

4. FINANCIAL MANAGEMENT COMPANIES

Decree-Law no. 11/2005, of 7th February

Creates Financial Management Companies

O.B. no. 6 - I Series

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of 7th February

This decree-law creates the Financial Management Companies structure, based on the parabanking regime set out in Law 3/V/96, of 1 July. It permits them to manage one or more classes of collective investment undertakings, and establishes the general rules with which they must comply, without prejudice to any additional requirements which may be laid down from time to time by the laws governing such institutions with a view to providing specific protection for prevailing interests.

Thus,

Under the powers conferred by Article 203(2)(c) of the Constitution the Government hereby decrees the following:

Article 1

(Definition and Object)

1. A Financial Management Company is a parabanking institution governed by Law 3/V/96 of 1 July, unless expressly provided to the contrary herein.
2. The object of a Financial Management Company shall consist of one or more of the following:
 - a) Management of collective investment undertakings which raise capital from the public, namely:
 1. Securities investment funds;
 2. Real estate investment funds;
 3. Pension funds;
 4. Risk capital funds;
 5. Other collective investment undertakings created by law.
 - b) Discretionary and tailored management of portfolios on behalf of third parties, based on powers conferred by the investors, provided that the following instruments are included:
 1. Securities;
 2. Collective investment undertakings units;
 3. Money market instruments;
 4. Financial instruments futures, including other derivative instruments which may be settled in cash;

- 5. Forward rate agreements (FRAs);
- 6. Interest rate swaps, currency swaps or equity swaps;
- 7. Put or call options on the abovementioned instruments, including cash instruments; this category includes currency and interest rate options.
- c) Investment consultancy regarding the assets whose management is the object of the company, in accordance with b) above;
- d) For the purposes set out in paragraph 2(a), capital is deemed to have been raised from the public when the respective offer:
 - 1. Is aimed at unspecified investors or at more than 100 investors;
 - 2. Is preceded or accompanied by prospecting or data gathering of investment intentions from unspecified investors, or by promotional advertising.
- e) A holding in the share capital of any type of banking or parabanking institution or finance companies, whether foreign or domestic, shall also be stated in the object of a Financial Management Company, provided that:
 - 1. Its object is identical or complementary to the object of the Financial Management Company which owns the holding;
 - 2. The total amount of such holdings does not exceed the own funds of the Financial Management Company which owns the holding.

Article 2

(Type of company and own funds)

1. A Financial Management Company shall incorporate as a public limited company with nominative or registered bearer shares.

2. A Financial Management Company's own funds shall not be lower than the sum of the following percentages of the total net value of each one of the collective investment undertakings and assets under their management:

- a) Up to 770,000,000\$00:0.5%
- b) Over 770,000,000\$00:0.1%

3. A Financial Management Company which manages pension funds shall comply with the solvency ratios and maintain the guarantee funds set out in the applicable legislation.

4. Own funds means the paid-up capital, reserves, carry-overs and medium and long-term subordinate loans, provided that these are authorised by the *Banco de Cabo Verde* and do not exceed the sum of the remaining categories.

Article 3

(Authorisation and registration)

1. The incorporation of Financial Management Companies and their registration with the *Banco de Cabo Verde* are governed by articles 8 and thereafter of Law 3/V/96 of 1 July.
2. The *Banco de Cabo Verde* shall keep a current register of shareholders in Financial Management Companies with holdings of 10% or more of the share capital.
3. The *Banco de Cabo Verde* may oppose *inter vivos* transfers of Financial Management Company shares which have the effect of moving shareholders from or to a 10%, 20%, 33%, 50% scale.
4. For the purposes of the preceding paragraph, any entity which wishes to acquire or dispose of such holdings *inter vivos* shall provide advance notice of its intention to the *Banco de Cabo Verde*, which will have 30 days in which to make a decision, with silence being construed as approval.
5. A breach of the duty to give prior notice or the conclusion of a transaction opposed by the *Banco de Cabo Verde* shall empower the Bank to suppress the voting rights attached to the transferred shares, in addition to the legal sanctions applicable to particularly serious breaches.

Article 4

(Duties)

A Financial Management Company shall carry out all the acts and transactions which are deemed necessary for or incidental to the smooth running of the managed collective investment undertakings and assets, according to normal standards of diligence and professional skills, particularly:

- a) Those required for the proper implementation of the chosen investment policy, particularly:
 1. Selecting the assets which may be acquired by the managed collective investment undertakings or assets, which in the case of the latter may at any given time include any type of movable and immovable property, according to the criteria set by a Financial Management Company which has discretionary management powers;
 2. Acquiring and disposing of the assets of the managed collective investment undertakings or assets, and complying with all the procedures necessary for a valid transfer;
- b) Exercising the rights attached to the assets of the managed collective

- investment undertakings or the assets;
- c) Administering the assets of the managed collective investment undertakings or the assets, particularly:
 - 1. Providing the legal and accounting services necessary to administer the managed collective investment undertakings or assets, without prejudice to the specific legislation applicable to these activities;
 - 2. Processing and responding to complaints made by unit holders and clients;
 - 3. Valuing the portfolio, determining the value of the investment units and issuing tax declarations;
 - d) Complying and controlling compliance with the applicable provisions, the constituent documents of the collective investment undertakings and the contracts entered into with regard to the managed collective investment undertakings or assets;
 - e) Registering collective investment undertakings unit-holders;
 - f) Distributing income;
 - g) Issuing and redeeming collective investment undertakings units;
 - h) Carrying out clearance and settlement procedures, and sending certificates;
 - i) Keeping documents on file;
 - j) Marketing the collective investment undertakings units;
 - k) Marketing, in Cape Verde, collective investment undertakings units administered by third parties, whether domiciled in Cape Verde or otherwise, in accordance with the law.

Article 5

(Duties)

- 1. In the pursuit of its object, a Financial Management Company shall act at all times in the sole interest of the holders of the assets under its management or the corresponding certificates.
- 2. Financial Management Companies shall be obliged to administer the managed collective investment undertakings or the assets in accordance with the principle of risk spreading, and performing their duties according to the normal standards of diligence and professional skills.
- 3. A Financial Management Company may not exercise the voting rights attached

to the securities held by the managed collective investment undertakings or to the assets:

- a) By means of a person who also represents the entity with which it is in a controlling or group relationship;
 - b) With a view to including or maintaining in the constituent documents non-transfer clauses, clauses which restricted voting rights or any other clauses which may adversely affect the success of a takeover bid;
 - c) With the main objective of increasing the company's influence over the company with which it is in a controlling or group relationship.
4. The duties set out above and the provisions of Articles 7 and 8 shall be supplementary to the laws and regulations governing managed collective investment undertakings and assets.

Article 6

(Remuneration)

The act of administering a managed collective investment undertaking or assets shall be remunerated:

- a) By management commissions and performance awards, in accordance under the terms set out in its constituent documents and regulations, as well as under the management agreements or mandates;
- b) By commissions for subscription, redemption or transfer of the collective investment undertakings units which it manages, insofar as these are so attributed in the constituent documents, in accordance with the regulations;
- c) Other commissions as set out by regulations, management agreement or mandate.

Article 7

(Conflict of interests)

1. Financial Management Companies employees and managing or supervisory bodies who have decision-making powers and the power to carry out investments shall not be permitted to perform any duties for another Financial Management Company.
2. The members of the managing or supervisory bodies of the Financial Management Companies shall act independently and in the sole interest of the unit-holders, which interests shall prevail over their own interests and those of any entities with which they are in a controlling or group relationship.
3. Whenever a Financial Management Company manages more than one collective

investment undertaking or asset, it must regard each one as a client and seek to prevent any conflict of interests, and whenever such conflicts are inevitable, they must be solved according to equitable non-discriminatory principles.

4. Whenever joint orders are issued for several managed collective investment undertakings or assets, the Financial Management Companies shall distribute the assets and their respective costs proportionately.
5. A Financial Management Company which manages investment funds and at the same time exercises a discretionary and tailored portfolio management power on behalf of third parties based on powers conferred by the investors, may not invest all or part of a client portfolio in investment units in the collective investment undertaking it manages, except with the prior consent of the client, which consent may be given in general terms.

Article 8

(Prohibited operations)

Financial Management Companies shall not:

- a) Take out loans;
- b) Grant loans, including guarantees, on its own behalf, with the exception of the occasional advance on salary or allowances to employees;
- c) Short sell securities on its own behalf;
- d) Acquire collective investment undertakings investment units on its own behalf, except for those which fall within the category of treasury collective investment undertakings or equivalents which are not managed by them;
- e) Acquire real estate apart from that required for use in the course of its business and which does not exceed the amount of its own funds.

Article 9

(Contracting out)

1. A Financial Management Company may contract out investment management and administrative duties, in accordance with the following principles:
 - a) It periodically defines the investment criteria;
 - b) The contracting out does not relieve the Financial Management Company entirely of its business activity;
 - c) The Financial Management Company and the depositary remain liable for compliance with regulatory provisions;
 - d) The subcontractor holds the necessary qualifications and skills to perform

the duties contracted out;

- e) The Financial Management Company remains in permanent and effective control of the performance of the duties contracted out and ensures these are carried out in the interest of the clients, providing additional instructions to the subcontractor or replacing the subcontractor, if so required by the interests of the client.
2. The subcontractor shall be subject to the same obligations as are imposed on Financial Management Companies and to the supervision of the *Banco de Cabo Verde*.
3. The fact that duties have been contracted out may not adversely affect effective supervision by the Financial Management Companies, nor shall it prevent them from acting, or prevent the managed collective investment undertakings or assets from being administered, in the interests of the unit-holders or the clients.
4. The Financial Management Company shall apprise the *Banco de Cabo Verde* of the terms and conditions of each subcontract prior to completion.
5. The full prospectus for each collective investment undertaking and the contract authorising the management of the assets shall state the duties contracted out by the Financial Management Company.

Article 10

(Subcontracted entities)

1. The management of any investments shall only be contracted out to another Financial Management Company or credit institution.
2. The management of any investment shall not be contracted out to a depositary or to any other institution whose interests may conflict with those of the Financial Management Company which is contracting out the duties, or with those of their clients and respective unit-holders.
3. It shall be incumbent on Financial Management Companies to prove that there is no conflict of interest such as that referred to in the preceding paragraph.
4. The management of an investment may only be contracted out to an institution based in a State which is not a member of the OECD if cooperation between the domestic supervisory authority and the supervisory authority in such a State is guaranteed.

Article 11
(Commencement)

This decree-law shall come into force on the day after publication.

Passed by the Council of Ministers
José Maria Pereira Neves – João Pinto Serra
Promulgated on 26 January 2005.

For publication.

The President of the Republic, PEDRO VERONA RODRIGUES PIRES

Countersigned on 31 January 2005.

The Prime Minister, *José Maria Pereira Neves*