

# Doing business in Cape Verde

## 1. Introduction

This memorandum sets out a summary of certain legal aspects which should be taken into account when doing business in Cape Verde. It is not intended to be exhaustive and is provided for information purposes only. If further information or legal advice is required, the readers are invited to contact one of the lawyers of Clifford Chance LLP or Ilídio Cruz & Associados who are listed below.

## 2. General information

### 2.1 Political structure

<b>Official name</b>	<i>República de Cabo Verde</i>
<b>Form of state</b>	Unitary republic
<b>Independence</b>	5 July 1975
<b>National legislature</b>	<i>Assembleia Nacional</i> (parliament) with 72 seats
<b>Legislative elections</b>	February 2011 (legislation) and August 2011 (presidential)
<b>Main political parties</b>	Two main political parties: the ruling party, <i>Partido Africano da Independência de Cabo Verde</i> (PAICV), and the main opposition, <i>Movimento para a Democracia</i> (MPD).

**President of the Republic** Jorge Carlos Fonseca

**Prime Minister** José Maria Neves

### 2.2 Basic data

<b>Land area</b>	4,033 sq km
<b>Population</b>	491,875 ( <i>census 2010</i> )
<b>Islands</b>	<i>Ilhas de Borlavento</i> (windward islands): Santo Antão, São Vicente, Santa Luzia, São Nicolau, Sal and Boa Vista  <i>Ilhas de Sotavento</i> (leeward islands): Maio, Santiago, Fogo and Brava
<b>Main towns</b>	Population based on <i>census 2010</i>  Praia (capital; Santiago island) 131,719 Mindelo (São Vicente island) 77,542 Santa Maria (Sal island) 22,937 Pedra Badejo (Santiago island) 10,461

**Languages** Portuguese, Crioulo

**Currency** Cape Verde escudo (CVEsc); it is pegged to the euro at a rate of CVEsc 110.265 : € 1.

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### 3. Financial data

	2008 <sup>a</sup>	2009 <sup>a</sup>	2010 <sup>b</sup>
GDP (USD m)	1,718.9 <sup>b</sup>	1,916.0 <sup>b</sup>	1,875.3
Real GDP growth (%)	5.9 <sup>b</sup>	3.0 <sup>b</sup>	4.5
Consumer price inflation (av; %)	6.8	1.0	2.1 <sup>a</sup>
Export of goods fob (USD m)	115.7	91.0	97.8
Imports of goods fob (USD m)	830.7	720.6	796.7
Current-account balance (USD m)	-205.5	-154.0	-223.3
Foreign-exchange reserves excl gold (USD m)	361.0	366.0	394.2
Exchange rate (av) Db:USD	75.28	79.38	83.26 <sup>a</sup>

<sup>a</sup>Actual. <sup>b</sup>Economist Intelligence Unit estimates.

Main destinations of exports 2010	% of total
Spain	63.5
Portugal	17.1
Morocco	5.7
Algeria	3.0

Main origins of imports 2010	% of total
Portugal	42.1
Netherlands	17.9
Spain	7.0
China	4.2

### 4. The business environment

#### 4.1 Business opportunities

Cape Verde offers business and investment opportunities in the following areas:

- light industry (fishery products, salt, food)
- utilities (water and energy)
- construction
- fisheries
- agriculture (coffee, wine, flowers, fruit)
- service industry (telecommunication and transport)
- tourism
- infrastructure (privatisation of airline, airports, port management and shipyards).

#### 4.2 Government guarantees

The Cape Verdean government offers foreign investors the following statutory guarantees:

- non-discrimination
- fair and equal treatment of investors
- security and protection of goods and rights
- ability to transfer funds in foreign currency in respect of all amounts to which an investor is entitled
- free opening of and transfers from foreign currency bank accounts
- ability to recruit foreign personnel.

## 5. Investment regulation and procedures

### 5.1 CVI

*Cabo Verde Investimentos* (CVI) plays an important role in promoting Cape Verde as an alternative and safe destination for investments. Its activities are aligned with the Cape Verdean government's programme and public strategy for development of the country. This strategy has as ultimate goal the reduction of unemployment and poverty and the improvement of the country's competitiveness.

CVI is an autonomous public agency and is regulated pursuant to Decree (*Decreto-Regulamentar*) No. 12/2009 of 20 July 2009. Its specific function is to position Cape Verde as a destination of excellence for investment and tourism, using the country's advantages in terms of good governance, transparency and geographical location.

### 5.2 Approval procedures

#### *Foreign Investor Status*

*Request:* All foreign investments are subject to prior approval. The request (to be submitted in three copies using a prescribed form) for the status of foreign investor must be addressed to the Minister of Finance and Planning, through the CVI, accompanied by, inter alia, the following documents:

- identification of the sponsor
- curriculum vitae and bank references of the sponsor
- proposed location of the investment
- summary description of the project
- if applicable, environmental impact study.

*Response deadline:* The decision of the Minister of Finance and Planning in response to the request must be communicated to the potential investor within 30 days of the submission of the completed request to the CVI. If the CVI requires additional information, then the deadline will be 30 days after the CVI has received the relevant information.

*Certificate:* If the approval is granted, the Minister of Finance and Planning will grant a certificate confirming the foreign investor status. The certificate will expire if the investments are not realised within the prescribed time period.

*Registration:* Certain foreign investment operations must be registered with the Central Bank of Cape Verde.

*Inspection:* Before the commencement of the activities, the business operations must be duly registered and inspected by the competent authorities within 30 days of the date on which the foreign investor made the inspection request.

#### *Free zone enterprises*

Free zone enterprises are enterprises whose object it is to produce and trade in goods or services that are exclusively destined for export or for the sale to other free zone enterprises established in Cape Verde.

*Request:* Request to be made using a prescribed duly completed form and to be submitted to the CVI. It is usually accompanied by the same documents as are required for the Foreign Investor Status.

*Response deadline:* See information above in relation to the Foreign Investor Status.

*Certificate:* If the request is approved, the Minister of Finance and Planning will issue, through the CVI, a free zone enterprise certificate.

## 6. Establishing a commercial entity

### 6.1 Commercial entities

The following commercial entities exist in Cape Verde:

- commercial partnership (*sociedade em nome colectivo*)
- private limited company (*sociedade por quotas*)
- public limited company (*sociedade anónima*)
- limited partnership or limited partnership with shares (*sociedade em comandita simples* or *sociedade em comandita por acções*)
- cooperative (*sociedade cooperativa*).

## 6.2 Public and private limited companies

Private limited companies and public limited companies are the most often used legal entities for investments in Cape Verde. In connection with the establishment of a public limited company or private limited liability company, the following should be noted:

- Public limited company (*sociedade anónima*):
  - The company must have at least two shareholders; it is possible to establish a public limited liability company as a single shareholder company (but in that case the shareholder must also be a *sociedade anónima*), in which case it will be called "*sociedade anónima, unipessoal, SA*"
  - Minimum share capital of CVEsc 2,500,000
  - Of the subscribed capital, 30% must be deposited in cash with a local bank. The remainder must be paid in cash within the following five years, as further described in the constitutive documents.
  
- Private limited liability company (*sociedade por quotas*):
  - The constitutive document must specify its share capital and the number and value of shares and the amount of capital subscribed by each shareholder
  - Minimum share capital is CVEsc 200,000
  - Of the capital, 50% must be deposited in cash with a local bank. The remainder must be paid in cash within the following three years as further described in the constitutive documents.

## 6.3 Procedure for establishment of a company

The following steps are involved for the establishment of a company:

- The person wishing to establish the company must obtain a certificate from the commercial register (*conservador*) which indicates that the proposed name can be used.
- The incorporation contract together with the agreed articles of association must be registered with the commercial register.
- A statement from a Cape Verdean bank confirming the payment of the company's required capital should be attached to the incorporation contract.
- The company must be registered with the commercial register.
- The constitutive documents of the company are published in the Official Journal of Cape Verde (*Boletim Oficial de Cabo Verde*).
- A tax number (*número de identificação fiscal; NIF*) is issued by the tax authorities (*Direcção Geral de Contribuição e Impostos; DGCI*).
- The company is registered with the Directorate of Commerce (*Direcção Geral de Comércio*).

## 7. Investment incentives

Cape Verde offers a number of investment incentives for foreign investors. They consist of incentives that are generally available as well as incentives that are available to specific type of activities and investments.

### 7.1 General incentives for foreign investments

The incentives that are generally available to foreign investors include<sup>1</sup>:

- exemption from taxation of dividends and profits distributed during a period of five years (or permanently if they are reinvested)
- exemption from taxation of principal and interest payments relating to the foreign investments
- fixed tax rate (tax rate of 10% after the sixth year of activity) without prejudice to more advantageous conditions that may apply as a result of bilateral taxation treaties between Cape Verde and the country of residence of the investor.

### 7.2 Free zone enterprises

Free zone enterprises benefit from a wide range of special incentives<sup>2</sup>

- Tax incentives:
  - exemption from all tax or other duties on income during the first ten years of activity
  - following the end of the exemption period, a tax rate on the profits of the company or distributed dividends that will not exceed 15% of the profits
  - exemption from indirect taxes and duties (such as stamp duties).

<sup>1</sup> Source: Law No 89/IV/93 of 13 December 1993

<sup>2</sup> Source: Law No 99/IV/93 of 31 December 1999

- Customs incentives:
  - exemption from custom duties and consumption taxes in connection with the import of equipment, construction materials, fuel and lubricants that are applied in the production of goods
  - special regime for the import of primary goods and certain other materials
  - export is exempt from duties.

### 7.3 Exporting enterprises subject to general regime

Enterprises that are involved in the export of goods and services can benefit from the following incentives<sup>3</sup>.

- Tax incentives:
  - reduction of income tax during first five years. This period can in certain circumstances be extended to a maximum of ten years. The enterprise can after the period benefit from further tax reductions for income received in foreign currency.
- Customs incentives:
  - exemption from duties on primary goods, finished and semi-finished products that are used in the production of goods and service for export
  - exemption from import duties and consumption taxes on goods and materials incorporated in the making of products that are destined for export
- free export of goods.

### 7.4 Incentives for specific sectors

Companies that are active in the industrial and tourism sector can also benefit from specific incentives. These include:

- Industry:<sup>4</sup>
  - exemption from custom duties and consumption taxes for the import of goods, equipment and certain listed materials
  - exemption from income tax on the income generated by each new industrial establishment during a period of three years
  - free export of goods
  - tax deduction for reinvested profits.
- Tourism:<sup>5</sup>
  - exemption from custom duties for the import of materials destined for the construction and exploitation of hotels, resorts, marinas, golf courses and other activities linked to tourism
  - exemption from income tax: 100% during the first five years of activity and 50% for the ten years thereafter
  - tax deduction for profits reinvested in similar activities
  - tax deduction for the costs of formation of local employees
  - free export of goods.

### 7.5 Limits on incentives

Incentives are not available to foreign investors who focus their economic activities principally on the local market or to foreign investment in the financial sector, which is subject to specific legislation.

## 8. Taxation

### 8.1 Uniform income tax (*imposto único sobre os rendimentos; IUR*)

The IUR applies to individuals and legal entities and is payable on worldwide income received or generated during a calendar year. The income sources include income from: real estate, commercial or industrial activities, delivery of services, agriculture or fisheries, the application of capital (including betting and lotteries) and labour.

Enterprises (whether or not legal entities) that are effectively resident or are deemed to be resident in Cape Verde are subject to the IUR. Enterprises which do not have an effective seat or establishment in Cape Verde are subject to the IUR in respect of income generated in Cape Verde.

The IUR is calculated by reference to the profits of the relevant enterprise. In order to determine the taxable profits, the net annual result and variations in the value of assets is taken into account and calculated in accordance with the applicable rates. If income is assessed on the basis of recorded income, the tax rate is 25%. If it is assessed by way of estimate, the tax rate is 15%. A local surcharge of 2% applies for the islands of Santiago and São Vicente.

Personal income tax rates are progressive and vary from 0%-35%.

<sup>3</sup> Source: Decree law No 92/IV/93 of 15 December 1993

<sup>4</sup> Source: Decree-law No. 108/89 of 30 December 1989

<sup>5</sup> Source: Law no. 42/IV/92 of 6 April 1992

### 8.2 Withholding tax (*taxa liberatória*)

The following payments are, amongst others, subject to withholding tax:

- interest on term deposits (except deposits of emigrants): 20%
- remaining income from capital applications (except distributed profits): 15%
- royalties and rental payments to non-residents: 20%
- income received by non-residents without a permanent establishment in Cape Verde: 20% calculated by reference to the amount invoiced.

### 8.3 Uniform property tax (*imposto único sobre o património: IUP*)

Tax at 3% is charged in relation to corporate transactions that are subject to notarisaton and on the value of real estate. It applies, for example, to any gains resulting from a valuation of building plots, the transfer of buildings and other immovable and moveable property.

### 8.4 Stamp duty (*imposto do selo*)

Stamp duty applies, inter alia, to the following transactions:

- credit operations: 0.5%
- interest, premiums and other financial services: 5%
- guarantees: 0.5%
- insurance: 3.5%
- bills, documentary credit, payment orders: 0.5%
- corporate transactions: 0.5%
- rental contracts: 10%
- transfer of real estate: 1%
- notarial deeds: 15%
- written contracts: CVEsc 1,000

### 8.5 VAT (*IVA*)

VAT in Cape Verde is charged at a 15% standard rate and a 6% reduced rate.

### 8.6 Social security contributions

The following payments are to be made:

- employment and disability insurance: the premium varies from 2% - 6% of the gross income of the employee
- social security contributions: the employer pays 15% of the gross income of the employee and the employee pays 8% of his/her gross income.

### 8.7 Custom duties and consumption taxes

- Custom duties are levied on the custom value of most important goods. They vary from 0% to 50%.
- Consumption tax is charged on the production and import of listed good at a general rate of 10%.

### 8.8 Double taxation treaties

Cape Verde has a double taxation treaty with Portugal only.

## 9. Investment treaties

Cape Verde has signed bilateral investment treaties with the following countries: Angola, Austria, China, Cuba, Germany, Italy (not yet in force), the Netherlands, Portugal and Switzerland. These bilateral investment treaties establish the terms and conditions for private investment by nationals and companies of one state in another state. They provide for a number of guarantees which typically includes fair and equitable treatment, protection against expropriation and protection and security. They generally also allow investors recourse to international arbitration if rights under the treaty have been violated. ■

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