administration contributions.

4 — The collection of credits from the revenue set forth in n° 1 a) and b), is subject to taxation.

Article 28

Services

1 — Professional public associations shall establish the necessary operational and technical services to carry out their duties, notwithstanding the right to outsource tasks.

2 — Professional public associations can establish cooperation agreements with Public Administration inspection services in order to verify the duties carried out by their members. .

3 — Cooperation agreements may be established with the inspection services mentioned in the previous paragraph, with the aim of preventing the illegal practice of the profession, namely by persons who do not fulfill the legally required qualifications.

CHAPTER V

Tutelage, Judicial Control and Responsibility

Article 29

Administrative Tutelage

1 — Professional public associations are not subject to government superintendency or tutelage, in the case of the latter, except in the cases specifically set forth in the law.

2 — Professional public associations are subject to the judicial tutelage which is identical to that exercised by the Government over territorial autonomous administration.

3 — The creation law establishes which member of the Government exercises the powers of tutelage over each professional public association.

4 — With the exception of the following paragraph, administrative tutelage over professional public associations is inspective in nature.

5 — The regulations regarding professional internships and the professional examinations to access the profession, fees and related rates and professional specialties, require tutelary approval, which is deemed to be granted if no decision to the contrary is received within the subsequent 90 days.

6 — The provisions set forth in Law n° 27/96, of the 1st August, with the necessary alterations, are applicable to professional public associations.

Article 34

Foundation Committees

1 — The decisions made by professional public bodies in exercising their public power are subject to administrative proceedings, under the terms of the laws on Administrative Proceedings.

2 — The legality of the acts and regulations of professional public bodies may be contested by:

- a) The interested parties, pursuant to the laws of Administrative Proceedings;
- b) The Public Prosecutor;
- c) The Supervisory Minister;
- d) The Ombudsman.

Article 31

Inspection by the Court of Auditors

Professional public associations are subject to the jurisdiction of the Court of Auditors, pursuant to the terms established in its organic law.

Article 32

Annual Report and Duty to Inform

1 — Professional public associations prepare an annual report on the performance of their duties which is submitted to the Assembly of the Republic and the Government.

2 — Professional public associations must provide the Assembly of the Republic and the Government with all the information requested with regard to the performance of their duties.

3 — “*Bastonários*” and Presidents of the executive bodies must comply with the request by the competent parliamentary commissions to provide the information and clarifications they require.

Article 33

Criminal Procedure

Professional public associations cannot become private prosecutors in criminal cases relating to the practice of the profession which they represent or the performance of the positions in their bodies, unless they relate to facts that involve disciplinary responsibility.

CHAPTER VI

Establishment

Article 34

Foundation Committees

1 — Until the bodies of the new professional public associations created under the terms of this law take office, the respective statutes must foresee, for a maximum period of one year, the existence of foundation committees, which are responsible for undertaking the acts necessary for the election of the Assembly of Representatives and the permanent establishment of such bodies.

2 — The members of the foundation committees, one of whom is the President, are nominated by the member of the Government who exercises supervisory powers over the professional public association, having consulted the professional associations interested.

CHAPTER VII

Final Provisions

Article 35

Optional Implementation

1 — Upon decision by its competent body, existing professional associations may request their submission to the regime set forth herein to the Government.

2 — The request must be submitted with a draft of the new statutes.

3 — The publication of the new statutes deems the expiry of the former statutes.

Article 36

Transitional Standard

With the exception of that set forth in Article 2 (3), this law applies to professional public bodies whose legislative process for their creation is in progress on the date it enters into force.

Article 37

Entry into force

This law enters into force 30 days following its publication. Approved on 6th December 2007.

The President of the Assembly of the Republic, *Jaime Gama*.

Promulgated on the 22nd January 2008.

Let it be published.

The President of the Republic, ANÍBAL CAVACO SILVA.

Approved on 24th January 2008.

The Prime Minister, *José Sócrates Carvalho Pinto de Sousa*.