

Cabo Verde

External Investment Code (1993)

Official translation

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External Investment Code

Law No. 89/IV/93

Official Gazette

Mandated by the People, the National Parliament determines, according to paragraph b) of article 186 of the Constitution, the following:

Chapter I. General conditions

Article 1. Objective

The present law establishes the general conditions for the establishment of external investments in Cabo Verde, as well as the rights, warranties and incentives granted to external investments.

Article 2. Scope

The present law applies to external direct investments made in any sector of economic activity and to the legal negotiating situations that, in this scope, entails the propriety or operation of economic enterprises.

Article 3. External investment

An external investment is any participation in an economic activity made, according to the law, with contributions from abroad which can be monetarily evaluated.

For the effect of the established in number 1, the following are contributions from abroad:

- The legally convertible foreign currency transferred from abroad or deposited in any legal financial institution, according to laws and regulations in force;
- Goods, services and rights imported without foreign exchange costs to the country;
- Profits and dividends derived from a foreign investment and re-invested in the same or another economic activity, according to the law.

An external investment may result in:

- A new enterprise in Cabo Verde, in the form of a partnership or a sole proprietorship;
- Creation of branches or any other kind of representative offices of legally established foreign enterprises;
- Total or partial acquisition of assets in an existing enterprise;
- Purchase of shares or increase of share ownership in an existing Capeverdean enterprise;
- Contracts that imply the ownership or operation of an enterprise, a business, a real estate and of other facilities or equipment intended for the operation of economic activities;
- Leasing or equivalent concession regime of equipment, as well as any other regime that implies the maintenance of goods in the investor's propriety in the scope of previous paragraphs;
- Capital loans or installments directly made in the participating enterprises by the foreign investor, as well as other loans linked to the participation on profits.

Article 4. Foreign investor

A foreign investor is any collective or individual person, national or foreign, that undertakes a foreign investment authorized in accordance with the law.

Article 5. Authorization and registration

The following situations are subject to prior authorization from the Minister in charge of the Planning and to registration at the Central Bank (Banco de Cabo Verde):

- Undertaking of foreign investment operations, as referred to in article 3, number 3 of the present Law;
- Revision of contracts covered in the scope of paragraph e) of article 3, number 3, whenever implying the entry of new foreign investors as contracting parties or the change of financial conditions non foreseen in the initial contract.
- Buy-outs of enterprises, branches, or other kinds of representation, as well as any changes in share ownership or in contracts, must also be subject to registration at the Central Bank, according to article 3, number 3.

The following situations are not subject to prior authorization as in number 1:

- Increases of share ownership by foreign investors in enterprises, branches, or other kinds of venture representation where they previously had a participation;
- Transaction of shares of enterprises, branches, or other kinds of venture representation, when made among foreign investors that already detained shares on those entities;
- Operations covered by paragraph g) of article 3, number 3.

However, the conditions regarding terms and interest rates of the operations referred to in paragraph c) of the previous article are subject to prior approval from the Central Bank.

Article 6. Applicable legislation

Foreign investment is regulated by the present law, its regulations and other decrees in effect in the Republic of Cabo Verde.

Economic activities which are participated by foreign investment are subject to the rules or regulations established in legal regimen of the Republic of Cabo Verde, applicable to the respective sectors of activity, namely regarding access and operation conditions, as well as applicable incentives.

Chapter II. Guarantees

Article 7. Non- discrimination

The State guarantees fair and equal treatment to the foreign investor and to the ventures that have foreign investment participation.

Without prejudice to the established in the present law, foreign investors are granted the same treatment as other investors, as far as rights and obligations resulting from the Capeverdean law are concerned.

Foreign investors of a nationality other than the Capeverdean are entitled to the same treatment, without prejudice to specific conditions established in treaties and agreements signed between the Republic of Cabo Verde and other States.

Article 8. Security and protection

The State guarantees against expropriation and nationalization, the security and protection of assets and rights, understood within the framework of foreign investment.

The established in the previous number does not apply to expropriations justified on the ground of public interest, in accordance with the law, which always grants to the foreign investor the right to be fairly compensated in an amount based on the real and present value of the investment on the date public interest was declared.

The amount of the indemnity mentioned in previous number 2 will be established by joint agreement between the Government and the foreign investor or, in lack of agreement, by arbitration, according to article 17 below.

The indemnity referred to in number 2 can be freely transferred abroad and will be paid immediately, without unjustifiable delays, in a freely convertible currency agreed upon by the Government and the foreign investor, and will earn interests at the LIBOR rate, as for 30 days applicable to the same currency, from the day of its determination to the day of the actual payment.

Article 9. Foreign currency transfer

It is granted to foreign investors the right to transfer abroad, in a freely convertible currency and at the exchange rate prevailing in Cabo Verde on the date the request is made, all amounts resulting from foreign investment operations duly registered, as established by article 6, namely the following:

- Dividends and profits resulting from foreign investment operations;
- Capital derived from alienation, liquidation or extinction of enterprises, branches or other forms of representation or ownership that constitutes their foreign investment, as well as capital resulting from the alienation of assets linked to the operation of those facilities, propriety of the investor;
- Any amounts earned as a result of contracts that constitute foreign investment, as established by paragraph e) of article 3, number 3;
- Sums referring to amortization and interest rates resulting from financial operations that constitute foreign investment, as established by paragraphs f) and g) of article 3, number 3;
- Income derived from the exercise of management functions performed as a foreign investor.

Once fulfilled all fiscal obligations related to the capital to be transferred and made the registration of foreign investment operations, in accordance with the established in article 5, all transfers mentioned in previous number 1 above will be made immediately, without unjustifiable delays, within 30 days from the date of entry at the Central Bank of the respective demand or of the reception of complementary information, according to number 6 of the present article.

The established in the previous number 2 does not apply to the transfers mentioned in paragraph b) of number 1 of the present article, when the amounts to be transferred may cause serious constraints to the balance of payments of Cabo Verde. In this situation, the Governor of the Central Bank may exceptionally order the transfer in a series of equal and successive quarterly installments, over a period not to exceed two years.

From the 31st day of the justified request to the Central Bank for the transfer funds, the amount deposited in a national legally established financial institution, awaiting transfer, will earn interest at the LIBOR rate, as for 30 days applicable to the concerned currency, from this day to the day of the actual transfer. The earned interest will be transferred along with the amount deposited.

The payment of interests mentioned in the previous number is of the responsibility of the Central Bank, unless some other entity is responsible for the delay.

The Central Bank can always refuse a request to transfer the funds mentioned in number 1 of the present article if:

- The amounts relates to a foreign investment operation non registered in accordance with the law;

- The declarations and proofs presented contain false or inadequate information.

Article 10. Accounts in foreign currency

Foreign investors are permitted to hold foreign currency accounts in national financial institutions authorized by law, through which they can make all necessary banking operations.

The accounts foreseen in the previous number may only be fed with foreign currency coming directly from abroad or from other accounts in foreign currency held in the country in institutions authorized by law.

Opening and operation of the accounts mentioned in preceding number 2 will be regulated by the Government by proposal from the Central Bank.

Article 11. Foreign workers

Economic activities that have foreign investment participation can hire foreign workers, according to the law.

Foreign wage earners hired in accordance to the preceding number benefit from the following rights and warranties:

- Free expatriation of wages earned in the scope of the foreign investment;
- Customs exemptions similar to the ones granted in accordance with Decree-Law No. 39/88, of May 28.

The established in the preceding number also applies to Capeverdean workers that at the date of recruitment lived abroad for at least five years.

Chapter III. Incentives to foreign investment

Article 12. General incentives

Economic activities which have foreign investment participation will benefit from the general incentives foreseen in existing law for each sector of activity.

Article 13. Special incentives

Dividends and profits distributed to the foreign investor and resulting from the foreign investment, authorized and in accordance to the law, are tax-exempt in the following situations:

- During the first five years, from the day the foreign investment is registered;
- Whenever they are re-invested, according to the law, in the same or another economic activity in Cabo Verde.

Are also tax-exempt the amortization and interest rates corresponding to the financial operations that constitute a foreign investment, according to paragraphs f) and g) of article 3, number 3;

Article 14. Normalization of the fiscal regime

Once terminated the exemption term foreseen in paragraph a) of article 13, and in cases not covered by the established in paragraph b) of the same article, the dividends and profits earned by the foreign investor and resulting from the foreign investment, authorized in accordance to the present law, are subject to a single tax at a rate of 10%, without prejudice to more favorable fiscal arrangements agreed upon between the State of Cabo Verde and the State of origin of the foreign investor.

Article 15. Limits to incentives

The incentives foreseen in article 13 do not apply to:

- Foreign investments made in economic activities essentially oriented to the domestic market;
- Foreign investments made in the financial sector, which will be covered by specific legislation.

Chapter IV. Special conditions

Article 16. Convention of Establishment

A convention of establishment is a written contract, celebrated by the Government's initiative, between the State and a foreign investor, in view of the exercise of a specific economic activity in Cabo Verde.

A convention of establishment defines an exceptional regime, and can only be celebrated in relation to activities that, by their dimension or nature, by their economic, social, ecological or technological implications or by other circumstances, reveal to be of exceptional interest in the framework of Cabo Verde's development strategy or recommend the adoption of clauses, cautions, guarantees or special conditions not covered by the general regime in force.

The celebration of a convention of establishment is authorized by a resolution from the Council of Ministers, which must clearly indicate the essential elements of the activity it refers to, as well the clauses, requirements, conditions and authorized special incentives.

To the economic activities governed by conventions of establishment applies the common regime established by the law in force related to the respective sector of activity.

Chapter V. Resolution of conflicts

Article 17. Conciliation and Arbitration

Conflicts between the State and the foreign investor regarding foreign investments, will be solved by means of conciliation and arbitration, according to the present article, if other methods have not been established differently in international agreements signed by the Government of Cabo Verde or defined by common agreement by the parties.

The arbitration procedure is initiated by written notice from one party to the other, stating:

- The object of the conflict;
- The proposed arbitration method;
- The name(s) of the arbitrator(s).

The notified party must respond in writing, within 30 days, referring expressly to all points listed in number 2 above.

The arbitration will be performed by a single arbitrator, except when the parties agree upon the use of an arbitrage commission to be established non later than 45 days from the date of the written notice established in number 2.

The single arbitrator will be appointed by joint agreement of both parties. They may choose to request his/her appointment by the Superior Court or, if the foreign investor is not Capeverdean, by an international arbitration entity agreed upon.

If, within 90 days of the written notice referred to in the previous number 2, there is no agreement on the process of nomination of a single arbitrator, any of the parties may request his/her nomination by the Paris headquarters of the International Chamber of Commerce. When the investor is a Capeverdean, the request is submitted to the Superior Court.

The single arbitrator or the president of the commission designated by the Paris International Chamber of Commerce, as established previously, can not be of the same nationality of none of the involved parties.

The following applies to the resolution of conflicts:

- Applicable legislation in force in Cabo Verde;
- Applicable agreements signed between Cabo Verde and the country of origin of the involved foreign investor;
- Subsidiary, international applicable laws.

The arbitration will take place in Cabo Verde, if another location is not agreed upon by the parties.

The arbitration language will be Portuguese, if the parties do not disagree on the matter.

The decision of the arbitration is final and not subject to appeal.

Article 18. International agreements

The rights and guarantees granted to foreign investments, in light of the present law, are assured without prejudice of those resulting from agreements celebrated between the Republic of Cabo Verde and other States or International Organizations.

Article 19. Agreements already in force

The agreements of economic nature celebrated between the Government and the foreign investor before the date of application of the present law are valid and remain in effect as they are.

Article 20. Regulation

Within 90 days, the Government will establish by Regulatory Decree, regulation required to the implementation of the present law.

The Minister in charge of the Planing is responsible to promote the elaboration and approval of the regulations previously mentioned.

Chapter VI. Final conditions

Article 21. Revocation

Are revoked: Law 49/III/89, of July 13, 1989, Decree-Law 110/89, of December 30, as well as, in general, all legal conditions contrary to the established in the present law.

Article 22. Entry into force

The present law enters into force within 30 days of its publication.

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