REPUBLIC OF CAPE VERDE DRAFT LEGISLATION ON

ON

FINANCIAL MANAGEMENT COMPANIES

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It is thus created the figure of Financial Management Company, based on the regime of the parabanking enterprises, such as indicated in Law No. 3/ V/ 96, of 1 July. Consenting for them the management of one or more types of collective investment institutions, this law fixes for them the general and common rules they will have to obey, without prejudice for the additional demands that the laws that regulate these different institutions may make upon them, for the specific protection of the interests that, case by case, must prevail.

Thus,

In the use of the faculty conferred by subparagraph c) of number 2 Article 203 of the Constitution, the Government decrees the following:

Article 1 (Notion of object)

1. The Financial Management Companies (SGF) are parabanking institutions that are gathered under the discipline of Law No. 3/ V/ 96, of 1 July, in all that which is not specifically regulated in this law.

2. The SGFs have as statutory object, one or more of the following activities:

a) Management of Collective Investment Organizations (OIC) with collection of capitals from the public, as follows:

1.º - Movable investment funds;

- 2.º Non-movable investment funds;
- 3.º Pension funds;
- 4.º Risk capital funds;
- 5.º Other OICs created by law.

b) Discretionary and individualized management of portfolios on someone else's behalf, based on a mandate conferred by the investors, as long as they include the following instruments:

1.º - Movable securities;

- 2.º Units of participation in the OIC;
- 3.º Money market instruments;
- 4.º Futures on financial instruments, including equivalent instruments that initiate cash liquidations;
- 5.º Time contracts pertaining to interest payments (FRAs);
- 6.º Currency interest rate swaps, or swaps pertaining to the shares index (equity swaps);

- 7.º Options destined for the purchase or sale of any instrument incorporated in the preceding subparagraphs, including the equivalent instruments that give rise to a cash liquidation; namely included in this category are the options on currency and on interest rates.
- c) Consultancy for investment in assets, object of their management, under the terms of subparagraph b).
- d) For the purpose of subparagraph a) of No. 2, collection of capital from the public is considered to have taken place when the respective offer:
 - 1.º Is directed to an indeterminate addressee; or in number greater than 100;
 - 2.º It is preceded or accompanied ny prospecting or collection of intention to invest with indeterminate addresses or from publicity campaign.
- e) Included as accessory to the SGF object in the capital stock of any type of banking and parabanking institution, of of financial companies, national or foreign, as long as:
 - 1.º Its object is identical or complementary to that of an SGF participant;
 - 2.° The total of these participations does not exceed that of the participating SGF's own funds.

Article 2 (Form and self-owned capitals)

3. The SGFs are constituted under the form of capital stock companies with nominative shares or shares payable to the registered bearer

4. The SGF's own funds cannot be less than the sum of the following percentages applied to the liquid global amounts of each of the OICs and of the patrimonies under its management:

a)	Up to ecv 770.000.000\$00:	0,5%;
b)	In the exccess:	0,1%.

5. The SGFs that manage pension funds are obligated, in what pertains to them, to observe the solvency margins and to maintain funds of guarantee defined in the law that regulates them.

6. It is understood as self-owned funds the realized capital, the reserves, the transited results and the subordinated medium and long-term loans, as long as they are authorized by the Bank of Cape Verde and do not exceed the summation of the remaining categories

Article 3 (Authorization and registration)

7. The constitution of the SGFs and their registration in the Bank of Cape Verde is governed by Articles 8 and following of Law No. 3/ V/ 96, of 1 July.

8. The Bank of Cape Verde shall maintain an up to date list of the SGF shareholders with positions equal to or greater than 10%.

9. The Bank of Cape Verde has the faculty of opposing to the *inter-living* transactions in shares of the SGF that result in alteration of the shareholders in the participative levels of: 10%, 20%, 33%, 50%.

10. For the purpose of the preceding number, the entities that propose to

- c) Administer the assets of the OIC managed patrimonies, especially:
 - 1.º Provide the legal and accounting services necessary to the management of the OIC or managed patrimonies, without prejudice to the specific legislation applicable to these activities;
 - 2.º Analyze the complaints of the participants and clients, providing the clarifications that may be due;
 - 3.º Evaluate the portfolio, determine the amount of the participation unit and emit fiscal declarations;
- d) Observe and control the observance of the applicable norms, of the

16. The duties enumerated above as well as the rules of articles 7 and 8 add to those that laws and regulations of the OICs and patrimonies under their management may define.

Article 6 (Remuneration)

The exercise of the management activity of the OIC or patrimony is remunerated by commissions:

- a) For management, and the premiums for good performance, under the terms established in the constitutive documents, in the regulations and in the management contracts or mandates;
- b) For subscription, buy back or transfer of participation units pertaining to OICs they manage, to the extent that the constitutive documents attribute them to it, under the terms for eseen in regulation;
- c) For others established as such in regulations and in management contract or mandated.

Article 7 (Conflicts of interest)

17. It is forbidden to the workers and the SGFs administration organs who exercise the functions of decision and execution of investments to exercise any functions in the SGF.

18. The members of the SGFs act independently and in the exclusive interest of the participants, that they superimpose to their own and to those of the entities with which they have a relation of domination or of group.

19. Whenever an SGF administers more than one OIC or patrimony, it must consider each one of them a client, having in view the prevention of conflicts of interest and, when unavoidable, it shall resolve them according to the principles of equality and non-discrimination.

20. Whenever joint orders are issued for several OIC or managed patrimonies, the SGF performs a proportional distribution of the assets and the respective costs.

21. The SGF that has investment funds under its management and simultaneously also exercises the discretionary and individualized management activity on portfolios on account of others, on the basis of a mandate conferred by the investors, it cannot invest all or part of client's portfolio in units of participation of the OIC that manages or whose participation units it commercializes, except by prior consent of the former, which may be given in generic terms.

Article 8 (Prohibited operations)

It is forbidden to the SGF:

- a) To contract loans;
- b) Grant credit, including providing guarantees, on its own account, save the occasional salary advance or subsidies to its workers;
- c) Perform, on its own account, open sales of the movable securities;
- d) Acquire, on its own account, units of OIC participation, except those that can be incorporated in the type of treasury OIC or equivalent and that are not managed by it;
- e) A cquire non-movables of those that are instrumental to directly prosecute its activities and up to the concurrence of its own funds.

Article 9 (Subcontracting)

22. The SGF may subcontract the management of investments and of administration, by obsering the following principles:

a) Periodic definition of the investment criteria by the SGF;

b) Non emptying out of the SGF activities;

c) Maintenance of the SGF and the depository's responsibilities by complying with the dispositions that govern the activities;

d) Detention by the subcontracting entity of the qualification and technica and professional capacities necessary to perform the subcontracted functions;

e) Effective and permanent control of the functions subcontracted by the SGF, guaranteeing that they are performed in the interest of the clients, specifically giving the subcontracted entity additional instructions or rescinding the subcontract whenever doing so is in the interest of the former.

23. The subcontracted entity is subject to the same duties that impend over the SGF and to the supervision of the Bank of Cape Verde.

24. The subcontracting cannot compromise the effectiveness of the SGFs' supervision nor impede them from acting, or the OICs or managed patrimony from being managed to the exclusive interest of the participants or clients.

25. The SGF informs the Bank of Cape Verde of the terms of each subcontract before its celebration.

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Article 10 (Sub contracted entities)

27. The investment management can be subcontracted only by other SGFs or credit institutions.

28. The investments management activity cannot be subcontracted with the depository or other entities whose interest may colide with those of the delegating SGFs or with those of their clients and respective participants.