NATIONAL ASSEMBLY

LAW Nº 61 /VIII/2014

Of April 23

By the mandate of the People, and under the terms of paragraph b) of article 175 of the Constitution, the National Assembly decrees the following:

CHAPTER I
OBJECT, SCOPE AND GUIDELINES

Article 1
Object

This document defines the foundations, the guidelines and the legal reference framework for the financial system.

Article 2
Definitions

For the purposes of this document, the following are defined as:

a) "Auxiliary activities of financial activities" - the activities and services which auxiliary institutions of the financial system are authorized, under the law, to develop and provide to financial institutions, namely prospecting with the aim of attracting new clients to the financial institutions, accounting and external audit services provided to the financial institutions, credit information services and credit-rating;

b) "Banking activity" - the activity carried out by banks, of receiving from the public deposits or other repayable funds, to be used on their own account, namely in credit operations;

c) "Financial activities" - the activities of banking, of financial intermediation in financial instruments and of insurance considered as such by law;

d) "Bank" - a credit institution that carries out banking activities;

e) "Financial contracts" - the contracts that will result in financial instruments or whose object are financial instruments; where one of the parties must be a financial institution or which involve exclusively financial institutions;

f) “Reporting date”, the date on which the financial information that is the object of disclosure is reported;

g) “Equity/Capital” - the difference between the patrimony of the financial institution, assessed by realizable and eligible values for that effect, and its firm or contingent liability, assessed by values payable;

h) “Auxiliary institutions of the financial system” - persons and entities mentioned in number 3 of article 3, natural or legal, public or private, legally qualified to carry out one or more auxiliary activities of financial activities and classified as such by law;

i) “Credit institutions” - financial institutions which, besides other financial activities, carry out the activity of granting credit.

j) “Financial institutions” - persons and entities mentioned in number 2 of article 3, natural or legal, public or private, legally authorized by the Bank of Cape Verde to carry out one or more financial activities, as defined in article 20;

k) “Financial instrument” - a negotiable instrument in the financial market, in the form of security or a derivative financial instrument;

l) “Financial market” - an organized or non-organized market, where freely transferable *inter vivos* financial instruments are traded and in which: (i) either one of the parties in the transaction is a financial institution; (ii) or the business has the mediation of a financial institution;

m) “Financial operations” - an orderly set of legal and material acts with a common purpose by a financial institution in the exercise of a financial activity;

n) “Collective investment schemes” - institutions classified as such by the applicable law, corporate or unincorporated, whose purpose is the collective investment of capital, operating under a principle of division of risks and under the pursuit of the exclusive interest of the participants;

o) “Risk profile” - probability features of the possible losses associated with a given financial contract or with a given portfolio of financial instruments;

p) “Reporting period” - the time between two consecutive reporting dates;

q) “Prudential regime” - the set of rules, including non-written rules that simply originate from good practices, emanating from a regulatory authority, or accepted by it, and are in force in a given financial system;

r) “Financial income” - a transfer of liquidity that is not the consideration of a transaction of goods or of services;

s) “Risk” - the possibility of a patrimonial loss that the financial institution is subject to;

t) “Financial risks” - the set of risks that financial institutions are exposed to, including the counterparty risk, credit risk, market risks (price risk, exchange risk and interest rate risk), operational risks and reputational risk;

u) “Insurable risks” - the set of risks that the insurance sector traditionally covers, namely in the “Life”, “Real” and “Health and Assistance” classes;

v) “Financial system” - the set of institutions and persons involved in the activities of receiving deposits and other repayable funds, of granting credit and financing, in the payment system, in the financial markets, in contracts concerning money and precious metals, in the insurance activity, in the management of pension funds, in the provision of services relating to these and in their regulation and supervision;

w) “Payment system” - systems of transfer of funds governed by formal and standardized arrangements as well as by common rules regarding the processing, clearing and settling of payment transactions;

x) “Security” - financial instrument classified as such by the applicable law, including all the representative documents for homogeneous legal situations that may be negotiated in the market.

Article 3
Scope

1- This document applies:

a) To the financial institutions and to the auxiliary institutions of the financial system that have headquarters, a permanent establishment or any other form of representation in the territory of the Republic of Cape Verde;

b) To all the financial operations and financial contracts involving residents in the territory of the Republic of Cape Verde that are not financial institutions.

2- The following are financial institutions:

a) Credit institutions, including:

i. Banks;

ii. Investment companies;

iii. Leasing companies;

iv. Factoring companies*;*

v. Credit-purchase financing companies;

vi. Credit card issuing or management companies;

vii) Mutual guarantee societies;

viii) Regional development companies;

ix) Others that are classified as such by law;

b) Electronic money institutions;

c) Insurance companies and pension fund management companies;

d) Pension funds and collective investment schemes as long as they constitute a legal person;

e) Investment fund management companies and depository companies of assets linked to investment funds, in accordance with Executive Law nº 15/2005, of 14 February;

f) Financial management companies;

g) Venture capital companies;

h) Exchange offices;

i) Others that are classified as such by law.

3- The following are auxiliary institutions of the financial system:

a) Financial intermediaries;

b) Certified auditors and accountants and external auditors;

c) Credit information private bureaus;

d) Credit-rating agencies;

e) Self-regulation organizations;

f) Others that are classified as such by law.

Article 4
Pillars of confidence, soundness and stability

1- The financial system is structured so as to promote the confidence, soundness and stability of the financial system, to efficiently attract savings and to promote economic development.

2- The security, soundness and stability of the financial system are based:

a) On the level of capitalization of the financial institutions that integrate it;

b) On the behavioural and prudential supervision exercised by the Bank of Cape Verde and by the Auditor-General of the Securities Market (*Auditoria Geral do Mercado de Valores Mobiliários* - AGMVM), within their spheres of competence;

c) On market discipline, based on disclosure, by the financial institutions, of timely, precise, comparable and credible information.

Article 5
Competition

An environment of healthy competition shall prevail in the financial system for it to be safe, sound and stable, and for this purpose financial institutions of the same type must be subject to identical requirements of regulatory capital.

Article 6
Capital adequacy

Any financial institution that integrates the financial system shall have, at all times, adequate regulatory capital, regarding both the policy of exposure to risk that it adopts, and the risk it is actually exposed to.

Article 7
Rights of third parties with direct and legitimate interests

This document acknowledges the right of a third party, resident or non-resident, to take to court the question of illegality of any acts or omissions carried out by the financial institutions, as long as it establishes a direct and legitimate interest to do so.

Article 8
Irrelevance of the currency of denomination

The currency of denomination of issued or negotiated financial instruments is irrelevant for the purpose of applying this document, unless the contrary results from a provision contained therein.

CHAPTER II
REGULATION AND SUPERVISION

Section I
Organization, general objectives and scope of regulation and supervision

Article 9
Regulation

1- The regulation of the financial system is carried out in accordance with the Constitution of the Republic of Cape Verde, with the intervention of the competent authorities, under the terms established by law.

2- The regulatory authorities of the financial system are the Government, the Bank of Cape Verde and, under the Governor of the Bank of Cape Verde, the Auditor-General of the Securities Market (AGMVM).

3- The Government may delegate its regulatory powers to the Bank of Cape Verde, in compliance with the provisions of the Constitution and of this document.

4- The Government shall consult the Bank of Cape Verde prior to the approval of any legislative act framed within its regulatory powers.

Article 10
Supervision

1- The supervision of the financial system by the competent authorities is behavioural and prudential.

2- At the macro-prudential level, supervision focuses on the financial system as a whole and its main function is to limit financial instability risks and consequent losses.

3- At the micro-prudential level, supervision focuses on each financial institution, individually considered and within the respective consolidation limits taken as a whole, as well as on each financial market, individually considered.

4- The supervisory authorities of the financial system are the Bank of Cape Verde and, under the Governor of the Bank of Cape Verde, the AGMVM.

Article 11
Objectives of the regulation and supervision

The following are objectives of the regulation and supervision of the financial system:

a) The maintenance of the stability of the financial system;

b) The prevention of systemic risks;

c) The protection of the legitimate interests of the purchasers of financial services, including unqualified consumers and investors, and the increase of the financial literacy rate;

d) The defence of the regular functioning of the financial markets;

e) The promotion of free and healthy competition and of the efficiency of the financial markets;

f) The prevention, processing and penalization of financial crimes;

g) The prevention of the use of the financial system for purposes of money laundering and terrorism financing.

Article 12
Entities subject to regulation and to supervision

The following are subject to regulation and to supervision:

a) Financial institutions;

b) Auxiliary institutions of the financial system;

c) Members of the social boards of the institutions mentioned in paragraph a) and b), individually and collectively;

d) Natural persons that hold senior management positions in the institutions mentioned in paragraphs a) and b);

e) Legal entities directly or indirectly holding a qualifying participation in the share capital of the financial institution;

f) Each one of the promoters of a financial institution or of a collective investment organization to be set up, from the moment the request for authorization to operate in the financial system is submitted to the competent authority.

Article 13
Qualified shareholding

1- The concept of qualified shareholding in a financial institution is defined in supplementary legislation.

2- The regulations for the application of the provisions of the previous number are incumbent on the Bank of Cape Verde.

Section II
Powers of the regulatory and supervisory authorities

Article 14
Powers of the Government

1- Within the regulation and supervision of the financial system, it is incumbent upon the Government, through the Government Member in charge of the Finance area:

a) To establish policies regarding the financial system, after hearing the Bank of Cape Verde, and, in general, regarding the matters governed by this document and by supplementary legislation;

b) To exercise the powers conferred upon it by number 3 of this article and by supplementary legislation.

2- Within sixty days of carrying out the powers mentioned in the previous number, the Government shall send a report to the National Assembly regarding the adopted measures, for their information.

3- In the case of a disturbance in the money, financial and exchange markets that seriously endangers the national economy, it is incumbent upon the Government Member in charge of the Finance area to choose to order, by decree, and after hearing the Bank of Cape Verde, appropriate and proportional measures, namely the temporary suspension of certain markets or of certain operational categories, or even the temporary closure of financial institutions.

Article 15
Powers of the Bank of Cape Verde

1- It is especially incumbent upon the Bank of Cape Verde, within the regulation and supervision of the financial system:

a) To exercise the powers conferred upon it by the respective organic law, namely the full and totally autonomous exercise of the duties of Central Bank;

b) To exercise, fully and autonomously, the regulatory powers resulting from this law and from other supplementary legislation and regulations;

c) To carry out, fully and autonomously, the duties of prudential and behavioural supervision under the terms of this law and of other supplementary legislation and regulations;

d) To intervene in identifying and controlling systemic risks;

e) To cooperate with the other competent authorities with a view to ensuring an effective supervision of the financial system, from a macro-prudential perspective;

f) To disclose information with a view to pursuing the objectives of regulation and supervision, namely the legal and regulatory texts governing the financial system in Cape Verde, the criteria and general methodologies used in the supervision of financial institutions and statistical data concerning fundamental aspects of the application of prudential rules and requirements;

g) To increase the financial literacy rate, namely by providing training and dissemination actions and by promoting public awareness regarding the benefits of financial planning and the advantages and specific risks of certain products and financial operations;

h) To monitor compliance with the laws and regulations and the prevention, processing and penalization of financial crimes;

i) To prevent the use of the financial system for purposes of money laundering and terrorism financing;

j) To establish the rules regarding the provision of payment services, to control and supervise access to payment systems and to promote their safe and efficient functioning;

k) To exercise the other powers conferred upon it under the terms of this law and of other supplementary legislation and regulations.

2- Subject to the principles and rules laid down in this law and in other supplementary legislation and regulations, it is incumbent upon the Bank of Cape Verde to specify, by announcement, the relations to be observed between on-balance-sheet and off-balance-sheet assets, and to set prudential limits for operations that the financial institutions are authorized to carry out, individually and in consolidated terms in both cases.

3- The Bank of Cape Verde is the authority regarding competition in the financial system in general, and in the financial markets in particular.

Article 16
Powers of the Auditor-General of the Securities Market

It is incumbent upon the AGMVM, within the regulation and supervision of the market of securities and of other financial instruments, to exercise the powers conferred upon it under the terms of the Securities Market Code and other supplementary legislation and regulations.

Section III
Regulations and decisions of the Bank of Cape Verde

Article 17
Regulatory standards of the Bank of Cape Verde

1- Within the regulation of the financial system, the Bank of Cape Verde shall produce regulations about the matters included in its tasks and powers.

2- The regulations of the Bank of Cape Verde must comply with the principles of legality, need, clarity and publicity.

3- The regulations of the Bank of Cape Verde that take on the form of notices shall be published in the Official Bulletin of Cape Verde and on the website of the Bank of Cape Verde, entering into force on the date mentioned therein or five days after their publication.

4- The regulations of the Bank of Cape Verde merely aimed at regulating internal procedures of one or more categories of entities are called instructions; these are not published under the terms of the previous numbers, their respective addressees shall be notified of them and they shall enter into force three days after the notice or on the date mentioned therein.

Article 18
Decisions of the Bank of Cape Verde

1- Legal actions challenging administrative decisions of the Bank of Cape Verde made according to the present law shall follow, in all that is not expressly regulated in it, the terms laid down for the challenge of acts of the administration.

2- In the legal actions mentioned in the previous number and in the legal actions challenging other decisions made within specific legislation governing the activity of financial institutions, with the exception of appeal procedures regarding administrative infractions, suspending the effect is assumed to cause serious damage to the public interest, and the suspension of the enforceability of acts cannot be granted, unless proven otherwise.

3- In cases in which decisions mentioned in the previous numbers result in damage to third parties and in which the payment of the corresponding compensation has been made by the Bank of Cape Verde, the civil liability of its authors may only be enforced by a claim against the respective supervisory authority and if the seriousness of the conduct of the person so justifies, in cases of criminal intent or gross negligence, unless it constitutes a crime.

4- The Bank of Cape Verde compensates its collaborators, whether permanent or temporary, or members of the governing boards, for costs incurred in the defence against legal proceedings taken in respect of such persons in connection with the performance of public functions related to the powers and tasks of the Bank of Cape Verde, as long as these persons have not been convicted of crimes related to the activities that are the object of those legal actions.

Section IV
Governance of the regulatory and supervisory authorities

Article 19
Rules of good governance

1- The Bank of Cape Verde and the AGMVM shall adopt rules of good governance, consonant with internationally accepted practices and that are appropriate for the regulatory and supervisory functions legally attributed to them.

2- The rules of good governance shall be approved by the respective governing boards and reviewed at least biannually.

CHAPTER III
FINANCIAL INSTITUTIONS

Section I
General authorization

Article 20
Activity of the financial institutions

1- A financial institution may only carry out financial activities for which it is duly qualified under the terms of this document and of the supplementary legislation and regulations.

2- The following are financial activities:

a) Reception of deposits or other repayable funds;

b) Credit operations, including granting guarantees and other transactions, leasing and factoring;

c) Payment services, the provision of payment services, and the issuing and management of other payment methods, such as paper checks, paper traveller's checks and letters of credit;

d) Activities of investment in financial instruments and the provision of investment services regarding these instruments;

e) Transactions, on their own account or on customers' account, concerning instruments of the money and exchange market, financial savings instruments, options and operations with currencies, interest rates, commodities and securities;

f) Risk-taking through insurance and reinsurance contracts and insurance mediation;

g) Participations in issues and placements of securities and provision of related services;

h) Consultancy, custody, administration and management of securities portfolios;

i) Management and consultancy in the management of other assets;

j) Acting in interbank markets;

k) Leasing movable assets, under the terms permitted to leasing companies;

l) Operations with precious stones and metals;

m) Consultancy of companies regarding capital structure, business strategy and related issues, as well as consultancy and services relating to mergers and acquisitions;

n) Equity participation in the capital of companies;

o) Providing business information;

p) Hiring of safes and safekeeping facilities;

q) Other similar operations which are not forbidden by law, as defined in a notice issued by the Bank of Cape Verde.

Article 21
Publicity and prospection

Publicity and prospection aimed at securing financial contracts or at collecting elements about current or potential customers may only be carried out:

a) By a financial institution that is duly qualified under the terms of this law and of the supplementary legislation and regulations;

b) By a financial mediator that is duly qualified under the terms of this law and of the supplementary legislation and regulations.

Article 22
Quality acquisition

1- The quality of financial institution is acquired through:

a) Authorization to carry out financial activities granted by the Bank of Cape Verde;

b) Final registration with the Bank of Cape Verde; and

c) Final registration with the competent commercial registry office, if it is a financial institution with headquarters or established in the Republic of Cape Verde.

2- In order to obtain the authorization mentioned in the previous number, an authorization issued by the supervisory authority of the country of origin must be submitted, under the terms of the applicable international conventions:

a) The promoter of a financial institution to be set up in the Republic of Cape Verde that is subject to regulation and supervision in its country of origin;

b) The financial institution with headquarters in a foreign country willing to set up in the territory of the Republic of Cape Verde.

3- The grant of the authorization to operate is an essential prerequisite for registering with the Bank of Cape Verde.

4- Registration with the Bank of Cape Verde is an essential prerequisite:

a) To register at the commercial registry office; and

b) To carry out financial activities.

Article 23
Non-transferability of the authorization

The authorization to carry out financial activities is non-transferable.

Article 24
Authorization and operation requirements

For a financial institution to be qualified to fully integrate the financial system and carry out financial activities there, it must meet the following requirements at all times and simultaneously:

a) Correspond to one of the types laid out in the Cape-Verdean law;

b) Have the exclusive object of carrying out one or more financial activities;

c) Have capital that are not below the legal minimum and are adequate to the risk policy it adopts, namely regarding maximum tolerable losses;

d) Have capital that are adequate to the type of risk it is exposed to;

e) Have capital that are adequate to the costs with the structure and other costs with the purchase of non-financial goods and services that do not vary in proportion to the income obtained;

f) Have not pronounced imbalances between the values demonstratively realizable of the firm or contingent asset, and the values demonstratively payable do firm or contingent liability, at successive future reference dates;

g) Ensure the solvency of immediate and short-term liquidity;

h) Present strong devices as regards corporate governance, including a clear organizational structure, with well-defined, transparent and cohesive lines of responsibility, and a remuneration policy that is in line with a sound and prudent risk management and with the institution's long-term objectives;

i) Practice management methods proved to be appropriate for the financial activities it undertakes or proposes to undertake;

j) Comply with the other requirements laid out in the applicable legislation and supplementary regulations.

Article 25
Minimum regulatory capital

1- The Bank of Cape Verde shall establish, by notice, the minimum limits of regulatory capital per type of financial institution and/or activity undertaken.

2- The Bank of Cape Verde shall also establish, by notice, the elements that, for the purposes of complying with the limits mentioned in the previous number, may integrate regulatory capital of financial institutions, defining the features they shall have.

Article 26
Trade name and company name

Without prejudice to the general requirements for admissibility laid down in the commercial companies code and supplementary documents, financial institutions shall adopt a trade name or company name that:

a) Clearly and reliably translates the financial activities that they are authorized to carry out and are registered with the Bank of Cape Verde;

b) Is not likely to generate confusion in the financial markets or for the general public.

Article 27
Principle of exclusivity

1- Only financial institutions may professionally undertake the financial activities mentioned in paragraphs a) to l) of number 2 of article 20.

2- The activity of receiving from the public deposits or other repayable funds for use on own account is reserved to the banks.

3- The provision of number 2 shall not prevent the following entities from receiving from the public repayable funds, under the terms of the applicable legal, regulatory or statutory provisions:

a) The State and international organizations that Cape Verde is part of and whose legal regime provides the receipt from the public of repayable funds, on national territory;

b) Insurance companies, with regard to capitalization operations.

4- For the purposes of the provision of number 2, funds obtained through the issue of bonds are not considered repayable funds, under the terms and limits of the Commercial companies Code.

5- For the purpose of applying the principle of exclusivity, the following are not considered credit grants:

a) Supplementary loans and other forms of loans and advance payments between a company and its partners;

b) Credit granted by companies to their workers, for social reasons;

c) Extending or shortening payment periods agreed between parties in contracts for the purchase of goods or services;

d) Treasury operations, when legally allowed, between companies within a control or group relationship;

e) The issue of vouchers or cards to pay for goods or services provided by the issuing company.

Article 28
Forbidden operations

Unless otherwise established in special legislation that applies to them, financial institutions are forbidden to:

a) Purchase, sell and/or be holders of the ownership or co-ownership of any movable or immovable property that is not exclusively assigned to their own use or to the composition of their technical reserves;

b) Negotiate or act as mediators in business dealings whose object is movable or immovable property, unless the ownership of this movable or immovable property derives from a transfer in lieu of payment or from a judicial procedure for the collection of a debt, proposed by the financial institution;

c) Purchase or accept guarantees concerning elements of their own capital without the previous authorization of the Bank of Cape Verde.

Article 29
Governance and internal control systems

1- The financial institutions shall have internal control systems, under the responsibility of the administrative board, that observe what is laid out in this law and in the supplementary legislation and regulations and are both appropriate for and proportionate to:

a) The financial activities they undertake or propose to undertake;

b) The current or predicted dimension of those activities;

c) The management of the risks they are exposed to or they accept to be exposed to;

d) The complexity of the financial markets in which they operate; and

e) The dimension and complexity of their organization.

2- The control systems shall deal with:

a) The internal operational procedures;

b) Information collection, registration and processing, including disclosed information;

c) Keeping supporting documents of the registered information;

d) Cash movement collection, registration and processing;

e) The collection, registration and processing of losses incurred due to risks that have materialized;

f) The areas vulnerable to conflicts of interests;

g) The identification and correction of flaws regarding compliance with the legal standards and prudential rules in force.

3- The members of the board and the people who hold senior management positions in the financial institutions are severally and solidarily liable for the compliance of their respective internal control systems with the applicable legislation and regulations.

Article 30
Members of the board and control

1- Only persons with a reputation and availability that offer guarantees of sound and prudent management may be part of the board and control of a financial institution, including non-executive administrators, particularly considering the safety of the funds entrusted to the institution.

2- The requirements of reputation, experience and qualification of the persons mentioned in the previous number, as well as the regime of incompatibilities, are laid down in the Law of Activities and Financial Institutions and supplementary regulations.

Article 31
Obligation to identify the counterparty

1- In compliance with the provisions in this law and in the applicable legislation and regulations, financial institutions shall, in the exercise of their financial activities:

a) Carry out a full identification of their counterparties;

b) Register their identities; and

c) Keep these registrations in good order so they may easily be consulted by the Bank of Cape Verde.

2- Financial institutions are forbidden to register operations that they undertake under names that conceal the true identity of the counterparty or that may cause confusion.

Article 32
Duty of secrecy

1- Financial institutions, their members of the board of directors, managers, officers, trustees, workers, contractors, subcontractors, as well as persons who, on a permanent or occasional basis, provide services directly to them or through another, must maintain secrecy regarding the identity of the financial institution's customers, and cannot reveal or use information about facts or elements concerning the functioning or the relations of the financial institution with its customers, and whose knowledge derives from carrying out their functions or providing their services.

2- Subject to secrecy are, namely, the names of customers holding current accounts and their movements and other financial operations.

3- The duty of secrecy does not expire with the termination of functions or of service provision.

Article 33
Exceptions

The facts and elements covered by the duty of secrecy may only be revealed:

a) To the Bank of Cape Verde, within the scope of its powers;

b) To the AGMVM, within the scope of its powers;

c) For purposes of and in the context of calls on guarantee mechanisms laid down in Chapter VI of this law;

d) Upon authorization from the client, transmitted to the financial institution, and in strict compliance with that authorization;

e) With the authorization of the financial institution, and in strict compliance with that authorization, when the information deals exclusively with their own operation;

f) Within the context of the exchange of information laid down in paragraph b), of number 2, of article 60;

g) Under the criminal and procedural law;

h) Under any other legal provision that expressly allows it.

Article 34
Duty of secrecy of the supervisory authorities

1- Those persons who carry out or have carried out functions in the Bank of Cape Verde, as well as those who provide or have provided services on a permanent or occasional basis, shall be subject to the duty of secrecy regarding facts whose knowledge derives from carrying out such functions or providing such services, and they cannot disclose or use the information obtained.

2- The facts and elements covered by the duty of secrecy may only be revealed upon authorization of the concerned party, transmitted to the Bank of Cape Verde, under the terms of the criminal and procedural law or of another law that expressly allows it.

Article 35
Promotion of legitimate trust

1- Financial institutions must promote legitimate trust in their relations with customers and other counterparties, avoiding situations of conflict of interests.

2- For the purposes of the provision of number 1, the conditions offered by the financial institutions, whether in writing or verbally, shall respect the principles of veracity, clarity, sufficiency of information and comparability.

Article 36
Registrations and financial information

1- Financial institutions must:

a) Carry out the registration of all financial activities they undertake, so as to allow any operation carried out and the whole process that led to a decision, in whatever direction, to be fully reconstituted, at a later date, by the Bank of Cape Verde;

b) Keep up to date the registration of both the firm or contingent asset positions, assessed by values demonstratively realizable;

c) Keep up to date the registration of both the firm or contingent liability positions, assessed by values demonstratively payable;

d) Periodically disclose, in the markets in which they operate, financial information:

i. That provides an accurate global view of their asset situation on the reporting date;

ii. That allows the causes of asset variation, found in that reporting period, to be identified.

2. The company accounting and reporting currency of the financial institutions is the Cape-Verdean escudo, without prejudice to the provision of article 39.

Article 37
Withdrawing of the authorization

1- Withdrawing the authorization is incumbent on the Bank of Cape Verde.

2- The decision to withdraw the authorization shall be substantiated and notified to the financial institution.

3- Withdrawing the authorization implies the dissolution and liquidation of the financial institution.

Section II
Restricted authorization

Article 38
Waiver

1- When requesting authorization for the financial activities they propose to develop, the promoters of a credit institution to be set up may waive, from the start and expressly:

a) Access to liquidity facilities established by the Bank of Cape Verde;

b) Access to interbank markets in the Cape-Verdean escudo and in currencies to obtain funds from those;

c) The comfort of the last resort lender, be it the State, the Bank of Cape Verde or any other public institution with headquarters in the Republic of Cape Verde;

d) The coverage, in benefit of the respective counterparties, provided by the guarantee systems that integrate the financial system, laid out in Chapter VI of this law;

e) Capturing, holding, conveying and moving:

i. Paper currency and metal currency, whichever their respective currency is;

ii. Precious metals, transformed into coins or bars;

iii. Any other valuable articles.

2- The waive comprises all the paragraphs mentioned in the previous number, and it is definitive, irreversible and a condition to validate the authorization to operate as a restricted authorization credit institution.

Article 39
Choosing another currency

1- Restricted authorization credit institutions may choose another currency instead of the Cape-Verdean escudo, for purposes of accounting, reporting and disclosing financial information.

2- For statistical purposes, the financial information disclosed under the terms of number 1 must always be accompanied by the equivalent value in Cape-Verdean escudos.

Article 40
Another prudential regime and another chart of accounts

Restricted authorization credit institutions may choose the prudential regime and the chart of accounts in force in another country, as long as:

a) The prudential regime is publicly recognized by the international organizations whose aim is to reinforce the safety and stability of the international financial system;

b) The chart of accounts is in force in that prudential regime;

c) The Bank of Cape Verde accepts the prudential regime and the chart of accounts associated with it;

d) The correct observance of the prudential regime, and of the chart of accounts associated with it by the financial institution in question, is accompanied and certified by external auditors:

   i. That are expressly recognized by the supervisory authority of the country where that prudential regime is from and is applied; and

   ii. That has been previously registered as such with the Bank of Cape Verde.

Article 41
Responsibility of the external auditors

The external auditors are administratively, civilly and criminally responsible for the veracity of the certifications they subscribe.

Article 42
Applicable rules

Restricted authorization credit institutions must observe, cumulatively and without exception:

a) The provisions of this document;

b) The behavioural and prudential rules the financial institutions are subject to under the terms of this document and of supplementary legislation and regulation, without prejudice to the provisions of articles 39 and 40;

c) The good practices usually recognized by the international financial system, as well as by the Bank of Cape Verde;

d) The prudential recommendations or rules emanating from international organizations whose aim is to reinforce the safety of the international financial system, as long as they are recognized by the Bank of Cape Verde.

Article 43
Movement of funds with other financial institutions

Movements of funds between restricted authorization credit institutions and the remaining financial institutions that integrate the financial system, regardless of the currency of denomination of the funds moved, are exceptional, must be domiciled exclusively in accounts opened in the Bank of Cape Verde and depend on the authorization of the latter.

Article 44
Movement of funds with resident non-financial entities

Movements of funds between residents that are not financial institutions and restricted authorization credit institutions, regardless of the currency of denomination of the funds moved, are exceptional and depend on the authorization of the Bank of Cape Verde.

Article 45
Transparency

The restricted authorization credit institutions must inform, in a clear, explicit and unambiguous manner, its counterparties and, in general, the markets and the supervisory authorities of the host countries that they have waived the protections, guarantees and coverages described in article 38.

CHAPTER IV
FINANCIAL MARKETS

Article 46
Subjection to supervision

The financial markets are subject to supervision.

Article 47
Organized and regulated markets

1- The following financial markets are subject to regulation, as organized and regulated markets:

a) The interbank money market;

b) The interbank securities market;

c) The market of bulk transactions of securities representing public debt and of other securities representing debt;

d) The exchange market;

e) Stock exchanges.

2- The regulation of the markets mentioned in paragraphs a), b) and d) of the previous number is incumbent upon the Bank of Cape Verde, through the regulatory process.

3- The regulation of the markets mentioned in paragraphs c) and e) of number 1 is carried out under the terms of the Securities Market Code.

Article 48
Conversion to Organized and regulated market and financial compensation schemes

Considering the provisions of Articles 1, 4, 5, 6 and 11, the Bank of Cape Verde may:

a) Establish that any financial market begins to operate as an organized and regulated market;

b) Create the payment systems and schemes, financial settlement and compensation necessary for the stability of the financial system.

CHAPTER V
PUBLIC INTERVENTION IN THE PREVENTION, MANAGEMENT AND RESOLUTION OF BANKING CRISES

Article 49
Competence

1- It is incumbent upon the Bank of Cape Verde, in articulation with the Government Member in charge of the Finance area, to intervene in banks in the context of the prevention, management and resolution of banking crises, with a view to safeguarding the financial solidity of the bank in difficulties, the interests of the depositors and the stability of the financial system.

2- The application of prevention, management and resolution measures in banking crises is subject to the principles of need, adequacy and proportionality, taking into account, in particular, the risk or extent of non-compliance by the bank itself, of the legal and regulatory rules and requirements that govern its activity, and the seriousness of the respective consequences on the financial solidity of the bank in question, on the interests of the depositors and on the stability of the financial system.

3- In case the public interest justifies making available State funds regarding programs for the prevention, management and resolution of banking crises, this availability must be previously approved by the Council of Ministers, at the proposal of the Government Member in charge of the Finance area.

Article 50
Remission

1- The terms under which the Bank of Cape Verde may intervene in banks, for the purposes mentioned in the previous article, are laid down in the supplementary legislation and regulations.

2- Specifically, the following are laid down in supplementary legislation and regulations:

a) The extent of the powers of intervention of the Bank of Cape Verde regarding prevention, management and resolution of banking crises;

b) The measures that may be taken by the Bank of Cape Verde;

c) The purposes for taking each measure;

d) Relations of precedence between the different measures foreseen, taking into account the extent of intervention of the Bank of Cape Verde in the bank in question, regarding each one of them.

CHAPTER VI
Guarantee schemes system

Article 51
Coverage

1- Under the terms of the supplementary legislation and regulations, a system is established and organized to cover the totality or part of the asset losses suffered by counterparties with headquarters, a permanent establishment or residence in the territory of the Republic of Cape Verde.

2- The insurance scheme established under the terms of the previous number may also make available the funds needed to implement bank resolution processes, on terms to be defined in supplementary legislation.

3- National citizens with their habitual residence abroad shall be regarded as residents for the purposes of this article.

Article 52
Conditions of access to coverage

The terms and conditions of access to coverage provided by the insurance scheme laid down in this Chapter are regulated in the supplementary legislation and regulations that specifically establish:

a) The credits that are covered by this insurance scheme;

b) The requirements to be fulfilled by the counterparty in order to have access to the coverage provided by this insurance scheme;

c) The maximum limits of coverage;

d) The rules for the calculation of compensations.

Article 53
Financing

1- The ways in which the guarantee scheme is financed are regulated in the supplementary legislation and regulations.

2- The exceptional circumstances in which the Bank of Cape Verde may finance the guarantee scheme are regulated in supplementary legislation and regulations, in compliance with the following:

a) The intervention of the Bank of Cape Verde, in this case, is essential to pursue the fundamental objective of the stability of the financial system;

b) The intervention of the Bank of Cape Verde is temporary, subject to constraints of public interest and justified by the unavailability of the use of public funds for this purpose, and it ends when this unavailability or inconvenience ceases;

c) The appropriate guarantees and safeguards shall be ensured by the Government, so as to allow the reimbursement of the funds made available by the Bank of Cape Verde;

d) The Bank of Cape Verde and the Government shall establish, in a memorandum of understanding between the two entities, the terms and conditions applicable to the financing operation that may be carried out by the Bank of Cape Verde, under the terms of this article.

Article 54
Exclusion of financial institutions

Financial institutions are excluded from the coverages provided by the guarantee scheme, except in the case of number 2 of article 51.

Article 55
Duty to take out insurance coverages

Financial institutions shall take out and keep current insurance policies that adequately cover civil liability arising from bad practice and from the materialization of operational risks and of other insurable risks.

CHAPTER VII
RESOLUTION OF CONFLICTS

Article 56
Customer protection associations

Without prejudice to the freedom of association, the only customer protection associations that shall benefit from the rights granted by the supplementary legislation and regulations are those that are legally constituted and meet the following requirements, verified by registration at the Bank of Cape Verde:

a) They are non-profit organizations;

b) Their main statutory object is protecting the interests of customers or potential customers of financial institutions;

c) Among their members there are at least one hundred natural persons that do not qualify as qualified investors under the terms of the applicable law.

Article 57
Voluntary arbitration

1- The conflicts and civil issues which may emerge between financial institutions, or in which these may become involved, may be subject to voluntary arbitration, under the terms of the legislation in force.

2- Technical and administrative support to the normal operation of the arbitration tribunal is ensured by the Bank of Cape Verde.

Article 58
Mediation of conflicts

1- The Bank of Cape Verde shall organize a service aimed at the voluntary mediation of conflicts between financial institutions and their customers or potential customers.

2- The mediators are nominated by the Board of Directors of the Bank of Cape Verde, whose choice may fall on people belonging to its ranks or on other persons of recognized integrity and competence.

3- The mediation procedures are established in a notice by the Bank of Cape Verde and must comply with the principles of impartiality, speed and gratuitousness.

4- When the conflict deals with customers' homogeneous individual or collective interests, the consumer protection associations may take the mediation initiative and participate in it, as principal or secondary agent.

5- The mediation procedure is confidential and the mediator shall be subject to the duties of secrecy regarding all the information obtained in the course of the mediation; the Bank of Cape Verde may not, in any proceedings, use elements whose knowledge stems exclusively from the mediation procedure.

6- The mediator may attempt conciliation or propose to the parties the solution that it deems most appropriate.

7- The agreement resulting from the mediation, when in writing, shall have the status of an extrajudicial transaction.

CHAPTER VIII

RELATIONSHIP WITH INTERNATIONAL FINANCIAL ORGANIZATIONS AND WITH THE SUPERVISORY AUTHORITIES OF OTHER STATES

Article 59
International organizations

1- The regulation of the financial system tends to accept recommendations' coming from international organizations whose aim is to reinforce the safety and stability of the international financial system.

2- Except as provided in paragraph c) of article 42, applying the recommendations mentioned in number 1 in the financial system shall always depend on the initiative of the regulatory authority.

Article 60

Cooperation with supervisory authorities of other countries

1- In the performance of their powers, the supervisory authorities of the financial system shall cooperate with similar or equivalent institutions of other countries with the aim of reinforcing the safety and stability of the respective national financial systems, under the terms of the law and of the agreements in place.

2- The supervisory authorities of the financial system may celebrate bilateral or multilateral cooperation agreements with these institutions, namely with a view to:

a) Gathering elements regarding infractions against the financial market and other infractions whose investigation falls within their powers;

b) Exchanging information necessary for the performance of the respective functions of supervision or regulation;

c) Consulting about problems raised by their respective activities;

d) Training staff and exchanging experiences within their respective activities.

3- The agreements mentioned in the previous number may include the subordinate participation of representatives of similar foreign institutions in acts falling within the power of the national supervisory authorities of the financial system, when there is suspicion of a breach of the law of that country.

4- The cooperation this article refers to must be developed under the terms of the law and of the international conventions binding the State of Cape Verde.

5- Within the cooperation agreements signed with the supervisory authorities of other countries and on the basis of reciprocity, the national supervisory authorities may exchange information when needed for the supervision, on an individual or consolidated basis, of the financial institutions with headquarters in national territory or of equivalent institutions with headquarters in those countries.

6- All the authorities and persons participating in the exchange of information mentioned in the previous number are subject to the duty of secrecy.

7- The information received by the Bank of Cape Verde, under the terms of this article, may only be used by the national supervisory authorities within the sphere of their competences and powers.

8- The cooperation agreements mentioned in number 2 may only be celebrated when the information to be provided benefits from guarantees of secrecy equivalent at least to those established in this law, and when its aim is the performance of supervision duties assigned to the institutions in question.

9- The provision of this article applies, with the necessary adaptations, to the relationships stemming from the participation of the national supervisory authorities of the financial system in international organizations**.**

CHAPTER IX
REGIME OF SANCTIONS

Article 61
Powers of the Bank of Cape Verde

It is incumbent upon the Bank of Cape Verde, as supervisory authority and within the area of its powers, to monitor compliance with the laws and regulations in force and to prosecute and punish the violations detected, namely:

a) To perform inspections, inquiries or other investigations deemed necessary or legally assigned to it;

b) To initiate and pursue enquiries;

c) To initiate and pursue financial infringement proceedings;

d) To apply the corresponding sanctions to the infringements detected.

Article 62
Adversarial principle

In the infringement proceedings the adversarial principle applies.

Article 63
Sanctions

Within the infringement proceedings, in addition to fines, the following sanctions may be applied:

a) Warning registered with the Bank of Cape Verde;

b) Temporary suspension of the performance of functions as member of a governing board or as senior manager of financial institutions;

c) Temporary suspension of the exercise of voting right in a financial institution;

d) Temporary suspension of the exercise of all or only of certain financial activities;

e) Inhibition to exercise regarding all or certain financial activities;

f) Inhibition to exercise regarding the exercise of voting right in a financial institution;

g) Revocation of the authorization to operate in the financial system and closure;

h) Seizure and loss of the instruments or object of the infringement, in compliance with the provisions of the law;

i) Publication, under the terms of the law, of the final conviction decision or of the *res judicata*.

Article 64
Destination of the fines and of the seized objects

80% of the fines collected and the objects seized under the terms of the law shall be allocated to the guarantee scheme that covers the activity of the financial institution regarding the sanctioned infringement, while 20% shall fall to the Bank of Cape Verde, regardless of the stage in which the conviction decision becomes final.

CHAPTER X
SELF-REGULATION

Article 65
Self-regulation organizations

1- To the extent permitted by law and by the regulations, financial institutions, professional associations and other organizations of the financial system may autonomously regulate the activities they manage.

2- For the purposes mentioned in the previous number, financial institutions may constitute self-regulation organizations to reinforce market discipline, without prejudice to an environment of healthy competition.

3- Adherence to self-regulation organizations is voluntary.

4- The rules established under the terms of the previous numbers that are not subject to registration, as well as those included in codes of conduct approved by professional associations and by other organizations of the financing industry, shall be deposited with the Bank of Cape Verde.

5- The Cape Verde Stock Exchange shall issue the regulations and notices of its competence, according to the terms of its statutes and of other applicable legislation and regulations.

Article 66
Means of self-regulation organizations

Self-regulation organizations must have the appropriate technical means and resources:

a) To comply with the provisions of this law and of other supplementary legislation and regulations;

b) To make their members comply with the rules the organization lays down;

c) To give the necessary publicity to its own valid rules and to the sanctions they will have to impose.

Article 67
Obligation to submit documents

The following must be deposited with the Bank of Cape Verde:

a) The statutes of the self-regulation organization and respective amendments;

b) The nominal list of its joining members;

c) The behavioural and prudential rules that the organization lays down and has in force;

d) The sanctions applied and respective proceedings.

CHAPTER XI
FINAL PROVISIONS

Article 68
Referral to revoked provisions

When legal or contractual provisions refer to rules revoked by the law, the referral is understood to hold for the corresponding provisions of the Basic Law of the Financial System or of the supplementary legislation, unless a different interpretation results from its context.

Article 69
Tax benefits applying to credit institutions with restricted authorization

With the approval of this document, the tax benefits laid down in numbers 1 and 2 of article 28 of Law nº 26/VIII/2013, of 21 January, shall apply, respectively, to credit institutions with restricted authorization and to their customers.

Article 70
Repeals

The following acts shall be repealed:

a) Law nº 3/V/96, of 1 July;

b) Law nº 43/III/88, of 27 December;

c) Executive Law nº 12/2005, of 7 February;

d) Executive Law nº 29/2005, of 2 May.

Article 71
Entry into force

This document enters into force thirty days after its publication, and takes effect with the entry into force of the Law that regulates the activities of financial institutions.

Approved on 2014 February 26.

The President of the National Assembly,

/ BASÍLIO MOSSO RAMOS /

Promulgated on 2014 April 11.

Let it be published.

The President of the Republic,

/JORGE CARLOS DE ALMEIDA FONSECA/

Signed on 2014 April 11.

The President of the National Assembly,

/ BASÍLIO MOSSO RAMOS/