Ministerial Order No. 38/2000, of 27th November

This Ministerial Order establishes the framework applicable to registration, handling and control of book-entry securities admitted to listing on the Stock Exchange.

O.B No. 34 – I Series
The international experience in countries that are characterised by business dynamism and by the degree of development in the securities market amply shows the utility of book-entry securities, i.e. securities which are not physically represented by certificates but only by entries in an account. And thus, whether by reduction of costs and time in which the issue and the circulation of securities is carried out, or by the simplification which allows a group of operational procedures regarding the functioning of markets, such as the exercising of patrimonial rights and the settlement of transactions carried out on the stock exchange.

In this manner, the Securities Market Code approved by Law No.52/V/98, of 11th May, set out in article 10 the possibility of the existence, corresponding to certificated securities, of book-entry securities, making same dependent, by means of article 123, on the possibility of effective issue in national territory of this type of securities, on the publication of special legislation that specifically regulates same as provided by article 16 of said Code.

The Commercial Companies Code approved by Decree Law No. 3/99, of 29th March, did not only strengthen the enshrinement of the possibility of shares and bonds being merely in book-entry from, authorising their issuance, but also immediately established a set of rules essential for the registration of said issuance and ownership. Said rules shall adequately regulate most situations wherein are found companies to which the Code is applicable.

However, within the context of the implementation, inevitably general, of the Commercial Companies Code, there is still the need for more thorough regulation of situations that are more specific, as is the case of securities that, being in book-entry form, are admitted to listing on the Stock Exchange of Cape Verde.

In fact, the circumstances intrinsically underlining said situation, which is to enable a higher frequency of transactions involving securities in simple, prompt and secure conditions, with recourse to professional intermediaries, impose the establishment of mechanisms specifically aimed at said reality in which the security of legal commerce is safeguarded in an environment which simultaneously allows as far as possible the easy and prompt circulation of traded securities.

This shall in fact be a truly important contribution to favour the expansion of the securities market, since the absence of the possibility of issuing of book-entry securities and of adequate mechanisms to regulate their handling has been an inhibiting factor of access to the market by some issuers.

The system established in this legislation registers an adequate co-operation between the registration of issue accounts, to be created and maintained by issuers, the
registration accounts of the holder of book-entry securities, to be created and maintained by authorised financial intermediaries, and the accounts to control the positions of the various intermediaries, to be created and maintained by the stock exchange.

A set of mechanisms shall be created to regulate the content of these accounts, their judicial value, the liabilities of participants, the various vicissitudes that can occur as a consequence of the handling of book-entry securities and the information to be provided on the accounts for the registration of book-entry securities. The Banco de Cabo Verde shall also be granted supervisory duties in this jurisdiction, in conformity with the general competencies of supervision and monitoring of the securities market already incumbent on said entity.

Pursuant to article 16 of Law No.52/V/98, of 11th May;

The Government of the Republic of Capo Verde hereby decrees, through the Minister of Finance, the following:

CHAPTER I

General provisions

Article 1

(Scope)

This document establishes the legislation applicable to the register, handling and control of book-entry securities admitted to listing on the stock exchange.

Article 2

(Registration and control of book-entry securities)

The system for the registration and control of the issuance and handling of book-entry securities is guaranteed through the existence of the following accounts:

(a) Issue registration accounts, set up and maintained by the issuer or its representative, in accordance with article 4;

(b) Accounts registering the ownership of book-entry securities, set up and maintained by authorised financial intermediaries, in accordance with article 6;

(c) Position accounts representing the total of the values kept in register by each financial intermediary, set up and maintained by the stock exchange in accordance with article 9.

Article 3

(Deposit system)

With the due changes, the accounts registering the ownership of book-entry
securities set out in sub-paragraph b) of the previous article fall under the deposit system established in article 15 of the Securities Market Code, namely for the purposes of observing the rules concerning stock exchange orders.

CHAPTER II

Registration accounts

Article 4

(Issuance registration account)

1. The issuance of book-entry securities admitted to listing shall be performed exclusively by means of the respective registration in an account named ‘Issuance registration account’, set up and maintained by the issuer or by a single institution that same designated and that shall act as representative of the entity.

2. The provision in the previous number does not do away with the need to observe the legal and statutory provisions regarding the issuance of the securities in question, including the authorisations, resolutions and acts of registration due.

3. Financial intermediaries that are members of the clearing and settlement system of operations held by the stock exchange may only be appointed by the issuer in accordance with number 1.

Article 5

(Contents of Issue registration accounts)

1. The issue registration account may be either paper-based or computer-based.

2. The entities that carry out the registrations on computer shall use security means appropriate for this type of format, including security copies kept in a different registry.

3. The issue registration account shall reflect:
   a) The complete identity of the issuer;
   b) The date of issue;
   c) The quantity of securities that incorporate the issue.
   d) The identity and complete characteristics of the securities issued;
   e) The amount and date of the payments for release stipulated and carried out;
   f) The changes that are made to any of the above mentioned;
   g) The date and identity of the financial intermediaries wherein the first ownership registrations were made.
Article 6
(Accounts registering the ownership of book-entry securities)

1. The ownership of book-entry securities shall be exclusively performed through the respective registration in the registration account named ‘account registering the ownership of book-entry securities, opened at the request of the stakeholders in an authorised institution.

2. Only financial intermediaries who are members of the clearing and settlement system of operations of the stock exchange may provide the service of registering the ownership of book-entry securities.

3. The provisions set forth in numbers 1 and 2 of the previous article shall apply to the accounts stipulated in this article.

Article 7
(Contents of the accounts registering the ownership of book-entry securities)

1. The accounts registering the ownership of book-entry securities shall confirm the ownership, nature, characteristics and legal position of registered securities on behalf of the respective title holders and shall also show, through appropriate entries and annotations, the processing of all operations involving registered securities, as well as the exercise of the respective patrimonial rights.

2. The accounts referred to in the previous number shall reflect the following:
   a) Number of account and opening date;
   b) Name, domicile and tax number of the holder or holders, in the case of more than one account holder it shall be presumed that the parts of each holder are equal, unless otherwise stated in the account;
   c) Full identity of securities registered at all times;
   d) Entries of debit and credit of the quantities acquired and sold, with the identification of the bank account where the corresponding financial movements were made;
   e) Allocation and payment of dividends, interest and any other income, with the identification of the bank account where same were credited;
   f) Subscription and acquisition and the free allocation of securities of the same or different type, to which the registered securities have conferred rights;
   g) Total or partial conversion of the securities registered in other securities, with the specification of new securities and the cancellation of the registration of converted securities;
   h) Detached rights of registered securities;
i) Establishment, modification or withdrawal of usufruct, surety, attachment, lien, collateral, seizure or any other legal position that encumbers the registered securities;

j) Blocking of registered securities, with an indication of the basis therefore, term of validity and quantity of securities covered, and termination of the blocking;

k) Other references that are due by the nature or characteristics of registered securities or by the legal positions relating to same.

3. Any entries on the account shall be dated.

**Article 8**

**(Structure of the accounts registering the ownership of book-entry securities)**

1. The contents of the accounts registering ownership of each holder shall at least be structured by successive subdivision of the following:

   a) Shares, bonds and any other types of securities;

   b) Denomination, by indicating the respective issuer of the security.

2. The structure of accounts registering ownership shall likewise reflect the differentiation of the security, when applicable, in regard to the respective tax system and special class of security holders, when there are legal or statutory limits to the ownership of the securities concerned, taking into account the capacity of its holders.

3. The accounts registering ownership shall furthermore be structured in such a manner that allows the financial intermediary to provide the following at any time.

   a) The relationship of all of the holders of a certain security, indicating the quantity held by each one;

   b) When applicable, the relationship of all holders of certain classes of a certain security, indicating the quantity held by each one;

   c) The complete statement of account of each registered securities holder, both and in regard to a certain type of security and a certain value;

   d) The total quantity of securities registered in accounts under their office, differentiated by types and individual identity of securities.

4. Financial intermediaries authorised to hold accounts registering the ownership of book-entry securities may create internal systems that incorporate all the securities accounts under their office, independently of same being book-entry or certificates and whether or not they are admitted to listing, without prejudice of such system allowing at any time compliance with that set forth in the previous numbers
and likewise clearly showing the differentiation between book-entry securities and certificated securities, for both listed and unlisted securities.

**Article 9**

*(Position accounts of securities admitted to listing)*

1. With regard to each issue, or group of fungible issues, of book-entry securities admitted to listing on the stock exchange, each of the financial intermediaries authorised to hold accounts registering the ownership of book-entry securities shall open at the stock exchange, until the date on which transactions commence or the date on which certificated securities are converted into book entries, an account representing the total shares registered at same.

2. The accounts referred to in the previous number aim to clearly show at all times all of the securities integrated in each issue, the group of fungible issues, held in record at each financial intermediary in accordance with the transfers of ownership arising from the respective trade or from other reasons, with the total balance of each financial intermediary corresponding at all times to the sum of the securities recorded in the individual accounts held by same and the sum of all of the accounts of all intermediaries corresponding to the total quantity of the issue or issues in question.

3. Whenever the stock exchange detects that the total quantity of securities deriving from the sum of the accounts of all of the financial intermediaries does not correspond to the total quantity of the issue or issues in question, it shall in conjunction with said intermediaries and with the issuer, rectify the situation, informing the *Banco de Cabo Verde* of the anomaly and its solution.

4. The rules regarding the opening and handling of accounts referred to in this article, as well as the information to be provided to the issuer, shall be established by the stock exchange by means of a circular.

5. The service provided by the stock exchange in terms of this article may be remunerated under the conditions to be established by the *Banco de Cabo Verde*.

**Article 10**

*(Format, officiousness and proceedings of registrations)*

1. The records, references and annotations in the accounts registering the ownership of book-entry securities shall be made by the financial intermediaries based on documentation legally required for proof of rights or facts to be recorded and, that being the case, a written request by the interested parties, and shall indicate the number of the archive document, including the said request.

2. Financial intermediaries shall undertake the registrations regarding the sale, acquisition or any other operations involving securities registered or to be
registered in the accounts under their responsibility and carried out by them, and shall undertake the remaining registrations on the written request of the holders of the right or subject of the fact to be registered, or by determination of the competent entities.

Article 11
(Date and order of registrations)

1. Officious registrations shall be recorded with date of the registered fact.

2. The registrations requested by the interested parties shall be carried by order of submission of requests and date of same.

3. Pending registrations with regard to blocked securities shall be reported on the day the blockage is cancelled.

Article 12
(Value and binding nature of the registration of book-entry securities)

1. The registration in the accounts referred to in this legislation shall presume that the legal positions are in accordance with the exact terms of the respective registration.

2. The rights and facts subject to registration shall only become effective with respect to third parties as from when the registration took place; however, the lack of registration may not be invoked by those who had the obligation to undertake same.

3. The rights registered on said securities shall prevail in the order whereby the respective registrations took place.

4. The holders of any rights on book-entry securities may only convey, encumber same or exercise inherent patrimonial and social rights, provided that the securities are registered in an account in their name in accordance with this order.

The registration of any facts or legal positions may be proven by a certificate issued by the registration entity.

CHAPTER
Vicissitudes

Article 13
(Blocking of securities)

1. Securities shall be subject to blocking when the following takes place:

a) Sell order, until the sale takes place, withdrawal of order or deadline of the respective validity period wherein it was not executed;
b) Exercise of rights when said right depends on keeping the ownership of securities in question, with the implementation of the provision in number 2 of article 13 of the Securities Market Code;

c) Request by the respective holder;

d) Stipulation by the Banco de Cabo Verde within the scope of investigation in progress in the exercise of its supervisory functions of the securities market;

e) Legal decision.

2. The blockage hinders the handling or transfer of blocked securities, with the exception of their sale in the case of sub-paragraph a) of the previous number, and also the entries of any records on said securities that do not refer to the termination of the blockage.

Article 14
(Transmission of book-entry securities)

1. The transmission, free of charge or against payment, of listed book-entry securities shall occur on debiting the transferor’s registration account and crediting the buyer’s account or one which shall be opened to this effect.

2. In the case of trades carried out on the stock exchange, the financial intermediaries that received the respective buy and sell orders shall officiously and mandatorily be obliged to register said orders in the stakeholders’ accounts, in observance of that established in the Securities Market Code and in the rules applicable to the clearing and settlement system.

Article 15
(Conversion of certificated securities into book-entry securities)

1. The conversion into book-entry securities of certificated securities admitted to listing which any issuer decides to proceed, shall mandatorily include the entire issue whereof the securities to be converted resulted and, if such is the case, all of the securities constituting fungible issues with same.

2. For the purposes of conversion, the issuer shall publish a notice in at least one national newspaper of mass circulation and in the stock exchange bulletin, announcing the event and establishing the time period of no less than sixty days so that the holders of said security may carry out the respective deposit with the financial intermediary in accordance with the conditions established in article 6.

3. On the first working day following the closing date for the period established by the issuer, financial intermediaries shall proceed as follows:

a) Open, on behalf of the holders of the converted securities, the accounts registering the holder of book-entry securities, corresponding to securities
to be converted which had been submitted and those which had already been deposited.

b) Make a note on the certificates of the respective conversion and deliver them to the issuer.

4. The issuing entity shall cancel or destroy the securities which it received in accordance with the previous number, and shall open up the registration account of the issue.

5. At the end of the period defined for the conversion, the issuer shall publish, in the format set out in number 2, an announcement stating the quantity of securities converted and, in the event of them not corresponding to the totality of the issue or issues covered, the contents of the provisions in the following number.

6. Once the period defined by the issuer for the conversion has elapsed, and in the event of there being no delivery of securities constituting the issue or issues included in said securities, only the respective securities shall be legalised so as to apply for registration in their favour. These securities may not be validly traded nor the respective rights exercised until the holders convert them in conformity with that set forth in this article.

7. The issuer shall record the missing securities in a special account that shall be created to this effect whose balance shall, at all times, represent the quantity of securities not yet converted.

8. The dividends, interest and any other income regarding the securities that were not converted shall be credited by the issuer in a special account to be opened specifically for this purpose and which shall subsequently be debited as and when the conversion of the corresponding securities takes place by undertaking for credit in the account of the respective holder, to be carried out by the financial intermediary that presents the securities for conversion.

9. In the event of none of the securities being converted, the stock exchange shall withdraw the quantity of securities not converted from trading with the amount subsequently converted being restored to trading as and when the conversions take place, by means of the issuer communicating same to the stock exchange.

10. All charges inherent in the conversion of certified securities into book-entry securities shall be at the issuer’s expense, with no costs whatsoever falling on the interested parties.

**Article 16**

*(Conversion of book-entry securities into certificates)*

1. The issuer that decides to convert an issue of book-entry securities into certificated securities shall publish an announcement of said fact in a national
newspaper of wide circulation and in the stock exchange bulletin, indicating the date as from which the securities shall be available for delivery.

2. The issuing entity shall be responsible for agreeing with all financial intermediaries qualified to keep accounts registering ownership on a specific date for the delivery of the securities, which shall take place on a single day for all, in accordance with the total quantities of securities concerned with each one registered.

3. Financial intermediaries shall be responsible for recording the conversion in the accounts registering the ownership of book-entry securities, on the date of the delivery of the securities, and for depositing the securities on behalf of the respective holders.

4. The stock exchange shall encourage the technical interruption of trading under the conditions deemed necessary.

5. The charges associated to the creation of securities and the developments deemed necessary for the initial distribution shall be wholly borne by the issuer.

**Article 17**

*(Conversion of book-entry securities into certificated securities for foreign trading)*

1. When it proves necessary for foreign trading to be allowed, the holders of book-entry securities shall request the financial intermediary wherein said securities are registered to initiate the respective conversion into certificated securities, if said trading does not depend on any authorisation from Cape Verde or any country in which it is purported to be traded, or if it does depend, presenting the interested parties with proof of the necessary authorisation.

2. The issuance of securities shall be made by the issuer on the financial intermediary’s indication.

3. Securities may not be traded or be the object of any legal deal on the national market, except for the reconversion into book-entry securities, obliging the mention of same being included in the securities.

4. With the delivery of the securities by the issuer to the financial intermediary, and by the latter to the respective holder, the issuer and the financial intermediary shall record the conversion of the quantity of securities in question in the issuance registration account and in the ownership registration account, respectively.

5. The reconversion of certificated securities into book-entry securities shall depend on the request from their legitimate holder, together with securities, presented to an authorised financial intermediary.

6. The exercise of any rights inherent to the securities referred to in this article
shall be done in accordance with the general procedure applicable to certificated securities.

7. Only the initial holder and the persons that confirm having acquired same by foreign trading shall be considered to be the legitimate holders of the securities.

8. The costs of converting the book-entry securities into certificated securities and the reconversion from the latter to book-entry securities, in accordance with this article, shall be wholly borne by the interested parties.

**CHAPTER IV**

**Information**

**Article 18**

*(Information for holders)*

1. Financial intermediaries shall send to the holders of accounts registering the ownership of book-entry securities under their care a notice of the launches carried out, whenever any movement or subsequent registration in the respective accounts takes place, with the service of the proof of the entry related thereto being carried out.

2. On the opening date of the accounts, and whenever requested to do so, financial intermediaries shall send to the holders of accounts registering the ownership of book-entry securities under their care a print-out of same, specifying the nature, class, characteristics and quantity of securities registered therein, as well as the indication, if applicable, of the existence of any encumbrances, charges, limitations or obligations that are registered against said securities.

3. When requested to do so, financial intermediaries shall provide the beneficiaries of any rights of usufruct, encumbrances or charges and other limitations or obligations with a certificate confirming the registration, nature and conditions, as well as the respective amendment or withdrawal.

4. The documents referred to in this article may be produced by computer, without prejudice to their signature, albeit by rubber-stamp, by an authorised representative of the financial intermediary.

5. It shall apply to the provisions of article 13 of the Securities Market Code.

**Article 19**

*(Other information)*

1. Whenever necessary and timely, financial intermediaries authorised to keep ownership registration accounts shall provide the issuer with information requested by same and which is necessary for the issuer to comply with its obligations regarding the exercise by holders of the patrimonial rights inherent to the securities issued, and may adequately control the conditions and results of said exercise.
2. In the case of book-entry securities that follow the framework for nominal securities, financial intermediaries shall provide issuers, at their request, with reports containing the identity of the securities holders and the quantity held by each one.

3. When the law or the memorandum and articles of association of the issuer impose restrictions on the percentage of the respective share capital that may be held by a group of shareholders that belong to a certain category of individuals or legal persons, and in the case of book-entry shares that follow the framework for nominal securities, authorised financial intermediaries shall provide the issuer, at its request, with reports containing an indication of the shares held by shareholders falling under said categories.

CHAPTER V

Final and contingent provisions

Article 20

(Liability)

The issuer, by itself or jointly with the institution named by same, in regard to the registration accounts of issues, and the financial intermediaries, in regard to accounts registering the ownership of securities held, shall be answerable independently of the fault for the damages caused to the holders of rights on registered securities or third parties, as a result of the omission, irregularity, error, shortcomings or delay in carrying out or amending the registrations, unless it can be proved that the injured party was at fault.

Article 21

(Professional secrecy)

Without prejudice to the provisions of articles 18 and 19, financial intermediaries and their employees shall be subject to professional secrecy on the contents of ownership registration accounts and the documentation relating thereto, which may only be accessed by holders, as to the matter concerned therewith, the Banco de Cabo Verde, in exercising supervisory functions of the securities market, and the legal authorities in the scope of the process.

Article 22

(Prohibition from pursuing activity)

The Banco de Cabo Verde may prohibit the financial intermediary authorised in accordance with this legislation to keep accounts regarding registration, issues or the ownership of book-entry securities, from carrying out said activity when it deems justified in the exercise of its general supervisory powers that the intermediary in question does not display being in possession of technical capacity or resources to guarantee the provision of registration services in appropriate conditions of efficiency and security.
Article 23

(Securities already issued)

Any book-entry securities, ultimately issued before the enactment of this legislation, shall become subject to the provisions contained therein if said securities were admitted to listing on the stock exchange, with the issuers being responsible to taking all the actions necessary to bring into conformity the respective legal status, in accordance with this regulation.

Article 24

(Supervision)

The *Banco de Cabo Verde* shall be responsible for supervising the compliance with the provisions of this regulation.

Article 25

(Entry into force)

This Ministerial Order comes into force on the date of publication.