

LAW N.° 13/2001

TRANSPOSING TO NATIONAL LAW THE CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS, WHICH WAS APPROVED IN PARIS, ON 17 DECEMBER 1997, UNDER THE AEGIS OF THE ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD)

THE NATIONAL ASSEMBLY HEREBY DECREES, UNDER PARAGRAPH Q OF ARTICLE 161 OF THE CONSTITUTION, AS A GENERAL LAW OF THE REPUBLIC, THE FOLLOWING:

Article 1

Article 41 -A - It shall be added to Decree-Law N° 28/84, of 20 January, an article 41 -A with the following wording:

"Article 41-A

Active corruption with the loss of international business

- 1 . Who either on his own behalf or through an intermediary with the consent or ratification of the former, gives or promises to an official or to a national or foreign political official or to a third party any undue pecuniary or intangible advantage with their knowledge, in order to obtain or retain business, a contract or other improper advantage in the conduct of international business, shall be punished with a prison sentence of between one to eight years.
2. For the purposes of the provisions laid down in the foreign paragraph, foreign public official means any person holding an administrative or judicial office for a foreign country, whether appointed or elected either exercising a public function for an enterprise, a public organisation or a public services agency, regardless of the national or local level, as well as any official or agent of a public international or supranational organisation.
3. For the purposes of the provisions laid down in paragraph 1, foreign political officials are those qualified as such by the law of the State which they exercise such functions.

Article 2

Money laundering and the fight against economic and financial corruption and crime

For the purposes of the provisions laid down in Article 2, of Decree-Law N' 325/95, of 2 September and in paragraph I (a) of Article 1, of Law n' 36/94, of 29 September, the conduct described in the foregoing Article is qualified as a crime of corruption.

Article 3

Territorial application

Regardless of the general framework governing the territorial application of criminal law and the provisions set forth regarding international judicial co-operation, the provisions laid down in Article I of this Law shall be applicable to the acts committed by Portuguese citizens as well as to acts committed by foreigners found in Portugal, regardless of the place where such acts were committed.

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**MINISTRIES OF JUSTICE, OF HEALTH, OF AGRICULTURE, FORESTRY AND
FOODSTUFFS, OF TRADE AND TOURISM AND OF THE QUALITY OF LIFE**

Decree-Law no. 28/84

of 20 January

1. The criminalisation and punishment of illegal activities against the national economy has been the subject of secondary criminal legislation. Its most important milestone was Decree-Law no. 41,204 of 24 July 1957, which was saluted at the time as being quite advanced when compared to the many foreign texts on the subject.

Meanwhile, more than 26 years after its publication and in spite of the successive changes that have been made to it, the criminological situation, in constant mutation, urgently requires the system of rules for combating economic offences to be revised and updated.

The constituent parliament took this into account when it decreed that offences against the national economy would be defined by law and subject to sanctions proportionate to their seriousness (Constitution of the Portuguese Republic, article 88, no. 1) and when it drew up some criminal policy guidelines to be observed by the regular parliament.

One of them concerns the sanctions, which may include as punishment forfeiting the goods directly or indirectly obtained through the criminal activity and without any kind of compensation for the offender (no. 2 of above article).

Another deals with State intervention in rationalising distribution circuits and establishing and controlling prices, in order to combat speculation, prevent restrictive practices and their effects

on prices and adapt the changes in the prices of essential products to the objectives of economic and social policy (article 109, no. 1).

2. Although the pertinence of the objectives laid down in Decree-Law no. 41,204 has been recognised, not only with regard to the attenuation of the punitive system but also the elimination of the special wartime rules of procedure and the advantage of systematising the diffuse legislation, there can be no doubt that many of the defects of this legislation were kept and accentuated and many of its concepts were repeated almost word for word.

Moreover, on the strength of the definition in article I of the law, its provisions have only been applied as a system almost exclusively repressive of commercial activity or similar, when the reality of economic and social life has shown that there are behaviours no less deserving of prevention and repression in other sectors.

Indeed, it is the very nature of this area of criminal law to basically attend to punishing conduct that, in itself, is detrimental to fundamental values and only considers the quality or condition of the offenders in special cases or for special purposes.

3. With Law no. 12/83 of 24 August, the Government was authorised to change the existing regimes, classifying new criminal offences, defining new penalties or changing existing ones, using as a reference the scale of the Criminal Code relating to offences against the economy and public health, among others.

The same law authorised the Government to change the legal regime for administrative offences and their procedures and sanctions, as laid down in Decree-Law no. 191/83 of 16 May and Decree-Law no. 433/82 of 27 October, to which it refers.

Finally, the sense of the authorising law is to achieve greater speed and effectiveness in preventing and repressing offences against the economy and public health by updating the current regime.

4. This law is intended to satisfy the legislative policy arising from the above-mentioned texts.

It therefore falls under the principles that guided the Criminal Code that came into effect on 1 January of this year, which is why the distinction between crimes and misdemeanours has been eliminated and preference has been given to the distinction between crimes and administrative offences.

Where criminal procedure is concerned, it would not be advisable to introduce substantial changes, in view of the fact that a new draft Code of Criminal Procedure is being drawn up and this fact alone affects any attempt to enshrine innovations that might soon come into conflict with those adopted in the new code.

But the need for speed and effectiveness has been guaranteed as far as immediately possible through the use of the summary procedure laid down for offences liable to up to three years' imprisonment for offenders that are caught in flagrante delicto.

Indeed, the fact that several behaviours are treated here as administrative offences lends greater speed to processing and applying sanctions in that they are subtracted from the action of the judicial apparatus, which is already overburdened.

5. According to the latest trends in criminal law, and in order to achieve the desired harmony in the legal system, certain types of offence that were normally considered to be misdemeanours have ceased to be punishable and the behaviours in question have been included in the law on social order.

In this respect, some of the solutions in Decree-Law no. 191/83 of 16 May have been re-used and care has been taken to strictly define the limits of the two offences in question in order to avoid overlapping or confusion between the provisions of the corresponding legal types.

This means that only those behaviours that do not jeopardise the community's essential or fundamental interests and therefore lack true criminal worth have been transferred to the category of administrative offences.

6. Where crimes are concerned, the following innovations are worthy of note:

a) The introduction of important changes in the structure and penalisation of offences provided for in Decree-Law no. 41,204, so that, unless people's life, health or physical integrity were at stake, the protection of which is guaranteed by a special part of the Criminal Code, these offences would be infractions against the authenticity, quality or composition of foodstuffs and food additives, in which the values protected are the trust of those doing business with the offender and, thus, the interest of the buyer or consumer.

b) Where these offences are concerned, special relevance is given to the use of concepts in defining the types of crime, in accordance with the guidelines of current laws based on the standards laid down in the Codex Alimentarius of the FAO-WHO, in which Portugal collaborates.

c) Protection has, however, been extended to falsification, counterfeiting or depreciation of other goods and products, as there is no reason to exclude them, when, as was said, what is at stake is the value of trust and the protection of the property of the offended party, which are not sufficiently protected by the law on fraud in the current Criminal Code and under the law on the crime of fraudulent sale, as provided for in the 1886 criminal code.

d) Where this aspect is concerned, this Decree-Law has been inspired by solutions laid down in the Swiss Penal Code.

e) The crime of illegal slaughter of livestock, the only type included in offences against public health, has been typified in a new way, as this behaviour would not fall under any of the types provided for in the Criminal Code, although these are quite extensive types of crime against public health.

f) New situations have been included under the crime of hoarding, such as making the sale of certain goods subject to the sale of others and the purchase of goods in larger quantities than needed for the normal supply of buyers, thus including consumers themselves, in accordance with the other legislation in EEC countries.

g) Concerning the same crime and maintaining the reference from Decree-Law no. 41,204 to prejudicing the regular supply of the market, it has been specified that this is the case, whenever it is a question of goods for which maximum prices have been fixed or special, guaranteed supply systems have been established.

h) Regarding the crime of speculation and considering its particular severity, the classification includes offences that were punished only as attempted speculation or that constituted other offences with lighter penalties.

i) New offences have been classified in order, as far as possible, to include situations not provided for in legislation and others already provided for in common legislation but that were sometimes handled differently.

j) In this way of thinking, according to the provisions of article 110 of the Constitution of the Portuguese Republic and the current guidelines of European law, commercial or industrial advertising liable to mislead the public as to certain specified situations has been classified as a crime.

l) Among the new types of crime included in this law are fraud in obtaining subsidies or grants, illegal use thereof and fraud in obtaining loans, recognised in other legislations such as that of

the Federal Republic of Germany, which, because of their serious effects and the need to protect the interest of properly investing public funds in production, they could not continue to be ignored by our legal system.

m) The crimes of destroying or damaging goods that are essential or of great importance to the national economy, aimed at combating practices violating property rights with deplorable negative effects on the public interest, are particularly important.

7. Where administrative offences are concerned, as already mentioned, this law follows the guidance of Decree-Law no. 191/83, though the behaviours that might raise justified doubts as to their pertinence in the field of mere administrative offences, as they are closer to being crimes, have been excluded.

It is important to recognise that the preamble of the above-mentioned law already pointed in that direction to some extent, although it cannot reasonably be criticised for having encroached on spheres of illegality alien to mere administrative offences in terms that were intolerable to the legal conscience.

The introduction of a new type of administrative offence designed to punish unacceptable behaviours in trade, such as in clearance sales or other similar practices, was particularly opportune as it was aimed at guaranteeing the general regulation of such practices and, as a result, consumer confidence.

8. An important innovation in this law is the fact that it openly enshrines the criminal liability of legal persons and companies and some recommendations of international instances such as the Council of Europe are mentioned repeatedly.

Although it is a controversial subject in terms of legal and criminal dogma, this is no reason to ignore practical realities, as everyone recognises that it is in the field of economic crime that the idea of abandoning the old principle of *societas delinquere non potest* has been defended most.

Nevertheless, the principle of the criminal liability of legal persons is enshrined with caution. There must always be a connection between the offender's behaviour, as a natural person, and the legal person, as the former should act in representation or on behalf of the latter and in the collective interest. This liability is considered to have been excluded when the offender acts against the express orders of the legal person.

9. The chapter on sanctions has respected the injunction of Law no. 12/83 regarding the scale of penalties laid down in the Criminal Code.

There were naturally some difficulties here in that it is always hard to find common points of reference between different types of crime.

Although one is not unaware of the material proximity between crimes against the economy and crimes against property, with which it would be possible to devise criminal frameworks in the special part of the Criminal Code for them, one cannot ignore the eminently supra-individual nature of juridical/economic property for the purposes of determining the sanctions to be applied to conduct against it.

This is why the penalties provided for in this Decree-Law for the different types of crime have taken into account the diversity of interests.

Wide use is made of custodial sentences, which are considered appropriate for the normal type of offender in question, for whom special prevention purposes predominate and the inadvisability in terms of re-socialising is less urgent.

Many criminological studies point in this direction. The offender against the economy is particularly sensitive to the threat of a prison sentence and, on the other, hand, is indifferent to monetary penalties, as the fact of embarking on criminal behaviour involves a margin of risk that includes the possible costs of sanctions of this type.

A criminal law of fear was not, however, the choice, involving overly severe sanctions, which have proved to be ineffective and run the risk of violating the principle of proportionality, not to mention undesirable socio-economic separation.

A vast range of additional sanctions has, however, been adopted, as experience shows that they are the most appropriate for the particular type of offender in question and permit the right kind of individualisation.

The additional sanctions that may imply deprivation of professional rights are never laid down as a necessary effect of the main penalty, in harmony with no. 4 of article 30 of the Constitution of the Portuguese Republic. Whether they are imposed or not will depend on the circumstances of each case and will be up to the judge to decide.

10. The criminal liability of legal persons has made it necessary to provide for particularly appropriate main penalties.

Among them is the penalty of dissolution, which, due to its severity, has been reserved for very restricted circumstances: when a legal person has been formed solely or predominantly for the

purpose of certain crimes provided for in this law or has distorted its object or purposes to commit them.

This penalty is provided for in some European countries and recommended, as an ultima ratio, for exceptionally serious cases and should always be used with caution.

11. Where administrative offences are concerned, the range of additional sanctions has been reduced in relation to the system in Decree-Law 191/83. Consideration was given to the criticisms of the inadvisability of granting the Administration the power to impose sanctions depriving people of certain rights, with the resulting reduction in guarantees.

12. Where procedures for administrative offences are concerned, it has been decided to allow the intervention of legally recognised consumer associations to a moderate extent, due to their obvious utility, - also in line with some of the recommendations of the Council of Europe and given the precedent laid down by Decree-Law 191/83.

13. For similar reasons, it has been decided to allow any natural or legal person to intervene as an assistant in the action brought for crimes provided for in this law, provided that they were prejudiced by the offence.

Thus:

Under the legislative authorisation given by article 1, paragraph a), article 2 and article 4 of Law no. 12/83 of 24 August, the Government hereby decrees the following under the terms of paragraph b), no. I of article 201 of the Constitution:

CHAPTER I

General Principles

Article I

(Subsidiary legislation)

1. The crimes provided for in this Decree-Law shall be subject to the Criminal Code, the Code of Criminal Procedure and complementary legislation.

2. The administrative offences provided for in this Decree-Law shall be subject to the general law on administrative offences.

Article 2

(Liability for action taken on behalf of others)

1- Anyone acting voluntarily, as a member or representative of a legal person, company, even if not properly set up, or of a de facto association, or in legal or voluntary representation of third parties, shall be punished even when the type of crime or administrative offence requires:

a) Certain personal elements and these can only be found in the person represented

b) That the offender carried out the act in his or her own interest and the representative acted in the interest of the person represented

2- The provisions of no. 1 for cases of representation applies, even if the legal act granting the powers is invalid.

3- Civil and commercial associations and any of the other entities mentioned in no. 1 shall be jointly liable under civil law for paying any fines, damages and other payments to which those committing the offences provided for in this Decree-Law are sentenced, under the terms of n°2.

Article 3

(Criminal liability of legal persons and similar)

1 -Legal persons, companies and de facto associations are liable for the offences laid down in this Decree-Law when they are committed by their governing bodies or representatives on their behalf and in the collective interest.

2- They are not liable if the offender has acted against express orders or instructions from authorised persons.

3- The liability of the entities mentioned in no. 1 does not exclude individual liability of the offenders and no. 3 of article 2 is applicable, with the necessary adaptations.

CHAPTER II

Crimes against the economy and public health

SECTION I

General principles

Article 4

(Attempted crimes)

Attempts to commit the crimes provided for in this Decree-Law are always punishable.

Article 5

(Replacing prison with fines)

Prison sentences may not be replaced by fines when the offence is committed under any of the circumstances provided for in article 6.

Article 6

(Determining the penalty)

When determining the penalty, the following circumstances shall be taken into* special consideration:

- a) The offence was committed when there was a shortage of goods or services to supply the market, including rationing, provided that the object of the crime was one of these goods or services.
- b) The offence was committed while carrying out duties, or taking advantage of said duties, by an employee of the State or of any public legal person, or by a manager, member of the supervisory bodies or employee of companies in the public sector or of companies in which the State has a majority holding, including public corporations, nationalised companies, combined companies in which the State is the majority shareholder, concessionaires or holders of exclusive rights or companies whose management has been appointed by the State.
- c) The offence caused an abnormal change in prices in the market
- d) There was connivance, alliance or opportunism on the part of the voluntary association to commit the offence.
- e) The offender has substantial economic power in the market, determined by means of the following indices: subject to industrial taxation in Group A, more than 400 employees, or 600 if work is in shifts, and a dominant position in the market for the good or service involved in the offence.
- f) The offender took advantage of the pressing need of the buyer, consumer or seller, in full knowledge of this need.

g) The offence enabled the offender to achieve excessive profits or was committed with the intention of obtaining them.

h) The good or service involved in the offence represented the dominant part of the company's gross turnover in the previous year.

i) The offender favoured foreign interests in detriment to the national economy.

Article 7

(Penalties applied to legal persons and similar)

1. The following main penalties are applicable to legal persons and similar for the crimes provided for in this Decree-Law:

- a) Reprimand
- b) Fine
- c) Dissolution

2. A reprimand shall be given whenever, in general terms, the penalty can be applied to a natural person that, representing and on behalf of the legal person or similar, committed the offence.

3. When the court gives a reprimand, it may cumulatively bind the offender over not to re-offend.

4. -Every day of fine shall correspond to an amount between PITE 1,000 and 1,000,000, which the court shall fix on the basis of the economic and -financial situation of the legal person or similar and its expenses.

5. If a fine is imposed on an entity without a separate legal existence, its common assets shall be answerable for the fine and, if said assets are non-existent or insufficient, the assets of all its associates.

6. Dissolution shall only .be imposed if the founders of the legal person or company had the exclusive or predominant intention of using it to commit crimes provided for in this Decree-Law or if the repeated commission of these crimes shows that the legal person or company is being used for this purpose either by its members or by its management.

Article 8

(Additional penalties)

The following additional penalties may be applied for the crimes provided for in this Decree-Law:

- a) Loss of assets
- b) Being bound over to keep the peace
- c) Judicial injunction
- d) Temporary interdiction on exercising certain activities or professions
- e) Temporary deprivation of the right to bid in public tenders
- f) Deprivation of the right to subsidies from public bodies or departments
- g) Deprivation of the right to participate in fairs or markets
- h) Deprivation of the right to obtain supplies from bodies belonging to the Public Administration or other public bodies
- i) Temporary closure of the establishment
- j) Definitive closure of the establishment
- l) Publication of the conviction

Article 9

(Forfeit of assets)

1- The forfeit of assets to be declared under the terms of this Decree-Law and of Criminal Law includes any illegal profit obtained by the offender.

2- If the court finds that the offender acquired certain goods by using the money or other means of payment obtained in the commission of the crime, they shall also be subject to the decision ordering the forfeit of assets.

Article 10

(Being bound over to keep the peace)

1- When the offender is bound over to keep the peace, s/he shall be obliged to, deposit between PTE 10,000 and PTE 1,000,000, to the court's order, for the period fixed in the decision, which may be from six months to two years.

2- The offender may be bound over to keep the peace in addition to the penalty of a judicial injunction and, in general, whenever the court passes a suspended sentence.

3- The deposit shall be forfeited to the State if the offender commits and is convicted for another offence provided for in this Decree-Law within the period fixed; otherwise it shall be returned.

Article 11

(judicial injunction)

1 - The court may order the offender to cease the illegal activity immediately or by a certain date or, in case of omission, to take the legally required measures.

2- The injunction is essentially intended to put an end to an irregular or potentially dangerous situation and re-establish legality.

3- Anyone not complying with this injunction is guilty of contempt.

Article 12

(Temporary interdiction on exercising certain activities or professions)

1- A temporary interdiction on exercising certain activities or professions may be ordered when the offence was committed in blatant abuse of a profession or activity that depends on a public title or on authorisation or approval from a public authority.

2- The interdiction on exercising a certain activity or profession shall have a minimum duration of two months and a maximum of two years.

3- Anyone that personally or through others exercises the profession or activity during the interdiction shall be subject to the penalty in article 393 of the Criminal Code.

Article 13

(Deprivation of the right to bid in public tenders)

1- The deprivation of the right to bid in public tenders is applicable to offenders:

- a) that have committed an offence punishable with a prison sentence of over six months
- b) when the circumstances in which the offence was committed show that s/he is not worthy of the general trust needed to participate in public tenders.

2- The deprivation of the right mentioned in no. 1 shall have a duration of from one to five years.

3- Depending on the circumstances, the court may limit the deprivation of the right to bid to certain tenders or bids.

Article 14

(Deprivation of the right to subsidies or grants from public bodies or departments)

1- The deprivation of the right to subsidies or grants from public bodies or departments is applicable to offenders that may or may not exercise a subsidised profession or activity.

2- The sanction provided for in no. 1 shall have a duration of one to five years.

Article 15

(Deprivation of the right to participate in fairs or markets)

1- The prohibition on participating in fairs or markets is only applicable when the offence is punishable by a prison sentence of over three months and has been committed by an offender that is legally qualified to sell at fairs or markets. It consists of a prohibition of this activity by the offender or through others for a minimum of two months and a maximum of two years.

2- The court may limit this prohibition to certain fairs or markets or certain geographical areas.

3- Violation of the prohibition on participating in fairs or markets shall be punishable with the penalty provided for in article 393 of the Criminal Code.

Article 16

(Deprivation of the right to obtain supplies from bodies belonging to the Public Administration or other public bodies)

1- The penalty of deprivation of the right to obtain supplies from bodies belonging to the Public Administration or other public bodies may be imposed when the offender has used goods or merchandise from them to commit the offence.

2- This penalty shall consist of the deprivation of the right to obtain further supplies for a period of one to five years.

Article 17

(Temporary closure of the establishment)

1- Temporary closure of the establishment may be ordered for a minimum of one month and a maximum of one year, when the offender has been sentenced to more than six months' imprisonment.

2- The imposition of this penalty shall still stand even though the establishment has been transferred or rights of any kind have been granted, related to the exercise of the profession or activity, carried out after the case has been brought or after commission of the offence, unless, in the latter case, the acquirer did so in good faith.

The closure of the establishment does not constitute just cause for the dismissal of employees or grounds for suspending or reducing payment of their salaries.

4- The conviction shall be published.

Article 18

(Definitive closure of the establishment)

1- The definitive closure of a commercial or industrial establishment may be ordered if the offender:

a) Has already been convicted of an offence laid down in this Decree-Law, if the circumstances show that the previous conviction or convictions did not constitute sufficient prevention of the crime

b) Has already had the same or another establishment temporarily closed

c) Has been sentenced to a prison term for an offence provided for in this Decree-Law that caused very costly damage or to a considerable number of people.

2- The provisions of nos. 2, 3 and 4 of article 17 are applicable.

Article 19

(Publication of the conviction)

1- Whenever the court imposes the penalty of publication of the conviction, it shall be published at the guilty party's expenses in a periodical published in the judicial district in which the offence was committed, or if there is none, in a periodical in the nearest judicial district, and by posting a notice for a period of no less than 30 days at the commercial or industrial establishment or in the place which the activity is carried out, in such a way that it is clearly visible to the public.

2- In particularly serious- cases, namely when the offence has caused serious damage or risk of damage not limited to a particular area of the country, the court shall order, also at the guilty party's expense, that the conviction be published in the government gazette, *Diário da República*, 2nd series, or in another form of publication.

3- The publication of the conviction shall consist of an extract, which shall contain the details of the offence, the sanctions applied and the identity of the offenders.

Article 20

(Essential goods)

For the purposes of the crimes provided for in this Decree-Law, all goods for which maximum prices have been fixed 'or for which special supply guarantee systems have been established shall be considered essential.

Article 21

(Definition of subsidy or grant)

For the purposes of this Decree-Law, a subsidy is a payment made to the company or production unit from public funds, when this payment:

- a) Is not, at least in part, accompanied by a counter-payment under normal market terms or when is entirely repayable without interest or at low interest, and
- b) Should, at least in part, be intended for the development of the economy.

SECTION II

Crimes

(...)

"Article 41-A (1)

Active corruption with the loss of international business

1. Who either on his own behalf or through an intermediary with the consent or ratification of the former, gives or promises to an official or to a national or foreign political official or to a third party any undue pecuniary or intangible advantage with their knowledge, in order to obtain or retain business, a contract or other improper advantage in the conduct of international business, shall be punished with a prison sentence of between one to eight years.

2. For the purposes of the provisions laid down in the foreign paragraph, foreign public official means any person holding an administrative or judicial office for a foreign country, whether appointed or elected either exercising a public function for an enterprise, a public organisation or a public services agency, regardless of the national or local level, as well as any official or agent of a public international or supranational organisation.

3. For the purposes of the provisions laid down in paragraph 1, foreign political officials are those qualified as such by the law of the State which they exercise such functions.

(1) Version of Law n.º13/2001, of 4 of June.

SECTION III

Procedures

Article 42

(Form of procedure)

The crimes provided for in this Decree-Law shall be tried in summary procedures if they do not involve a prison sentence of more than three years and a fine and the offenders were arrested in flagrante delicto.

Article 43

(Assistants)

Any legal or natural person may intervene as an assistant in cases brought for the crimes provided for in this Decree-Law, provided they have been wronged by the act.

Article 44

(Intervention of consumers and professional associations)

1- The consumers associations referred to in Law no. 29/81 of 22 August and professional associations are allowed to intervene as assistants in the criminal procedures provided for in this Decree-Law.

2- The provisions of this article shall in no way prejudice the provisions of the law on slanderous accusations or litigation in bad faith.

Article 45

(Dissolution procedures)

1- After sentence has been passed to apply the penalty of dissolving the legal person or company, the public prosecutor shall request the liquidation of its assets. The procedure provided for in the law for the liquidation of assets shall be followed, with the necessary adaptations.

2- The liquidation shall take place in the court of sentencing and as an addition to the main procedure.

3- The liquidators shall always be appointed by the judge.

4- The public prosecutor shall request the protective orders necessary to guarantee liquidation.

5- The product of the assets shall be used to pay first and in the following order:

1st Criminal fines

2nd Justice taxes

3rd costs owed to the State and to the Treasury and to the social service of the Ministry of Justice

4th The remaining costs, in proportion

5th Damages

Article 46

(Confiscation of assets)

1- In the procedures initiated for the crimes provided for in this Decree-Law, assets may be confiscated when needed for the criminal investigation or for the fact-finding phase, to put a stop to the illegal activity or in cases of signs of a violation that may result in their loss.

2- In the case of speculation, any goods the same as those that were the subject of the crime found in the offender's possession at the establishment, at other premises or at the point of sale may be confiscated.

3- For the purposes of no. 2, any goods that are of the same type, quality, characteristics and unit price may be considered the same as those that were the subject of the crime.

Article 47

(Sale of confiscated goods)

1- As soon as any goods confiscated cease to be needed for the criminal investigation or fact-finding, they may be sold by order of the entity in charge of these procedures, observing the provisions of article 884 and subsequent articles in the Code of Civil Procedure, provided that:

- a) They are at risk of deterioration
- b) It is advisable to use them immediately to supply the market
- c) Their legitimate owner has requested that they be sold

2- In any of the circumstances mentioned in no. 1 at any other time in the procedure, the sale shall depend on the judge's order.

3- When the goods confiscated are sold under the terms of no. 1, the entity responsible for the criminal investigation shall take the necessary steps to prevent the sale or disposal of the goods from being the subject of other offences provided for in this Decree-Law.

4- The product of the sale shall be deposited at the Caixa Geral de Depósitos to the order of the court or the entity responsible for the criminal investigation so that it can be handed over to those entitled to it. or go into the State coffers, if it is declared forfeit to the State, after the end of the cases and without any expenses.

5- The goods seized shall be destroyed whenever it is impossible to use them without violating the provisions of this Decree-Law.

6- When it is in the interest of the national economy and there is no threat to consumer health, the Government may decide that the seized goods should not be destroyed under the terms of no. 5 and that they should be used for the purpose and under the conditions it establishes.

Article 48

(Bail)

Whenever bail is required by law to guarantee the appearance of the accused, an amount in cash is compulsory under the terms of the law of criminal procedure.

Article 49

(Preventive seizure)

1- In cases of justified fear of insolvency of the offender or the concealment of goods and if the fine fixed by the judge is likely to be no less than FITE 300,000, the public prosecutor shall, during arraignment or equivalent, request the preventive seizure of goods belonging to the accused, in order to ensure that s/he is able to pay any monetary obligations.

2- Preventive seizure may also be requested during fact-finding, when, in - addition to the presuppositions fixed in no. 1, there are unusual circumstances suggesting that it is highly likely that the accused will be found guilty, such as the unknown whereabouts of the accused, abandonment of his or her businesses or the placing of the management of the business in the hands of others.

3- The seizure, which shall be appended to the procedure, may be opposed by the means of defence provided for in the Code of Civil Procedure, except with regard to actual responsibility for the crime.

Article 50

(Expiry or reduction of security deposit)

1- The requirement of a security deposit to guarantee payment of the monetary part of the sentence shall be annulled or suitably reduced, when seizure totally or partially ensures this payment.

2- The security deposit may be paid voluntarily in order to annul the seizure.

3- A monetary security payment paid before the seizure shall prevent said seizure.

Article 51

(Competent authorities)

1- Goods and services shall be supervised during production, manufacture, preparation, import, export, storage, warehousing, preservation, transport and retail or wholesale sale and during the provision of services, whoever the economic agent may be, including those in the public sector.

2- It is the exclusive responsibility of the Criminal Investigation Division of the police to investigate the crimes provided for in articles 36 to 38.

3- Regarding the remaining crimes provided for in this Decree-Law, it is the responsibility of the Directorate General for Economic Supervision to carry out the preliminary enquiry, without prejudice to the provisions of article 4 of Decree-Law no. 605n5 of 3 November, pertaining to the public prosecutor.

4- Any authorities receiving accusations or opening cases under the terms of article 166 of the Code of Criminal Procedure regarding crimes provided for in this Decree-Law shall send them immediately to the body that is qualified to conduct the investigation under the terms of this article.

CHAPTER IV

Final provisions

Article 85

(Revocations)

1- The provisions of Chapters I and 11 of Decree-Law no. 41,204 of 24 July 1957, of Decree-Law no. 191/83 of 16 May and all the legal provisions that provide for and punish acts constituting crimes and administrative offences provided for in this Decree-Law are hereby revoked.

2- The reversions to Decree-Law no. 41,204 of 24 July 1957 and Decree-Law no. 191/83 of 16 May shall be considered to have been effected for the corresponding provisions in this Decree-Law.

Article 86

(Coming into force)

This Decree-Law shall come into force on 1 March 1984.

Seen and approved in Council of Ministers of 6 December 1983. - Mário Soares - Carlos Alberto da Mota Pinto - Rui Manuel Parente Chancerelle de Machete - António Manuel Maldonado Gonelha - Manuel José Dias Soares Costa - Alvaro Roque de Pinho Bissaia Barreto - António d'Orey Capucho

Promulgated on 9 January 1984.

To be published.

The President of the Republic, ANTÓNIO RAMALHO EANES

Counter signed on 11 January 1984

The Prime Minister, Mário Soares