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COUNCIL OF MINISTERS

Decree-Law No. 29/93

Of 24 May 1993

Exchange Regime

This law envisages a profound revision in the established norms of the exchange regime in effect, as well as in the operations of invisible currents of capital between Cape Verde and the outside.

Such readjustment is imposed by the need of an effective insertion of Cape Verde into the world's economic order, for which the internal market liberalization process assumes vital importance, when the private sector, as an economic agent, is attributed a lead role.

It is in this framework that the proposed revision fits, with which it is proposed to regulate the exchange operations, the exercise of the exchange trade and the operations on gold, which lead to a greater freedom of action for the private economic agents, in opposition to the monopolist administrative norms in effect.

Thus, this law constitutes a first step in the process of liberalizing the exchange operations. This liberalization shall take place gradually and cautiously attending to the Country's economic and financial particularities.

The reformulation of the resident and non-resident concept should be pointed out from the outset, with the significant enlargement of the scope of action of the resident economic agents. Generally very open principles are consecrated, to permit greater freedom of action to the economic agents. However, it behooves the Central Bank to always define the terms and conditions of that action and to take punctual action against the referred liberalization, in the event of perturbation in the operation of the financial market.

In an effort to clarify concepts, distinction was made between, on the one hand, the transactions involving in this concept the operations in goods, invisible currents and capitals currents, and, on the other hand, the liquidation of those transactions.

The operations in merchandise continue to be regulated by appropriate legislation in which a principle of liberalization has been progressively implemented that allows the residents, for certain categories of goods, to obligate themselves, without depending on authorization, as compared to the non-residents.

As a universal application norm, the realization of exchange operations by residents continues to be submitted to the principle of mandatory intermediation by an entity authorized to exercise exchange trade. Two other principles are associated to this one: the prohibition to residents to hold availabilities on the outside and making it obligatory to those same residents to concede to authorized entities the exchange trade to the foreign currency they have obtained.

While monetary and exchange authority, it behooves the Bank of Cape Verde to supervise and regulate the operation of the exchange market as well as to the authorized entities to act on the same. The Bank of Cape Verde can demand from any public or private entities the information indispensable to the verification of the nature and reality of any exchange operation.

In the exercise of its supervisory function, the Bank of Cape Verde, in conformity with directives from the Minister of Finance, shall issue notices and technical instructions that will complement this law.

Relatively to exchange infractions, its classification as a transgression is maintained, punishable with fine and accessory sanctions. This solution has proven to be of superior efficacy as compared to penal repression.

Under these terms,

In the use of faculty conferred by subparagraph a), of number 2 article 215 of the Constitution, the Government of Cape Verde decrees the following:

CHAPTER I

General provisions

Article 1 **(Ambit of application)**

The execution of the operations listed next are subject to the provisions of this Decree-Law and of the respective regulations, as well as in the notices and technical instructions from the Bank of Cape Verde:

- a) Exchange operations;
- b) Exchange trade;
- c) Importation, exportation and re-exportation of gold, coins and credit titles;
- d) Merchandise transactions, transactions of invisible currents and currents of capitals and the respective liquidation

Article 2
(Entities from the public administrative sector)

The execution of exchange operations by entities of the public administrative sector is regulated by special legislation.

Article 3
(Bank of Cape Verde)

The execution of the operations referred to in the preceding article, by the Bank of Cape Verde, are governed by the provisions of its Organic Law and by the provisions of this law that are applicable to it.

Article 4
(Residents and non-residents)

1. For the purpose of this law, the following are considered residents in the national territory:
 - a) The singular persons who have their habitual residence in the Country for more than one year;
 - b) The collective persons with main office in the Country;
 - c) The branches, agencies or any other form of representation in the countries, of singular or collective persons residing on the outside;
 - d) The singular persons with habitual residence on the outside, as well as collective persons with main office on the outside, relatively to the activity developed in the Country, when dealing with their principal activity.
2. The following are considered non-residents:
 - a) The singular persons with habitual residence outside the country;
 - b) The collective persons with main office outside the country;
 - c) Those that immigrate to the Country and those who, for more than one year, remained absent from the country;
 - d) The branches, agencies or any other form of representation, in a foreign country, of singular and collective persons with residence in the Country.
 - e) The singular persons with habitual residence in the Country, as well as collective persons with main office in the Country, relatively to the activity they develop outside the Country, when dealing with their principal activities.

Article 5
(Special Cases)

The Bank of Cape Verde may, in special cases, duly founded, recognize the status of resident or non-resident to entities that not meet, totally or partially, the requisites of the preceding article.

CHAPTER II
(Exchange Operations)

1. The following are considered exchange operations:

- a) The opening and activity in foreign currency accounts in credit institutions outside the Country, in behalf of residents;
- b) Acquisition or alienation of foreign currency;
- c) Liquidation of any transaction in goods, invisible currents or capital currents;
- d) The opening of and account activity in foreign currency at credit institutions in-Country, in the name of residents or non-residents;
- e) The opening of and activity in accounts in national currency at in-Country credit institutions, in the name of residents;
- f) The acquisition or alienation of coined gold, gold bars or in other unworked forms.

2. The bills or metal coins used as legal tender in a foreign country, liquid or demand credits derived from accounts open at institutions authorized to receive deposits and the titles of credit that serve to effect payments, expressed in those coins or in account units utilized in international payments and compensation, are considered foreign currency.

Article 7
(General Principle)

Except for special cases foreseen in the article that follows, the exchange operations can be executed only through an entity authorized to exercise exchange trade.

Article 8
(Exceptions)

1. Residents are permitted to receive in Cape Verde, directly from non-residents, travel checks or foreign currency, destined to pay expenses pertaining to the stay of these non-residents in the national territory.

2. Emission and payment of international money-orders is, likewise, permitted, under the terms and conditions established in technical instructions that the Bank of Cape Verde transmits to the competent services.

Article 9
(Compensation)

The total or partial payment of transactions in goods, invisible currents or currents of capitals for compensation with credits or debits resulting from transactions of identical or different nature, require prior special authorization from the Bank of Cape Verde.

Article 10
(Ceding foreign currency)

The residents who in any way receive foreign currency from non-residents are obligated to proceed to their sale, within the deadlines and conditions that shall be fixed in a notice from the Bank of Cape Verde.

Article 11
(Availability outside the country)

1. Save with authorization from the Bank of Cape Verde, the residents cannot make deposits, open or develop activities in accounts or maintain availability outside the Country in foreign currency or in Gold.
2. The residents may make deposits, open or develop activities in accounts or maintain availability outside the Country in foreign currency, as long as they are fed by revenue proven to have been generated outside the Country.
3. The Bank of Cape Verde shall define the terms and conditions under which the entities authorized to exercise exchange trade may make deposits, open or generate activities in accounts or maintain availability outside the country in foreign currency or in gold.

Article 12
(Accounts for non-residents)

1. The entities authorized to exercise exchange trade may open and develop activities in accounts for non-residents in national or foreign currency, under the terms and conditions to be established by the Bank of Cape Verde.
2. Special norms regulate the opening and development of activities in in-Country accounts, in the name of emigrants.

Article 13
(Accounts for residents)

1. By special authorization from the Bank of Cape Verde, the entities authorized to exercise the exchange trade may open accounts in foreign currency, in the name of residents.
2. Necessary requisites to grant the authorization are the importance or the nature of the resident's activity and the relevance of the amount and of the frequency of the transactions with the outside. The diversity of countries with which the transactions take place is also considered.
3. The activities in the accounts foreseen in the preceding article shall be made according to the terms and conditions established by the Bank of Cape Verde in the respective authorization to open the account.

CHAPTER III
Exchange Trade

Article 14
(Exercise of the Exchange Trade)

Exercise of the exchange trade is understood to be the habitual execution of exchange operations, on one's own account or in someone else's behalf, with lucrative intent.

Article 15
(Authorized Entities)

1. The exercise of exchange trade requires special prior authorization from the Bank of Cape Verde.
2. The Bank of Cape Verde can authorize credit institutions or other institutions that act in the financial and monetary market, to exercise exchange trade, and fix the conditions and limits of this exercise.
3. The Bank of Cape Verde can also grant authorization to exercise exchange trade to other entities not included in the preceding number, that fulfill the requisites defined in a notice from the same Bank. However, the authorization is limited to the execution of operations of purchase and sale of foreign currency and traveler's checks.

Article 16
(Special Cases)

The Bank of Cape Verde may authorize services connected with tourism, in particular, hotels, travel agencies and free shops, to execute operations of purchase of foreign

currency and traveler's checks to the respective clients, under the terms and conditions fixed by the Bank.

Article 17
(Superintendence)

It is the competence of the Minister of Finance to superintend the set of activities subject to the discipline of this law.

Article 18
(Supervision)

1. It behooves the Bank of Cape Verde, as exchange authority of the Republic of Cape Verde, to regulate the operation of the exchange market, supervise the entities authorized to exercise the exchange trade, totally or not, and oversee the execution of the exchange operations.

2. The Bank of Cape Verde shall exercise its regulatory attributions through notices or technical instructions.

3. For the purpose of the provisions of the preceding number, the Bank of Cape Verde may demand from any public or private entity, the information it may need.

Article 19
(Duty to inform)

The entities authorized to exercise exchange trade should send to the Bank of Cape Verde, the statistical and other data the Bank solicits from them, in conformity with the technical instructions transmitted to them and in the deadlines fixed by the Bank,

CHAPTER IV
Importation, exportation and reimportation
of gold, coins and titles of credit

Article 20
(Operations over gold)

1. The importation, exportation and reimportation of coined gold, gold bars or in other non-worked forms are of the exclusive competence of the Bank of Cape Verde or, by delegation of the latter and under the terms and conditions fixed by it, of the entities authorized to exercise the exchange trade.

2. International transit in-Country, of coined gold, gold in bars or in other non-worked forms, are subject to authorization by the Bank of Cape Verde, in the conditions and terms the latter determines.

Article 21
(Importation, exportation and re-exportation of the coin)

1. The importation, exportation or re-exportation of bills and metallic coins used a legal tender in Country and outside, as well as traveler's checks and other analogous means of payment can only made by institutions authorized to exercise the exchange trade and by special authorization by the Bank of Cape Verde.
2. The provisions of the preceding number apply to the exportation of the national currency out of circulation.
3. The cases encompassed by article 8 and those regulated in the article that follows are exceptions from the provisions of No. 1.

Article 22
(Travelers)

The importation, exportation or re-exportation of bills and metallic coins used a legal tender in Country and outside, as well as traveler's checks and other analogous means of payment, when transported by travelers destined for payment of traveling expenses or tourism, are free up to the limits and under the terms defined by notice from the Bank of Cape Verde.

Article 23
(Importation, exportation, re-exportation of titles of credit)

1. The importation, exportation or re-exportation of shares of stock or of titles of national or foreign obligations, whether of public debts or comparable, whether issued by international entities or by public or private enterprises, are free when they abide by operations of capitals executed in harmony with the applicable legislation.
2. Also free are the importation, exportation or re-exportation of promissory notes, payment orders, invoice extracts and other titles of credit of analogous nature, such as coupons of national or foreign titles, as long as they are executed by entities authorized to exercise exchange trade and in conformity with the determinations and technical instructions from the Bank of Cape Verde.
3. The importation, as well as the exportation of checks, excluding traveler's checks, in foreign currency, is free, as long as:
 - a) The checks to be imported are destined for the liquidation of operations of goods, of invisible currents and currents of capitals, executed in harmony with the applicable legislation;

- b) The checks to be exported are emitted by entities authorized to exercise exchange trade and are, likewise, destined for any of the purposes indicated in the preceding subparagraph.
4. The provisions of article 10 are applicable to the checks imported under the terms of subparagraph a) above.
5. Outside the cases foreseen in No. 1 to 4, the importation and exportation of titles of credit and their coupons require authorization from the Bank of Cape Verde.

Article 24 (Control)

1. Customs services should effect dispatch of parcels or of any type of remittances, when there is a mention that they contain titles, bills or coins, national or foreign, before the sender shows proof that the legal requisites foreseen in articles 21 to 23 have been fulfilled.
2. The postal and telecommunications services should not register any parcels, boxes or correspondence, nor delivery to its destination, when the former contain titles or coins, national or foreign, without, in the first case, the senders, and in the second case, the recipients show proof that the legal requisites foreseen in articles 21 and 23 of this law have been fulfilled.

Article 25 (Circumstantial measures)

In the event of crisis or difficulty in the balance of payments, as well as in cases of perturbations of the financial market, the Bank of Cape Verde may establish, by notice, restrictions or other conditionalisms to the operations foreseen in articles 21 and 23.

CHAPTER V Transactions and their liquidations

Article 26 (Operations with goods)

The importation, exportation and re-exportation of goods are regulated by the appropriate legislation.

Article 27 (Operations with invisible currents)

1. The operations with invisible currents enumerated in Annex I to this law, that imply making payments to non-residents, require prior authorization from the Bank of Cape Verde, whenever they exceed the amounts to be fixed by notice.

2. When the operations referred to in Annex I of this law pertain to providing services, objects of contracts, the respective project should be remitted to the Bank of Cape Verde.

Article 28 (Repatriation)

The residents interested in operations of invisible currents referred to in No. 2 of the preceding article are obligated to promote the repatriation of the respective value within three months, counting from the date the same was made available to them.

Article 29 (Operations of capitals)

1. The importation and the exportation indicated in Annex II to this law require special prior authorization from the Bank of Cape Verde, when executed between residents and non-residents, or when executed between non-residents, and have to do with assets located in the Country.

2. Without prejudice to the provisions of article 30, operations in amounts to be fixed by notice, are exceptions to the provisions or the preceding number.

3. The authorization by the Bank of Cape Verde, under the terms of the preceding No. 1, should be homologated, by dispatch of the Minister of Finance, when dealing with operations whose value exceeds 25 million escudos.

Article 30 (Processing)

The requests for authorization to execute invisible currents or currents of capitals operations must be filed and processed under the terms and conditions to be fixed by notice from the Bank of Cape Verde.

Article 31 (Liquidation)

1. The parties interested in operations with goods, invisible currents or currents of capitals, even if they do not require authorization, are obligated to execute the corresponding liquidations through the entities authorized to exercise the exchange trade.

2. The entities referred to in the preceding number should not proceed to the liquidation of the operation with goods, invisible currents or currents of capitals, without showing proof of compliance with the legal or regulatory requisites from which the execution of this operation depends.

Article 32
(Finality of the acquisition of the means payment)

1. The means of payment to the outside, acquired with a view to the liquidation of an transaction foreseen in this chapter, should not be utilized for diverse purpose.
2. If the liquidation transaction that prompted the acquisition of those means of payment was not executed totally or partially, the same should be ceded to an authorized entity exercising the exchange trade within one month counting from the date the unexecuted transaction consummated.
3. The Bank of Cape Verde may require from the acquirers of the means of payment to outside the country, directly or through the entities authorized to exercise exchange trade, proof of both the operation and the amounts effective spent in the liquidation.

Article 33
(Circumstantial measures)

The provisions of article 25 are applicable to the operations foreseen in this Chapter V and to the respective liquidation.

Article 34
(Foreign investment)

The execution of foreign investment in the Country, as well as the rights, guarantees and incentives attributed to the foreign investor, are governed by special legislation.

CHAPTER VI
Infractions and Sanctions

Article 35
(Transgressions)

1. The following constitute transgressions punishable under the terms of this law:
 - a) The exercise of the exchange trade on one's own account or in some else's behalf, by whosoever is not duly authorized;
 - b) The execution of the operations referred to in subparagraphs a), c) and d) of article 1, with violation of the provisions of this Decree-Law, its regulatory laws, notices or instructions from the Bank of Cape Verde and, as well, any infractions to the same provisions.
2. The attempts and the frustrated attempts are always punishable.

Article 36 **(Sanctions)**

1. Without prejudice to the application of other sanctions included in the law, the transgression foreseen in subparagraph a) of No. 1 of the preceding article shall be punished with a fine of ecv 500,000\$00 to ecv 5,000,000\$00.
2. The transgressions foreseen in subparagraph b) No. 1 of the preceding article shall be punished, without prejudice to other sanctions included in the law, with a fine of ecv 20,000\$00 to ecv 4,000,000\$00, as a function of the value of the operation and the gravity of the infraction.
3. When an agent who is condemned for an exchange infraction commits another exchange infraction, before two years have elapsed, counting from the de of the sentence, the fine shall not be less than double that applied in the previous sentence.

Article 37 **(Accessory sanctions)**

The transgression foresee in subparagraph a) of No. 1 article 35, as well as the transgression foreseen in subparagraph b) of No. 1 of the same article, if in this case there is repetition, such as defined in No. 3 of the preceding article, can be punished additionally with:

- a) Loss to the State of the assets utilized or obtained with the illicit activity;
- b) Inhibition, up to 3 years, from executing exchange operations;
- c) Suspension from the exercise of economic activities, for a period not greater than two years.

Article 38 **(Process)**

1. It behooves the Bank of Cape Verde to investigate the exchange infractions and institute the respective processes. The Bank of Cape Verde may carry our inspections to any entities and apprehend the assets utilized or obtained with the illicit activity.
2. The police authorities and other public services entities must provide to the Bank of Cape Verde the collaboration deemed necessary.
3. It behooves the Executive Board of the Bank of Cape Verde the application of the fines foreseen in article 36.

The application of the sanctions foresee in article 37 is of the competence of the Minister of Finance.

Article 39
(Appeal)

The decision that applies a fine or accessory sanction can be appealed under the general law.

CHAPTER VII
Final Dispositions

Article 40
(Notary, registration and judicial acts)

1. The notaries and the curators must withhold the execution of the acts of their competence that involve currents and capitals operations with the outside in which non-residents intervene, as long as documents that prove the intervention of an entity authorized to exercise exchange trade or, if such is the case, of the prior authorization or declaration issued by the competent entity.

2. The actions pertaining to the acts referred to in the preceding number is applicable, with the necessary adaptations, the provisions of article 280 of the Civil Process Code.

Article 41
(Oversight)

The Bank of Cape Verde shall establish, with competent authorities and services, the technical norms for the oversight and compliance with the provisions of this law and in those laws that will regulate it.

Article 42
(Revocation)

1. Decree-Law 27/84, of 24 March, is hereby revoked.

2. However, Decree-Law 27/84 of 24 March shall remain in effect, while the regulatory norms in effect, in all that is not contrary to this law, until others replace them.

Article 43
(Effective date)

This Decree-Law goes into effect thirty days after its publication.

Reviewed and approved in the Council of Ministers.

Carlos Veiga – José Tomás Veiga – Úlpio Napoleão Fernandes

Promulgated 23 April 1993

Publish it

The President of the Republic, ANTÓNIO MANUEL MASCARENHAS MONTEIRO

Referended 26 April 1993

The Prime Minister

Carlos Veiga