

COUNCIL OF MINISTERS

**Decree-Law n° 59/99
of 27 September 1999**

Regulates the Registration of Firms

This legislation proposes to institute a centralized record of firms and denomination of commercial enterprises and other entities subject to it – enterprises under individual names, non-commercial enterprises, complementary groupings of enterprises, and other collective entities – that assures in a perfected, expedite and secure form, the respect for the fundamental respect that must rule these distinct expressions of the collectives and homologous entities.

The dimension, in Cape Verde, of the framework of entities this regime is destined to, as well as the need to establish a perfect syntony between this record of the firms and the commercial register, leads to the proposition of the creation of a close institutional connection with the central organization of the Public Administration responsible for this area and, at the same time, with the Conservatory that is competent in the matter of commercial registration. Hence, the record of the enterprises constitutes a service directorate of the General Directorate of Services, Notary and Identification, headed by a Service Director or a Conservatory Officer.

The competence of the enterprises register is clearly defined in the diploma, thus distancing any conflict possibility with those of the Conservatory of commercial registrations.

The diploma also establishes firms' composition regime of the diverse entities subject to firms' registration, ordering them to apply the Commercial Enterprises Code on the matter.

The requirement of the firm's admissibility registration is mandatory in the enterprises and the collective persons' constitution process. The public registration and other instruments prepared or approved without the authorization become void. On the other hand, the presentation of this certificate is indispensable for the purpose of definitive registration.

The diploma establishes, likewise, a simplified procedure for obtaining the admissibility certificate, as a way of simplifying the constitution of the enterprises and other collective entities.

In as much as the matter pertaining to firms is extremely sensitive, taking into account the protection of the fundamental interests of the identity of the enterprises and other collective persons, a double jurisdiction degree was established in the matter of resources.

Thus,

In the use of the faculty conferred by subparagraph a) f number 2 of article 216 of the Constitution, the Government decrees the following:

CHAPTER I

General provisions¹

Article 1

Object

This diploma regulates the registration of firms.

Article 2

Nature

The firms' registration is the central service of the Registration and the Notary Services, responsible for assuring the centralization on the national level, of the registrations relative to the identification of enterprises and other collective entities and the respect for the legally established principles and norms pertaining to the same.

Article 3

Organizational integration

Firms' registration is integrated in the organizational structure of the General Directorate of Registration, Notary and Identification.

Article 4

Competences

It behooves the firms' registrations specifically:

- a) Study, plan and coordinate the tasks necessary to identify the enterprises and other collective entities, sealing for the respect for the legal principles and norms established for the firms;
- b) Issue the firm's certificate of admissibility, under the terms and conditions of the law;
- c) Attribute the inherent right to the exclusive use of the firm as well as declare the loss of the same right;
- d) Propose and promote the measures necessary to maintain and develop of fair competition, in coordination with the other competent entities, to the extent that the same depends from the registration and composition of the firm;
- e) Apply fines or promote adequate legal action, under the terms of the applicable legal provisions;
- f) Whatever else is attributed to it by law and by decisions from higher ups.

Article 5 Management

Director comparable to a service director, or by a Conservatory official or a Notary officer will manage the Firms' registration, under the terms of the respective personnel statute.

Article 6 Exclusiveness of the firms registration competence

The identification of the enterprises and collective entities is the exclusive competence of the Firms Registration.

Article 7 Prevalence of the attribution of the right to the Exclusive use or declaration of its loss

The attribution of the right to exclusive use or the declaration of the loss of any firm or denomination's right to use, executed by the Firms Registration, prevails over the determination by any other entity, save in case of a judicial decision.

CHAPTER II Firms

Article 8
Commercial entrepreneurs firms

Individual entrepreneur firms, commercial enterprises, civil enterprises under commercial form and complementary groups of enterprises must be constituted under the terms described in the Commercial Enterprises Code and other specific legislation, without prejudice to the application of the provisions of this diploma in whatever does not prove incompatible with the referred legislations.

Article 9
Firms of civil enterprises under civil form

1. The firms of civil enterprises under civil form may be constituted under the complete or abbreviated names of one of the partners followed by the notation “and Associates”, as well as by acronyms, initials, fantasy expressions or compositions, as long as it is accompanied by the expression “Enterprise”
2. The norms of articles 82 to 88 of the Commercial Enterprise Code are applicable to the civil enterprise firms.

Article 10
Firms from other collective entities

1. The firms from other collective entities are governed by the respective law and by the provisions of this diploma that are not contrary to those laws.
2. The firms from associations and foundations must be constituted so as to let their associative or institutional nature be known, respectively, and they may contain acronyms, fantasy or composition expressions.
3. However, it is permissible adoption by associations or foundations of firms, without explicit reference to the associative or institutional nature, as long as they correspond to traditional designations or do induce errors about their nature and the activities to be developed
4. To the firms of the collective entities mentioned in the preceding numbers of this article are applicable the norms of articles 82 to 88 of the Commercial Enterprises Code, with the necessary adaptations.

CHAPTER III
Admissibility certificate to the Firm

Article 11

Mandatoriness of the certificate

1. Compliance with the legal norms pertaining to the constitution of the Firm is proven through certificates of admissibility, issued by Firms Registration, at the request of the interested parties.
2. The public registrations and other instruments destined for the constitution of commercial enterprises and other collective entities, as well as those the vie for the alteration of the enterprises or other collective entities' contract or statute that represent the form or the object, must mention the date of the certificate of admissibility of the Firm, issued in conformity with the law and within its validity period. Without presentation of the certificate the public recording cannot be executed or expedited.
3. The certificate of admissibility is dispensed with for the contractual alterations of commercial enterprises that do not imply the alteration of the object and in which the alteration of the Firm is limited to indicative annotation of the enterprise.
4. In the instruments referred to in n° 2 of this article, the object of the enterprise cannot be expanded to activities not contained in the certificate of admissibility.
5. The activity resulting from the participation in the capital of other entities is not considered autonomous activities for purpose of this article.
6. The individual entrepreneurs, the promoters of enterprises and the other collective entities under private law, as well as the State and other public entities should obtain certificates proving admissibility or the corresponding firms or denominations, before promoting the creation of collective entities or public administration entities.
7. The public registrations and other instruments prepared or expedited without observing the provisions of the provisions of n° 2 of this article, or without exhibiting the certificate admissibility, are null.

Article 12

Mandatoriness f the certificate for the purpose of registration

1. Exhibition of the Firms certificate of admissibility is mandatory issued in conformity with the law, before the definitive registration can be executed:
 - a) From the beginning of activity of an individual entrepreneur who adopts a firm with a name different from his complete or abbreviated name, as well as of his/her Form's alteration;

- b) Of the enterprise's constitution as well as the alterations of the respective firm or object, or of its merger, break-up, or transformation.
 - c) Of the constitution of the public enterprise as well as of its grouping, of the alteration of the respective Firm or object, or its merger or break-up;
 - d) Of the complementary grouping of enterprises contract or of the alteration of the respective Firm or object;
 - e) Of the institution of a foundation or constitution of an association or another collective entity with juridical personality, as well as with the alteration of the respective statutory object.
2. The validity period of the certificate referred to in the preceding number must be expired on the date the request for registration is submitted.
3. The registration must be refused:
- a) In the instrument destined to the constitution or modification of the collective person has been emitted without exhibiting the certificate of admissibility;
 - b) If the certificate has been emitted in non-compliance with the legislation in effect;
 - c) If the certificate's applicant did not participate the instrument referred to in subparagraph a) or if the Firm has been altered, the object or the conditions indicated in the certificate of admissibility, notwithstanding the provisions of nº 2, 3, 4 e 5 of the preceding article.

Article 13

Annotation of the act in the certificate

The public official before whom the Firm's certificate of admissibility is exhibited must annotate this fact in the respective original, indication the certificate served as support of, as well as the office and the date in which it was executed.

Article 14

Information regarding the viability of the Firms and its reserve

1. Any interested party may solicit in person, by mail, telephone or telecopy to the Firms Registration office, information regarding the viability of the Firms pretended.

2. In first analysis the proposed Firm is already constituted in legal terms, and is not susceptible of confusion with another firm already registered, it is permitted to reserve it for 48 hours. A reference number will be given an interested party.
3. A reservation of the firm constitutes merely a presumption that there is no confusion between it and a firm previously registered.
4. The reservation will automatically expire if the certificate request is not correctly formalized within the time frame referred to in n° 2 of this article.

Article 15
Presentation of the request

1. The firm's certificate of admissibility should be submitted in the approved form, presented directly to Firm's Registration, by mail, telecopy or through the competent conservatory of commercial registration or notary office in which the instrument of constitution or alteration of the enterprise or other collective entity is executed or authenticated. The request should be evaluated quickly in a time frame not in excess of eight days.
2. The certificate request form must be correctly filled out and signed by one or more of the constituents, or by someone else under the constituents, authorized or in representation of the same.
3. The request, including the firm's reservation request, presented first shall prevail over those that follow it.
4. The order of priority of the presentation is defined by the date and time recorded under the terms of the rules indicated in the numbers that follow.
5. The date and time the request is received and a reference number are affixed to each certificate request and in each reservation document, if possible by mechanical or automated means.
6. The number, date and time are affixed:
 - a) In the certificates or reservation requests presented in person in the Firms' Registration, immediately after it has formally verified to be in order;
 - b) In the reservation requests made by telephone, immediately after the corresponding request form is filled out;

- c) In the requests made by telecopy, immediately after it is formally verified that they are in order;
 - d) In the requests received by mail, immediately after the correspondence is opened and it is formally verified that each request is in order.
7. In cases of coincident date and time, the following chronological priority is presumed:
- a) The certificate requests received by mail over the certificate requests presented in person;
 - b) The reservation requests received by mail over the reservation requests presented in person;
 - c) The certificate requests presented in person over the reservation requests.

Article 16
Addition of documents

1. The requestors may add the documents they deem necessary, to their certificate requests, to support admissibility of the solicited or preferred firms.
2. It may be unofficially requested of the requestors that may not have done so, the addition of the proofs necessary to verify compliance with the requisites established in the law.
3. Non-presentation of the proof in the established time frame, which must not be less than ten days, implies that the request will be archived.

Article 17
Issuance of the admissibility certificate

1. The certificate of admissibility may be issued in the request form or in a separate document. In either case, it is dated and signed by the competent functionary of the Firms' Registry and authenticated with the dry seal or stamp in use in the service.
2. Error by the Firm Registry service in issuing the certificate exempts the requestor from payment of the emoluments, fees and charges due for the issuance of a new certificate and for the registration acts that the error may have originated.

Article 18

Validity and efficacy of the certificate

1. The firm's admissibility certificate is valid for the purpose of executing the public scriptures and other instruments destined for the constitution of an enterprise and other collective entities or for the alteration of the contract or statute of the enterprise and other collective entities with the firm, and at least the members declared in it, as well as for the purpose of definitive registration in the cases described in article 12.
2. The certificate pertaining to a firm in which only a singular name is shown, as well as the firm, name of the establishment, registered service mark may be issued under condition that only a person legitimately authorized will use it.
3. The validity of the certificate will depend on compliance with the conditions contained therein.

Article 19 Validity period

1. The certificate expires six months after it is issued.
2. The certificate may be renewed by so requesting in a proper, approved form, accompanied by the original, and within the respective validity period.

Article 20 Invalidation

1. The requestor of the admissibility certificate of may solicit its invalidation in a proper, approved form.
2. The return of the original of the already issued certificate is a condition for deferment of the invalidation request.
3. Presentation of a new request for the firm's certificate of admissibility previously requested, simultaneously with the invalidation request, is admissible only if it is made by the original requestor of the first certificate or if the written consent of the same is presented, even if by means of a representative with powers to do so.

CHAPTER IV Rights and guarantees of the particulars

SECTION I Hierarchic recourse

Article 21
Justification of the recourse

Hierarchic recourse to the General Director of Registration, the Notary and Identification is allowed for the dispatches of the Firms Registry that:

- a) Admit or refuse firms' deferment;
- b) Attribute exclusive right or declare the loss of the same right;
- c) Admit a firm conditioned upon restrictions and observations;
- d) Refuse requests, demand compliance with certain formalities or the fulfillment of certain requisites;
- e) Deny the invalidation of the certificate of admissibility or its renovation.

Article 22
Interposition time period

1. The hierarchic recourse must be filed within 30 days after receiving the notification or, in the cases in which the act recurred did not lead to a notification after the recurring entity was informed of it.
2. Filing of the recourse is considered done with the presentation of the recourse request through the conservatory of commercial registration or in the Notary's office where the request was presented, or in the Firms Registry, accompanied by the documents that requestor may wish to present as proof.
3. Once the petition is received, the functionary that executed the act must issue a fundamented dispatch to repair or sustain the decision, within five days.
4. The requestor is notified of the dispatch, by registered mail, within 48 hours.

Article 23
Remittance and decision on the recourse

1. Should the decision be sustained, the functionary that executed must, within five days, remit the entire case file, documented with the refusal and sustaining dispatches and additional documents, to the General Directorate of Registration, Notary and Identification.
2. The recourse is decided in a maximum of five days counting from the date it is received. The General Director of Registration, Notary and Identification may

solicit from the recurrent additional information or documents to correctly document the case.

3. In case the decision affects the rights of third parties, the latter should be heard, and they should be given a period of ten days to respond.
4. If the third parties pronounce themselves bringing new facts to the process, the recurrent should be notified to respond within ten days.
5. In the cases described in the final part of n° 2, the period is suspended until the solicited documents and information are received.
6. The recurrent and the third parties referred to in n° 3 are notified of the dispatch, accompanied by its documentation.

SECTION II **Litigious recourse**

Article 24 **Recoursability**

1. Without prejudice for the optional hierarchical recourse to the member of the Government responsible for Justice, the decisions of the General Directorate of Registration, Notary and Identification can be litigiously appealed to the competent tribunal of the recurrent's domicile or main office.
2. The recourse must also be filed against the interested parties to who the recurred dispatch may have been favorable.

Article 25 **Legitimacy**

1. After having exhausted all the necessary hierarchic recourse, the recurrences, as well as the persons and entities that consider themselves directly injured by the dispatch of the General Directorate of Registration Notary and Identification are legitimate parties to the recourse.
2. The recourses filed by non- recurrent persons can only apply to final dispatches that defer a specific firm or that determine the cancellation of the registration or that declare the loss of the right to the exclusive of the firm.

Article 26 **Period of the interposition**

1. The litigious recourse must be interposed within fifteen days, counting from the date the recurrent is notified of the decision to a necessary hierarchic recourse.
2. The initial petition is presented in the administrative office of the competent tribunal, documented with a copy of the recurred dispatch and respective documentation.
3. The initial petition must be accompanied by all the documentation that the recurrent may wish to present as proof.
4. In the initial petition the recurrent must also request the diligences it considers necessary to prove its claims.

Article 27
Tramits of the litigious recourse

1. After distribution, if there is no motive for preliminary deferment, the general Director of Registration and Identification and interested third parties are cited to respond.
2. Citations are delivered by registered letter with return receipt request.
3. The response is deduced within the time period fixed for the declarative actions with summary process, in civil process, and the provisions of n° 2, 3 and 4 of the preceding article are applicable to it.
4. With the articulate ended, the process is concluded for a final decision, which must be proffered within ten days, save the case of just impediment.
5. The request of clarification or documentation to the recurrent or to the Firms Registry or any diligence the judge deems pertinent, on the judges own initiative or by request of the parts, done in the articulate, are considered just impediment.
6. The sentence proffered in litigious recourse cases can be recurred, with suspense effect, to the Supreme Court of Justice.
7. The recurrent, the Public Ministry, the General Director of Registration, Notary and Identification and the injured third parties have legitimacy to interpose recourse.

CHAPTER V
Infractions and sanctions

Article 28
Contra-ordinations

1. Under the terms of the respective legislation, without prejudice to the criminal or disciplinary procedure that may be called for, the persons or entities commit contra-ordination and are subject to fines from a minimum of CVE 10.000\$00 to a maximum of CVE 500.000\$00, if:
 - a) In any form, and with fraudulent intention or for the purpose of causing injury to a third party, falsifies or unduly utilize documents issued by the Firms Registry;
 - b) Use firms without having previously obtained the respective certificate of admissibility or, having obtained the certificate, did not promote the constitution of the enterprise.

2. Under the terms of the respective legislation, without prejudice to the criminal or disciplinary procedure that may be called for, the persons or entities commit contra-ordination and are subject to fines from a minimum of CVE 5.000\$00 to a maximum of CVE 250.000\$00, if:
 - a) Retain in portfolio, documents issued by the Firms Registry to negotiate with third parties;
 - b) Make false or inexact declarations or omit information that they should have provided, under the terms of applicable legislation;
 - c) Do not make the communications foreseen in this diploma or do so outside the deadlines or the established conditions;
 - d) Falsify, counterfeit, reproduce, proceed to unauthorized resale or in any form use the Firm Registry exclusive forms illegitimately;
 - e) Do deceptive publicity suggesting facility in obtaining documents issued by Firms Registry.

Article 29
Initial registration in Firms Registry

The application of the fines foreseen in this diploma is the competence of the Director of Firms Registry.

CHAPTER VI
Final and transitory provisions

Article 30
Initial registration in Firms Registry

1. Registration of the individual entrepreneurs and commercial enterprises whose firms are already registered in the commercial registry shall be made unofficially in the Firms Registry on the basis of the elements to be made to the Firms Registry by the respective conservatories of registration.
2. The individual entrepreneurs, the enterprises and other collective entities not covered by the preceding number and in existence on the date this diploma goes into effect, have 90 days counting from that same date to register their firms in Firms Registry, under penalty of losing, from that date on, the right to exclusive use of the respective firm, denomination or name.

Article 31
Fees

1. By the registration in Firms Registry, by the issuance of admissibility certificates and by other acts inherent in it or of its competence, specifically the cost of the forms, fees shall be collected as established in joint decree of the ministries responsible for justice and finance.
2. The fees referred to in the preceding number shall constitute revenue for Justice's General Coffers, under the terms of the respective Organizational Regulation.

Article 32
Forms

The forms necessary to execute this diploma shall be approved by joint decree of the member of the Government responsible for justice and shall constitute an exclusive of the Firms Registry.

Article 33
Cost exemption

Firms Registry is exempt from the preparations and costs of the processes in which it intervenes.

Article 34
Existing firms

1. The enterprises and other collective entities already constituted may continue to use the firms they been using legally.

2. The provisions of the preceding number do not prevail if, by force of the alteration of the object, the firm, denomination or name becomes deceptive.

Article 35
Effective date

This diploma goes into effect with entry into effect of the Commercial Enterprises Code.

Viewed and approved in the Council of Ministers

Carlos Veiga – Simão Monteiro – José Ulisses Correia e Silva – Alexandre Monteiro

Promulgated 27 September 1999

Publish it

The President of the Republic, ANTÓNIO MANUEL MASCARENHAS GOMES MONTEIRO

Referenced 27 September 1999

The Prime Minister, *Carlos Veiga*

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**MINISTRY OF JUSTICE
AND INTERNAL ADMINISTRATION
AND MINISTRY OF FINANCE**

Offices

**Ordinance No. 45-A/99
Of 27 September 1999**

Approves the Fees to be Collected by the Firm Registration

In as much as it is convenient to approve the amount of fees to be collected for services rendered by Firms Registration;

Under the terms of No.1, Article 31 of Decree-Law No. 59/99, of 27 September;

In the use of the faculties conferred by subparagraph b) of Article 217 of the Constitution, the Government of Cape Verde, through the Ministers of Justice and Internal Administration and of Finance, orders the following:

**Article 1
Approval**

The amounts of the fees to be covered for services rendered by Firms Registration, which are indicated in the Table attached to this legislation of which it is an integral part and signed by the Ministers of Justice and Internal Administration and of Finance, are hereby approved.

**Article 2
Payment of the Fees**

1. The payment of the fees contained in the Table annexed to this legislation is made in advance to the bank account of the General Coffers for Justice indicated by the organism that received the request.
2. In the case of reservation of firm the requester must pre-pay either the reservation fee or the firm registration request or alteration thereto, under the terms of the preceding number.

Article 3
Exemptions

1. The legal exemption of the fees and other commercial registration charge includes the exemption of Firm Registration fee.
2. The organisms and services of Public Administration, the public institutions of social solidarity and the collective persons under public law, with the exceptions of the public enterprises and the public capital or with a majority of public capital companies, are exempt from the fees foreseen in this legislation.

Article 4
Preparations for Hierarchic Appeal

1. The charges for hierarchic appeal are returned to the recurrent should the appeal be accepted.
2. Should the appeal be rejected the charges for hierarchic appeal shall constitute revenue for the General Coffor for Justice.
3. The dispatch of partial hierarchic appeal charges fixes the proportions of the charges that constitute revenue for the General Coffor for Justice.

Article 5
Effective Date

This legislation goes into effect when the Code of Commercial Companies goes into effect.

Office of the Ministers of Justice and Internal Administration and of Finance, 27 September 1999. – The Ministers *Simão Monteiro – José Ulisses Correia e Silva*.

ANNEX I

TABLE OF FEES TO BE COLLECTED FOR FIRM REGISTRATION

I. For each form to request certificate of admissibility of firm	Ecv	100\$00
II. For each form to request reservation of firm	ECV	100\$00
III. For each notification form regarding commercial activity or name	ECV	100\$00
IV. For each form to request invalidation of the firm's certificate of admissibility	ECV	200\$00
V. For each reservation of Firm	ECV	250\$00
VI. For each inscription of firm and issuance of the respective certificate of admissibility	ECV	500\$00
VII. For each alteration of firm and issuance of the respective certificate of admissibility	ECV	500\$00
VIII. For each revalidation of the firm's certificate of admissibility	ECV	500\$00
IX. For each inscription of facts contained in the notification relative to activity of the requester	ECV	250\$00
X. For each inscription or alteration of facts contained in the notification relative to activity of the requester	ECV	250\$00
XI. For each inscription of facts contained in the notification relative to commercial name.	ECV	1,500\$00
XII. For each alteration of inscription of facts contained in the notification relative to commercial name	ECV	1,500\$00
XIII. For each request of invalidation of the certificate of admissibility of firm and respective inscription	ECV	1,000\$00
XIV. Charge for each hierarchic appeal	ECV	2,500\$00
XV. For each certificate or copy of computerized registration	ECV	250\$00
XVI. For each certificate of proof of exclusive use by firm	ECV	2,500\$00
XVII. For each declaration of loss of the right of exclusive use of firm	ECV	2,500\$00
XVIII. For each 2 nd issuance of the documents referred to in the preceding numbers, double what has been established		

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**MINISTRY OF JUSTICE
AND INTERNAL ADMINISTRATION
AND MINISTRY OF FINANCE**

Offices

**Ordinance No. 45-A/99
Of 27 September 1999**

Approves the Fees to be Collected by the Firm Registration

In as much as it is convenient to approve the models of forms necessary to the operation of Firms Registration;

Under the terms of No.1, Article 32 of Decree-Law No. 59/99, of 27 September;

In the use of the faculties conferred by subparagraph b) of Article 217 of the Constitution, the Government of Cape Verde, through the Ministers of Justice and Internal Administration and of Finance, orders the following:

**Article 1
Approval**

The models of forms for exclusive use by Firms Registration, contained in Annexes I to VII of this legislation of which they are an integral part and signed by the Ministers of Justice and Internal Administration and of Finance, are hereby approved.

**Article 2
Inscription in Firm Registration**

1. Except for the request of firm reservation the deferment of other requests and the acceptance of the notifications relative to activity and commercial name imply, for the service, obligatoriness of inscription in Firms Registration.
2. The inscription in Firms Registration is done based on the elements contained in the respective requests or notifications.

Article 3
Obligations Relative to Activity and Commercial Name

3. Without prejudice to the obligations legally established relative to commercial registration, the subjects obligated to do inscription in Firms Registration should notify, through the form contained in Annex V of this legislation, all the relevant facts relative to commercial name, the beginning, the suspension and the cessation of activity, as well as its extinction.

Article 4
Effective Date

This legislation goes into effect when the Code of Commercial Companies goes into effect.

Office of the Ministers of Justice and Internal Administration and of Finance, 27 September 1999. – The Ministers *Simão Monteiro – José Ulisses Correia e Silva*.

TRANSLATOR'S NOTE:

The forms cited in the above legislation have not been translated due to their numbers, complexity of design and time constraints. They are available in Portuguese.