

August 2020

Catarina Pinto Correia | cpc@vda.pt

José Melo Ribeiro | jmr@vda.pt

TIMOR- LESTE

ORGANIZATION OF THE STATE' S DIRECT AND INDIRECT ADMINISTRATION

The recently enacted Decree-Law 30/2020, of 29 July 2020, established a new framework applicable to the Organization of the State's Direct and Indirect Administration and repealed the former framework established by Decree-Law 12/2006, of 26 July 2006, as amended by a Rectification published in the Official Gazette, no. 14, Series I, of 31 August 2006.

The act overhauling the framework in place is prompted by the need to update the existing decade-old legislation in the light of the population's changing requirements and to address the challenges faced by the State's administrative organisation. On the other hand, it was imperative to fill the existing framework's gap regarding the creation, regime and operation of the State's Indirect Administration.

In addition to defining and implementing the operation of the State's direct and indirect Administration, the act has the following goals:

- Regulate the operation of the administrative organization, which has become increasingly complex in meeting collective needs.
- Establish clear and precise legal concepts with regard to administrative organisation.
- Reinforce the cohesion of the State's indirect Administration, promoting the hierarchical operation of public bodies and services to ensure the efficiency of the Government's administrative organisation.
- Clarify the use of the blurred concept of public legal personality within the context of the State's indirect Administration, which is subject to the State's supervision or oversight, for the fulfilment of public requirements and has implications on public expenditure, among other things.

The act is divided into three chapters: the first containing the general provisions, which:

- Define and flesh out the administrative organization principles, whilst the former act only listed such principles (Articles 3 to 8);
- Clarify the concept of public legal entity and the framework applicable to public legal entities in the State's Indirect Administration (Articles 9 and 10);

- Establish the legal concepts of supervision and oversight as inter-subjective relations within the public administration (Article 11);
- Define the concept of administrative, financial and asset autonomy (Article 12);
- Define the concept of administrative bodies and regulate the hierarchical relationship applicable to interactions between bodies, further expanding the scope of the powers of administrative bodies, as well as the concept of delegation of powers. The act also establishes the rules applicable to the operation of collegiate bodies (Articles 13 to 31);
- The legal concept of public services and their organization is clarified (Articles 32 and 33).

The second chapter is divided into two sections: a first section containing provisions applicable to the State's Direct Administration, and a second section establishing, in an innovative manner when compared to the former regime, the provisions that apply exclusively to the State's Indirect Administration.

The act establishes the organization and operating rules of the State's direct Administration, notably of the Government, Ministries, Secretaries of State and public services of the Ministries (Articles 35 to 40).

The act further defines and fleshes out the types of legal entities which are part of the State's indirect Administration – public institutes, state enterprises and other public legal entities and customised services which, regardless of their name, have been created with at least administrative and financial autonomy and are subject to the supervision of the Government members – it also defines the regime applicable to their creation, organisation and operation (Articles 41 to 62). It should also be noted that, even though Public Institutes are now governed by the provisions of this Decree-Law (Articles 49 to 53), state enterprises and other entities in the State's commercial sector are still governed by a separate act (Article 42(2)). In addition, reference must be made to the autonomy regime applicable to public legal entities of the State' indirect administration, foreseeing its budgetary and financial impact, impact on the assets, revenue and expenditure, accounting, accounts and treasury as well as the applicable labour framework (Articles 57 to 62).

The last chapter containing the final provisions provides in Article 63 for a transitional regime applicable to the existing ministries, legal entities and public services, establishing a period of up to 6 months following the entry into force of the act to make the necessary amendments to the legislation and organizational by-laws in order to ensure that they are aligned with the new framework.

The Decree-Law entered into force on the day following its publication, i.e. on 30 July 2020