

COUNCIL OF MINISTERS

Regulamentary Decree n° 1/94 Of 3 January

In as much as it is convenient to simplify foreign investment operations registration and authorization, presently regulated by Decree n° 155/90, of 22 December.

Under the terms of article 20 of Law 89/IV/93, of 13 December

In the use of the faculty conferred by sub-paragraph b) of article 217 of the Constitution, the Government decrees the following:

CHAPTER I Of the objective of this Diploma

Article 1 (Ambit of application)

This diploma regulaments the foreign investment authorization processes and to organize their respective registration as foreseen in article 5 of Law n° 89/93 of 13 December.

CHAPTER II Of the foreign investment authorization

Article 2 (Authorization request)

1. The foreign investment operations authorization referred to in article 3 n° 3 of Law n° 89/IV/93, is submitted to the Minister responsible for Planning, in triplicate, using the form that constitutes annex 1 of this diploma, of which it is an integral part, duly filled out and documented according to the instructions contained in the form.
2. Whenever the foreign investment operations implies the creation, expansion or substantial modification of economic activities, the request referred to in the preceding number shall be accompanied by the form that constitutes annex 2 to this diploma and which is integral part of the same, duly filled out in triplicate and documented in accordance with the instructions contained in the form.
3. The documents referred to in the preceding number are delivered directly to the Exports and Investment Promotion Center by hand or by registered mail with return receipt request, by the requestor or by a representative, duly credentialed with a power of attorney, letter, telex or telefax.

Article 3

(Response deadline)

Except in the case referred to in n° 3 of article 4, the foreign investor who solicits the authorization should receive a reply in a maximum of 30 days, counting from the date the request is received by the Export and Investment Promotion Center. If the response is not received within the referred deadline, the request is considered approved.

Article 4

(Processing)

1. Whenever the request for foreign investment authorization results from the provisions of number 1 of article 2, the Exports and Investment Promotion Center shall evaluate it with the utmost urgency, organize and remit the *dossier*, for recommendation, to the Foreign Investments and Franc Enterprises Evaluation Committee, created by the Council of Ministers Resolution n° 43/93, of 30 August, and rectified in *Official Bulletin* n° 49/93, I Series, of 27 December.
2. The Foreign Investment and Franc Enterprises Evaluation Committee should forward its recommendation to the Minister, accompanied by the entire case file, in a maximum of 15 days counting from the date the case file is received by the Exports and Investment Promotion Center.
3. Whenever necessary, the Investment and Franc Enterprises Evaluation Committee should, solicit complementary elements of information from the foreign investor.
4. In the case described in the preceding number, the deadline referred to in article 3 is suspended. It will resume after the foreign investor or its representative provides the information requested.
5. Whenever the foreign investment authorization request refers to operations that are not associated to projects of creation, expansion or substantial modification of economic activities, the Exports and Investment Promotion Center sends a complete copy of the case file directly to the Minister responsible for Planning, for deliberation and recommendation.

Article 5

(Deliberation)

1. After the Minister's deliberation a foreign investor's certificate is issued and remitted to the requestor or to its representative, through the Exports and Investment Promotion Center, within 15 days counting from the date the case file is received. The form for the certificate constitutes annex 3 to this diploma of which it is an integral part.
2. A copy of the certificate referred to in the preceding number is forwarded to the Exports and Investment Promotion Center, the Bank of Cape Verde, and the government department directly connected with the sector in which the foreign investment is to be made.

Article 6
(Effects of the authorization)

1. The certificate constitutes sufficient documentation to prove before any national entity that the bearer is entitled to:
 - a) Execute all the acts and contracts necessary to implement the authorized operations, under the legal and regulatory terms applicable to the same;
 - b) Benefit, relatively to the activities included in the authorized operations, of the rights, guarantees and incentives described in Law n° 89/IV/93, of 23 December.
2. Whenever the authorized operations are associated to projects of creation, expansion or substantial modification of economic activities, the certificate constitutes sufficient authorization to execute the same, with due respect for the legal and regulatory norms in effect in the respective sectors of activity.

Article 7
(Basis for non-deferment)

1. The foreign investment authorization can be rejected only when the rejection is fundamented in:
 - a) Non-authorization of the projects of creation or expansion of economic activities the same refer to, under the terms of the legislation in effect in the respective activity sectors;
 - b) Violation of the fundamental principles of the Capeverdean public order or international commitments of the State of Cape Verde;
 - c) Danger to national security, to public health, the environmental balance, or to the archeological, historic cultural or landscape, natural or edifying patrimony;
 - d) Potential negative effects or insufficient contribution to the Country's economic development objectives, taking into account the principles established in the National Development Plan;
 - e) Fundamented presumption that the projects of creation, expansion or substantial modification of economic activities referred to in the authorization request may constitute an unbearable overload for existing or planned infrastructures or general services, unless the requestor guarantees, through a Protocol to be signed with the Government, the financing of the expenses corresponding to the installation or reinforcement of the referred infrastructures or general services, for a minimum period of 5 years

- f) Manifest unsuitability or lack of technical or financial capability of the investors to execute the operations referred to in the authorization request;
 - g) False declarations
2. For the purpose of the dispositions in subparagraph d) of the preceding number, the foreign investment operations and the projects of creation, expansion or substantial modification of economic activities the same refer to are evaluated by means of global or partial verification, among others, of the following criteria:
- a) Investment volume;
 - b) National value added;
 - c) Creation of new jobs and valorization of human resources and national resources;
 - d) Valorization of natural resources and utilization of national goods and services;
 - e) Potential favorable currency balance for the Country;
 - f) Transfer of *know-how*.
3. The non-deferment of a foreign investment request shall be communicated to the requester or its representative through registered mail with a return receipt request, expedited within the deadline referred to in article 5. The communication shall always contain justification of the reasons for non-deferment.

Article 8 **(Effects of the non-deferment)**

1. The non-deferment of the foreign investment requests implies the prohibition of the operations described in them, without prejudice to the right to appeal under legal terms.
2. Any non-deferred request may be renewed under the terms of article 2. The investor or its representative shall then be exempt from presenting any documentation that did not suffer alterations, but they must present proof of elimination of the causes for the non-deferment.

Article 9 **(Expiration of the authorization)**

1. Non-implementation of the authorized operations within the deadline or under the conditions indicated in the certificate is cause for the automatic expiration of the authorization.
2. The authorization may be renewed by dispatch of the minister responsible for planning, by way of a fundamented request by its bearer in which it is

demonstrated that non-compliance with the deadlines or conditions referred to are caused ponderous reasons beyond his control.

Article 10 **(Annulment of the Authorization)**

1. Without prejudice to the other sanctions described in the law, the authorization conferred by the certificate can be annulled by the minister responsible for planning, in the following cases:
 - a) Whenever it is subsequently verified that the information provided in the authorization process, by the requestor or his representative, were false;
 - b) Whenever the elements inscribed in the certificate have been altered by an action of its bearer or by third parties with the authorization of the bearer.
2. The dispatch referred to in the preceding number can be appealed under the terms of the law.

Article 11 **(Communication)**

The ministry responsible for planning shall immediately communicate the decisions to renew the foreign investment authorization under the terms of n° 2 article 8 and its annulment under the terms of the preceding article to the Bank of Cape Verde, to the Exports and Investment Promotion Center and to the government departments responsible for the activity sectors in which the entities the same pertain to are inserted.

CHAPTER III **Of the registration of the foreign investment**

Article 12 **(Registration)**

1. The registration or the execution or the alienation of the foreign investment referred to in article 5 of Law n° 89/IV/93, of 13 December, is made by delivering to the competent services of the Bank of Cape Verde of a triplicate of the form that constitutes annex 4 to this diploma, of which it is integral part, duly filled out and documented according to the instructions contained in the form.
2. The registration form may be delivered by hand in the services referred to in n° 1 or sent to them by registered letter, with return receipt requested, within a maximum of 30 days counting from the effective date of the operation referred in the same.

Article 13
(Organization of the registration)

1. For each foreign investor, the Bank of Cape Verde shall organize a registration case file containing sufficient elements to characterize the investor and its foreign investments in Cape Verde and follow its respective evolution.
2. The registration case file shall consist of:
 - a) A list of all the foreign investment operations, as well as the respective divestitures, carried out by the foreign investor, with indication of the nature of each operation, and the modality and value of the same, under the terms of article 5 of Law n° 89/IV/93, of 13 December;
 - b) Copies of the authorization certificates issued in their names, as well as the renewal or annulment dispatches that may be applicable to the same;
 - c) Proof documents of the effective execution of the registered foreign investment operations;
 - d) List of the exchange movements associated to each of the registered investment operations

CHAPTER IV
Final dispositions

Article 14
(Existing foreign investments)

Existing foreign investments on the date this diploma goes into effect must be registered in the Bank of Cape Verde within 120 days counting from that date.

Article 15
(Changes in the forms)

The forms that constitute annexes 1, 2, 3 and 4 of this diploma may be altered by ministerial decree of the ministry responsible for planning.

Article 16
(Sole authorization)

The execution of the operations described in n° 1 of article 2 does not require any other authorization that is not required by this diploma.

Article 17
(Revocation)

Decree law n° 155/90, of 22 December as well as all other legal dispositions that are expressly counter the provisions of this diploma are hereby revoked.

Article 18
(Derogation)

The matters regulated by this diploma with regard to articles 5, 6, 7, 8, 9 and 10 of Decree Law nº 108/89, of 30 December, are hereby derogated

Article 19
(Effective data)

This diploma goes into effect immediately.

Viewed and approved in the Council of Ministers.

Carlos Veiga – José Tomás Veiga – Úlpio Napoleão Fernandes.

Promulgated 23 December 1993

Publish it

The President of the Republic, ANTÓNIO MANUEL MASCARENHAS GOMES MONTEIRO.

Referended on 23 December 1993

The Prime Minister

Carlos Veiga

(TRANSLATOR'S NOTE: FORMS REFERRED TO IN THE TEXT, ANNEXED TO THIS DOCUMENT, ARE ATTACHED HERETO, **NOT TRANSLATED**)
