

Law n° 89/IV/93

Of 13 December 1993

(General conditions for making foreign investments)

Under the terms of subparagraph b) article 186 of the Constitution, by mandate of the People, the National Assembly decrees the following:

CHAPTER I
General provisions

Article 1
(Object)

This law establishes the general conditions for making foreign investments in Cape Verde, as well as the rights, guarantees and incentives attributed in the ambit of foreign investment.

Article 2
(Ambit of application)

This diploma applies to direct foreign investments made in any sector of economic activity and to juridical-business situations that, in this ambit, imply the exercise of ownership or exploration of enterprises of an economic character.

Article 3
(Foreign investment)

1. All the participation in economic activity carried out under the terms of the law, with contributions with pecuniary value, originating outside the country, are considered foreign investment.
2. For the purpose of the provisions of n° 1, the following are considered contributions origination outside the country:
 - a) The freely convertible currency transferred directly from the outside or deposited directly in legally established financial institutions, in conformity with the laws and regulations in effect;
 - b) The assets, services and rights, imported without expenditure of currency for the country;
 - c) The profits and dividends produced by a foreign investment and legally reinvested, in the same or in another economic activity.

3. The foreign investment consists of the following:

- a) Creating a new enterprise in Cape Verde, under individual name or as a firm;
- b) Creating branches or other forms of representation of enterprises legally constituted outside the country, under the terms and conditions authorized in applicable cape verdian legislation;
- c) Acquiring assets of existing enterprises;
- d) Acquiring parts of firms or increasing capital participation in enterprises already constituted in Cape Verde;
- e) Contracting that implies ownership or exploration of enterprises, establishments, real estate complexes and other installations or equipments destined for the exercise of economic activities;
- f) Conceding goods and equipments by “leasing” or similar regimes as well as any other regimes that imply the maintenance of assets in the investor’s property, that are connected to the receiving entity by act or contract in the ambit of the preceding subparagraphs;
- g) Loans or supplementary installments of capital, obtained directly by the foreign investor, to the enterprises in which the investor participates, as well as any other loans connected to the share in the profits.

Article 4 (Foreign Investor)

Any singular or collective person, national or foreign, that makes a foreign investment duly authorized under the law is considered a foreign investor.

Article 5 (Registration requirement and authorization)

1. The following require prior authorization from the Minister responsible for finance and planning and registration in the Bank of Cape Verde:

- a) Executing foreign investment operations such as those defined in n° 3 of article 3;
- b) The revisions of contracts covered by subparagraph e) of n° 3 of article 3, whenever such revisions imply the entry of new foreign investors as contracting part or the alteration of the financial conditions in molds not authorized in the initial contract.

2. The alienation of enterprises, branches, other forms of representation, as well as all the alteration in capital participation or contracts that constitute foreign investments under the terms of article 3, n° 3, are equally subject to registration in the Bank of Cape Verde.
3. The following are exempt from the prior authorization referred to in number 1:
 - a) The increase in capital participation by foreign investors in enterprises, branches or other forms of entrepreneurial representation in which there already existed prior participations;
 - b) The participation transactions of enterprises, branches or other forms of entrepreneurial representation, when carried out between foreign investors who already had participations in these entities;
 - c) The operations included in the ambit of subparagraph g) of n° 3 of article 3.
4. However, the conditions pertaining to deadlines and interest rates of the operations referred to in subparagraph c) of the preceding number, remain subject to prior authorization by the Bank of Cape Verde.

Article 6 **(Applicable legislation)**

1. The foreign investment is subordinated to this law, its regulations and additional legal diplomas in effect in the Republic of Cape Verde.
2. The economic activities with foreign investments participation are subordinated to the juridical forms and juridical regimes in effect in the Republic of Cape Verde and applicable to their respective activity sectors, specifically with reference to the conditions of access and activity and to the applicable incentives.

CHAPTER II **Of the guarantees**

Article 7 **(Non-discrimination)**

1. The State guarantees a just and equitable treatment to the foreign investor and to the undertakings with the participation of foreign investment.
2. Save for the provisions of this diploma, the foreign investors receive a treatment identical to that of other investors, relative to the rights and obligations ensuing from cape verdian legislation;
3. All foreign investors of non cape-verdian nationality receive the same treatment, with reservation for the specific provisions contained in treaties and accords signed between the Government of Cape Verde and other States.

Article 8
(Security and protection)

1. The State guarantees the protection of the assets and rights included in the ambit of the foreign investment. Those assets and rights cannot be nationalized or expropriated.
2. Expropriations based on public utility, under the terms of the law, are exceptions to the provisions of the preceding number. The law always confers to the public investor the right to just indemnity, based on the real and actual value of the investment on the date of the declaration of public utility.
3. The amount of the indemnity referred to in the preceding number 2 is established by mutual accord between the Government and the investor. In the absence of an accord, the indemnity is established in accordance with the arbitration proceedings established in article 17.
4. The indemnity referred to in number 2 is freely transferable to a foreign country and shall be paid promptly and without unjustified delays, in a freely convertible currency agreed to by the Government and the foreign investor. It will earn interest at the LIBOR rate, on a 30-day basis applicable to the currency in question, from the day it is established to the effective date of payment.

Article 9
(Regarding the transfer of currency)

1. All foreign investors are guaranteed the transfer to the outside, in freely convertible currency at the exchange rate in effect in Cape Verde on the legal date of entitlement as a consequence of foreign investment operations duly registered under the terms of article 6, of the following:
 - a) The dividends and profits distributed to them as a result of the foreign investment they may have made;
 - b) Capital resulting from alienation, liquidation or extinction of enterprises, branches or other forms of representation or entrepreneurial participations that constitute their foreign investment, as well as those resulting from the alienation of assets connected to the exploration of those entities owned by the investor;
 - c) Any amounts that are due them by virtue of contracts that constitute foreign investment under the terms of subparagraph e) of nº 3 article 3;
 - d) Installments pertaining to amortizations and interests from financial operations that constitute foreign investment under the terms of subparagraphs f) and g) of number 3 article 3;

- e) Personal revenue obtained in the exercise of management or administration functions in the ambit of economic activities in which he/she participates as a foreign investor.
2. Once the fiscal obligations relative to the capitals to be transferred are complied with and the registration of the foreign investment operation are effected, in conformity with the provisions of article 5, the transfers referred to in the preceding number 1 shall be effected promptly and without unjustified delays, within a maximum of 30 days, counting from the date of delivery of the respective request to the Bank of Cape Verde or of the receiving of complementary information, in conformity with article 6 of this article, duly justified.
 3. The transfers relative to subparagraph b) n° 1 of this article whose amounts are susceptible of gravely perturbing the balance of payment are exceptions to the provisions of the preceding number. In such cases, the Governor of the Bank of Cape Verde may determine exceptionally to break the transfers down to equal and successive quarterly payments along a period that cannot exceed 2 years.
 4. Beginning on the 31st day counting from the date the duly justified request for transfer is delivered to the Bank of Cape Verde, the deposited amounts awaiting transfer in financial institutions legally established in the country will earn interest at the LIBOR rates on a 30 day basis applicable to the currency in question, from that day to the effective date of transfer. The interest earned is also transferable at the same time as the capitals.
 5. The payment of the interests referred to in the preceding number is of the responsibility of the Bank of Cape Verde unless the reasons for non-transfer are attributable to another entity.
 6. The Bank of Cape Verde may refuse the transfer request referred to in n° 1, whenever:
 - a) The amounts in the transfer requests result from foreign investment operations not registered under the terms of the law;
 - b) The declarations or the proofs presented are false or insufficiently justified;

Article 10

(Accounts and currencies)

1. Foreign investors may dispose of their accounts in convertible currency, in financial institutions established in the country and authorized by law, through which they may carry out all their operations.
2. The accounts alluded in the preceding number can only be moved when they are credited with transfers from the outside or from other accounts in foreign currency existing in the country in financial institutions duly authorized under the terms of the law.

3. The opening and movement of the accounts referred to in n° 2 shall be regulated by the Government under proposal from the Bank of Cape Verde.

Article 11 **(Foreign workers)**

1. The economic activities with foreign investment participation may recruit foreign workers under the terms of the law.
2. The foreign workers recruited under the terms of the preceding number have the following rights and guarantees:
 - a) Free transfer to the outside of the revenues earned in the ambit of the foreign investment;
 - b) Customs benefits and facilities identical to those attributed under the terms of Decree-Law n° 39/88, of 28 May.
3. The provisions of the preceding number apply also to workers of cape verdian nationality who, at the time they are contracted, have lived for more than five years outside Cape Verde.

CHAPTER III **Of the incentives to foreign investment**

Article 12 **(General incentives)**

The economic activities with foreign investment participation benefit from the general incentives described in the legislation in effect and applicable to the respective sectors of activity.

Article 13 **(Special incentives)**

1. The dividends and profits distributed to the foreign investor and originated in foreign investment authorized under this diploma, are exempt from taxes in the following cases:
 - a) For a period of five years counted from the date the investment is registered;
 - b) Whenever they are reinvested under the terms of the law, in the same or in another economic activity in Cape Verde.
2. The interests and amortizations corresponding to financial operations that constitute foreign investment under the terms of subparagraphs f) and g) of n° 3, article 3 are also tax-exempt.

Article 14
(Stabilization of the fiscal regime)

After the exemption period allowed in subparagraph a) of article 13 has elapsed and in the cases where they are not covered by the provisions of subparagraph b) of the same article, the dividends and profits distributed to the foreign investor and originating from foreign investments, authorized under the terms of this diploma, shall be levied a single tax at the rate of 10%, without prejudice to more favorable provisions contained in accords signed between the State of Cape Verde and the State of nationality of the foreign investor.

Article 15
(Limitation on the incentives)

The incentives described in article 13 do not apply:

- a) To foreign investments in economic activities turned fundamentally to the internal market;
- b) Foreign investments in the financial sector that shall be the object of a specific legislation.

CHAPTER IV
Special conditions

Article 16
(Convention of establishment)

1. Convention of establishment is a written contract, celebrated by initiative of the Government, between the State of Cape Verde and the foreign investor, with a view to the exercise of a determined economic activity in Cape Verde.
2. The convention of establishment defines an exception regime. It can be celebrated only relatively to activities that, for their dimension or nature, by their economic, social, ecologic or technological implications or for other circumstances, reveal themselves to be of exceptional interest to the national development strategy or recommend the adoption of clauses, caution, guarantees or special conditions not included in the general regime in effect.
3. The celebration of a convention of establishment is authorized by Resolution of the Council of Ministers that should indicate expressly the essential elements of the activity they pertain to, as well as the clauses, conditions and special incentives authorized.

4. The common regime established in the legislation in effect relative to the respective sector of activity is subsidiarily applied to the economic activities regulated by convention of establishment

CHAPTER V

Conflict resolution

Article 17

(Conciliation and arbitration)

1. Differences between the State and the foreign investor pertaining to the foreign investment, shall be resolved by means of conciliation or arbitration, under the terms of this article, if another form has not been established in international accords subscribed to by Cape Verde or conventioned by common accord between the parts.
2. The arbitration proceeding is instituted by written notification from one of the parts to the other, specifying:
 - a) The object of the difference;
 - b) The proposed mode of arbitration;
 - c) The name(s) of the arbitrator(s)
3. The notified party must respond in writing, within 30 days, and address expressly all the points referred to in nº 2, above.
4. A single arbitrator shall do the arbitration, unless the parts agree to have it done by an arbitration commission and to constitute the commission within 45 days counting from the date of notification indicated in nº 2.
5. The single arbitrator shall be chosen by common accord between the parts, and the parts may opt to solicit that the Supreme Council of Magistracy designates the arbitrator. When the foreign investor does not have the cape verdian citizenship, an international arbitration agency agreed to by the parts may be appointed.
6. If within 90 days, counting from the date of the notification referred to in nº 2, there is no agreement regarding the designation of the single arbitrator, any of the parts may request the appointment of one by the International Chamber of Commerce, with main office in Paris. When the foreign investor has cape verdian nationality the designation request goes to the Superior Council of Magistracy.
7. Under the terms of the preceding number, the single arbitrator or arbitrator president designated by the International Chamber of Commerce in Paris, may not have the same nationality as either of the parts involved.
8. The following shall apply in the resolution of conflicts:

- a) The law in effect in the Republic of Cape Verde;
 - b) The accords signed between Cape Verde and the country of nationality of the foreign investor involved;
 - c) Subsidiarily, the applicable international norms.
9. The arbitration shall be made in Cape Verde, if the parts do not expressly agree to another location. In the absence of agreement to the contrary, the arbitration language shall be the Portuguese.
10. The arbitration decision is final and not subject to recourse.

Article 18
(International Accords)

This law assures the rights and guarantees granted to foreign investments without prejudice to those resulting from accords celebrated between the Republic of Cape Verde and other States and international organizations.

Article 19
(Accords already signed)

The accords signed between the Government and foreign investors up to the date this diploma goes into effect are valid and will remain valid along with their contents.

Article 20
(Regulamentation)

1. Within 90 days, the Government shall establish by decree, the regulatory norms necessary to implement this diploma.
2. It behooves the Minister responsible for the area of planning.....

CHAPTER VI
Final disposition

Article 21
((Revocation))

Law 49/III/89, of 13 July 1989, the Decree-Law nº 110/89, of 30 December and in general, all the legal provisions contrary to the provisions of this diploma are hereby revoked.

Article 22
(Effective date)

This law goes into effect 30 days after its publication.

Approved 18 October 1993

Publish it

The President of the National Assembly, *Amilcar Fernandes Spencer Lopes*

Promulgated 29 November 1993

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

Signed 30 November 1993

The President of the National Assembly, *Amilcar Fernandes Spencer Lopes*