



New framework for the exercise of political and high public office functions

On 31 July 2019, Law no. 52/2019 was published in the Portuguese Official Gazette, repealing Law no. 64/93 and approving a new framework for the exercise of duties by political office and high public office holders, their respective declarative duties and sanctions in case of non-compliance.

The subjective scope of the diploma goes beyond the persons identified as "political office holders" and "high public office holders", since it encompasses entities deemed as similar for declarative purposes, judges, state prosecutors, Constitutional Court Judges, Supreme Court Judges, the Ombudsman and Superior Council members.

Law no. 52/2019 densifies the incompatibilities regime erstwhile foreseen in Law no. 64/93, forbidding the exercise of other professional activities, paid or not, to those with political or high

public office functions. However, some exceptions are made, as is the case for lecturing and investigation in universities.

The Law also forbids local council board members who hold permanent positions from exercising additional activities. It was also established that local council board members cannot, in regards to any matters, lawsuits or disputes involving or being decided by the legal person in which they hold office represent, act as a consultant or issue opinions, as well as sign architecture or engineering projects. These preclusions are applicable to all forms of local government, such as parishes, counties, supra-county entities and public companies, with the applicable changes.



Other news revolve around the prohibition of political and high public office holders to participate, in any way, in public tenders with entities in which they had, in the three years prior to their appointment, a capital share higher than 10% or 50.000€. The aforementioned disallowance is applicable to the subject's spouses, in relation to public tenders with legal persons in which the spouse is a shareholder.

Contracts celebrated with legal persons whose board consists of political or high public office holders must be published in the public tender portal, with indication of the existing family bond, even if the share capital held by the subject is lower than 10% and 50.000€.

Political and high public office holders are also barred from pursuing private activities in companies from the sector in which they directly acted for the period of three years after stepping down from their respective office, in case those companies were privatized, given financial or tax benefits or suffered any kind of direct intervention from the political or high public office holder during their mandate.

Disregard for the abovementioned rules will result in loss of mandate or dismissal, depending on whether the subject holds an electable or non-electable office – with exception to the President of the Republic and Prime Minister. Under the same circumstances, the Ombudsman may be dismissed by Parliament.

The exercise of private activity in the governed sector in violation of the periods set forth in Law no. 52/2019 will result in an inhibition to hold political or public office for a period of three years. High public office holders may also be dismissed by the administrative courts.

All the priorly mentioned agreements carried out by political or high public office holders will be null and void.

A declaration template was also created for political and high public office holders to fill out in the 60 days that follow their appointment, where office holders should include, among other information, their total gross income and respective source, a detailed description of their assets and liabilities, any mention of board positions held in the three years prior, as well as other activities that may generate conflicts of interest.

From the moment of stepping down, re-election or mandate renewal, another declaration must be filled out and submitted within 60 days, in order to reflect the asset and income evolution during the mandate.

Three years after stepping down from office, one should submit a final declaration, following the same rules.

The elements contained in this declaration are mainly of public access, with some information being left out for data protection and privacy concerns.

Failure to present the income and interests declaration will result in loss of mandate, dismissal or court dismissal, as applicable, as well as in inhibition, from a period of one up to five years, to act in functions which require its presentation. Refusal to present the declaration is punished as a qualified disobedience felony, with a sentence ranging from up to 3 years in prison to a 360-day fine, whether the refusal is or is not accompanied by an income or asset omission before the tax authority.

Presenting a declaration with omissions or with the intent of hiding income or assets with a value higher than 50 minimum monthly wages is punished with a prison sentence of up to 3 years. One of the most significant aspects of this Law is the taxation on unjustified asset/income increases, which are subject to a special rate of 80%.

Also noteworthy is the covered public entities' duty to approve a Code of Conduct and publish it on their respective websites. Said Code must regulate, among other matters, institutional offerings and hospitality. As for these, Law no. 52/2019 provides that all offers of material goods or services with an estimated value of more than 150€, received in the exercise of office or function, must be presented to the body defined in the respective Code of Conduct. This value must be taken into account for all offers received per year, and the duty of presentation to the competent body arises from the moment the value of all offerings received surpasses 150€. Offers addressed to the public entities are always registered and delivered to the competent body, regardless of the value.



The destination of these offers shall be defined by the competent body in accordance with the Code of Conduct.

Notwithstanding the foregoing, political or high public office holders, acting as such, may accept invitations addressed to them for official events or from national or foreign public entities, as well as offers of an estimated value of over 150€ which are compatible with the institutional nature, with the relevance of acting the position, or that constitute a socially appropriate conduct in accordance with the social customs.

No Code of Conduct may derogate from the statutes of each political or high public office holder, or condition the holders' exercise of their respective positions or functions.

An entity whose functions include the analysis and supervision of the declarations to be submitted under the Law 52/2019 will be created by its own law. Such diploma, in addition to the competencies, will also define the rules of organization and operation of this new entity. A duty of communication to the Public Prosecution Office shall also be imposed onto it, whenever, from the analysis and supervision of said declarations, the supervisory entity finds facts that may entail any of the offenses referred to in Law No. 52/2019.

Law 52/2019 enters into force on the first day of the XIV Legislature of the Parliament.

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