Law no. 53/V/98, of 11 May

This sets forth the conditions for access to and performance of Securities Intermediation activities.

O.B. no. 27 - I Series

**Amendment**

Due to an error in the publication of Official Bulletin no. 18, of 11 May, Law no. 53/V/98, which sets forth the conditions for access to and performance of Securities Intermediation activities, is published anew.
Law no. 53/V/98
of 11 May

By the people’s mandate, the General Meeting decrees, pursuant to sub-paragraph b) of article 186 of the Constitution, the following:

CHAPTER I
General provisions

Article 1
(Scope)

This order sets forth the conditions for access to and performance of securities intermediation activities, hereinafter briefly referred to as securities intermediation activities or simply intermediation activities.

Article 2
(Intermediation activities)

1. Securities intermediation activities are considered those involving:

a) The canvassing of investors to subscribe, buy, sell or exchange securities or to carry out other operations on these, as well as the canvassing of clients for any type of securities intermediation services;

b) The provision of consulting services on securities investments;

c) The placing of securities issued by any entity in the primary market;

d) The provision of services related to the organisation, registration or obtaining of the authorisation, launch and implementation of public offers;

e) The reception of orders from investors for the subscription or transaction of securities and respective implementation by the financial intermediary who receives them, when authorised to operate in the stock market or in another market for which the orders are intended, or otherwise through another legally qualified intermediary;

f) The proprietary trading of securities through a financial intermediary authorised to negotiate in the stock market or in other secondary markets;

g) The opening and handling of accounts for the deposit of certified securities or registration of book-entry securities, as well as the provision of services related to the associated rights;

h) The management of third-party securities portfolios, with a view to ensuring not only the management of these securities and the exercise of the associated rights, but also the performance of any operations involving these securities;
i) The setting up and management of securities and real-estate investment funds;

j) The performance of security custodian duties involving the securities that incorporate the funds referred to in the previous sub-paragraph;

2. The canvassing of investors or clients is considered to be all activities that involve:

a) Approaching persons, albeit sporadically, either in public places or at their home or place of work, to propose or advise them to subscribe, buy, sell or exchange securities, or try to obtain the participation of these persons in other securities operations or get them to use any intermediation services envisaged in the previous number.

b) Regularly proposing or advising persons to perform the operations or to use the services mentioned in the previous sub-paragraph through letters, circulars, telephone calls or any other form of communication sent or made to their home or place of work.

3. Canvassing activities are forbidden, irrespective of the individual or legal person wishing to undertake them, when these involve the subscription, buying, selling or exchange of any securities, when these operations legally require the publication of a prospectus or of any other documentation and said publication did not take place or was dispensed with under the applicable terms.

4. The professional consultancy services referred to in sub-paragraph b) of number 1 include the provision to investors or potential investors, on an individual basis, of advice on the subscription, buying, selling or exchange of securities, on the exercise of the associated rights, namely the right to the respective conversion or sale or to the subscription or buying of other securities, or to the management of securities portfolios belonging to these investors.

5. In the cases of sub-paragraph h) of number 1, the authorisation of the holder of the portfolio to enable the financial intermediary to carry out any operations involving the securities that make up the portfolio must be provided in a written document and must set the terms, limits and degree of discretion with which these management acts may be practised by the intermediary.

Article 3

(Financial intermediaries)

1. Financial intermediaries are considered to be those individuals or legal persons authorised to carry out one or more of the securities intermediation activities referred to in the previous article.
2. Intermediation activities may only be carried out by individuals or legal persons expressly qualified as financial intermediaries by means of obtaining the authorisation and registration envisaged in this order.

3. Each financial intermediary may only carry out, from among those envisaged in number 1 of the previous article, those securities intermediation activities that have been authorised and which are included in the by-laws, in the case of a legal person.

CHAPTER II
Access to financial intermediation
SECTION I
Authorisation

Article 4

(Prior authorisation)

The exercise of any securities intermediation activities by individuals or legal persons, as well as the incorporation of financial intermediaries of any category that are not individuals, depend on prior authorisation, to be granted case-by-case by the Finance Minister, by order.

Article 5

(Requirements)

1. The authorisations referred to in the previous article may only be granted when:

   a) The financial intermediary has enough own financial resources, given the nature of the activities to be carried out;

   b) The financial intermediary, in the case of an individual, or the members of its management and supervisory committees, in the case of a legal person, as well as all of the other persons that in effect direct or supervise its activities internally, are competent, have suitable experience and do not have any of the incapacities or inhibitions envisaged in the next article;

   c) In the case of a company, the members holding more than 10% of the share capital are competent;

   d) The financial intermediary has an organisation and human and material means technically suited to the type and volume of the activities to be carried out.

2. In the case of authorisation for the incorporation of a financial intermediary, the applicant or promoters must ensure that the requirements set forth in the previous number have been met when the financial intermediary is incorporated.
3. The Finance Minister, by ministerial order, having heard the opinion of the Banco de Cabo Verde, is entrusted with establishing the minimum amount of own financial resources required under the terms of sub-paragraph a) of number 1 for each category of financial intermediaries, when said amount has not been fixed in the respective special legislation, and with updating said amount whenever necessary.

4. For the purposes of sub-paragraph c) of number 1, members holding a share of more than 10% are not considered to be competent when they can negatively influence the company’s healthy and prudent management of its activities, for any reason duly founded by the competent authority granting the authorisation.

Article 6

(Incapacity to hold office in financial intermediaries)

The duties concerning the management or supervision of the activities of individual financial intermediaries or of the members of the management companies of financial intermediaries that are legal persons may not be carried out by persons who:

a) Were declared, res judicata, bankrupt, insolvent or responsible for the bankruptcy or insolvency of companies in which they had a dominant position or were members of the board, directors or managers;

b) Held the offices referred to in the previous sub-paragraph in companies whose bankruptcy or insolvency was prevented, suspended or avoided by the State’s intervention, by an out-of-court settlement or by similar means;

c) Were condemned for the crimes of forgery, robbery, theft, fraud, embezzlement, extortion, breach of trust, disloyalty or usury;

d) Have an employment contract or a contract for the provision of services with other financial intermediaries or with any individual or legal person with qualifying holdings in the financial intermediary in question, or are their board members, directors, managers, member of the supervisory board or consultants, unless if said entity which, depending on the case, is fit to authorise the incorporation or registration of the financial intermediary, feels that there is no incompatibility in having multiple functions;

e) Do not have, in the reasoned decision of the competent entity, depending on the case, the competence and experience required in sub-paragraph b) of number 1 of the previous article to authorise the incorporation or registration of the financial intermediary, or who, due to having multiple functions or due to any other reason justified in the same decision, are considered by said entity as not meeting the requirements needed for the good performance of the office;

f) Have any other inhibition or incapacity envisaged in general law or in the
special legislation on the category of financial intermediary in which they wish to hold office.

**Article 7**

*(Application for authorisation)*

1. The application for authorisation shall be made with the documents necessary to confirm the requirements indicated in article 5.

2. Besides the documents required in the previous number, the applicant must also present an activity programme specifying the intermediation activities for which authorisation is requested, the main operations to be carried out, the services to be provided in the scope of these activities and the organisational structure of the company.

**Article 8**

*(Assessment of the request)*

1. The authorisation shall be preceded by statements of opinion issued, within the scope of the respective competence, by the Office of the Auditor-General of the Securities Market.

2. The Finance Minister and the entities entrusted, pursuant to the previous number, with issuing a statement of opinion on the respective process may ask the applicants for all of the documents, information or additional clarifications considered necessary, and proceed to make all of the inquiries deemed fit in order to assess the request or to draw up the respective statements of opinion.

3. The statements of opinion referred to in number 1 must be submitted to the Finance Minister within a period of one month, if the assumption envisaged in the previous number is not confirmed, or else within two months, counting from the date on which the statements were requested by the competent entity based on the application for authorisation with all of the legally necessary documents.

4. The statements not delivered within the period of time established in the previous number shall be considered to have been granted.

**Article 9**

*(Decision)*

1. If the authorisation request was accompanied by all of the legally required information, the decision shall be pronounced and communicated to the applicants within the maximum period of two months, counting from the date on which it was submitted.

2. Whenever, under the terms of number 2 of the previous article, it becomes necessary to obtain any documents, information or additional clarifications from
the applicants or to make any inquiries, both in order to draw up the statements of opinion envisaged therein and for the decision of the request, the term referred to in the previous number shall be extended by a period equal to the one during which the process waited for the supply of said information; the decision, however, may not be communicated more than six months after the submission of the application.

3. The lack of decision within the period of time established above shall be understood as implied rejection; however, the applicants are entitled to learn the reasons for said rejection within a reasonable period of time.

**Article 10**

*(Expiry of the authorisation)*

The authorisation granted shall become null and void if the applicants expressly renounce it, if the performance of the activity does not start within a 12-month period and, in the case of the incorporation of a financial intermediary, if said incorporation does not occur within a 6-month period, the time period starting on the date on which the authorisation is communicated.

**Article 11**

*(Cancellation of the authorisation)*

1. The authorisation granted may be cancelled in the following situations:

   a) When it was obtained through false declarations or other unlawful means;

   b) When the intermediary no longer has sufficient own funds or no longer complies with one of the prudential restrictions or capital adequacy limits set forth in article 15;

   c) When serious violations are committed in the management, in the organisation, in the accounting records or in the internal supervision of the company;

   d) When one of the authorisation requirements is no longer met;

   e) When the financial intermediary ceases or significantly reduces its activity for a period of more than six months;

   f) When the financial intermediary does not comply with the laws, regulations and instructions that discipline the intermediation activity, or supplies the Finance Minister, the *Banco de Cabo Verde* or the Office of the Auditor-General of the Securities Market with false, misleading or incomplete information, or violates a prohibition or requirement legitimately imposed by any of these entities.

2. When based on lack of competence or experience required for the persons mentioned in sub-paragraphs b) and c) of article 5, the cancellation shall only be
proclaimed if, in the period laid down, the financial intermediary does not replace the person or persons in question with another or others whose registration is accepted.

3. The cancellation shall be decided upon by the entity which, on the date on which it shall be proclaimed, is deemed fit to grant the authorisation in question, and shall be adequately established.

4. The cancellation of the authorisation prevents the performance of all of the activities falling under said authorisation.

5. When the authorisation was granted for the incorporation of the financial intermediary, the following shall be observed:

   a) If the cancellation covers all of the activities include in the corporate purpose, it shall imply the dissolution of the intermediary, under the legal terms;

   b) If the cancellation does not cover all of the activities include in the corporate purpose, the intermediary may continue to perform those activities that continue to be authorised.

SECTION II

Registration

Article 12

(Registration)

1. Without prejudice to that set forth in number 2 of article 24, financial intermediaries may only begin to pursue securities intermediation activities which they have been authorised to perform after forming part of the special register organised by the Office of the Auditor-General of the Securities Market.

2. The register mentioned in the previous number shall contain the following information:

   a) The signature or denomination of the financial intermediary, the indication of the share capital and other identification elements;

   b) The date of incorporation, in the case of a legal person;

   c) The place of business or registered offices;

   d) The intermediation activities which the financial intermediary is authorised to carry out;

   e) In the case of the financial intermediary being a legal person, the identification of the members of the respective management companies and the identification of the shareholders holding a share of more than a 10%;
f) In the case of the financial intermediary being an individual, the identification of those responsible for the management and supervision of the authorised activities;

g) The identification of the financial intermediary’s nominees with management powers;

h) The location and date of creation of any branches, agencies or delegations and the capital with which the branches were established or which was possibly assigned to the agencies or delegations.

3. If the financial intermediary has its headquarters abroad, the registration shall include, besides the information set out in sub-paragraphs a) to f) of the previous number:

a) The date on which it was authorised to set up business or on which it started its activities in Cape Verde;

b) The capital with which it operates in Cape Verde;

c) The identification of the persons in charge of its representation and of the management and supervision of its activities in the country.

4. The following shall be endorsed to this article:

a) All of the amendments to the elements indicated in the previous numbers; however, the facts regarding these amendments shall not be legally enforceable for the purposes of this order until the endorsement has been effected;

b) The sanctions applied and the extraordinary measures that may be demanded of the financial intermediary.

**Article 13**

**Process**

1. The registration must be applied for to the Office of the Auditor-General of the Securities Market within a period of 20 days counting from the date of authorisation, unless it involves the incorporation of the financial intermediary, in which case the period shall count from the date of its definitive incorporation.

2. The application must include all of the documents necessary to confirm the elements referred to in number 2 or 3 of the previous article and, when applicable, a certificate of the deed or equivalent document of incorporation of the financial intermediary and of its registration number in the commercial registry.

3. The marginal notes envisaged in number 4 of the previous article shall be compulsorily requested of the Office of the Auditor-General of the Securities Market by the stakeholders within a period of 10 days counting from the date on which the amendment is made.
Article 14

(Refusal to accept registration or endorsement)

The registration shall be rejected whenever any of the elements which shall be included have not been confirmed, in which case, the interested parties shall be notified to provide the missing information or to remedy shortcomings or irregularities of the requirement or of the documentation presented.

CHAPTER III

Conditions for the performance of the activity

Article 15

(Capital adequacy)

1. With a view to ensuring capital adequacy and, namely, the solvability of the financial intermediaries, the Banco de Cabo Verde, having heard the opinion of the Office of the Auditor-General of the Securities Market, shall be responsible for setting the following prudential restrictions to the carrying out of operations which the financial intermediaries are authorised to practise:

   a) Limits to the subscription, albeit for subsequent placement in the market, or to the guarantee of the placement of issues and of public offers for the sale of securities.

   b) Limits and forms of coverage of borrowed resources and of any other liabilities belonging to third parties;

   c) Limits to the issuance of bonds;

   d) Limits to the concentration of risks in a single entity, in a single activity sector, in a single region or in a single country;

   e) Minimum limits to the provisions designed to cover credit risks, market risks or any other risks;

   f) Other limits deemed necessary.

2. The Banco de Cabo Verde is responsible for setting forth, for the purposes of the previous number, the information that may be included in financial intermediaries’ own funds, as well as for defining the characteristics of said funds.

3. The Banco de Cabo Verde is further responsible for establishing the criteria necessary to ensure that, at all times, the capital of financial intermediaries is adapted to the dimension of their activity and to the risks assumed by them, and may also establish relationships to be observed among on-balance-sheet items and between own funds and the total number of assets and of off-balance-sheet accounts, weighted or not by risk coefficients.
4. The powers granted to the Banco de Cabo Verde in the previous numbers shall be exercised through a notice published in the Official Bulletin.

5. In order to exercise the powers assigned to it in numbers 1 to 3 and to supervise the observance of the rules laid down, the Banco de Cabo Verde may demand of financial intermediaries, on a regular basis or not, the documents and any other data and information it deems fit.

**Article 16**

(Accounting and operating records)

1. The accounting of financial intermediaries shall be organised in accordance with the standards and instructions issued by the Banco de Cabo Verde.

2. In the exercise of the competency referred to in the previous number, the Banco de Cabo Verde shall hear the opinion of the Office of the Auditor-General of the Securities Market in order to assess the rules on recording transactions and other accounting standards considered vital to guarantee the regular processing and control of transactions and the provision of other securities intermediation services, as well as to ensure, within the scope of its duties, adequate supervision of the activities of financial intermediaries.

**Article 17**

(Clients’ securities)

1. Financial intermediaries must keep their securities accounts separate from those belonging to clients or which they hold on their behalf, observing to this effect the accounting standards that are set forth under the terms of the previous article.

2. The Office of the Auditor-General of the Securities Market may regulate the handling conditions, usage, control and any other aspects related to the money financial intermediaries received from their clients to carry out the transactions to which they bound themselves, or which they received from third parties on behalf of their clients and, namely:

   a) Demand that it be deposited in credit institutions, in a general client account or in individual client accounts, which are separate from the financial intermediary’s accounts;

   b) Define the opening, handling and registration conditions of said accounts, namely specifying those cases and the terms under which said accounts may be debited.

**Article 18**

(Information on holdings)

1. The shareholder who, either directly or through an intermediary, holds shares
representing at least 10%, 20%, a third, 50% or two thirds of the share capital of a financial intermediary must inform the Office of the Auditor-General of the Securities Market of the percentage of the respective holding and of the corresponding voting rights.

2. The information envisaged in the previous number must be communicated to said entity when the shareholder, for any reason, ceases to hold shares or market share representing the percentages referred to in the previous number.

3. Financial intermediaries that are shareholders of another financial intermediary must inform the latter, as well as the Office of the Auditor-General of the Securities Market, of the percentage of its holding, irrespective of the volume, and of the corresponding voting rights, as well as of any changes made to this information.

4. The notifications envisaged in numbers 1 to 3 shall be made in writing up to 20 days following the date on which the facts took place.

5. Financial intermediaries must inform the Office of the Auditor-General of the Securities Market:

   a) During the month of April of each year, and insofar as they are knowledgeable of this information, of the identity, amount and percentage of the holdings, and of the corresponding voting rights, of the shareholders who have more than 10% of their share capital;

   b) Within the 20-day period following the date on which they are informed, of the holdings referred to in numbers 1 and 3 and of the respective changes.

6. Without prejudice to other applicable sanctions, non-compliance with the obligations set forth in number 1 to 3 shall prevent financial intermediaries from exercising their voting rights corresponding to the holdings in question, until the notifications foreseen therein have been made.

**Article 19**

*(Certificate of the books of financial intermediaries)*

1. Financial intermediaries are obliged to issue, in accordance with their books, certificates of the registrations regarding the operations in which they participate, whenever they are requested to do so by the competent authorities or by their clients.

2. When the clients of financial intermediaries ask for a certificate of facts that are beyond their direct intervention in the operations, the certificate may only be issued after obtaining the written consent of all of the participants.

**Article 20**

*(Information of a statistical nature)*

Financial intermediaries are obliged to send to the *Banco de Cabo Verde*, to the
Office of the Auditor-General of the Securities Market and to the Stock Exchange statistical data and information that are requested by each of these entities within the scope of the respective competencies.

**Article 21**

*(Simultaneous performance of intermediation activities)*

The Office of the Auditor-General of the Securities Market may, by way of regulation, impose on financial intermediaries that simultaneously pursue various securities intermediation activities the observance of any special organisation and operating conditions or standards, whenever it deems necessary to ensure, in the interest of investors and of the market, the regular processing and adequate control of the corresponding operations or to prevent conflicts of interest that could be brought about by having multiple functions.

**CHAPTER IV**

**Financial intermediation in the stock exchange**

**Article 22**

*(Stock exchange operators)*

1. Only financial intermediaries that set themselves up as stock exchange operators may pursue the securities mediation activity through the carrying out of stock exchange operations.

2. Stock exchange operators may:

   a) Have as their primary object the pursuit of intermediation activities in the stock exchange, by receiving investors’ orders for the trading of securities, and respective execution, and may also pursue the intermediation activities indicated in sub-paragraphs g) and h) of number 1 of article 2 of this order; or

   b) Have as their primary object the pursuit of intermediation activities in the stock exchange, either by receiving investors’ orders for the trading of securities, and respective execution, or by the proprietary trading of securities, and may also pursue all of the intermediation activities envisaged in number 1 of article 2 of this order, with the exception of those indicated in sub-paragraphs i) and j).

3. a) The stock exchange operators referred to in sub-paragraph a) of the previous number must include the expressions “securities broker” or “broker” in their signature;

   b) The stock exchange operators referred to in sub-paragraph b) of the previous number must include the expressions “securities broker-dealer”, “broker-dealer” or “dealer” in their signature.
**Article 23**

*(Form, share capital and other requirements)*

1. Stock exchange operators shall set themselves up as a joint-stock company or a private limited company and have to meet the following requirements:
   a) They must have their headquarters in national territory;
   b) They must have a minimum share capital of 10,000,000$00, in the case of the stock exchange operators referred to in sub-paragraph a) of number 2 of article 22, or of 50,000,000$00, in the case of the stock exchange operators referred to in sub-paragraph b) of number 2 of article 22;
   c) In the case of public limited companies, all of the shares must be nominative.

2. Stock exchange operators may only organise themselves after the shareholders provide proof that the company’s capital has been fully paid up, with the exception of a deferment of not more than 30% of the cash contribution for a period of no more than three years, in this case the stock exchange operators referred to in sub-paragraph a) of number 2 of article 22.

3. The shares of these companies may not be quoted on the stock exchange.

**Article 24**

*(Authorisation and registration)*

1. The provision in chapter 11 of this order applies to the authorisation and registration of stock exchange operators.

2. Stock exchange operators shall also be part of a register to be organised by the stock exchange, pursuant to that set forth by the latter through a circular, with the registration in this register conditioning the start-up of activity with the Stock Exchange.

3. The Stock Exchange shall charge the operators a registration fee, the amount of which shall be defined in the circular referred to in the previous number.

**Article 25**

*(Participation of stock exchange operators in other companies)*

1. Stock exchange operators may not have holdings in other stock exchange operators.

2. The holdings of the stock exchange operators referred to in sub-paragraph b) of number 2 of article 22 in other companies may not exceed:
a) 20% of own funds or 10% of the company’s share capital, in relation to each holding held;

b) in total, their own funds.

3. When a stock exchange operator referred to in sub-paragraph a) of number 2 of article 22, as a result of a lawsuit for the reimbursement of credits, buys holdings in any company, they must resell them within a one-year period; in exceptional cases, the Office of the Auditor-General of the Securities Market may authorise the extension of this period for an additional year.

4. When a stock exchange operator referred to in sub-paragraph b) of number 2 of article 22, as a result of the subscription of issues or of a lawsuit for the reimbursement of credits, buys holdings that exceed the limits defined in number 2, they must sell the exceeding amount within a one-year period; in exceptional cases, the Office of the Auditor-General of the Securities Market may authorise the extension of this period for an additional year.

5. After the period, either the initial period or the extension, foreseen in numbers 3 and 4 above, has elapsed, the rights associated to the holdings that are kept, namely the right to vote and the right to share in the profits, shall be suspended until said holdings have been resold.

**Article 26**

*(Holdings of the shareholders, members of the management companies and employees)*

1. Members of the management and supervision bodies of stock exchange operators are forbidden:

   a) To have a holding in the share capital, belong to the management or supervision bodies or perform any duties in other stock exchange operators;

   b) To belong to the management or supervision bodies of any publicly subscribed companies or companies that have a dominant or group relationship with companies of this nature;

   c) To hold more than 20% of the capital of the companies referred to in the previous sub-paragraph.

2. The prohibitions set forth in the previous number are extensive to:

   a) Shareholders holding more than 20% of the capital of the stock exchange operators;

   b) Those holding management positions in the stock exchange operators.
Article 27
(Forbidden operations)

1. Stock exchange operators are forbidden from:

a) Providing personal or real guarantees in favour of third parties;

b) Purchasing own shares;

c) Acquiring real estate, with the exception of that necessary to set up their own business;

d) Performing any farming or industrial activity or any other commercial activity;

e) Granting any form of credit.

2. Stock exchange operators may not associate themselves or establish any type of protocol or social dialogue process with other stock exchange operators with the aim of carrying out transactions.

3. The stock exchange operators referred to in sub-paragraph a) of number 2 of article 22 are forbidden from proprietary trading with any other companies.

Article 28
(Reserves)

1. A fraction of no less than 10% of the net profit of stock exchange operators established in each financial year must be used to create legal reserve, to the extent of the share capital.

2. Stock exchange operators must also set up special reserves, aimed at reinforcing net assets or to make up for losses unable to be met through the profit and loss account; in this regard, the Banco de Cabo Verde may define minimum limits, pursuant to article 15 of this order.

Article 29
(Extraordinary measures)

Shall any situation of disequilibrium affect the regular functioning of a stock exchange operator or upset the equilibrium of the securities market, the extraordinary measures envisaged for credit institutions may be taken against the stock exchange operator.

Article 30
(Fidelity bond of market operator)

1. Before commencing activities at the stock exchange, every market operator
shall provide a fidelity bond so as to guarantee compliance with the obligations and liabilities it becomes liable to vis-à-vis its clients, as a result of the operations it is entrusted with carrying out in the stock exchange.

2. The collateral shall be for the amount of 1,000,000$00, in the case of the stock exchange operators referred to in sub-paragraph a) of number 2 of article 22, or of 5,000,000$00, in the case of the stock exchange operators referred to in sub-paragraph b) of number 2 of article 22, and may be paid in any of the following ways:

a) Cash deposit with the Banco de Cabo Verde;

b) Irrevocable bank guarantee provided by a national credit institution;

c) Fidelity guarantee insurance.

3. The deposit, bank guarantee and insurance referred to in the previous number shall be made on behalf of the Office of the Auditor-General of the Securities Market.

4. The Office of the Auditor-General of the Securities Market may, whenever it deems necessary, change the amounts referred to in number 2, by way of regulation.

5. The collateral is inalienable and immune from attachment and shall not meet any obligations entered into by the stock exchange operator before or after providing it and that are not related to the pursuit of its professional activity, pursuant to the following article.

Article 31

(Scope and use of the guarantee)

1. The collateral provided pursuant to the previous article shall guarantee the interested parties against any of the following acts practised by the stock exchange operator:

a) Failure to return, when due, the securities delivered for the execution or collateral of any stock exchange operation;

b) Failure to refund, when due, any amounts delivered for stock exchange operations;

c) Failure to deliver securities purchased in the stock exchange with resources deposited by the instructing client or which were subsequently liquidated by the client;

d) Failure to pay the price of securities sold in the stock exchange or the balance of deposits in a current account kept by the stock exchange operator to carry out stock exchange operations;

e) Illegitimate non-performance, albeit partial, of any stock exchange orders,
or unjustified execution of said orders under different terms from those established by the instructing client,

f) Failure to deliver the balance of securities deposits kept in a current account held by the stock exchange operator to carry out stock exchange operations;

g) Repayment or delivery of false, extinct, deteriorated, irregular, encumbrances or non-negotiable securities or securities of a different nature or category from those that were involved in the stock exchange order;

h) Repayment or delivery of securities without the associated rights.

2. Shall any of the circumstances envisaged in the previous number prevail, the injured party must submit its complaint to the Office of the Auditor-General of the Securities Market within a period of ten days after it becomes aware of the fact, under penalty of not being able to do so at a later date, save through a court ruling obtained to this effect.

3. If the Office of the Auditor-General of the Securities Market, having heard the opinion of the stock exchange and of the stock exchange operator in question, deems that the facts fall under the scope of the guarantee provided, it shall call for the collateral paid to the extent necessary in order to indemnify the interested party.

**Article 32**

*(Reintegration and increase of the collateral)*

1. Whenever the security is used for the purposes for which it was intended or becomes insufficient, the stock exchange operator in question shall reintegrate or increase the collateral within the time period defined by the Office of the Auditor-General of the Securities Market, which may not be more than ten days.

2. When the security provided by a certain stock exchange operator, taking into consideration the situation of the securities market in general or of the stock exchange market in particular, in relation to the volume and type of proprietary trading and intermediation by the stock exchange operator in question, or the level of responsibility taken on by said operator, proves to be insufficient, the Office of the Auditor-General of the Securities Market shall decree, at its own initiative or on the proposal of the Board of Directors of the Stock Exchange, that the security be reinforced.

3. If the stock exchange operator does not comply with the provision in number 1, it shall be suspended from the activity until the collateral has been reintegrated or increased as ordered.
CHAPTER V
Rules of conduct and of professional ethics

Article 33
(Scope of application)

1. In addition to the other duties established in the applicable legislation and regulation, financial intermediaries are obliged, in the pursuit of their securities intermediation activities, to observe the rules of conduct and of professional ethics defined in this chapter.

2. The rules of conduct and of professional ethics must also be observed in the pursuit of the respective professional activities and in all of the activities resulting therefrom or related to them by the members of the management companies and by the employees or any co-workers, albeit occasional, of financial intermediaries.

Article 34
(Market defence)

Financial intermediaries shall conduct themselves according to strict standards of integrity and honesty and must:

a) Ensure that their actions taken within the scope of any activity pursued by them are characterised by the greatest competence, rigor and absolute transparency of processes, abstaining from adopting any behaviour that may affect the credibility of any market in which they operate;

b) Manage the orders which were entrusted to them in an exempt and responsible manner, respecting the principle of the smooth functioning of the market;

c) Abstain from performing any actions leading to a situation of unfair competition, namely by bypassing compliance with any legal and regulatory provisions applicable to the intermediation activities pursued by them.

Article 35
(Competence and diligence)

1. In all of their activities, financial intermediaries must assure their clients of high levels of competence and diligence.

2. The duties of competence and diligence set forth in the previous number imply the obligation of financial intermediaries to provide their organisation with the necessary technical and human resources so as to ensure that the respective activities and services provided by them are of high quality and efficiency, namely:

a) They must have competent and informed human resources on a permanent basis, which means that they shall use very strict criteria when recruiting
staff and shall also provide their staff or co-workers with adequate vocational training for the performance of the duties assigned to them;

b) They must equip themselves with enough technical resources in order to back up the various intermediation activities carried out and the services consequently provided with the highest standards of quality and efficiency;

c) They must strive to have a clear understanding of their clients’ wishes and objectives, as well as of the circumstances in which the services provided by them are requested by clients;

d) They must strive to obtain a suitable understanding of their clients’ situation, particularly as regards their degree of knowledge and experience in the securities market;

e) They must ensure that the management mandate, shall it exist, is provided in writing and clearly and objectively defines the terms, limits and the degree of discretion of the nominee.

Article 36

(Equal treatment)

Financial intermediaries must assure all of their clients of equal treatment, without discriminating among them based on their rights on account of the nature or priority, in terms of time, of their orders or of the services requested or of any other circumstance envisaged in the applicable legal and regulatory provisions.

Article 37

(Prevalence of clients’ interests)

Financial intermediaries must give absolute priority to the interests of their clients, both in relation to their own interests, irrespective of the nature, and in relation to the interests of the members of their management companies, of their staff and other co-workers and of third parties and to this effect must:

a) Carry out adequate internal control regarding the conditions in which the various services are provided to their clients;

b) Define the regime that is applicable to the personal operations to be carried out by the members of the management companies, employees and other co-workers, disciplining the types and modalities of operations authorised and the securities involved in said operations, the domiciliation of accounts and the information provided on the operations carried out.
Article 38

(Conflicts of interest among clients)

Financial intermediaries shall strive to avoid the arising of conflicts of interest among their clients, both in the scope of the same activity and in the scope of different securities intermediation activities pursued by them, and when said conflicts arise, despite all of their endeavours, they shall resolve them fairly, without giving undue preference to any client in particular.

Article 39

/Internal organisation and functioning of intermediaries/

1. With the aim of avoiding conflicts of interests between financial intermediaries and their clients or among clients of different securities intermediation activities pursued by the same intermediary, whenever it is technically and economically viable, these activities shall be organised and carried out in areas of autonomous decision, by staff exclusively assigned to each of them, without any interference in or from any other area with which said conflicts may arise.

2. Financial intermediaries shall also take the necessary measures in their internal organisation and functioning to:

a) Prevent the circulation of confidential information within their structure. This information, which was obtained in the performance of the respective duties and which, not having yet been disclosed to the public, may influence the quotations or transaction prices of any securities inside and outside the stock exchange, shall be limited to the services or persons directly involved in each specific type of activity or operation;

b) Make sure that the information referred to in the previous sub-paragraph is not used in operations which involve the financial intermediary, its management and supervision staff or other staff members, or which are of interest to their other clients or third parties;

c) Set up suitable rules, procedures and organic mechanisms to ensure and control the internal compliance with the ethical standards and legal and regulatory provisions to which the financial intermediary and the persons referred to in the preceding sub-paragraph are bound in the performance of their activities and duties, as well as to sanction any violations;

d) Set up internal mechanisms to make a fair assessment of clients’ complaints.

Article 40

(Duty to inform)

Moreover, with regard to the duty to inform to which they are bound by the
applicable legal or regulatory provisions, financial intermediaries must ensure that they provide sufficient information tailored to the client's needs, in accordance with strict principles of lawfulness, truthfulness, sufficiency, objectiveness, opportuneness and clarity, and must:

a) Provide their clients with clarification and information which they need in order to take a reasoned decision on the investment or transaction they wish to carry out and also, in operations which, due to their nature or conditions, involve special risks, explain to them the content of said risks and the financial consequences that could be brought about shall the transactions be executed;

b) In the case of rendering securities portfolio management services, inform their clients on the risks to which they are subject as a result of the management, particularly taking into account the investment objectives, the degree of discretion granted to the intermediary and the specialised technical services which the intermediary is able to ensure;

c) Clearly inform their clients, before carrying out the operations or providing the services in question, of any personal interest they may have in these operations or services;

d) Provide impartial, competent and objective support when the client so requires in order to make a decision, namely because the client requests it, because the client clearly has very little experience or knowledge of the securities market or due to the client's oversight;

e) Promptly inform their clients of the execution and results of the operations they carry out on their account, of any special difficulties that arise or of the unfeasibility of said execution, and of any facts of circumstances of which they become aware, not subject to professional secrecy and susceptible of justifying, when necessary, the revision and amendment or cancellation of the corresponding orders;

f) Clearly inform their clients of the nature of the services provided, of their conditions and of the respective costs.

Article 41

(Relationship with the competent entities)

Financial intermediaries must provide the supervision and control authorities to which they are subject and the management companies of the securities market with their entire collaboration, they must promptly satisfy the requests made by the latter within the scope of their competencies and they must refrain from raising obstacles to the performance of the respective functions.
Article 42

(Advertising)

1. Financial intermediaries must observe strict principles of lawfulness, truthfulness, objectiveness, sufficiency, opportuneness and clarity in all of their advertising, irrespective of the form used or of the purposes for which it is intended.

2. When a financial intermediary resorts to the advertising services provided by another entity, it must ensure that said entity observes that set forth in the previous number.

CHAPTER VI

Final provisions

Article 43

(Conflicts of interest)

1. Financial intermediaries authorised to operate in a secondary market may not perform any of the following actions without the written authorisation of their clients:

   a) Act as counterparty in the operations carried out on the clients’ account;

   b) Subscribe or purchase, on behalf of their clients, for securities portfolios whose management is entrusted to them, securities issued by them or which are the object of a public offer for subscription, for sale or for exchange launched by them or whose placement was ensured by them;

   c) Perform, on their clients’ account, any other operations of a similar nature that could lead to a conflict of interests with them.

2. Financial intermediaries must declare to the Office of the Auditor-General of the Securities Market the economic ties and connections or contractual relationships they have with third parties and which, in the pursuit of their specific activity, on their own account or on behalf of third parties, may lead to conflicts of interests with any clients.

Article 44

(Other general obligations of financial intermediaries)

1. Besides the general duties set forth in the Securities Market Code and of those resulting from the rules of conduct and professional ethics set forth in this order, financial intermediaries authorised to operate in secondary markets have the following general obligations:

   a) To certify themselves, depending on the cases, of the existence, authenticity, validity, regularity, negotiability or availability of the securities in whose negotiation they participate or which are deposited or registered through them;
b) To certify themselves of the identity, capacity and contractual legitimacy of their principals;

c) To execute with competence and diligence, in perfect harmony with the orders received and in the best interest of the principal, the operations with which they are entrusted, always placing the interests of the client before their own interests, as well as before those of other clients or of third parties who shall not legitimately prevail over the client's interests, and ensuring in all circumstances that the principal is not mislead in relation to the object, conditions or circumstances of the transaction;

d) To ensure the adequate and punctual execution and settlement of the transactions carried out;

e) To organise and keep appropriate records of the operations carried out, filing these records and all other documents related to said operations for at least five years.

2. Financial intermediaries, the members of their management companies, in the case of legal persons, or those responsible for their management and supervision, in the case of individuals, as well as their employees, nominees, principals and any other persons that provide them with permanent or accidental services are bound by professional secrecy on everything regarding the operations carried out and the services provided to their clients, as well as on facts and information on said clients or third parties of which they become aware during the pursuit of said activities.

3. The duty set forth in the previous number ceases when:

a) The financial intermediary and the persons indicated in the previous number have to provide information or other details to the Banco de Cabo Verde, to the Office of the Auditor-General of the Securities Market or to the Stock Exchange, within the scope of their respective competencies;

b) There is another legal provision that does away with this duty.

Article 45

(Amendments to the Memorandum and Articles of Association of the Financial Intermediary)

1. Any amendments to the Memorandum and Articles of Association of financial intermediaries are subject to the prior authorisation of the Office of the Auditor-General of the Securities Market, which shall announce its decision within a period of 20 days counting from the date on which all of the information necessary to this effect is delivered.

2. An exception to the provision in the previous number is the amendment to the memorandum and articles of association as a result of a merger, demerger or change
to the corporate purpose of the financial intermediaries. Just as with these actions, said amendment shall depend on the authorisation of the Banco de Cabo Verde, to which the general authorisation regime defined in chapter II shall be applied, with the necessary adaptations.

3. The charters for the establishment and amendment of the memorandum and articles of association of the financial intermediaries may not be entered into without the confirmation of the authorisations envisaged in this order.

4. The authorisations referred to in this article must be communicated to the member of the Government responsible for the Finance area.

**Article 46**

(Remuneration of financial intermediaries)

1. The commissions to which financial intermediaries are entitled for their intervention in the trading of securities shall be defined in a regulation drawn up by the Office of the Auditor-General of the Securities Market.

2. All of the other financial intermediation services are freely remunerated.

**Article 47**

(Pursuit of the activity of stock exchange operator by credit institutions)

1. The Finance Minister may, when he deems that the structuring of the national financial system and the degree of development and circumstances of the market's functioning so advise, having heard the opinion of the Banco de Cabo Verde and of the Cape Verde Stock Exchange, authorise, through an ministerial order of a general nature, the pursuit of the activity of stock exchange operator by credit institutions with their offices in the national territory.

2. The authorisation referred to in the previous number shall necessarily be confined to the pursuit of the activity of stock exchange operator under the terms of sub-paragraph b) of article 22.

3. The authorisation referred to in this article does not do away with the need for authorisation of the registration for the pursuit of the activity referred to in articles 4, 12 and 24 of this order.

4. The provisions in articles 22, no. 3, 23, no. 3, 25, no. 2 and 27, no.1 do not apply to credit institutions that pursue the activity of stock exchange operator.

**Article 48**

(Entry into force)

This order enters into force forty-five days after its publication in the Official Bulletin.

Approved on 31 March 1998
The Chairman of the National Assembly, António do Espírito Santo Fonseca.

Promulgated on 24 April 1998.

Hereby published.

The President of the Republic, ANTÓNIO MANUEL MASCARENAS GOMES MONTEIRO

Signed on 27 April 1998.

The Chairman of the National Assembly, António do Espírito Santo Fonseca.

Secretary-General of the National Assembly, on 21 July 1998. – The Chairman of the National Assembly, António do Espírito Santo Fonseca.