

Cabo Verde

CAPE VERDE'S INVESTMENT LAW (2013)

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The year indicated in brackets after the title of the law refers to the year of publication in the Official Gazette or, when this is not available, the year of adoption of the law.

Contents

CHAPTER I

General Considerations

CHAPTER II

Rights and guarantees

CHAPTER III

Incentives

CHAPTER IV

Conflict Resolution

CHAPTER V

Transitional and final provisions

CAPE VERDE'S INVESTMENT LAW

Decree-Law No. 34/2013, of 24 September

Agreeing to introduce changes to Law No. 13/VIII/2012, of 11 July, in order to obviate the emergence of a legal framework for Investment in Cape Verde, based on speed, dematerialization and streamlining of the investment process, it is determined that foreign investment registration at Banco de Cabo Verde will now be done electronically, through Cabo Verde Investimento, on the day following the issuance of the Investment Registration Certificate by Cabo Verde Investimento, thereby enhancing the status of Cabo Verde Investimento as the investor's only interlocutor.

This law establishes that reference to "Code" pursuant to various regulations of the aforementioned law be changed to "Law" and deletes the contents of Article 3, paragraph 2, sub-paragraph j), seeing as it repeats what comes in sub-paragraph h) of the same paragraph and article.

It also enables the existence of a legal framework for Investment in Cape Verde that will include the rules and principles contained in Law No. 13/VIII/2012, of 11 July, along with the specifications that develop or regulate it.

Thus:

Using the powers conferred by Article 204, paragraph 2, sub-paragraph a) of the Constitution, the Government decrees the following:

Article 1

Purpose

The purpose of this law is to amend Law No. 13/VIII/2012, of 11 July.

Article 2

Amendment to Law No. 13/VIII/2012, of July 11

1. The term "Code," contained in Law No. 13/VIII/2012, of 11 July, shall referred to as "Law".
2. The contents of Article 3, paragraph 2, sub-paragraph j) of Law No. 13/ VIII/2012, of 11 July, are deleted.
3. Paragraphs 4 and 5 of Article 7 of Law No. 13/VIII/2012, of 11 July, are amended and are now worded as follows:

"Article 7

[...]

1. [...]

2. [...]

3. . [...]

4. Foreign investment must be registered with Banco de Cabo Verde.

5. Registration is done electronically, through Cabo Verde Investimento, on the day after the Investment Registration Certificate is issued by Cabo Verde Investimento.

6. [...]

7. [...]

7. [...]

8. [...]

9. [...]

Article 3

Cape Verde's Investment Law

The rules and principles contained in Law No. 13/VIII/2012, of 11 July, along with the specifications that develop and/or regulate it, constitute the legal framework for investment in Cape Verde, called Cape Verde's Investment Law, which shall be translated, within six months from the publication of this law, to English, French and Spanish.

Article 4

Effect

This law has retroactive effect to January 1, 2013.

Article 5

Republication

Law No. 13/VIII/2012 Law, of 11 July, with the amendments now introduced, is republished in annex, which is an integral part of this law.

Article 6

Coming into force

This law comes into force on the day following its publication.

Reviewed and approved by the Council of Ministers on August 1, 2013

Jose Maria Pereira Neves

Cristina Isabel Lopes da Silva Monteiro Duarte

Humberto Santos de Brito

Enacted on September 13, 2013

To be published.

The President of the Republic, JORGE CARLOS DE ALMEIDA FONSECA

ANNEX

(Referred to in Article 5)

Law No. 13/VIII/2012

Of 11 July

By mandate from the people, in accordance with Article 175, sub-paragraph b) of the Constitution, the National Assembly decrees the following:

CHAPTER I

General Considerations

Article 1

Purpose

The purpose of this Law is to establish the general bases to accelerate and facilitate investments in Cape Verde, as well as the rights, guarantees and incentives to be given to investments that could contribute to the country's socio-economic development.

Article 2

Scope

This Law applies to all economic investments made in Cape Verde or abroad from Cape Verde, by national or foreign investors who wish to benefit from the guarantees and incentives provided therein.

Article 3

Guiding principles and objectives of investments

1. The investments referred to in the preceding article shall be subordinate to the provisions of this Law, its Regulations and other legislation in place in the country, as well as the principles and objectives of national economic and environmental policy.

2. Investments made under this Law should help to achieve, inter alia, the following objectives:

- a) Promote economic, social and cultural welfare of people;
- b) Reduce regional socio-economic disparities;
- c) Ensure environmental balance;
- d) Strengthen the national business sector and productive capacity;
- e) Create direct, indirect and induced jobs;
- f) Improve the quality of Cape Verde's workforce;
- g) Promote technological innovation and transfer;
- h) Increase and diversify exports;
- i) Improve balance of payment accounts;
- j) Increase and diversify exports;
- k) Effective supply of the domestic market;

- l) Improve the country's economic infrastructure;
- m) Enter and integrate competitively in the regional market.

Article 4

Definitions

For the purposes of this Law, we shall consider:

- a) Economic activity - the production and marketing of goods or the provision of economic services, in the country or from it, in accordance with the legislation in place there;
- b) Investment project - development of economic activities in which one intends to invest or has invested under the laws of the land;
- c) Investment - capital investment in the form of tangible or intangible assets, with a view to creating, modernizing or expanding an economic activity;
- d) Investor - any natural or legal person, of any nationality, who makes or has made investments, in accordance with the laws in force within the country;
- e) Foreign investor - any natural or legal person, regardless of his/her nationality, who makes a foreign investment in the country, duly authorized by the competent authority;
- f) Foreign investment - all participation in economic activities with contributions from abroad susceptible to pecuniary assessment, namely freely convertible currency deposited in a financial institution that is legally established in the country; goods, services and rights imported without foreign exchange expenses for the country; profits and dividends of a foreign investment reinvested in the same or in another economic activity, which may consist in the starting of a new company, subsidiaries or other form of representation of foreign companies, participation in capital increase, acquisition of assets, shares of existing companies, additional loans and partners' advances to the company;
- g) Establishment Agreement - written agreement between the State and an investor with a view to carrying out an economic activity which, due to its size or nature, its social, ecological or technological implications, or other circumstances, prove to be of exceptional interest, within the framework of the national development strategy, or recommend the adoption of clauses, warrants, guarantees or special conditions not included in the general system in place.

CHAPTER II

Rights and guarantees

Article 5

Non-discrimination

1. All investors, regardless of their nationality, have the same rights and are subject to the same duties and obligations under the laws of the land.
2. Exempt from the provisions in the preceding paragraph are investment projects which, given their nature or size, may merit special treatment and support from the State, including through the signing of an Establishment Agreement.

Article 6

Security and protection

1. Investors are guaranteed security and legal protection against any measures to requisition, nationalize or directly or indirectly expropriate their private property, in all its legal and economic aspects, except for public interest reasons, in accordance with the Law, obeying the non-discrimination principle, and subject to prompt, full and fair compensation, based on the current real value of the investment at the date of the declaration of public utility;
2. An investment that is subject to a nationalization or expropriation process has the right to seek constitutional guarantees or other forms of dispute resolution provided by any agreement between the investor and the Government.
3. The right to enjoy the incentives obtained under the Code of Fiscal Benefits cannot be revoked or diminished until the expiration of the period established therein, provided there is no change in the constraints that have based their obtainment or failure to comply with obligations to the beneficiary.

Article 7

Transfer of funds abroad

1. Having complied with all obligations to which they are subject, foreign investors have the right to convert to any other freely convertible currency and transfer abroad all income from their investment which has been duly registered with Banco de Cabo Verde under paragraph 4.
2. Income referred to in the preceding paragraph include:
 - a) Net operating profit, including dividends and interest on capital;
 - b) Royalties and commission for services related to the investment;
 - c) Income from sale of shares;
 - d) Income from partial or total sale of any part of an investment;

e) Benefits related to amortization and interest on financial transactions that constitute foreign investment;

3. Compensation for expropriation or loss.

Investors may also transfer abroad the initial and any additional capital that has been used to maintain or increase investment, as well as the repayment of any loan, including associated interest, related to investment, notwithstanding the application of paragraph 1.

4. Foreign investment must be registered with Banco de Cabo Verde.

5. Registration is done electronically, through Cabo Verde Investimento, on the day after the Investment Registration Certificate is issued by Cabo Verde Investimento.

6. The transfer is authorized by BCV, within 30 days from the date of the request or the receipt of additional information requested.

7. Whenever the amount to be transferred is likely to cause serious disturbances in the balance of payments, the Governor of Banco de Cabo Verde may exceptionally determine equal, consecutive quarterly remittances, over a period not exceeding two years.

8. After the period referred to in paragraph 6, Banco de Cabo Verde will be liable to pay interest, at the 30-day LIBOR rate, on the amount to transfer deposited in financial institutions that are in the country legally, with past due interest being transferable at the same time as the capital.

9. Failure to comply with the provisions of paragraph 4 may determine the non-recognition of the right to transfer funds established in paragraphs 2 and 3.

Article 8

Transfer of income from foreign workers

Having fulfilled all tax obligations, foreign workers and Cape Verdean workers who at the time of hiring had lived abroad for more than five years have the right to convert into freely convertible currency and to transfer abroad income from services rendered to companies financed with resources from abroad, duly registered with Banco de Cabo Verde under Article 6, and for which they were recruited.

Article 9

Accounts in foreign currency

1. Foreign investors can open accounts in convertible currency with financial institutions authorized by law to establish in the country and through which they can perform all transactions with others abroad.

2. The accounts referred to in the preceding paragraph may only be used on credit through transfers from abroad or from other accounts in foreign currency opened with institutions legally authorized to operate in the country.

3. The opening and operation of accounts referred to in paragraph 1 are regulated by Banco de Cabo Verde.

Article 10

International Agreements

The provisions of this Law do not restrict any guarantees, benefits and obligations especially addressed in international agreements or treaties of which the Republic of Cape Verde is a signatory.

Article 11

Making an investment in the Republic of Cape Verde, in any sector of activity, as long as permitted by law, is free, regardless of the investor's nationality, and needs no prior authorization, beyond the legal, sectoral and general procedures in force in the country.

Article 12

Confidentiality

Information provided in connection with an investment project is considered to be confidential and is treated with the strictest confidence by the authorities, services, employees and agents who have access to them.

CHAPTER III

Incentives

Article 13

Incentives

Investments made under this Investment Law may be granted incentives, both general and specific, dependent or automatic, contractual, contingent or temporary, in the form of exemptions, tax cuts, deductions from taxable income, accelerated depreciation and amortization, or investment tax credit, in accordance with the Code of Fiscal Benefits.

CHAPTER IV

Conflict Resolution

Article 14

Conciliation and arbitration

1. Disputes between the State and any investor concerning the interpretation and application of this Law and related regulations which cannot be resolved amicably or via negotiation are submitted for resolution to the judicial authorities, in accordance with Cape Verdean laws, if another procedure is not established in international agreements to which the Republic of Cape Verde is a party.
2. Disputes between the State of Cape Verde and foreign investors on investments authorized and made in the country, if no other route has been agreed, shall be settled by arbitration, by using the following alternatives:
 - a) Framework Law on national arbitration;
 - b) Rules of the Washington Convention of March 15, 1965 on the Settlement of Investment Disputes between States and Nationals of other States, as well as its International Centre for Settlement of Investment Disputes between States and Nationals of other States;
 - c) Rules set out in the ICSID Additional Facility Rules, approved on September 27, 1978 by the International Centre for Settlement of Investment Disputes' Board of Directors, if the foreign entity does not fulfill the nationality requirements provided for in Article 25 of the Convention;
 - d) The International Chamber of Commerce's (Paris) Rules of Arbitration.
3. The provisions of the preceding paragraphs shall not preclude recourse to the courts of the Republic of Cape Verde, as long as both parties so desire and have agreed.

CHAPTER V

Transitional and final provisions

Article 15

Transitional rules

1. This Law and its regulations do not apply to investments authorized before its coming into force. Such investments will continue to be governed by the provisions of law that authorized them until their completion.
2. Investment projects submitted for review and approval before the coming into force of this Law are analyzed and decided in accordance with the applicable legislation in force at the date of submission, unless promoters choose and expressly request the application of this Law.
3. The promoters of investment projects involving foreign investment authorized under Law No. 90/IV/93, of 13 December, and its regulations, which have not yet been registered pursuant to Article 7, shall complete their registration within ninety (90) days from the date of this Code's coming into force.
4. Failure to comply with the preceding paragraph may order the revocation of the authorization granted under Law No. 90/IV/93, of 13 December, and its regulations.

Article 16

Revocation

1. Law No. 90/IV/93, of 13 December, and Regulatory Decree No. 1/94, of 3 January, are repealed.
2. All provisions that contradict the provisions of this Law are also repealed.

Article 17

Coming into force

This Law shall come into force on the date the Code of Fiscal Benefits comes into force.

Approved on April 25, 2012.

The acting President of the National Assembly, Júlio Lopes Correia

Enacted on June 29, 2012.

To be published.

The President of the Republic, JORGE CARLOS DE ALMEIDA FONSECA

Signed on July 4, 2012.