

**COUNCIL OF MINISTERS**

**Decree-Law No.18/93  
Of 29 March**

**Banks**

In as much as it is convenient, under the terms of No. 1 and 2 of Article 19 of Decree-Law No. 52-E/90, of 4 July, to regulate the constitution and operating conditions of the banking institutions referred to in subparagraphs b) and c) of No. 2, Article 5 of the cited legislation as well as the start-up and operating conditions of banking institutions branches;

In the use of the faculty conferred by subparagraph a) of No.2, Article 216 of the Constitution, the Government decrees the following:

**CHAPTER I  
Of the General Provisions**

**Article 1  
(Ambit of the Legislation)**

1. This legislation legislates the constitution and operating conditions of the commercial banks and development banks, abbreviatedly referred to as banking institutions, as well as their start-up and operating conditions of the respective branches.

2. For the purpose of this legislation it is understood as:

- a)* **Branch:** establishment without juridical personality that, while belonging to a banking institution, directly performs operations proper of the banking institution;
- b)* **Agencies:** the branches, in Cape Verde, of banking institutions with main office in Cape Verde and the supplementary branches of credit institutions with main office on the outside.

**CHAPTER II  
Of the Constitution of the Banking Institutions**

**Section I  
Constitution of Banking Institutions requested  
By persons of Capeverdian Nationality**

**Sub-Section I  
General Regime**

**Article 2  
(Ambit of Application)**

The provisions of Section I shall apply to banking institutions with main office in Cape Verde, even though, entities of the public sector participate in the respective capital, when requested by singular or collective persons, of cape-verdian nationality.

**Article 3  
(Specific Prior Authorization)**

1. The constitution of the banking institutions referred to in No. 1 of the preceding Article requires prior authorization, to be granted case-by-case, by joint ordinance from the Prime Minister and the Minister responsible for Finance.

2. The authorization is always preceded by prior expert opinion by the Bank of Cape Verde.

#### **Article 4 (General Conditions)**

1. The authorization shall be granted when the creation of the institution in question satisfies the national economic-financial and the promoters commit to:

- a)* Adopt the form of limited responsibility capital stock company;
- b)* Endow the company with a capital stock not less than the minimum established in Article 12, subscribed to and realized under the terms foreseen in the law;
- c)* That the board of directors of the company be constituted by a minimum of three members, with adequate credibility and experience to exercise the function, and retains powers to effectively determine the direction of the activity of the institution;

2. In evaluating the need and opportunity for the institution whose authorization is requested, the following criteria shall be taken into account:

- a)* Adequacy of the objectives pursued to the Country's economic, monetary and financial policies;
- b)* Credibility of the founding shareholders, in what may directly or indirectly exercise significant influence in the activity of the institution;
- c)* Possibility that the institution will improve the diversity or the quality of the services provided to the public;
- d)* Sufficiency of technical means and financial resources relatively to the type of operations pretended;
- e)* Compatibility between the institution's development perspectives and the maintenance of a sound competition in the market in which it proposes to exercise its activity.

#### **Article 5 (Documenting the Request)**

1. The authorization request shall be addressed to the Minister responsible for Finance and delivered to the Bank of Cape Verde accompanied by the following elements:

- a)* Fundamented presentation regarding the financial-economic reasons that justify the constitution of the institution;
- b)* Characterization of the type of institution to be constituted, its geographic implantation and organizational structure with the specification of the material, technical and human resources to be utilized;

- c)* Draft Statute;
- d)* Balance and demonstration of provisional results for each of the first three years of activity;
- e)* Declaration of commitment that, in the constitutive act and as a condition for the same, the amount of capital referred to in Article 12 shall be deposited in the Bank of Cape Verde;
- f)* Personal and professional identification of the founding shareholders, specifying the number of shares subscribed by each;
- g)* Certificate of criminal record of the founding shareholders, when singular persons, and of the proposed administrators, directors or managers, when collective persons, issued in less than ninety days;
- h)* Declaration that neither the founding shareholders nor companies or enterprises whose control they may have assured or in which they may have been administrators, directors or managers, were declared in the state of insolvency or bankruptcy.

2. Relatively to the founding shareholders that are credit institutions or other collective persons, the authorization request shall also be documented with the following elements:

- a)* Certificate emitted by the competent entity which indicates that the requester is legally constituted and authorized to exercise its activity and that such authorization is not necessary;
- b)* Statute or the requester's company contract, certificate of the last balance approved, statement of the respective profits and losses accounts and documental proof of the reserves and provisionment constituted;
- c)* A list, accompanied by biographical notes of the persons that constitute the administration and management organs of the requestor;
- d)* Distribution of the requester's capital stock and list of the shareholders with more than 5% of the same capital;
- e)* List of the credit institutions and other companies in whose capital the requester participates;
- f)* List of the requester's representations outside the country;
- g)* Document authorizing the requester's general assembly or of legal representatives with sufficient power to for the participation of the former in the institution to be constituted;
- h)* Certificate issued by the competent authority, indicating that the requester was authorized to participate in the institution to be constituted;
- i)* An explanation of the requester's activities in the international ambit and, namely, of the commercial, financial or other type of relationships maintained with cape-verdian companies or entities.

3. The certificates referred to in subparagraph d) of the preceding number should not have been issued more than three months ago.

4. All the documents destined to document the authorization request, not written in Portuguese, must be duly translated and legalized save for express dispensation from the Bank of Cape Verde.

5. The requesters should appoint a representative who will represent them before the authorities responsible for evaluating the authorization request and shall choose domicile in Cape Verde for the purpose of receiving notification or correspondence.

#### **Article 6** **(Documenting the Case)**

1. The Bank of Cape Verde may conduct investigation within 30 days counting from the date the request is delivered, solicit from the requesters the complementary information or elements it considers necessary or useful to the elaboration of its expert opinion or to the documentation of the authorization process.

2. The complementary information and elements referred to in the preceding number must be provided to the Bank of Cape Verde within 30 days counting from the date of the notification to that effect.

#### **Article 7** **(Decision)**

1. The Bank of Cape Verde should remit its expert opinion to the member of the Government responsible for Finance within 90 days counting from the date of delivery of the authorization request.

2. The decision on the authorization request must be proffered within seven months counting from the date it is delivered to the Bank of Cape Verde.

#### **Article 8** **(Prorogation of the Deadlines)**

If justified, the member of the Government responsible for Finance may prorogue the deadlines established in this Subsection without prejudice to the provisions of No. 2 Article 7.

#### **Article 9** **(Expiration of the Authorization)**

1. The authorization may be withdrawn if its requesters renounce it expressly or if the institution is not formally constituted within six months or it does not initiate activities within 12 months.

2. The deadlines referred to in the preceding number are counted from the date of publication of the respective authorization in the Official Bulletin and they may be prorogued one or more times.

#### **Article 10** **(Revocation of the Authorization)**

1. Without prejudice to the fundamentals admitted in the general law, the authorization may be revoked when one of the following situations takes place:

a) The authorization was obtained by way of false declarations or other illicit means,

without prejudice to the penal sanctions applicable to the case;

- b)* The institution ceases or significantly reduces the activity for a period greater than 6 months;
- c)* Some of the conditions required by subparagraph a), b) or e) of No. 1, Article 4, cease to be verified;
- d)* The registration of the designations of member of the Board of Directors is refused for lack of credibility or experience;
- e)* The institution does not provide guarantee of compliance with the obligations before creditors, especially with regard to the security of the funds that may have been entrusted to it;
- f)* Grave infraction in the administration, in the organization of the accounting or in the internal oversight of the situation;
- g)* The institution repeatedly fails to comply with the laws, regulations and instructions that discipline the activity.

The fact foreseen in subparagraph d) of the preceding number shall not constitute fundament for revocation if, within the deadline established by the Bank of Cape Verde, the institution proceeds to the designation of another administrator whose registration is accepted.

3. When the authorization of an already constituted institution is revoked, a liquidatory committee shall be appointed under the terms and for the purposes of the applicable legislation.

#### **Article 11** **(Formalities of Revocation)**

1. Having heard the authority referred to in No. 2 of Article 3, the revocation of the authorization assumes the form of a joint ordinance of the Prime Minister and the member of the Government responsible for Finance.

2. The decision to revoke is fundamented and the institution in question is so notified.

3. The decision may be appealed litigiously to the Supreme Court of Justice, under general terms.

#### **Sub-Section II** **Capital and Reserves**

#### **Article 12** **(Minimum Capital)**

1. The banking institutions cannot be constituted with a capital stock smaller than ecv 300,000,000\$00 (three hundred million escudos).

2. On the date of its constitution, the capital stock of the banking institutions must be entirely subscribed to and realized in amounts not smaller than the minimum referred to in the preceding number. The remainder should be realized within six months counting from that same date.

**Article 13**  
**(Participation in the Capital Stock)**

1. The shares representative of at least 80% of the capital stock are obligatorily nominative or registered to the bearer.

2. No shareholder, except for the State may, directly or by interposed person, retain participation greater than one fifth of the capital stock, save if a higher participation but not greater than one third is authorized by the tutelage entity, in special cases, having heard the Bank of Cape Verde.

3. The inter-living transmissions of the shares, under any title, when a participation greater than one fifth results from them, as well as any act that involves the attribution of the right to vote or other corporate rights to a person other than the owner depend on the authorization of the Minister responsible for finance, having heard the Bank of Cape Verde, under penalty of annulment.

4. Up to five days before the general assembly meets, the list of shareholders with indication of the respective participation in the capital stock should be published in the Official Bulletin and in one of the newspapers with largest circulation in the country.

**Article 14**  
**(Reserve Funds and Guarantee)**

1. A fraction not smaller than 10% of the net profits must be destined to the creation of the legal reserve fund, up to the amount of the capital stock.

2. Additionally, the institutions must constitute special reserve funds and forecasts destined to prevent risks of depreciation or losses that certain kinds of securities or operations are subject to.

3. By notice from the Bank of Cape Verde, general or specific criteria may be established for the constitution or application of the funds referred to in the preceding number.

**Sub-Section III**  
**Administration of the Banking Institutions**

**Article 15**  
**(Management and Oversight Organs)**

The composition and competence of the banking institutions management and oversight organs are established in the respective statutes, under the terms of the law.

**Article 16**  
**(Inhibition)**

1. Aside from others covered by general or special provisions, the following are inhibited from being part of banking institutions corporate organs:

- a)* Those that have been declared by executable sentence, bankrupt, or insolvent or deemed responsible for bankruptcy or insolvency of companies whose management they assured or in which they were administrators, directors or managers;
- b)* Those that have performed the functions referred to in the preceding subparagraph in companies whose bankruptcy or insolvency was prevented, suspended or avoided by intervention of the State, composition or equivalent means.
- c)* The persons condemned for crimes of falsification, theft, robbery, fraud, usury or economic crimes;
- d)* Those without recognized credibility, under the terms of subparagraph b) 11.2 of Article 4.

2. Likewise, the following cannot be part of the administration or oversight organs of banking institutions:

- a)* The credit institutions, in the cases related to subparagraph a), No. 3 of Article 32 of Decree-Law No. 52-E/90, of 4 July;
- b)* The administrators, directors, managers, consultants, technicians or representative of other credit institutions including foreign institutions or branches thereof;
- c)* Two or more relatives or persons related between themselves, respectively up to the 3rd or 2nd degree, nor two or more persons that are partners or members of the administration and oversight organs of the same company;
- d)* Those that perform the functions referred to in subparagraph b) or that are workers of singular or collective persons that retain more than one fifth of the shares of the institution in question, of any other credit institution or companies controlled by them.

#### **Sub-Section IV Alteration of the Statutes**

##### **Article 17 (Statutory Alterations)**

1. The alterations to the banking institutions statutes require prior authorization from the Bank of Cape Verde.
2. The decision must be preferred within forty-five days counting from the date of delivery of the necessary elements in the Bank of Cape Verde.

#### **Sub-Section V Merger, Break-up and Modifications**

##### **Article 18 (Special Authorization)**

1. Under special conditions and upon expert opinion from the Bank of Cape Verde, the merger, break-up or modification of the object of the banking institutions may be authorized.

2. The authorizations shall be granted in the form of dispatch by the tutelage entity.

3. In the dispatch referred to in the preceding number, the special conditions not foreseen in the legislation applicable to the commercial companies may be established, always without prejudice to the preceding norms of this diploma.

## **Section II**

### **Constitution of Banking Institutions**

#### **Article 19**

##### **(Applicable Norms)**

The provisions of Articles 3 through 18 of this legislation, with the necessary adaptations and with the specialties contained in this Section, apply to the constitution of banking institutions with main office in Cape Verde when requested, in whole or in part, by single or collective persons of foreign nationality.

#### **Article 20**

##### **(Special Conditions)**

1. The administrators with foreign nationality must have knowledge of the Portuguese language.

2. A minimum of 50% of the institution's workers must have cape-verdian nationality.

#### **Article 21**

##### **(Revocation of the Authorization)**

The authorization may also be revoked if grave facts or situations occur, principally of a financial nature pertaining to foreign shareholders of the institution in question that significantly affect the Country's socio-economic interests.

## **Section III**

### **Branches of Foreign Banking Institutions**

#### **Article 22**

##### **(Applicable Norms)**

The opening of the first branches of banking institutions that constitute their establishment in the Country is subject to the provisions of Articles 3 to 9 with the necessary adaptations and with the specialties contained in this Section.

#### **Article 23**

##### **(Documenting the Request)**

The institution requesting the opening of a first branch must identify in the initial request the managers proposed in Cape Verde.

#### **Article 24**

##### **(Revocation of the Authorization)**

1. The authorization for opening the first branch may be revoked when, relatively to the branch or its managers:

*a) If any of the situations foreseen in subparagraphs a), b), d), e) and f) of No.1 of*



Article 10, takes place. ;

- b) Any of the conditions of Articles 25, 27 and 28 cease to take place.
- c) If grave facts and situations occur, principally of a financial nature regarding the foreign shareholders of the institutions in question, that significantly affects the country's financial and economic interests.

2. The authorization must be revoked if the authorities of the country in which the parent institution has main office removes the authorization that parent organization needs to carry out its activity in that country.

3. The revocation shall not harm the provisions of Article 26.

4. The revocation is executed under the terms of Article 11.

#### **Article 25** **(Affectation of Capital of the Branches)**

1. The capital affected to the operations to be executed by the branches in the national territory must be adequate to guarantee these operations and not less than the minimum foreseen in Article 12, without prejudice to the foreign institutions answering for the operations executed by their branches in Cape Verde.

2. The Bank of Cape Verde shall determine the rules for the determination of what is considered capital affected.

3. The minimum amount of the capital affected must be deposited in the Bank of Cape Verde before the special record is made in the same institution.

4. The branches must apply in Cape Verde the amount of the capital affected to its operation in the Country, as well as the reserves constituted and the deposits and/or the resources herein obtained, without prejudice to the other trade and exchange regulating provisions.

#### **Article 26** **(Patrimonial Autonomy of the Branches)**

1. The assets applied in Cape Verde may answer for obligations assumed in other countries by the principal institution, but only after the obligations contracted here have been satisfied.

2. The foreign sentence that decrees the bankruptcy or liquidation of an institution with main office in another country can apply to the branches it has in Cape Verde, even when reviewed by Cape-verdian courts, only after the provisions of the preceding number have been complied with.

#### **Article 27** **(Other Operating Conditions of the Branches)**

1. The management of the branch must be entrusted to an administration with a minimum of two managers and with plain and sufficient powers to resolve definitively with the State and with the private entities, in the Country, all matters that pertain to its activities.

2. The managers are subject to the requisites of credibility and experience required to the administrators of credit institutions with main office in Cape Verde.
3. The branches are obligated to use the Portuguese language in its accounting book keeping.
4. A minimum of 50% of the branch workers must be of Cape-verdian nationality.
5. The managers of foreign nationality must have sufficient knowledge of the Portuguese language.

**Article 28**  
**(Centralization of the Accounting)**

The foreign credit institutions shall maintain, centralized in their first branch, a specific accounting of their operations executed in Cape Verde.

**Article 29**  
**(Alteration of the Operating Conditions)**

The provisions of Articles 17 and 18 shall apply to the alteration of the conditions in which the opening of the branches was authorized.

**Section IV**  
**Agencies**

**Article 30**  
**(Special and Prior Authorization)**

The opening of agencies of institutions with main office in Cape Verde or agencies of the first branches in Cape Verde of credit institutions with main office in a foreign country shall require special prior authorization from the Bank of Cape Verde.

**Article 31**  
**(General Conditions)**

1. In the evaluation of the authorization request the interest to the economy of locality or area must be taken into account.
2. In the evaluation of the interest of the local economy, the economic situation of the municipality or island, the number and the nature of already established banking institutions, the volume of deposits or other monetary resources and the respective applications, by credit approval or in some other form, executed by the referred institutions.
3. One authorization condition is that the sum of the capital and the reserves of the institution be adequate to guarantee the operations to be executed by the agency.

**Article 32**  
**(Documenting the Process)**

1. The authorization request is filed in the Bank of Cape Verde.

2. The Bank of Cape Verde may solicit information and complementary elements from the requestor and carry out all the investigations it deems necessary or useful to document the respective process.

**Article 33**  
**(Expiration of the Authorization)**

The authorization expires if the requestor expressly renounces it or if the authorization granted the institution the agency belongs to is revoked.

**Article 34**  
**(Revocation of the Authorization)**

1. The authorization may be revoked if the agency is not open to the public within eight months counting from the date of notification of the authorization dispatch or if, relatively to the agency or its managers, in the applicable part, some of the situations foreseen in subparagraphs *a)*, *b)*, *d)*, *e)*, *f)* and *g)* of No. 1, Article 10, are verified.

2. The revocation of the authorization assumes the form of an Ordinance.

3. The conventional procedure for the infractions committed is of the competence of the Bank of Cape Verde.

**CHAPTER III**  
**Of the Registration of the Banking Institutions**

**Article 35**  
**(Subjection to Special Regime)**

The banking institutions are subject to special registration in the Bank of Cape Verde.

**Article 36**  
**(Registration Elements)**

1. The registration of the banking institutions with main office in Cape Verde includes:

- a)* The name of the institution;
- b)* The date of its constitution;
- c)* The location of its main office;
- d)* The capital authorized;
- e)* The capital realized;
- f)* The list of the qualified shareholders;
- g)* The names of the administrators and of any representatives with management power, as well as the components of the oversight organs and of the table of the general assembly;
- h)* The place and date of creation of the agencies and any other branches;

- i)* The alterations that take place in the elements referred to in the preceding subparagraphs.
2. The registration of the banking institutions with main office in a foreign country, established in Cape Verde, includes:
- a)* The name of the institution;
  - b)* The date in which it was authorized to establish in Cape Verde;
  - c)* The location of the main office;
  - d)* The capital realized;
  - e)* The name of the managers or representatives in Cape Verde;
  - f)* The location of the principal establishment in Cape Verde and of its agencies;
  - g)* The alterations that take place in the elements referred to in the preceding subparagraph.

**Article 37**  
**(Requesting the Registration)**

1. The registration must be requested within 30 days, counting from the date of the constitution to establish in Cape Verde, as the case may be, but always before the beginning of activity.
2. The annotation of the alterations to the registration must be requested within 30 days, counting from the date in which they take place.
3. Summary certificates of the registration and the alterations shall be issued to whoever shows a legitimate interest in requesting them.
4. The fees and the emoluments due for the registration shall be fixed by notice from the Bank of Cape Verde and shall revert in favor of the same.

**Article 38**  
**(Sanctions)**

The infractions to the provisions of the preceding Article shall be punished in conformity with Articles 64 to 79 of Decree-Law No. 52-E/90, of 4 July.

**CHAPTER IV**  
**Of the Diverse and Final Provisions**

**Article 39**  
**(Applicable Legislation)**

The banking institutions established in Cape Verde, with main office in a foreign country, are subject to the cape-verdian legislation and to the jurisdiction of the cape-verdian courts with regard to all the operations pertaining to Cape Verde.

**Article 40**  
**(Firm or Denomination)**

1. The banking institutions established in Cape Verde, with main office in a foreign country may use the firm or the denomination that they used in the State of the respective main office.

2. If the use of the firm or denomination under the terms of the preceding number is susceptible of creating confusion, the Bank of Cape Verde may require, in the interest of clarity, that an explanation be added to the firm or the denomination.

**Article 41**  
**(Accounting Plan)**

The accounting of the banking institutions referred to in No.1, Article 1, must be organized in accordance with the classification and nomenclature of an accounting plan to be approved by notice from the Bank of Cape Verde.

**Article 42**  
**(Effective Date)**

This legislation goes into effect on 1 July 1993.

Viewed and approved by the Council of Ministers.

*Carlos Veiga — José Tomás Veiga.*

Promulgated on 17 March 1993.

Publish it.

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

Referended on 17 March 1993.

The Prime Minister, *Carlos Veiga*