

REPUBLIC OF CAPE VERDE

DRAFT LEGISLATION ON

ON

FINANCIAL MANAGEMENT COMPANIES

DRAFT DECREE-LAW REGULATING THE LEGAL REGIME FOR FINANCIAL MANAGEMENT COMPANIES.

JUSTIFICATION NOTE

In comparative law, there is a growing integration into a same type of institution of the function that was before assigned to different management companies: of movable and immovable investment funds, of pension funds, of patrimonies. In reality, the demands of form and of self-owned funds became more and more common; the technical capacity demanded of them is largely coincident. And the more recent comparative regulations, with highlight for those of the European Union, namely, Directives Nos. 2001/107/CE e 2001/108/CE, both of January 2002, came to permit a complementarity of management activities to the companies constituted to administer movable funds that, in practice, corresponds to a large measure to the regime defined in this Decree-Law. If in the legislation of some countries of the European Union an autonomous and unitary treatment now conceived has not yet been given, it is because the collective investment institutions, the pension funds and the management of patrimonies went on appearing in the respective jurisdictions at the pace of the evolution of the financial markets. In Cape Verde, where none of these institutions and activities exit, or existed legally, it is useful to gather in the least number possible of legislation, well articulated among them, what separately and gradually was legislated in other countries.

It is thus created the figure of Financial Management Company, based on the regime of the parabanking enterprises, such as indicated in Law No. 3/V/96, of 1 July. Consenting for them the management of one or more types of collective investment institutions, this law fixes for them the general and common rules they will have to obey, without prejudice for the additional demands that the laws that regulate these different institutions may make upon them, for the specific protection of the interests that, case by case, must prevail.

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Thus,

In the use of the faculty conferred by subparagraph c) of number 2 Article 203 of the Constitution, the Government decrees the following:

Article 1
(Notion of object)

1. The Financial Management Companies (SGF) are parabanking institutions that are gathered under the discipline of Law No. 3/V/96, of 1 July, in all that which is not specifically regulated in this law.

2. The SGFs have as statutory object, one or more of the following activities:

a) Management of Collective Investment Organizations (OIC) with collection of capitals from the public, as follows:

- 1.º - Movable investment funds;
- 2.º - Non-movable investment funds;
- 3.º - Pension funds;
- 4.º - Risk capital funds;
- 5.º - Other OICs created by law.

b) Discretionary and individualized management of portfolios on someone else's behalf, based on a mandate conferred by the investors, as long as they include the following instruments:

- 1.º - Movable securities;
- 2.º - Units of participation in the OIC;
- 3.º - Money market instruments;
- 4.º - Futures on financial instruments, including equivalent instruments that initiate cash liquidations;
- 5.º - Time contracts pertaining to interest payments (FRAs);
- 6.º - Currency interest rate swaps, or swaps pertaining to the shares index (equity swaps);

- 7.º - Options destined for the purchase or sale of any instrument incorporated in the preceding subparagraphs, including the equivalent instruments that give rise to a cash liquidation; namely included in this category are the options on currency and on interest rates.
- c) Consultancy for investment in assets, object of their management, under the terms of subparagraph b).
- d) For the purpose of subparagraph a) of No. 2, collection of capital from the public is considered to have taken place when the respective offer:
- 1.º - Is directed to an indeterminate addressee; or in number greater than 100;
 - 2.º - It is preceded or accompanied by prospecting or collection of intention to invest with indeterminate addresses or from publicity campaign.
- e) Included as accessory to the SGF object in the capital stock of any type of banking and parabanking institution, of financial companies, national or foreign, as long as:
- 1.º - Its object is identical or complementary to that of an SGF participant;
 - 2.º - The total of these participations does not exceed that of the participating SGF's own funds.

Article 2

(Form and self-owned capitals)

3. The SGFs are constituted under the form of capital stock companies with nominative shares or shares payable to the registered bearer

4. The SGF's own funds cannot be less than the sum of the following percentages applied to the liquid global amounts of each of the OICs and of the patrimonies under its management:

- a) Up to ecv 770.000.000\$00: 0,5%;
- b) In the excess: 0,1%.

5. The SGFs that manage pension funds are obligated, in what pertains to them, to observe the solvency margins and to maintain funds of guarantee defined in the law that regulates them.

6. It is understood as self-owned funds the realized capital, the reserves, the transited results and the subordinated medium and long-term loans, as long as they are authorized by the Bank of Cape Verde and do not exceed the summation of the remaining categories

Article 3
(Authorization and registration)

7. The constitution of the SGFs and their registration in the Bank of Cape Verde is governed by Articles 8 and following of Law No. 3/V/96, of 1 July.

8. The Bank of Cape Verde shall maintain an up to date list of the SGF shareholders with positions equal to or greater than 10%.

9. The Bank of Cape Verde has the faculty of opposing to the *inter-living* transactions in shares of the SGF that result in alteration of the shareholders in the participative levels of: 10%, 20%, 33%, 50%.

10. For the purpose of the preceding number, the entities that propose to acquire or sell such positions *inter living* should give prior knowledge of their intention to the Bank of Cape Verde, who then has thirty days to deduce opposition. Its silence implies agreement.

11. Infraction of the duty to prior communication as well as going ahead with a transaction the Bank of Cape Verde has opposed, confers upon the Bank the right to deprive the shares in the transaction of the right to vote, in addition to the application of the sanctions foreseen in the law for median gravity infractions.

Article 4
(Functions)

12. It behooves them the practice of all the acts and operations necessary and convenient to the good administration of the OIC or patrimony under management, according to the criterium of high dilligence and professional competence and, in particular:

a) Those required for the opportune execution of the adopted investment policy, especially:

1.º - To select the assets acquired by the OIC or managed patrimonies, that in the latter case may include simultaneously movables and non-movables of any type, to the criteria of SGF authorized to perform discretionary management;

2.º - Aacquire and sell assets of the OIC or managed patrimonies, complying with the formalities necessary to its valid and normal transmission;

b) Exercise the rights related to the assets of the OIC or managed patrimonies;

- c) Administer the assets of the OIC managed patrimonies, especially:
 - 1.º - Provide the legal and accounting services necessary to the management of the OIC or managed patrimonies, without prejudice to the specific legislation applicable to these activities;
 - 2.º - Analyze the complaints of the participants and clients, providing the clarifications that may be due;
 - 3.º - Evaluate the portfolio, determine the amount of the participation unit and emit fiscal declarations;
- d) Observe and control the observance of the applicable norms, of the constitutive documents of the OIC and of the contracts celebrated in the ambit of the OICs or managed patrimonies;
- e) Proceed to the registration of the participants in OIC;
- f) Distribute the profits;
- g) Emit or buy back the participations of the OICs;
- h) Perform the liquidation and compensation proceedings, including issuance of certificates;
- i) Conserve the documents;
- j) Commercialize the units of participation of the OICs;
- k) Commercialize in Cape Verde the units of participation of the OICs managed by others, domiciled or not in the country, the legal requisites having been observed.

Article 5 (Duties)

13. In prosecuting its corporate objectives, the SGF shall always act in the exclusive interest of the owners of the patrimonies under their management, or of the securities they represent.

14. The SGF are subject, namely, to the duties of managing the OICs or patrimonies according to a principle of risk sharing and of exercising the functions entrusted to them in accordance with the criteria of high diligence and professional competence.

15. The SGF cannot exercise its voting rights inherent in the movable securities detained by the OICs or managed patrimonies:

- a) Through a common representative to an entity that is in a domination relationship or of group, with it;
- b) In the sense of supporting the inclusion or maintenance of non-transmissibility statutory clauses, clauses that limit the right to vote or other clauses susceptible of impeding the success of public acquisition offers;
- c) With the principal objective of reinforcing corporate influence by the entity that is together with it in a relationship of domination or of a group.

16. The duties enumerated above as well as the rules of articles 7 and 8 add to those that laws and regulations of the OICs and patrimonies under their management may define.

Article 6 (Remuneration)

The exercise of the management activity of the OIC or patrimony is remunerated by commissions:

- a) For management, and the premiums for good performance, under the terms established in the constitutive documents, in the regulations and in the management contracts or mandates;
- b) For subscription, buy back or transfer of participation units pertaining to OICs they manage, to the extent that the constitutive documents attribute them to it, under the terms foreseen in regulation;
- c) For others established as such in regulations and in management contract or mandated.

Article 7 (Conflicts of interest)

17. It is forbidden to the workers and the SGFs administration organs who exercise the functions of decision and execution of investments to exercise any functions in the SGF.

18. The members of the SGFs act independently and in the exclusive interest of the participants, that they superimpose to their own and to those of the entities with which they have a relation of domination or of group.

19. Whenever an SGF administers more than one OIC or patrimony, it must consider each one of them a client, having in view the prevention of conflicts of interest and, when unavoidable, it shall resolve them according to the principles of equality and non-discrimination.

20. Whenever joint orders are issued for several OIC or managed patrimonies, the SGF performs a proportional distribution of the assets and the respective costs.

21. The SGF that has investment funds under its management and simultaneously also exercises the discretionary and individualized management activity on portfolios on account of others, on the basis of a mandate conferred by the investors, it cannot invest all or part of client's portfolio in units of participation of the OIC that manages or whose participation units it commercializes, except by prior consent of the former, which may be given in generic terms.

Article 8 (Prohibited operations)

It is forbidden to the SGF:

- a) To contract loans;
- b) Grant credit, including providing guarantees, on its own account, save the occasional salary advance or subsidies to its workers;
- c) Perform, on its own account, open sales of the movable securities;
- d) Acquire, on its own account, units of OIC participation, except those that can be incorporated in the type of treasury OIC or equivalent and that are not managed by it;
- e) Acquire non-movables of those that are instrumental to directly prosecute its activities and up to the concurrence of its own funds.

Article 9 (Subcontracting)

22. The SGF may subcontract the management of investments and of administration, by observing the following principles:

- a) Periodic definition of the investment criteria by the SGF;
- b) Non emptying out of the SGF activities;
- c) Maintenance of the SGF and the depository's responsibilities by complying with the dispositions that govern the activities;
- d) Detention by the subcontracting entity of the qualification and technical and professional capacities necessary to perform the subcontracted functions;
- e) Effective and permanent control of the functions subcontracted by the SGF, guaranteeing that they are performed in the interest of the clients, specifically giving the subcontracted entity additional instructions or rescinding the subcontract whenever doing so is in the interest of the former.

23. The subcontracted entity is subject to the same duties that impend over the SGF and to the supervision of the Bank of Cape Verde.

24. The subcontracting cannot compromise the effectiveness of the SGFs' supervision nor impede them from acting, or the OICs or managed patrimony from being managed to the exclusive interest of the participants or clients.

25. The SGF informs the Bank of Cape Verde of the terms of each subcontract before its celebration.

26. The complete prospect for each OIC and the mandate contract for management of patrimony shall identify the functions that the SGF subcontracts.

Article 10
(Sub contracted entities)

27. The investment management can be subcontracted only by other SGFs or credit institutions.

28. The investments management activity cannot be subcontracted with the depository or other entities whose interest may colide with those of the delegating SGFs or with those of their clients and respective participants.

29. It behooves the SGF to demonstrate the inexistence of collision of interests referred to in the preceding number.

30. Subcontracting the management of investments can be done with an entity located in a State that is not a member of the OCDES only if cooperation is guaranteed between the national supervision authority and the supervision authority of that State.

Article 11
(Effective date)

This law goes into effect immediately.

Viewed and approved in the Council of Ministers.

José Maria Neves - João Serra - _____ - _____ -
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Promulgated on xx of xxxxxxxxxxxx of 200-.

Publish it.

The President of the Republic, PEDRO VERONA RODRIGUES PIRES.

Referended on xx of xxxxxxxxxxxx of 2004.

The Prime Minister,
José Maria Neves.