Decree No. 63/99, of 2nd November

Create a financial instrument called covered bonds

O.B. No. 40 - I Series
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This document, following the reform of the financial sector set out in the Government Programme, creates another financial instrument, the covered bonds.

Covered bonds are securities which grant the bearer the right of lien in respect of mortgage credit and shall permit the issuing institutions a systematic mobilisation of their credits with the public investor, thus, hereby, multiplying its action through resources obtained.

The universe of financial instruments made available to economic brokers is thus broadened with this legislative rule and shall certainly bring some dynamic to the real estate sector, namely, the housing sector.

In fact, credit and parabanking institutions which are found to be in the conditions established in the document thus avail themselves of a new measure of obtaining resources, by simply assigning the redemption of covered bonds available to them. Investors are granted access to a financial product with considerably reduced risk; the real-estate sector, namely the housing sector, shall benefit from a new dynamic factor which the system may produce.

This measure further establishes a framework that excludes the provisions in the Civil Code with regard to the hierarchy of lien rights. In effect, the holders of covered bonds enjoy special lien rights, a necessary condition for the binding nature of said financial instrument and which does not cause any prejudice to the legal certainty, as it is limited to assets belonging, in full ownership, to the mortgagor and over which there is no onus or encumbrance initially.

In accordance with these terms,

Granted by sub-paragraph a) of number 2 of article 216 of the Constitution, the Government hereby decrees the following:

Article 1
Purpose
This document creates a financial instrument called covered bonds.

Article 2
Concepts
For this decree, the following shall be deemed to be:

a) Issuers – the institutions authorised to issue covered bonds, in accordance with article 3;
b) Covered bonds – debt instruments that incorporate the duty of the issuer to pay the title holder in terms of the conditions of issue, a certain amount corresponding to the capital and interests that grant the right of lien indicated in number 1 of article 7;

c) Mortgage credit – mortgage credit granted by the issuing authorities in the conditions established in article 11;

d) Title holder – the holder of the covered bonds on the date of the exercise of rights;

e) Mortgaged property – real estate burdened by mortgage that guarantees the credit on fulfilment of the covered bonds.

Article 3
Issuers

In accordance with this legislation, the credit or parabanking institutions legally authorised to grant credit guaranteed by mortgage, to finance the construction or acquisition of real-estate and that have own funds of not less than 100,000,000$00, may issue covered bonds.

Article 4
Issuance resolution

1. The issuance of covered bonds shall be the object of a resolution expressly adopted by the board of directors of the issuer wherein shall be stated the justification for the issuance and characteristics of the bonds to be issued, as well as the actual issuance conditions.

2. The issuance shall take place within a maximum period of 6 months as from the resolution referred to in the previous number, which shall lapse at the end of said period.

Article 5
Issuance formalities

1. The issue and public offer for subscription of covered bonds shall not be subject to administrative authorisation or public registration.

2. The issuing institutions shall, prior to any public offer for subscription of covered bonds, advertise in one of the main newspapers of national coverage a prospectus containing all the relevant information on the characteristics of bonds and the issuing conditions, namely the total amount issued, the indication of the right of lien granted by no.1 of article 7 and referred to in sub-paragraphs a), b) and e) to j) of article 6.

3. The prospectus referred to in the previous number shall be sent to the Banco
Article 6
Reference of securities

1. Securities to be issued shall consist of, in compliance with the resolution of the issuing entity:
   a) References of the issuer referred to in article 256 of the Commercial Companies Code;
   b) Date of resolution for the respective issue;
   c) Date of issue;
   d) Order number;
   e) Nominal value;
   f) Term;
   g) Interest rate or rates;
   h) Maturity dates;
   i) Dates or periods wherein the respective redemption occurs;
   j) Method of payment, nominal or bearer, of bond;
   k) Signatures that bind the issuer.

2. The securities of the covered bonds may be in book-entry form, with the provisions of the Securities Market Code being applicable thereto and, in this case, the respective record shall refer to the details mentioned in the previous number.

3. The securities of covered bonds may be divided or concentrated, according to what is decided for each issue, with the charges being borne by the respective holders, unless otherwise stated.

Article 7
Right of Lien

1. The holders of covered bonds shall enjoy special right of lien over loans assigned to the respective issue, with precedence over other creditors, for the purposes of redemption of capital and receiving of interest corresponding to the respective bonds.

2. Mortgages that guarantee covered bonds shall prevail over any real-estate right of lien.
3. The real-estate right of lien established in no.1 requires registration in the land registry office.

4. The statement of registration of the bond shall include a special reference that the loan secured by same shall be assigned to the compliance of covered bonds, whenever said assignment results from constitutional documents or declarations from the issuer.

5. In the case of bonds already established, the abovementioned shall be carried out by an annotation based on the declaration from the issuer.

6. The cancellation of onus of allocation shall be carried out based on the declaration of the credit institution.

7. No fees shall be due for the registration referred to in numbers 5 and 6, or for the cancellation of the registrations of the onus of allocation, which were drafted under the terms of legislation.

**Article 8**

**Legal Regulation**

The following shall not apply to the issuance of covered bonds:

a) Chapter II of Title IV of the Commercial Company Code;

b) Article 3, sub-paragraph f) of Decree Law No. 42644, of 14<sup>th</sup> November 1959;

c) Chapter II of Title II of the Securities Market Code.

**Article 9**

**Redemption period**

Covered bonds may not be issued with a period of redemption of less than 3 years and greater than 30 years.

**Article 10**

**Manner of issue**

1. The issue of covered bonds may be executed in a continuous manner or in series, in accordance with the financial needs of the issuer and the demand from investors.

2. Each issue may not be less than fifty million escudos, nor each bond have a par value of less than a thousand escudos.

**Article 11**

**Interest rates**

1. Zero coupon or fixed interest rate mortgage issues may only be justified for mortgage credit at fixed interest rates.
2. In issues with a floating rate, the interest rate of assigned mortgage credit and of covered bonds must be defined with regard to the same reference value.

**Article 12**

**Requirements of mortgage credit**

1. Only matured credit, whereof taxable persons are the issuers, secured by first mortgages established over assets that belong in full ownership to the mortgager and which have no onus or charges, without prejudice to the provision in no.4, may be assigned collateral of covered bonds.

2. The amount of the mortgage credit may not exceed the value of the asset mortgaged.

3. Credits secured by assets or rights which, due to their nature or legal framework, shall not be considered to be of stable and lasting value, are not considered mortgage credits.

4. Mortgage credits secured by guarantee of a credit institution or adequate insurance contract, with a counter guarantee of mortgage that meets the conditions indicated no.1, shall be considered to be mortgage credits.

**Article 13**

**Insurance of mortgaged assets**

1. In the absence of an insurance agreement appropriate to the inherent risks of the nature of the mortgaged assets carried out by the owner of same, the issuer shall enter into the agreement, bearing, in this case, the respective charges.

2. The insurance contract referred to in the previous number shall guarantee a capital of no less than the evaluation value set out in the following article.

3. The compensation that possibly takes place shall be directly paid by the insurer to the mortgage creditor, up to the limit of the mortgage credit capital.

**Article 14**

**Evaluation of mortgaged assets**

1. The value of the mortgaged assets referred to in sub-paragraph 2 of article 12 shall be established by the issuer in accordance with the following criteria:

   a) In the case of urban buildings, the market value of assets with similar characteristics, use and location;

   b) In the case of rural buildings:

      i) Its timely use in accordance with the possibilities of fact and law;
ii) The profit foreseen by agricultural exploration, cattle breeding or similar.

2. Without prejudice to the provision of the previous number, the value of land shall be determined by taking into account the level of urbanisation, urban improvement, natural characteristics and location.

Article 15
Evaluation report

The evaluation referred to in the previous article shall be subject to a detailed report at the sole responsibility of the issuer.

Article 16
Limits

1. With respect to each issuer, the overall nominal value of the covered bonds in circulation may not exceed 80% of the overall value of the mortgage credit indicated in article 12, assigned to said bonds.

2. If, for any reason, the limit referred to in the previous number is exceeded, the issuing entity shall, within five working days following said fact, rectify the situation through one of the following procedures:
   a) Allocation of new covered bonds;
   b) Acquisition in the secondary markets of surplus bonds;
   c) Depositing of money or public debt in Banco de Cabo Verde, in the excess value, exclusively assigned to the bond debt service.

3. While in the possession of the issuer, covered bonds shall not enjoy the framework set out in this legislation.

4. The average maturity of covered bonds issued by an entity may not exceed the average life of mortgage credits that are assigned to same.

5. The overall amount of interest to be paid annually as a result of covered bonds may not exceed the amount of interest annually collected from the borrowers of the mortgage credit assigned to said bonds.

Article 17
Register of mortgage credits

1. The issuer shall keep an updated record, which shall be sent to the Banco de Cabo Verde on a quarterly basis, of all the mortgage credits it holds and which have been assigned to covered bonds.
2. Regarding the register referred to in the previous number, the following information shall be stated in relation to each credit:

   a) Amount outstanding;
   b) Interest rate;
   c) Redemption period;
   d) Notary public office where the respective mortgage deed was signed;
   e) References relating to the final registration of the mortgages in the land registry office.

3. The ownership of the credit recorded in the register referred to in no.1 may only be transferred or burdened in accordance with the issuer allocating the new mortgage credit to the bonds in question, pursuant to this legislation.

   **Article 18**
   **Accounting system**

   1. The *Banco de Cabo Verde* shall establish the accounting rules to be observed by issuers with the objective of at any moment being able to verify the values of covered bonds issued, in circulation and redeemed.

   2. Issuers shall inform the *Banco de Cabo Verde* on a monthly basis of the number and value of covered bonds issued by same that are in circulation.

   **Article 19**
   **Secondary market**

   1. Covered bonds may be admitted to listing on the stock exchange in accordance with regulations in force.

   2. Covered bonds may integrate the assets of real-estate investment funds, under the conditions that are defined in a specific regulation, and shall be equated to securities listed in the national stock exchange for the purposes of the composition of reserves of social security institutions.

   3. Covered bonds shall be considered as bonds issued by entities from Cape Verde for the purposes of the composition of assets that represent or guarantee the technical provisions of insurance companies, as well as the assets representing pension funds.

   4. Issuers may freely buy and sell covered bonds issued by themselves with the aim of ensuring the liquidity of the secondary market.

   **Article 20**
   **Notices of the Banco de Cabo Verde**

   For implementation of this legislation, the *Banco de Cabo Verde* may issue notices.
Article 21
Entry into force

This legislation comes into force 60 days after its publication.

Seen and approved by the Council of Ministers.

Carlos Veiga – António Gualberto do Rosário – José Ulisses Correia e Silva.
Promulgated on 25th October 1999.
Hereby published.
President of the Republic, ANTÓNIO MANUEL MASCARENHAS GOMES MONTEIRO
Countersigned on 26th October 1999.
The Prime Minister, Carlos Veiga