

PROPOSAL TO ALTER LAW N.º 43/III/88 OF 27 DECEMBER

JUSTIFICATION NOTE

1. Law n.º 43/III/88, of 27 December, altered by Law n.º 32/V/97 of 30 June, indicates in number 2 of its article 3 that “the international financial institutions cannot, under any circumstance, insurance and pension fund management activity in accumulation with other international financial operations”.

This norm is outdated today by the international evolution verified in the management of financial assets, that is entrusted to companies whose prior vocation was turned to the exclusive administration of one of its types, as is better described in the preamble of the law that regulates the financial management companies.

Thus, the viability of this project, as well as that of the regulating law for the Collective Investment Organisms (specifically in its article 126), demands a modification of the norm transcribed above.

2. On the other hand, a restrictive interpretation has been given to number 2 of article 2 of the law under reference, that neither its spirit nor its letter consent to. In truth, what is proposed to be safeguarded interdicting the International Institutions (IFI) dealing with residents in Cape Verde is the exportation of capital through these institutions, namely by the collection of local savings. The movement of capital in the inverse direction must be liberalized, restricting the prior authorization of the Minister of Finance to the cases not especially foreseen in the norm that we propose to alter.

3. Finally, reference is made that the liberalization of relations with residents forces the revision of the fiscal benefits attributed, whether to the international financial institutions, or to their clients. It is, therefore, necessary, to make additions to article 15.

LAW N.º /VI/04
of

By mandate of the People, the National Assembly, under the provisions of subparagraph b) of article 174, in subparagraph h), number 2 of article 176, all of the Constitution, decrees the following:

Law nº 43/III/88
of 27 December

By mandate of the people, under the terms of subparagraph b) of article 58 of the Constitution, the National Assembly decrees the following:

Article 1
(Constitution of International Financial Institutions)

The constitution or establishment and the operation of international financial institutions is permitted as long as the institutions comply with the requisites and conditions of this law.

Article 2
(Object of the international financial institutions)

1. The international financial institutions have as **principal objective** the execution of international financial operations with non-residents in Cape Verde, in foreign currency.
2. The international financial agencies can also execute, with residents, relevant financial operations for the development of Cape Verde, as long as the Minister responsible for the Finance area authorizes them, having heard the Bank of Cape Verde.
3. The institutions and the operations referred to in No. 1 are subject to a special regime, derogatory of the general norms that regulate the country's monetary, financial and exchange market, which consists in total freedom of execution and contracting, without the need of authorization or prior knowledge by any of the monetary, financial or exchange authority, namely maintaining deposit accounts in foreign currency at the non-resident institutions and moving them freely.

4. In what is not foreseen in the legal and regulating provisions pertaining to the activity of international financial institutions the juridical regime for the credit and parabanking institutions shall apply.

Article 2A
(Financial Operations with Franc Enterprises)

It is likewise permitted to the international financial institutions the execution of any operations with franc enterprises legally established in Cape Verde.

Article 3
(International financial operations permitted)

1. The international financial operation permitted in the preceding article shall include, namely:

- a) General banking commerce including exchange operations;
- b) Insurance activities in any of its forms;
- c) The management of movable and non-movable funds and investments;
- d) The emission of negotiable credit titles, on its own account or account of others;
- e) Financial leasing, factoring, brokerage of movable securities and mediation in the monetary and exchange financial markets, management of patrimonies and purchases in group;
- f) The management of pension funds;
- g) Those that Minister responsible for the Finance area authorizes, having heard the Bank of Cape Verde.

2. The international financial institutions cannot, under any circumstance, exercise the insurance activity or the management of pension funds in accumulation with other international financial operations.

Article 4
(Authorization)

The constitution of international financial institutions requires prior authorization by the Government, to be granted under the terms of the law.

Article 5
(Eligibility)

The authorization referred to in the preceding article can be granted only to national and foreign entities with recognized prestige and financial capacity.

Article 6
(Form)

1. The international financial institutions shall assume one of the following forms:
 - a) Branches of monetary and non-monetary financial institutions;
 - b) Autonomous entity constituted in Cape Verde, according to the laws in effect, with juridical personality and authorized by the Government to exercise **international financial activity**, according to **the** law;
2. The branches referred in subparagraph a) of the preceding number should correspond to a perfectly individualized center, namely in terms of installation, personnel, documentation and accounting.

Article 7
(Mandatory denomination)

1. The designation of the international financial institutions shall include:
 - a) The denomination of the requesting entity, as it is recorded in the respective country of origin, as well as the expression “**foreign financial branch of Cape Verde**”, in the hypothesis of subparagraph a) of n° 1 article 6;
 - b) The adopted denomination for the autonomous entity indicated **in subparagraph b) n° 1, article 6**, as well as the expression “**international financial institution**” or the initials “**I.F.L.**”;
2. It is mandatory to display the elements referred in the preceding number in the installations, in well visible places and in all the documents and correspondence, so as not to induce the public into errors regarding the ambit of the operations that can be performed.

Article 8
(Confidentiality and secrecy of the operations)

1. The managers and other workers of the international financial institutions cannot reveal or take advantage of the information they have knowledge of as a result of the exercise of their functions, namely the clients' names, deposit account numbers and their movements, banking, exchange and financial operations and other similar elements.
2. Aside from the inherent civil responsibilities, the violation of the duty to secrecy, attempted or consummated, constitutes just cause and reason for dismissal, and is punishable under the terms of the penal law in effect.

Article 9
(Installation and operation license)

The international financial institutions are subject to the payment of an installation license and of an annual operation license under the conditions and amounts to be defined by the Government.

Article 10
(Management)

The management of the international financial institutions should be entrusted to [the minimum number of persons who, while maintaining permanent residence in Cape Verde may statutorily may obligate the autonomous company or establishment](#), with [sufficient](#) power to take care of and resolve all the matters regarding the exercise of the respective activity in Cape Verde.

Article 11
(Execution of foreign sentence)

The sentence that determines bankruptcy or liquidation of an institution with main office outside Cape Verde can apply [only](#) to the respective branches referred to in subparagraph a) of n° 1, article 6, only when reviewed by the Capeverdean Courts, under the terms of the law.

Article 12
(Supervision by the State)

The international financial institutions are subject to the State's supervision, under terms to be defined by the Government.

Article 13
(Fiscal benefits to the partners)

The persons that participate in the constitution of the capital stock of the autonomous entity referred to in subparagraph b) of No.1 Article 6 of Law No. 43/III/88, of 27 December, are entitled to the following fiscal benefits, exempt from any formality:

- a) Consideration of the total amount of the participation in the capital stock as cost of the exercise, for the purpose of the IUR of the exercise it pertains to;
- b) Exemption from IUR relatively to the revenue resulting from interest received and other forms of remuneration if the partners did not withdraw the profits or remunerations made available to them;
- c) Exemption of the municipal transfer tax (sisa) and the municipal tax over patrimony relatively to the transmissions, onerously or gratuitously, as the case may be of assets that constitute the patrimony of autonomous entity.

Article 14

(Fiscal benefits to the international financial institutions)

The international financial institutions are entitled to the following fiscal benefits:

- a) Exemption from the municipal transfer tax (sisa) and municipal tax over the patrimony due to the acquisition of real estate assets destined for their installations;
- b) Exemption of duties, consumption tax and general customs emoluments on the importation of materials and equipment assets destined exclusively for the installation;
- c) Exemption from IUR until December 2017;
- d) Exemption from municipal taxes and fees;
- e) Consideration of the totality of profits effectively reinvested in any industrial activity as well as the expenses incurred in their personnel of cape-verdian nationality, as cost of the exercise for the purpose of IUR of the exercise it pertains to;
- f) Exemption of the stamp tax in all the acts it practices and operations of any nature that it may execute, the ones and the others on its own account or on behalf of others, namely interests that it pays or collects, mandates and orders that its executes, remunerations of any type that it pays or receives and contracts of which it is a part.

Article 15
(Fiscal benefits to the lientes)

The non-resident single or collective persons and as well the resident with regard to capitals they hold outside of Cape Verde who contract with international financial institutions, as clients of the services that the latter legally present, are entitled to the following fiscal benefits:

- a) Exemption from IUR, regardless of the category that the revenues earned may pertain to;
- b) Exemption of stamp tax in any acts practiced and operations of any nature it performs, namely remunerations received or paid, wit interest, premium and dividends, or capital gains realized with alienation of assets;
- c) Exemption of municipal tax on patrimony.

Article 16
(Limits available to the assets)

The transmission of acquired or imported assets with fiscal benefits is subject to authorization by the Government, with the possible payment of the taxes, duties and other impositions calculated on the basis of the customs value recognized or accepted on the date of transmission.

Article 17
(Oversight)

All persons that have been granted fiscal benefits by this legislation are subject to oversight by the General Directorate of Contribution and Taxation and other competent entities, for the control and verification of the assumptions of the respective fiscal benefits and of the compliance with the obligations imposed to the recipients of the rights and benefits.

Article 18
(Regulation)

The Government shall regulate this legislation.

Article 19
(Effective date)

This law goes into effect immediately.

Approved 17 December 1988

The President of the National popular Assembly, *Abílio Augusto Monteiro Duarte*

Promulgated 26 December 1988

Publish it

The President of the Republic, ARISTIDES MARIA PEREIRA

TRANSLATORS'S NOTE

This is a draft of the Revised Law proposed for approval by the National Assembly. The proposed amendments are incorporated in the above text (text of the original law), in blue.