

VI CONSTITUTIONAL GOVERNMENT

Decree-Law No. ____ / 2016

of ____ of ____

REGULATIONS OF THE INFRASTRUCTURE FUND

In 2011, the National Parliament created and the Government regulated the Infrastructure Fund as a special fund under Article 32 of the Law on Budget and Financial Management, which has functioned as a funding mechanism for strategic infrastructure projects. Although this funding mechanism has different management rules from the Treasury Account, which allow for greater flexibility, its revision, after five years of existence, is imperative in order to meet the current needs of real multi-year funding that do not overload the annual General State Budget, giving this the ability to ensure consistent and effective implementation of the Government Programme.

In this way, and following the approval of Law no. 1/2016, of 14 January, approving the State Budget for 2016, there is a need to regulate the Infrastructure Fund as an autonomous fund, with administrative and financial autonomy, with legal personality.

This solution ensures the continuity of financing multi-annual investment projects in infrastructure, ensuring the responsibility for budget execution and project implementation, transparency and budgetary rigor that the law and the nature of strategic infrastructure projects require, while allowing the National Parliament and the Audit Chamber continue to pursue their monitoring and audit roles.

Thus, the Government decrees, under paragraph 1(o) and Article 115.3 of the Constitution and Article 11.5 of Law 1/2016, of 14 January, as law, the following:

Chapter I General Provisions

Article 1 Purpose and scope

1. This law regulates the Infrastructure Fund, hereinafter called the Fund.
2. The purpose of this Decree-Law covers the nature, aims, objectives, administration, and administrative, financial, equity and operating management of the Fund, as well as the procurement and administrative and financial supervision.

Article 2 Nature

The Fund Infrastructure is an autonomous fund, endowed with legal personality and administrative, financial and patrimonial autonomy, with its own revenues.

The Infrastructure Fund is an organ of the indirect State administration, supervised by the Minister of Planning and Strategic Investment.

Article 3 Legal regime

The Fund is governed by the provisions of this Decree-Law, Law 13/2009 of 21 October, as amended by Laws 9/2011 of 17 August and 3/2013 of 11 September and Law 1/2016 of 14 January.

Article 4 Aims

1. Infrastructure Fund is intended to finance strategic programs and projects for the acquisition construction, development, maintenance and rehabilitation of:

- a) Road infrastructure, including roads, bridges, ports and airports;
- b) Social-oriented infrastructures, including hospitals, schools and universities;
- c) Infrastructure to protect against floods and landslides;
- d) Water and sanitation treatment facilities;
- e) Generators and power distribution lines;
- f) Telecommunications;
- g) Logistic facilities, including storage infrastructures;
- h) Government buildings and public facilities;
- i) Other infrastructure that promote strategic development.

2. The capital and other income of the Fund may be allocated to the purposes mentioned in paragraph 1 of this Article.

Article 5 Objectives

The objectives of the Fund are:

- a) To ensure the financing of public investments in infrastructure, including its maintenance and rehabilitation;
- b) Ensure proper preparation and security in the negotiation and financing of multiannual projects;
- c) Ensure the provision of technical and legal support for the quality of contracting necessary to carry out projects under its funding;
- d) To promote efficiency, transparency and accountability regarding the implementation of programs and infrastructure projects financed by the Fund;
- e) Ensure that the projects and programs contracted under the Fund are properly managed, monitored and supervised;
- f) Ensure the registration, management, maintenance and operation of public infrastructure and operational and exploration assets, as well as equipment that has funded, including those in the public domain, whose management is the responsibility of the State;
- g) Encourage national and international investments in the areas of intervention of the Fund, which contribute to the development of the country.

Article 6 Capital

The capital of the Fund is established and can be strengthened by the proposal of the Administrative Council, approved by the Council of Ministers, and inscribed in the State Budget, approved by the National Parliament.

Article 7 Territorial scope

The Infrastructure Fund has national territorial scope.

Chapter II Organic structure

Article 8 Organs

The Infrastructure Fund includes the following organs:

- a) Administrative Council;
- b) Audit Committee;
- c) Major Projects Secretariat.

Article 9
Administrative Council

1. The entity responsible for the Infrastructure Fund's operations is the Administrative Council, which is composed of the Government member responsible for planning and strategic investment, who presides, and the Government member responsible for public works, transport and communications and the Government member responsible for finance.
2. The Administrative Council has practical management of all actions relating to the object and the fulfillment of the purposes of the Infrastructure Fund, including the following:
 - a) Ensure the implementation of policy and financing strategy for infrastructure project programs and adopt financing for their implementation;
 - b) Establish approval criteria for projects to be financed by the Fund as well as their respective cost estimates;
 - c) Approve the financing options for each project;
 - d) Coordinate the preparation of the annual budget proposal of the Fund and approve it for submission to the Council of Ministers in order to be included in the proposed State Budget to be submitted to the National Parliament;
 - e) Approve the plans and activity reports and management and annual accounts of the Fund;
 - f) Authorize payments to be processed through the Fund;
 - g) Ensure the monitoring and supervision of execution of the financing of projects supported by the Fund, approving the execution reports for project and contract;
 - h) Approve the internal organization of the Fund;
 - i) Carry out other acts necessary for the management of the Fund.
3. The Administrative Council may delegate to any of its members the powers provided for in f) and i) in the preceding paragraph.
4. The Administrative Council may delegate to the Director of Major Projects Secretariat the powers provided for in f), g) and i) of paragraph. 2 of this Article.

Article 10.
Operation

1. The Administrative Council meets whenever convened by its Chair or by the majority of its members.
2. The Management Board shall make decisions by simple majority of the members present, with the Chair having the casting vote.
3. The Board's decisions are justified and recorded in the minutes.
4. Being called by the Chair, the Director of Major Projects Secretariat may attend meetings of the Administrative Council, without voting rights, acting as Secretary of the Meeting.
5. Any other person that the Council decides to invite can also attend meetings of the Administrative Council, without voting rights.

Article 11.
Chair of the Administrative Council

1. It is specific to the Chair of the Administrative Council:
 - a) To convene and chair the meetings of the Administrative Council and ensure compliance with its decisions;
 - b) To represent the Infrastructure Fund in and out of court, arbitration agreement, with the authority to designate representatives to constitute;
 - c) To exercise the powers delegated by the Administrative Council.

2. The Chair of the Administrative Council is replaced in his absence or disability by a designated member.
3. The Chair of the Administrative Council may delegate his/her powers to another Council member.

ARTICLE 12.
Audit Committee

1. The Audit Committee is the supervisory body for economic and financial management of the Fund.
2. The Audit Committee shall:
 - a) Monitor the economic and financial management of the Fund, including through the promotion of audits;
 - b) Review accounts, balance sheets and accounting documents, issuing an opinion to the Administrative Council;
 - c) Exercise internal control and can, therefore, examine books, documents, accounting and administrative records, and take other measures deemed necessary;
 - d) Decide on the accounts for the previous year;
 - e) Decide every six months, on the account balance accompanied by brief information on the activities of the Fund.
3. The Audit Committee consists of three members appointed by the Administrative Council, who may not have the same role in any other organ of the Fund.
4. The three members of the Audit Committee appoint from among themselves the Chair of the Committee.

Article 13.
Operation

1. The Audit Committee shall meet whenever convened by its Chair or a majority of its members.
2. The Audit Committee shall act by a simple majority of members present, the Chair has the casting vote.
3. In the absences, absences or impediments of the President, it appoints the replacement from among the remaining members of the Committee.
4. The Committee's decisions are justified and recorded in the minutes.

Article 14.
Major Projects Secretariat

1. The Major Projects Secretariat is the body of technical and administrative support for the Administrative Council.
2. The Major Projects Secretariat is headed by a director appointed by the Administrative Council.
3. The Director of Major Projects Secretariat is responsible to carry out decisions of the Administrative Council.
4. It is, in particular, the Director of the Major Projects Secretariat:
 - a) Ensures the minutes of the current management of the Secretariat and the Fund;
 - b) Ensures the smooth functioning of services;
 - c) Ensures institutional relations with public entities;
 - d) Submits to approval or authorization of the Administrative Council all the minutes that it needs;
 - e) Acts as secretary to meetings of the Administrative Council, when called by its Chair to participate;
 - f) Exercises powers delegated by the Administrative Council.

**Article 15.
Fund Linking**

1. The Infrastructure Fund is committed:
 - a) By the signature of two members of the Administrative Council;
 - b) By the signature of one Administrative Council member, under delegation of powers;
 - c) By the signature of authorized representatives, in the scope and limits of the powers that have been entrusted to them by the Administrative Council.
2. For acts of mere expediency the signature of the Director of Major Projects Secretariat is sufficient, or of an officer or employee to whom such power has been expressly granted by the Administrative Council.

**Chapter III
Financial and Asset Management**

**Section I
Budget and Assets**

**Article 16.
Budget of the Fund**

The proposed budget of the Fund is presented to the National Parliament as part of the General State Budget, pursuant to Law n. 13/2009 of 21 October.

**Article 17.
Revenue, Financing and Expenses**

1. The revenues and financing forms of the Fund include:
 - a) The budget allocated annually by the State Budget Law;
 - b) Reimbursements or donations by public or private entities, national or foreign, of lawful origin and purposes, for pursuing the tasks and objectives of the Fund;
 - c) Forms of financing arising from contracts, agreements or any other means permitted by law or decree-law.
 - d) Its own revenue income, comprised of income from goods assigned by the State or belonging to the Fund itself which are to be used by it under the asset purposes of its work, or from administrative fees, that may be legally created, resulting from service from the pursuit of its mission.
2. The expenses of the Fund include those:
 - a) Resulting from the operation of the Fund in pursuing its duties and objectives as well as the mandates of its bodies and services;
 - b) Relating to contracts entered into, as well as to their preparation, monitoring and supervision;
 - c) Arising from the use and management of goods and equipment from the responsibility of the Fund;
 - d) Costs of technical, financial, administrative and secretarial assistance, either from its own staff or by hiring third parties;
 - e) Costs of the meetings of administrative, technical and supervisory bodies;
 - f) Remuneration under the career framework and remuneration table of the Fund;
 - g) Any other expenses necessary to achieve the purposes to which the Fund is intended.

**Article 18.
Assets**

1. The initial capital and Fund's own assets constitute a guarantee of its obligations and responsibilities.

2. Included in the Fund's own assets are assets and rights arising from the pursuit of the scope of the activities of its tasks and objectives or which have been granted with that allocation, not including between these assets and rights in the public domain of the State, as well as those of its own assets and other public and private entities.
3. For the debts of the Fund only responds to its own assets and constitutive capital.

Section II Implementation of the Budget and Oversight

Article 19. Account

1. The Fund has an official account, to which is credited all income and expenses charged to the Fund.
2. The official account of the Fund complies, with the necessary adaptations resulting from the legal nature of the Fund, with the legal provisions applicable to official bank accounts.

Article 20. Authorization of Expenditure

1. The execution of expenses and processing of payments can take place only after authorization from the Administrative Council or its designee, for carrying out expenditures by the Fund in the relevant financial year.
2. The payments to be made by the Fund are processed by the Fund through the official account, in accordance with the law on budget execution.

Article 21. Procurement

Procurement under the Fund is carried out under Legal Procurement Regime.

Article 22. Financial control

Control of execution of the budget and the performance of financial responsibilities of the Fund are subject to the rules contained in Chapter II of Title VI, with the necessary adaptations, and Title VII of Law 13/2009 of 21 October, as amended by Laws no. 9/2011 of 17 August and 3/2013 of 11 September.

Article 23. Administrative and financial supervision

The Fund is subject to supervision and administrative and financial inspection applicable to public administration services.

Chapter IV Final provisions

Article 24. Staffing

1. The Fund has its own staff, approved by the Administrative Council, adjusted to the specific requirements justified by its activity.
2. The Fund may resort to hiring mode for a fixed term or the arrangements for the transfer and posting under the Civil Service Act.
3. The preceding paragraph is without prejudice to contract services which use the Legal Procurement Regime.

**Article 25.
Regulation**

The operation of procedures for the approval of projects to be funded, the definition of deadlines and coordination with other entities is regulated in the Diploma approved by the Minister of Planning and Strategic Investment, under proposal of the Administrative Council.

**Article 26.
Fund Settlement**

In case of liquidation of the Fund, the Government has the right to receive all the capital and accumulated reserves after their liquidation.

**Article 27.
Succession of rights and obligations**

The Infrastructure Fund assumes all rights and obligations of the dissolved Fund under article 11.1 of Law no. 1/2016, of 14 January, approving the State Budget for 2016.

**Article 28.
Revocation**

Decree-Law no. 8/2011 of 16 March is repealed.

**Article 29.
Entry into force**

This Decree-Law shall enter into force on the day following its publication.

Approved by the Council of Ministers on 15 March 2016.

The Prime Minister,

/s/

Dr. Rui Maria de Araujo

The Minister of Finance,

/s/

Santina J.R.F. Viegas Cardoso

The Minister of Public Works, Transport and Communications

/s/

Gastão de Sousa

The Minister of Planning and Strategic Investment,

/s/

Kay Rala Xanana Gusmão

Promulgated on _____

To be published.

(No signature yet)

The President of the Republic,

Taur Matan Ruak