

REPUBLIC OF CAPE VERDE

DRAFT LEGISLATION ON

ON

FINANCIAL LEASING COMPANIES

PROPOSAL OF DECREE-LAW TO REGULATE THE CREDIT YIELDING COMPANIES (“FACTORING”)

Justification Note

The small and medium enterprises (PMEs) face several difficulties and challenges in their development and growth. One of the inherent barriers to PMEs, that assumes particular emphases in Cape Verde, is the relative non-feasibility of recourse to bank credit as a favorable way of financing short term capital resulting principally from commercial strategies of dilating average deadlines and receivables.

The recourse to the *factoring* contracts is one of the most constructive tools that the PMEs dispose of to transpose the referred restriction and maintain a healthy business, given that through its utilization, it is possible to obtain an advance on the receivables from their clients, without raising their debt.

A *factoring* contract is defined as a financial operation by which an enterprise – the adhering enterprise – sells to another enterprise – the *factoring* or factor enterprise – a series of short term credits from its clients, pertaining to the sale of products or for services rendered by that same enterprise. The adhering enterprise consecutively receives an amount agreed upon and, the *factoring* enterprise retains the right to collect these debts of the adhering enterprise.

In a simplified form, it can be said that the *factoring* mechanism involves 4 phases:

- In the first phase, the adhering or supplying enterprise, sells to the owing enterprise or client, goods or services on a deadline, emitting an invoice;
- In the second phase, the adhering enterprise yields its short-term credit to the *factoring* enterprise;
- In the third phase, the *factoring* enterprise advances the amount that the adhering enterprise has to collect, updated and with the discount of a fee previously agreed to;
- In the last phase, the owing enterprise or client, pays the amount of the debt, within the stipulated deadline, to the *factoring* enterprise and not to the supplying enterprise.

Advantages of Factoring

- The *factoring* contract may be made “with recourse” or “without recourse”. In the first case, does not pay within the time agreed, the factoring enterprise has the right of redress on the adherent. In the second modality, the *factoring* enterprise assumes the losses that may result from the financial incapacity of the clients in facing up to commitments assumed by them. This modality is a precaution to the enterprise of incumbent payers. The risk and responsibility for the collection is shifted to the *factoring* enterprise, which has appropriate effective methods to collect.
- It enables the reduction of the average collection time as it transforms credit sales into cash sales with a discount. By the timely attainment of the fund necessary to finance the exploration cycle, the enterprise can support the commercial effort without the need to increase debt or emit titles.
- By supporting the commercial risks resulting from the insolvency and/or non-compliance by international debtors, the *factoring* enterprises permit a reduction of the risk of the exporting enterprises. Thus, they foment exports, in as much as, for the enterprises that operate in external markets, the possibility of credit risk coverage in the export business assumes an added importance, in the face of the distance and greater complexity in making the contract prevail, among other advantages that could be cited. It is important to emphasise as well that the *factoring* activity does not circumscribe the ceding of credits. They also provide diverse services namely *rating*.

DECREE-LAW N°...../04

Of _____

Law n° 3/V/96 of 1 July foresees the existence of the so-called credit yielding enterprises (*factoring*).

This law consecrates the respective legal framework. Considering that the operations they engage in is only financial in nature, only one of the types of the vast category of credit yielding, it is opted to give such operations, (called *factoring*) the denomination of “financial yielding”. Their importance of their pretended development is recognized, now that, in the more modern frameworks, they tend to expand.

In truth, there a conviction that, given the diverse functions they can perform – collection and management of credit granted, facilitating the corresponding mobilization and alleviating the clients of the administrative surcharge for the necessary purposes, coverage of credit risks and their better rationalization, short-term financing resulting from the anticipation of payments by the yielder (“factor”) - the financial yielding companies may assume a marked utility for the national enterprises, specifically to small and medium enterprises. It is also considered that financial yielding may turn into an effective instrument of support to the exporting enterprises.

Thus,

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

Article 1º

(Scope)

This law regulates the financial yielding companies, also usually called “factoring”.

Article 2º

(Actividade de cessão financeira)

- 1 – The financial yielding credit activity consist in the acquisition of short-term credits, derived from the sale of products or services rendered, in the internal or the external market.
- 2 – Included in the financial yielding activity are complementary actions of collaboration between the activities referred to in Article 4 and their clients, specifically of credit risk studies and of legal, commercial and accounting support to the good management of the transacted credits.

Article 3º

(Other notions)

For the purposes of this law, the following designations apply:

- a) Factor or yielder: the entities referred to in nº 1 of Article 4;
- b) Adherent: the stakeholder in the financial yielding contract who yields credit to the factor;
- c) Debtors: the third party debtors of the credits yielded by the adherent to the yielder or “factor”.

Article 4º

(Exclusiveness)

- 1 – Only the financial yielding companies and the banks may habitually celebrate financial yielding contracts with the yielders.
- 2 – The designations «*factoring* company, «financial yielding company» or any others that pursue this activity can only be used by the businesses referred to in the preceding number.

Article 5º

(Capital stock)

The financial yielding company must own a capital stock not smaller than established by Ordinance from the Ministry of Finance.

Article 6º

(Recourses)

Aside from the passive operations that by special law they are allowed to resort to and of the forms of financing especially authorized to them by the Ministry of Finance, by proposal from the Bank of Cape Verde, the financial yielding companies may finance their activities by:

- a) Emitting obligations (*shares*) at medium and long term or other titles in any of the modalities legally allowed;
- b) Financing from national Credit Institutions and from foreign or international financial establishments;
- c) Acquiring funds in the interbanking monetary market, under terms to be defined by the Bank of Cape Verde;
- d) Refinancing by the Bank of Cape Verde, under terms to be defined by this institution.

- e) Supplies or other forms of loans and advances between one company and the respective partners;
- f) The Treasury operation, when legally permitted, between companies that are in a dominant relationship or in a group.

Article 7

(Factoring contract)

1- The *factoring* contract is always celebrated in writing and it must contain the set of *factor's relationship* with the respective adherent.

2 – The transmission of credits under the *factoring* contracts must be accompanied by the respective invoices or separate equivalent document, computerised document or exchange title.

Article 8°

(Exchange operations)

The financial yielding companies may perform exchange operations necessary to the exercise of their activity, under the terms of the law.

Article 9°

(Payment of transmitted credits)

- 1. Payment to the adherent or of the credit transmitted by him/her must be made on the average due dates presuming that they are stipulated contractually.

2. The factor may also pay all or part of the credits yielded before the due average or effective date or permit, by posting of a guarantee or other credible means, the payment in advance by means of another credit institution.
3. The advance payment of credits, made under the terms of the preceding number, cannot exceed the creditor position of the adherent on the date the payment is made.

Article 10º

(Subsidiary law)

Whatever is not included in this law regarding the *factoring* companies the law that regulates the constitution, the operation and the activity of parabanking institutions, and complementary legislation, shall apply.

Article 11º

(Effective date)

This law goes into effect immediately.

Viewed and approved by the Council of Ministers.

José Maria Neves – João Serra – _____ – _____ – _____.

Promulgated on the xx of xxxxxxxxxxxx of 2004.

Publish it.

The President of the Republic, PEDRO VERONA RODRIGUES PIRES.

Referended on xx of xxxxxxxxxxxx of 2004.

The Prime Minister,
José Maria Neves.