

# OFFICIAL JOURNAL

## SUMMARY:

### MINISTRY OF FINANCE

#### Decree-Law no. 289/2001

Approves the new Charter of the Instituto de Seguros de Portugal (Portuguese Insurance Institute) and amends Decree-Law no. 158/96, of 3rd September, which approves the Finance Ministry Act

### MINISTRY OF FINANCE

#### Decree-Law nº 289/2001, of 13th November

The Charter of the Instituto de Seguros de Portugal (ISP), the supervisory authority for the business of insurance, re-insurance, insurance intermediaries and pension funds, was approved by Decree-Law no. 251/97, of 26th September and now it reflects the need to adapt to the new environment marked by the privatisation process, by the single insurance market – the main cause of the progressive liberalisation and deregulation of the business – and by the proliferation of new products, in particular as regards the institutionalisation of pension funds.

Although the ISP has a relatively recent Charter there are a number of powerful reasons why the text approved by Decree-Law no. 251/97, of 26th September, should be revised.

Two factors stand out above all others and call for a revision. On the one hand, the amendments to the legislation relating to the taking up and pursuit of the business of insurance set out in Decree-Law no. 94-B/98, of 17th April have strengthened the ISP's autonomy and its decision-making role, and thus justify matching these developments to the institution's legal powers and authority.

In fact, among the States that, together with Portugal, make up the European Union, in recent years there has been a trend towards greater autonomy in relation to the Government on the part of the public bodies responsible for regulating and supervising markets and sectors. This trend has been particularly evident in the financial sector where it has reflected a new view of public intervention in that sector.

On the other hand, since a new phase in the national system of financial supervision has begun, which presupposes the creation of a new institutional structure capable of bringing about greater co-ordination and co-operation between the three institutions that currently make up the financial sector supervisory system, there is every reason to bring these bodies' charters closer together.

In order to meet these concerns this Act not only provides that the ISP shall now be under the sole authority of the Minister of Finance, rather than being under the Minister's supervision, but it also assigns broad regulatory and decision-making powers in supervisory matters to the ISP's governing bodies which, therefore, shall no longer be dependent upon the direct intervention of the Minister of Finance.

It is the case with decisions concerning the setting up, splitting, merging, closing and winding-up of insurance and re-insurance undertakings and of pension fund management

companies.

In order to provide the ISP with greater autonomy and match the structures of the three supervisory authorities the new legislation lays down new regulations for board members, extends their term of office from three to five years and grants their irremovability, which is already the case for the other financial supervisory authorities.

As far as financial and asset management is concerned the accounting rules are simplified and the ISP budget management shall now be based on the rational use of the financial resources stemming from the sector supervised.

In other matters, besides some clarifications, updating of terminology and improvements to the ordering of the provisions, the revised Charter retains, in the main, the legal framework currently in force.

The views of the Regional Governments and the Instituto de Seguros de Portugal were heard.

Thus:

Under the terms of article 198 n<sup>o</sup>1 a) of the Constitution the Government decrees the following:

## **Article 1**

### **Approval**

The Charter of the Instituto de Seguros de Portugal, attached hereto and forming an integral part of this Act, is hereby approved.

## **Article 2**

### **Amendments to the Finance Ministry Act**

Article 10 of Decree-Law no. 158/96, of 3rd September, amended by Decree-Law no. 21/99, of 28th January, shall read as follows:

"Article 10

[...]

...

a) ...

b) [Wording as per previous subparagraph c).]

c) [Wording as per previous subparagraph d).]

d) [Wording as per previous subparagraph e).]"

### **Article 3**

#### **Present offices**

The current members of the Instituto de Seguros de Portugal's governing bodies shall remain in office until new members are appointed under this Act.

### **Article 4**

#### **Revoked legislation**

Decree-Law no. 251/97, of 26th September is hereby revoked.

### **Article 5**

#### **Coming into force**

This Act shall come into force eight days after its publication.

Seen and approved by the Council of Ministers on 20th September 2001. - António Manuel de Oliveira Guterres - Jaime José Matos da Gama - Guilherme d'Oliveira Martins - Henrique Nuno Pires Severiano Teixeira - António Luís Santos Costa - Paulo José Fernandes Pedroso - Alberto de Sousa Martins.

Promulgated on 30th October 2001.

To be published.

President of the Republic, JORGE SAMPAIO.

Countersigned on 31st October 2001.

Prime Minister, António Manuel de Oliveira Guterres.

## **CHARTER OF THE INSTITUTO DE SEGUROS DE PORTUGAL**

# **CHAPTER I**

## **Name, nature, legal framework and Head office**

### **Article 1**

#### **Nature**

The Instituto de Seguros de Portugal, hereinafter referred to by the abbreviation ISP, is a state-owned corporate body with administrative and financial autonomy and its own assets.

### **Article 2**

#### **Legal framework**

1 – The ISP shall be governed by this Act and its internal regulations, and, in matters not specifically covered by or incompatible with the former or the latter, by the rules applying to state-owned companies.

2 – The ISP shall be subject to the authority of the Minister of Finance, which shall be exercised under the terms set out in this Charter.

### **Article 3**

#### **Head office and regional offices**

The ISP has its Head office in Lisbon and a regional office in Oporto. It may set up regional offices or other forms of representation in other parts of the country.

# **CHAPTER II**

## **Duties**

### **Article 4**

#### **Duties**

1 – Within the framework of its duties the ISP shall:

- a) Regulate, inspect and supervise the business of insurance, re-insurance, insurance intermediaries and pension funds, as well as connected or complementary activities;
- b) Assist the Government and the Minister of Finance, at the latter's request or on its own initiative, in defining policy guidelines for the insurance sector, including activities connected with or complementary to the business of insurance, re-insurance, insurance intermediaries and pension funds;
- c) Implement that policy and control its performance;
- d) Liase with the corresponding authorities in other States, in particular with the authorities in European Union Member-States;
- e) Liase with other Portuguese authorities in their respective fields and in particular with the other financial supervisory authorities;
- f) Manage the funds ascribed it by law.

2 - ISP supervision shall cover all activities performed by undertakings subject to its supervision, including activities connected with or complementary to their main business. Supervision shall be carried out in accordance with the national and Community legislation in force and in a manner that ensures the proper working and protection of the market, guaranteeing the interests of insurance creditors.

3 - Within the scope of its duties the ISP shall issue regulations binding on the entities subject to its supervision, which shall be published in Diário da República (Official Journal), 2.<sup>a</sup> série.

4 – The ISP is entitled to seek injunctions whenever necessary to protect the stability of the insurance sector and to guarantee the interests of insurance and pension fund management company creditors, as well as to take legal action in defence of pension fund members' interests.

5 – The ISP may issue certificates pertaining to facts that are related to its duties under the terms of the relevant legislation.

## **Article 5**

### **Binding instructions**

1- In the performance of its duties the ISP shall issue binding instructions aimed at remedying any irregularities it is aware of among the undertakings subject to its supervision and it shall take all necessary actions.

2- Any actions made in breach of specific instructions or bans issued by the ISP in the performance of its duties shall be null and void.

## **Article 6**

### **Liasing with other authorities and bodies**

1- The ISP may request the information and co-operation it requires from all government departments and other public bodies in order to fulfil its duties.

2- The ISP may demand information that it deems relevant from any private body, namely individuals or corporation that take part in undertakings subject to its supervision or that are owned by the latter, from individuals or corporation that perform activities overseen by the ISP and also from auditors, the Chamber of Official Auditors and the Portuguese Institute of Actuaries.

## **CHAPTER III**

### **Structure**

## **SECTION I**

### **General provisions**

## **Article 7**

### **ISP governing bodies**

The ISP's governing bodies are the Management Board, the Consultative Committee and the Audit Committee.

## **Article 8**

### **Quorum and decision taking**

1 – The ISP's governing bodies may only take decisions when a majority of members are present.

2 – Notwithstanding the provisions of article 20, no. 3, decisions of the ISP’s governing bodies shall be taken by a majority of the members present at the respective meeting. The Chairperson or his/her replacement, when they are entitled to vote, shall have a casting vote.

3 - Minutes shall be taken at all ISP governing body meetings and they shall be signed by all members present.

## **SECTION II**

### **The Management Board**

#### **Article 9**

##### **Composition, appointment and term of office**

The Management Board shall consist of a chairperson, deputy chairperson, and one to three members, appointed by the Council of Ministers under a proposal from the Minister of Finance for a period of five years, renewable once for an equal period. They shall be individuals of recognised ability, independence and competence.

#### **Article 10**

##### **Powers**

1 – The Management Board shall establish the general guidelines and internal management policy and carry out all acts relating to performance of the ISP’s duties that do not fall within the scope of the other governing bodies powers.

2 - The Management Board shall also have powers in regard to regulations, monitoring and supervision of the business of insurance, re-insurance, insurance intermediaries and pension funds, in the area of fund management and ISP management, as well as in regard to relations with other institutions and international relations, under the terms of the following articles.

#### **Article 11**

##### **Powers referring to regulations**

The Management Board shall, in regard to regulating the business of insurance, re-insurance, insurance intermediaries and pension funds:

- a) Provide the Government, on request or on its own initiative, with proposals for legislation concerning matters falling within the ISP's authority;
- b) Approve regulations and other rules, falling within the ISP's authority, that are binding on the undertakings subject to its supervision.

## **Article 12**

### **Powers referring to supervision**

1 – The Management Board shall, in regard to supervision:

- a) Appraise and decide upon operations relating to undertakings subject to ISP supervision, namely the setting up, splitting and merging of insurance and re-insurance undertakings, and pension fund management companies, as well as their closure and winding-up and other matters related to the supervised activities and undertakings;
- b) Give its opinion on the manner undertakings with their head office in Portugal, pursue the business of insurance, re-insurance or pension funds in other countries and grant them authorisation to open agencies, branches and other forms of representation outside the European Community;
- c) Authorise the marketing of insurance classes and types and define standard policies for certain insurance contracts;
- d) Evaluate and hold copies of the technical basis, general conditions, schedules and charge rates for insurance contracts;
- e) Evaluate the representation of technical provisions by the undertakings subject to ISP supervision;
- f) Review annual accounts of the undertakings subject to ISP supervision and require adjustments giving detailed grounds for this;
- g) Certify undertakings subject to ISP supervision;
- h) Monitor the activities of undertakings subject to its supervision and control compliance with applicable legislation and with prudential control rules;
- i) Inspect, whenever it deems appropriate or in accordance with legal provisions, the undertakings subject to its supervision, request information and documents and conduct investigations and examinations of any entity at any location whilst performing its functions;
- j) \* Suspend authorisation and determine the temporary suspension or definitive withdrawal of clauses, rates and the sale of products whenever there is a breach of the law, or whenever interested parties or the stability of the undertaking or insurance sector are subject to an unlawful risk;
- l) Keep a record of management and audit bodies of the undertakings subject to ISP supervision and of any agreements between the shareholders of those undertakings;
- m) Certify insurance and re-insurance intermediaries and carry out the corresponding supervision;

- n) Bring and prepare infringement proceedings and set the corresponding fine;
- o) Bring and prepare proceedings for breach of regulations and apply or propose the corresponding fine and additional penalties;
- p) Exercise any other supervisory powers granted it by the law.

2 – The provisions of subparagraph a) of this article shall not hinder the legally established defence of competition mechanisms nor the authority of the responsible body.

### **Article 13**

#### **Powers referring to fund management**

1 - The Management Board shall, in regard to fund management:

- a) Perform all acts necessary to the management of the Motor Guarantee Fund (FGA);
- b) Perform all acts necessary to the management of the Accidents at Work Fund (FAT);
- c) Perform all acts necessary to the management of any other funds entrusted to it by law.

2 – The management of the aforesaid funds shall be conducted in accordance with the legislation setting up the funds.

### **Article 14**

#### **Powers referring to relations with other institutions and international relations**

The Management Board shall, in regard to relations with other institutions and international relations:

- a) Liase with all national and Community authorities on matters within its authority and, in particular liase with the Bank of Portugal and the Stock Exchange Commission to ensure the overall efficacy and consistency of financial supervision;
- b) Act as a representative to international bodies concerned with matters relating to its authority.

### **Article 15**

#### **Powers referring to ISP management**

The Management Board shall, in regard to ISP management:

- a) Prepare the ISP's annual budget and plan of activities and submit them for the Minister of Finance's approval, together with the Audit Committee's opinion;
- b) Prepare, where necessary, additional ISP budgets and submit them for the Minister of Finance's approval, together with the Audit Committees' opinion,
- c) Prepare the ISP's annual report, balance sheet and annual accounts and submit them all by March 31st of the following year, along with the Audit Committee's opinion, for the Minister of Finance's approval. Said documents shall be published in the Diário da República within 30 days of being approved;
- d) Prepare the internal regulations, and submit them for the Minister of Finance's approval. These regulations shall define the ISP's organisational structure, the powers and tasks of the various departments, the general rules to be observed when performing its activities, and, in general, all matters deemed relevant to its proper running;
- e) Collect ISP revenue and authorise the expenditure needed to perform its duties;
- f) Manage the ISP's assets and, in particular, decide upon the purchase, sale, financial leasing or renting of assets and the renting of property in order to install, equip and run the ISP;
- g) Decide upon the purchase, financial leasing or sale of property for the same purposes, with the prior authorisation of the Minister of Finance;
- h) Hire third parties to provide services that will enable ISP to fulfil its duties in a satisfactory manner;
- i) Ensure human resource management policy is implemented;
- j) Represent the ISP in all legal proceedings, both as plaintiff and defendant, transact, acknowledge liability in or withdraw from any such proceedings and accept arbitration awards.

## **Article 16**

### **Other powers**

Furthermore, the Management Board shall:

- a) Ensure the collecting, processing and publishing of statistics on the insurance, re-insurance and pension funds sector, as well as other items of information needed for statistical purposes;
- b) Publish an annual report on the insurance re-insurance and pension funds market, its economic, financial and assets position, and its place in the country's overall economic position;
- c) Promote the preparation of technical studies relevant to the performance of its functions;
- d) Manage the motor vehicle registration number information system referred to in article 39 no.3 of Decree-Law no. 522/85 of December 31st;
- e) Perform any other acts within the powers of the former National Insurance Institute

and the former General Insurance Board that, under the terms of article 4, are compatible with its duties;

f) Open and close ISP regional and representative offices;

g) Examine and give an opinion on requests for information and complaints relating to the business of insurance, insurance intermediaries and pension funds, which includes the business of intermediaries and of pension funds, that have been lodged by individuals or official bodies, and have not been settled elsewhere.

h) Perform any other duties assigned to it under the law.

## **Article 17**

### **Chairperson's powers**

1 – The Chairperson of the Management Board shall:

a) Represent the ISP in all matters;

b) Liase with the Minister of Finance;

c) Call and preside over meetings of the Management Board;

d) Whenever he/she deems appropriate or the Management Board so decides, call for a meeting of the Consultative Committee or the Audit Committee or a joint meeting of those bodies, and meetings between either of them and the Management Board, when he/she shall preside;

e) Oversee all of the ISP's activities and departments and ensure their proper running;

f) Perform any other tasks assigned to him/her by the ISP's internal regulations or delegated to him/her by the Management Board under the terms of article 18.

2 – The Chairperson shall also be empowered to take any decisions and perform any acts requiring a Management Board decision that, being of an urgent nature, cannot wait until a Board meeting is held. Any such decisions or acts shall be submitted to the Management Board for ratification at the following ordinary meeting.

3 – The Chairperson may suspend the effects of any Management Board decisions that he/she deems are in breach of the ISP's Charter or against the public interest and submit them to the Minister of Finance for confirmation.

4 – The Deputy Chairperson of the Management Board shall assist the Chairperson in the performance of his/her tasks, replace him/her in his/her absence and exercise any functions delegated to him/her under the terms of the following article.

## **Article 18**

### **Delegation of powers**

1 - The Management Board may, following a proposal from the Chairperson, assign the management of the different areas of the ISP's activities to its various members.

2 - The assigning of responsibilities provided for in the above paragraph implies the delegation of the corresponding powers in the areas concerned, within the limits and conditions set out in the act of assigning.

3 - The Management Board shall, in all cases, expressly set the limits of the delegated powers and state whether or not they may be sub-delegated.

4 - The provisions of the above paragraphs shall not exempt the Management Board members from being aware of and familiar with ISP matters generally and expressing an opinion on them. Nor shall they hinder the Management Board's power to recoup delegated powers and revoke acts performed by the delegated or sub-delegated party, whenever it deems appropriate.

5 - Any delegation of powers shall be recorded in the minutes of the meeting at which the decision was taken and published in Diário da República, 2.ª série.

## **Article 19**

### **Power to bind the ISP**

1 - The ISP shall be bound by the signature of:

a) The Chairperson of the Management Board;

b) At least, two members of the Management Board; or

c) Whosoever is qualified to do so under the terms of the previous article.

2 - Acts of daily routine that do not give rise to any obligations on the part of the ISP may be ordered by any Management Board member or any ISP employee expressly empowered to do so.

## **Article 20**

### **Meetings and decisions**

1 - The Management Board shall meet ordinarily as often as laid down in the internal regulations and extraordinarily whenever the Chairperson calls a meeting on his/her own initiative, at the request of two of its members or at the request of the Audit Committee.

2 - Management Board decisions shall be valid when a majority of its members are present.

3 - Decisions shall be taken by a majority of the votes of those present and that majority

must include the Chairperson's vote when the following matters are under consideration:

- a) Approval of ISP regulations and other rules;
- b) Approval of proposed legislation to be submitted to the Minister of Finance;
- c) Approval of proposed internal regulations of the ISP;
- d) Preparation of the activity plan and annual budget;
- e) The matters referred to in article 15 f) and g) of this Charter.

## **Article 21**

### **Management Board members status**

1 - Management Board members shall be subject to the Public Manager Charter, notwithstanding any special provisions made in this Charter, and their remuneration and benefits, set by an Order from the Minister of Finance, shall be equal to that of members of the governing bodies of the other financial supervisory authorities.

2 - Management Board members shall belong to the social security system for members of the governing bodies of corporate bodies, unless they are seconded or requisitioned in which case they shall be covered by the social security system relating to their original post.

3 - While in office, Management Board members may not directly, nor through a third party, conduct operations involving stock issued by undertakings subject to ISP supervision.

4 - Management Board members who at the time of their appointment hold stock issued by undertakings subject to ISP supervision shall sell them before they take office or shall declare their existence to the Management Board, within 30 days of their appointment, and may then only sell them with the Minister of Finance's authorisation.

5 - The aforesaid declaration shall be recorded in a separate record kept by the ISP and shall state the nature, quantity and purchase price of the stock.

6 - The ISP annual report shall be accompanied by an annex containing the contents of said declarations.

7 - The holding of any other office or the performance of any other functions by Management Board members shall be governed by the legislation dealing with incompatibilities set out in Law no. 12/96, of 18th April.

8 - A breach of the duties laid down in paragraphs 4, 5 and 7 shall be grounds for the purposes of article 6 of Decree-Law no. 464/82 of December 9th.

## **Article 22**

### **Leaving office**

1 – The Chairperson and other Management Board members shall only leave office under one of the following circumstances:

- a) Their designated term of office has run its course;
- b) Office holder's permanent incapacity or overriding incompatibility;
- c) Resignation;
- d) Dismissal, following a duly grounded decision of the Council of Ministers, in cases of proven serious wrongdoing committed by the office holder in the performance of his/her functions or any other duty inherent in their office.

2 – A Management Board member's term of office shall be independent of that of the other members.

## **SECTION III**

### **Consultative Committee**

#### **Article 23**

##### **Composition, term of office and remuneration**

1 – The Consultative Committee shall consist of:

- a) The Chairperson of the Management Board, who shall preside but shall have no vote;
- b) A representative of the Regional Government of the Azores;
- c) A representative of the Regional Government of Madeira;
- d) A member of the Bank of Portugal's board of directors;
- e) A member of the Management Board of the Stock Exchange Commission;
- f) The Chairperson of the Consumers Institute;
- g) The Chairperson of one of the consumers associations;
- h) The Chairperson of one of the insurance undertakings associations;
- i) The Chairperson of one of the pension fund management companies associations;
- j) The Chairperson of one of the insurance intermediaries associations;
- k) Up to three individuals of recognised ability, independence and competence in the area of ISP affairs whom the Minister of Finance deems it appropriate to appoint.

2 – The members referred to above shall be appointed:

a) In the cases referred to in subparagraphs b) and c), by the bodies they represent;

b) In the cases referred to in subparagraphs e) to g), by their respective associations, except when there is no agreement as to the representative, in which case the appointment shall be made by the ISP Management Board from among the individuals named by their associations;

c) In the case of subparagraph h), by an Order from the Minister of Finance.

3 – The Chairperson of the Consultative Committee shall state the member who shall replace him/her in his/her absence.

4 – All members of the Consultative Committee shall hold office for three years and may be replaced during that term by the body that appointed them.

5 – Members of the Consultative Committee may be remunerated by means of attendance allowances, the value of which shall be set by an Order from the Minister of Finance, following a proposal from the Management Board.

## **Article 24**

### **Powers**

The Consultative Committee is the body the ISP shall consult on matters of broad strategic guidelines regarding co-ordination of the sector. The Committee shall:

a) Give its opinions on matters submitted to it by the Management Board. Nonetheless, its opinion shall always be heard in regard to the annual report referred to in article 16 b);

b) Make, on its own initiative, recommendations and suggestions to the Management Board, within the scope of the ISP's powers.

## **Article 25**

### **Meetings**

The Consultative Committee shall meet ordinarily every six months and extraordinarily whenever the Chairperson calls a meeting on his/her own initiative or at the request of the majority of its members.

## **SECTION IV**

## **Audit Committee**

### **Article 26**

#### **Composition, term of office and remuneration**

- 1 - The Audit Committee shall be comprised of a Chairperson and two members, appointed by the Minister of Finance, and one of whom shall be an official auditor.
- 2 - Members of the Audit Committee shall hold office for a period of three years, renewable for equal periods.
- 3 - The post of Audit Committee member shall be equivalent to that of members of the audit bodies of state-owned companies.
- 4 - The provisions of article 21 paragraphs 4 to 6 shall apply to members of the Audit Committee.

### **Article 27**

#### **Powers**

- 1 - The Audit Committee shall:
  - a) Monitor and control the financial management of the ISP;
  - b) Appraise and issue an opinion on the ISP budget, annual report and annual accounts;
  - c) Audit the ISP's accounting system and compliance with the law and the internal regulations in budgetary, accounting and cash management matters. It shall inform the Management Board of any discrepancies or differences it finds;
  - d) Give an opinion on all matters of interest to the ISP, in budgetary, accounting, financial and tax matters that are submitted to it by the Management Board or the Board's Chairperson.
- 2 - In order to perform its duties properly, the Audit Committee shall have the power to:
  - a) Request from the ISP's various bodies and departments all information, explanations and items it deems necessary to the performance of its duties;
  - b) Request from the Management Board Chairperson joint meetings of the two bodies to appraise matters falling within its authority.

### **Article 28**

#### **Meetings**

The Audit Committee shall meet ordinarily once a month and extraordinarily whenever its Chairperson calls a meeting on his/her own initiative, at the request of the Committee members or at the request of the Management Board Chairperson.

## **CHAPTER IV**

### **Assets, revenue and expenses**

#### **Article 29**

##### **Assets**

The ISP's assets shall consist of all its rights and obligations.

#### **Article 30**

##### **Revenue**

1- The ISP's revenue shall consist of:

a) A fee paid by the undertakings subject to its supervision under the legislation in force;

b) Income from the sale of assets and from services provided, as well as from rights over the former;

c) Return on assets and income from its activities;

d) Return on financial investments;

e) Subsidies, donations or contributions from Portuguese or foreign entities;

f) The costs of proceedings for infringements and breaches of regulations;

g) Any other income or return to which it is entitled under the law, under a contract or in any other manner.

2- All surpluses at the year-end shall be carried forward.

## **Article 31**

### **Expenses**

The ISP's expenses shall consist of:

- a) Running costs;
- b) Cost of purchasing, repairing and maintaining goods or services it needs to employ;
- c) Subsidies for scientific research and the disclosing of knowledge on matters relevant to its duties or to the insurance, re-insurance and pension funds market.

## **Article 32**

### **Debt collection**

1 – All ISP revenue stemming from fees or other income that is compulsorily due under the law or is recognised by a Ministerial Order shall be enforceably collectable and shall be collected under fiscal procedures laid down in the Taxation Proceedings and Procedures Code, through the appropriate justice department, and the fees and income shall be deemed equivalent to State revenue.

2 – For the purposes of the above paragraph, the Management Board shall issue a certificate bearing the sum due in accordance with articles 162 and 163 of the Taxation Proceedings and Procedures Code.

## **CHAPTER V**

### **Financial and asset management**

## **Article 33**

### **Financial and asset management**

1 – In all matters not specifically regulated herein, the ISP's financial and asset management shall be governed solely by the legal regulations applying to state-owned companies but general rules covering the financial activities of autonomous funds and departments shall not apply.

2 - The ISP's budget, which shall be prepared in keeping with the Official Accounting

Code, shall be subject to prior approval of the Minister of Finance.

3 - ISP accounting shall comply with the Official Accounting Code and the public sector accounting rules shall not apply.

4 - The ISP is responsible for managing the public funds connected with or complementary to the business of insurance.

5 - Unless otherwise provided by law the ISP shall, for all intents and purposes, represent the funds it legally manages and it shall exercise all their rights and fulfil their obligations.

6 - When managing funds which have been entrusted to it and when intervening in undertakings to correct irregularities or wind them up, the ISP may renounce credits and forego debts, give or accept accords and satisfactions and reach compromises in or out of court.

7 - When managing funds that have been entrusted to it, the ISP shall apply the provisions of paragraphs 1 to 3 of this article.

8 - Notwithstanding the Audit Court's powers in this matter, the ISP's accounts may, at the Management Board's initiative, be audited by independent bodies.

## **CHAPTER VI**

### **Human Resources**

#### **Article 34**

##### **General framework**

1 - ISP staff shall be subject to the law governing individual contracts of employment, notwithstanding the provisions of this Charter, of the internal regulations and of any other ISP regulations.

2 - The ISP may be a party to collective bargaining agreements.

#### **Article 35**

##### **Status**

1 - The terms of admission, remuneration and benefits of ISP staff shall be set by the Management Board. They shall be set out in the internal regulations in accordance with the law.

2 - With the exception of employees providing personal support, defined in the respective regulations, staff recruitment shall be preceded by a public advertisement and an

assessment procedure that ensures respect for the principles of equality and impartiality.

3 – Unless so indicated by the ISP for its own purposes, ISP employees shall not work or provide services, with or without remuneration, for any undertaking subject to its supervision nor act as insurance intermediaries.

## **Article 36**

### **Supervisory functions**

ISP employees who perform supervisory functions shall, when performing those functions, enjoy the following prerogatives:

- a) They may identify the entities that infringe the regulations supervised by the ISP for subsequent action;
- b) They may request assistance from the administrative and judicial authorities, when they deem such assistance necessary to the performance of their functions;
- c) They shall have access to the premises of the entities subject to ISP supervision.

## **Article 37**

### **Mobility**

1 - Civil servants and public institute and local government employees, as well as the employees, officers or directors of state-owned and private companies may be seconded or requisitioned to work for the ISP. Their original position and their vested rights there are assured and the period spent working at the ISP is deemed to be time spent in their original post.

2 - ISP employees may be seconded or requisitioned to perform functions in the Civil Service, public institutes or local government under the legislation in force.

3 - Civil servants and public institute and local government employees who perform functions for the ISP under the terms of paragraph 1 shall continue to be subject to the disciplinary regulations of their original post. However, the Management Board shall exercise disciplinary power while they remain in the ISP's service.

4 – Employees of state-owned and private companies in the situation referred to in paragraph 1, holding individual contracts of employment shall be subject to the disciplinary regulations in force at the ISP. The Management Board shall exercise disciplinary power in regard to all infringements taking place while the employee remains in the ISP's service.

## **Article 38**

## **Social Security**

1 - ISP employees shall be subject to the general social security scheme.

2 - ISP employees shall have the right to supplementary pension benefits of not less than the amount set in the collective bargaining agreement for the insurance business and those benefits shall be guaranteed by a pension fund.

## **CHAPTER VII**

### **General provisions**

#### **Article 39**

##### **Confidentiality**

1 - Members of the ISP's governing bodies, its permanent and temporary staff, and any public or private bodies or individuals providing any services on a permanent or temporary basis shall, under the terms of articles 158 to 162 of Decree-Law no. 94 -B/98, of 17th April, and under this Charter, keep confidential facts they learn in the performance of their duties or the provision of said services. They shall not, for any purpose, disclose nor use to their own or another's benefit, directly or through a third party, the knowledge they acquire from those facts.

2 - Notwithstanding the provisions of the above paragraph, the duty of confidentiality shall remain even when the individuals or bodies bound by the above paragraph leave the ISP's service.

3 - Notwithstanding any civil and criminal liability arising, a breach of the confidentiality laid down in this article, when committed by an ISP governing body or staff member, shall imply disciplinary measures, in keeping with the severity of the breach, be taken against the offender. Such measures may include dismissal or termination of the individual's contract of employment. In the case of a breach committed by an individual or entity bound to the ISP by a service provision agreement, the Management Board shall be entitled to terminate that agreement.

#### **Article 40**

##### **Appeals**

Appeals may be lodged under the general law against administrative acts performed by the Management Board, its Chairperson or by the ISP's departments, when performing delegated powers.

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\* The letter "k" is not part of the Portuguese alphabet