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Investing In... 2022

Cabo Verde: Law & Practice

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CABO VERDE

Law and Practice

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1. LEGAL SYSTEM AND REGULATORY FRAMEWORK

1.1 Legal System

The Cabo Verdean legal system is based on civil law.

The judicial system includes three main categories of courts:

- the Supreme Court of Justice (*Supremo Tribunal de Justiça*);
- the appeal courts (*Tribunais da Relação*); and
- the district courts.

The Supreme Court of Justice has jurisdiction over the entire national territory and is the highest court in the country.

The Cabo Verdean jurisdiction is divided into two circles, each encompassing one of the main sets of islands. There is an appeal court in each of these circles.

The district courts have very limited territorial competence and may have generic or specialised competence. Law No 59/IX/2019, of 29 July 2019, which amended and republished the law on the Organisation, Competence and Functioning of Judicial Courts, provides which specialised competence courts may be created.

There are no relevant restrictions on foreign investment, as further detailed below. Businesses in Cabo Verde may be subject to sector-specific regulatory frameworks, depending on the activities undertaken.

Sectors, such as the power production sector, require entities to undergo licensing procedures or obtain certain specific approvals.

1.2 Regulatory Framework for Foreign Direct Investment (FDI)

The most relevant legal act which governs investments in Cabo Verde is the Investment Law (IL), approved by Decree-Law No 34/2013, of 24 September 2013, which reviewed and republished the Investment Code (originally approved by Law No 13/VIII/2012, of 11 July 2013), which provides the general basis for accelerating and facilitating investments in Cabo Verde, as well as the rights, guarantees and incentives to be granted to investments likely to contribute to the country's socio-economic development. The IL applies to all investments made in or from Cabo Verde, either made by national or foreign investors wishing to benefit from the guarantees and incentives provided therein.

The definition of investment provided in the IL is broad, encompassing the "investment of capital in the form of tangible or intangible assets with a view to the creation, modernisation or expansion of an economic activity".

Investment in Cabo Verde is generally unrestricted in any sector of activity, as long as it is permitted by law and does not require any prior authorisation, without prejudice to the special legal framework applicable to certain sectors, such as fishing activities, inter-island shipping and ports. This is regardless of the nationality of the investor.

However, foreign investors will only be entitled to convert local currency into any other freely convertible currency and to transfer income derived from their investment abroad, provided that the foreign investment is registered with the central bank (*Banco de Cabo Verde* or BCV), which must be done through Cabo Verde TradeInvest by electronic means, as further described in **7.1 Applicable Regulator and Process Overview**.

2. ECONOMIC/POLITICAL/ BUSINESS CLIMATE

2.1 Outlook and FDI Developments

Cabo Verde has adopted a rather open investment policy regarding FDI, as compared to other African countries. FDI has had a very deep impact on the development of the Cabo Verdean economy. However, foreign investments have been focused mainly on tourism, which has been the driver of the economy in recent years. This, together with the fact that tourism is highly focused in two main areas, has led the government to make efforts to develop a more versatile economy and a better geographical distribution of investment. These two aspects are key in the strategy of Cabo Verde, aimed at sustainable economic growth and more balanced development.

The Strategic Programme for Sustainable Development

The Strategic Programme for Sustainable Development (2017–2021) proposes making Cabo Verde a “circular economy and platform in the middle Atlantic”, through strategic capital investments in connectivity, the blue economy, tourism and business development, industry and financial services.

The government has defined that the achievement of this goal must be based on a medium and long-term strategy aimed at the prospecting and exploitation of the potential, advantages and opportunities of each island, including seas, spaces and resources, sustained by scientific knowledge and technological development.

In order to diversify the economy, the government has been promoting a programme aimed at privatising some of the most prominent public companies in the country. These include companies operating in sectors such as transport (including ports and airports) and finance.

In 2020, Bases of the Legal Framework of Special Economic Zones was approved by Law 91/IX/2020 of 19 June 2020. According to this statute, “Special Economic Zones” are geographically limited areas in which special tax, para-fiscal, customs and labour frameworks are applicable, thus promoting the geographical redistribution of investment and economic growth.

COVID-19

The pandemic has stressed the crucial need to improve healthcare facilities to give tourists confidence and keep them safe while visiting Cabo Verde. The government has been investing in health centres on the most-visited islands. On the other hand, credit lines to support companies’ treasuries, a tax moratorium and credit moratorium have been provided as relief measures during COVID-19.

Investment by Cabo Verdean Emigrants

In March 2020, the Emigrants’ Investment Law was approved by Law 73/IX/2020 of 3 March 2020, which aims to provide a specific incentive scheme in favour of direct investment by Cabo Verdean emigrants permanently resident abroad back into Cabo Verde, establishing a legal framework for a One-Stop Service Counter for Emigrants (*Balcão Único de Atendimento aos Emigrantes*), as well as special conditions of access and the purchase of specific banking products, among other incentives.

3. MERGERS AND ACQUISITIONS

3.1 Transaction Structures

M&A practice in Cabo Verde is not extremely sophisticated. Despite having shown good indicators of growth, the local corporate fabric is not very developed.

The most common structures used for transactions include the acquisition of shareholdings in existing commercial companies; the acquisition of assets (including the acquisition of businesses or parts thereof as a going concern); and joint ventures.

The structure adopted in Resolution No 87/2017, of 3 August 2017, which approved the calendar for the privatisation of public companies is the acquisition of shares.

Some of the key considerations for a foreign investor in selecting a transaction structure include sector-specific regulation, the employees' situation, potential fiscal consequences, as well as competition rules. These would have to be assessed on a case-by-case basis.

It does not appear to be material to making this decision whether the acquisition is of a majority or minority of a business or company.

3.2 Regulation of Domestic M&A Transactions

Aside from the regimes applicable to FDI, foreign investors considering FDI in Cabo Verde must be aware of sector-specific regulatory frameworks (most notably, those related to sectors such as natural resources and power production) and regulations relating to the environment, competition and securities (the last two of which are respectively described in further detail in **6. Anti-trust/Competition** and **5.2 Securities Regulation**).

4. CORPORATE GOVERNANCE AND DISCLOSURE/REPORTING

4.1 Corporate Governance Framework

The Cabo Verdean Companies Code, approved by Legislative Decree No 2/2019, of 23 July 2019

(the “Companies Code”), establishes three forms of legal entity:

- the private limited company (*sociedade por quotas* or SQ);
- the public limited company (*sociedade anónima* or SA); and
- the co-operative company (*sociedade cooperativa*).

SAs and SQs are most commonly used. The choice between these two types of corporate entity depends on various factors, most notably, the complexity of the undertaking and the nature of the investor. SQs are usually chosen for simpler projects, whereas SAs are selected because of the confidentiality provided to their shareholders and the greater freedom granted to their management structures, conferring greater dynamism on this type of company, compared to an SQ.

Below are some of the key features of the two most common types of corporate entity.

Private limited company (SQ):

- there are no requirements regarding minimum share capital;
- there is no minimum number of shareholders required, with a single-shareholder SQ being permitted;
- shareholders' liability is limited to the capital subscribed by each;
- shareholders are jointly and severally liable for the contributions agreed in the articles of association;
- the company's articles of association may provide that shareholders are jointly and severally liable, up to a certain amount, for the company's debts;
- management is performed by one or more persons (who may or may not be shareholders).

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- ers) and is subject to the resolutions of the general shareholders' meeting;
- a supervisory board/single supervisor is not mandatory; and
- if the company has a turnover of more than CVE10 million and/or has more than ten employees, it is obliged to appoint a certified auditor to review its accounts.

Public limited company (SA):

- there are no requirements regarding minimum share capital;
- the minimum number of shareholders required is, in principle, two (a single-shareholder SA may be permitted, but only if the single shareholder is a corporate entity);
- shareholders' liability is limited to the capital subscribed by each;
- management is performed by a board of directors composed of an uneven number of directors established in the articles of association, who may or may not be shareholders; and
- the board of directors is only subject to the resolutions of the general shareholders' meeting when this is expressly provided by law or the articles of association.

A single supervisor or supervisory board must be appointed in the articles of association. The single supervisor and one of the members of the supervisory board must be a certified auditor.

4.2 Relationship between Companies and Minority Investors

The Companies Code approved in 2019 strengthened the protection awarded to minority interests, granting several rights to minority shareholders or groups of shareholders, of which the following should be noted:

- the right to summon shareholders' meetings;

- the right to include items in the agenda of shareholders' meetings; and
- the right to request information for the various corporate bodies.

The rights attributed to minority shareholders in SAs are dependent on these shareholders holding at least 5% of the voting rights (or 2% in the case of listed companies), whereas the rights granted to minorities may be exercised by any shareholder in an SQ.

4.3 Disclosure and Reporting Obligations

Under the Cabo Verdean foreign investment framework, there are no disclosure or reporting obligations especially applicable to FDI.

Disclosure obligations imposed on companies operating in Cabo Verde include, among others, the submission of their annual accounts to the commercial registry, and the obligation to publish any amendments to their articles of association. Companies operating in sectors such as banking and insurance may be subjected to further specific disclosure obligations.

5. CAPITAL MARKETS

5.1 Capital Markets

The Cabo Verdean Stock Exchange (*Bolsa de Valores de Cabo Verde*) has been operational since 2005. However, resorting to the capital markets for funding purposes is not common, either for foreign or domestic investors. Although foreign investors have access to local funding under the same market conditions as locals through commercial banks, the high interest rates offered by local banks make it more usual for investors to seek foreign funding.

5.2 Securities Regulation

The Capital Markets Code

The key statute regulating the Cabo Verdean capital markets is the Capital Markets Code, approved by Legislative Decree No 1/2012, of 27 January 2012, which sets out the basic principles and provisions governing the organisation, functioning and operations of the securities and financial instruments markets and the activities of all the players on those markets.

Apart from a few exceptions which are regulated by specific legislation, the Capital Markets Code is applicable to any security or financial instrument issued, negotiated, or traded in Cabo Verde, regardless of the nationality of the investor and the origin of the funds.

The General Audit of the Securities Market

The General Audit of the Securities Market (*Auditoria Geral do Mercado de Valores Mobiliários* or AGMVM) is the entity charged with the supervision of capital markets. This entity is dependent on the Central Bank of Cabo Verde but has financial and administrative autonomy.

Listed companies

The Capital Markets Code further provides that listed companies are subject to specific disclosure obligations.

Stock exchange operations

Stock exchange operations are subject to registration and may only be performed by stock exchange operators, which are defined in the Capital Markets Code as the financial intermediaries legally authorised to undertake stock exchange operations. This authorisation is granted by the AGMVM.

Public takeover offers

According to the Capital Markets Code, in a public takeover offer, once the offeror has made the decision to make the offer, a preliminary

notice must be sent to the AGMVM and to the board of directors or management of the target company. This preliminary notice must include the key features of the offer.

5.3 Investment Funds

IL does not provide a special framework applicable to investment funds as a form of investment. However, these are regulated by Decree-Law No 3/2014, of 16 January 2014, which amended and republished Decree-Law No 15/2005, of 14 February 2005, and approved the Legal Framework for Investment Funds (LFRI).

LFRI provides that investment funds may only be created in Cabo Verde with the authorisation of the AGMVM. This authorisation is subject to compliance by the proposed investment fund with requirements regarding transparency and disclosure obligations. AGMVM may exempt investment funds from some of these requirements in specific regulation. However, there does not appear to be any such regulation currently in force.

Investment funds are required to prepare and publish an annual report, including a management report and the accounts of the previous year.

6. ANTITRUST / COMPETITION

6.1 Applicable Regulator and Process Overview

Decree-Law No 53/2003, of 24 November 2003 (the “Competition Law”), provides the main principles regarding the protection of competition and is applicable to all economic activities carried out on a permanent or occasional basis, in the private, public and co-operative sectors.

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The Competition Law does provide for a merger control regime. A merger is deemed to occur in the following situations:

- two or more previously independent companies merge;
- one or more persons already in control of at least one company acquire control of one or more companies or parts thereof; and
- two or more companies incorporate a company together, as long as the new company is an autonomous and long-lasting entity and does not have as its purpose the co-ordination of competition between the founding companies or between these and the new company.

Under this framework, control is construed to derive from the following events, among others:

- acquisition of the entirety or part of the share capital; and
- acquisition of property rights over all or part of a company's assets.

In addition, mergers in which one of the following conditions are subject to prior notification:

- creation or strengthening of a share of more than 30% in the national market for a given good or service, or a substantial part thereof, as a result of the merger; or
- the turnover in Cabo Verde of all the companies involved in the concentration exceeded CVE1 million in the previous financial year.

The notification referred to above should include a brief description of the operation and the parties should aim to demonstrate why it is not in violation of fair competition. This notification is made to the National Directorate of Industry, Commerce and Energy (pursuant to Decree-Law No 60/2021, of 29 September 2021), which has 30 days from the date of receipt of the notice,

and pursuant to carrying out the preparation and appraisal of the procedure (*instrução*), to submit the procedure to the member of government responsible for the area of commerce.

The member of government indicated in the previous paragraph may then decide:

- not to oppose the concentration of companies;
- not to oppose the concentration of companies, by imposing conditions and obligations to maintain effective competition; or
- to prohibit the merger of companies, ordering, in case it has already been carried out, adequate measures for effective competition to be put in place, namely, by ordering the separation of the companies or of the assets that are grouped, or by ordering the discontinuation of control.

The member of the government has 30 days to make a decision or to send a notification to the Competition Council – the entity which, pursuant to the Competition Law, is ultimately responsible for permitting or refusing the operations that trigger the whole procedure. However, some difficulties may arise from the fact that the Competition Council is not apparently operational as yet.

Operations undertaken against a decision by a competent authority are deemed null and void. The parties to such operation may, however, appeal such decision with the Supreme Court of Justice.

6.2 Criteria for Review

The calculation of the market share and turnover referred to in **6.1 Applicable Regulator and Process Overview**, takes into account, among other factors:

- the turnover of the corporate entities involved in the merger;

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- whether the corporate entities directly or indirectly involved in the merger have:
 - (a) a majority shareholding;
 - (b) more than half of the voting rights;
 - (c) the possibility of appointing more than half of the members of the management or supervisory body; or
 - (d) the power to manage the company's business; and
- the turnover of the corporate entities which have any of the rights in the participating corporate entities listed in the bullet point above.

The Competition Law provides the situations and operations which put fair competition at risk and the operations which trigger control by the competent authorities. The criteria relate to an objective observation of aspects such as market share and turnover but, ultimately, the competent authority has the power to decide based on the criterion “maintenance of an effective competition”.

6.3 Remedies and Commitments

The merger operations that trigger the application of the control regime may be authorised if:

- justified by their contribution to the improvement of production or distribution of goods and services or to technical promotion or economic development, especially of small and medium-sized enterprises, provided that the legal conditions established in the Competition Law are cumulatively satisfied; or
- the international competitiveness of the corporate entities involved in the merger is significantly strengthened by it.

As referred to in **6.1 Applicable Regulator and Process Overview**, some operations may be granted conditional permission. These conditions will, as provided under the Competition Law, be aimed at the maintenance of effective competition.

6.4 Enforcement

The procedure to be followed pursuant to the control regime described above must be complied with prior to the undertaking of the merger operation. As stated above, an operation undertaken in violation of such procedure will be deemed null and void.

Furthermore, the Competition Law deems any transactions made with a view to concluding a merger as ineffective until express or tacit authorisation is granted by the competent authority.

The Competition Law further provides sanctions applicable to the violation of its terms.

7. FOREIGN INVESTMENT / NATIONAL SECURITY

7.1 Applicable Regulator and Process Overview

Under the legal framework applicable in Cabo Verde, foreign investment has very few restrictions, regardless of the nationality of the investor and the sector in which the investment is made.

The open FDI entry regime has been one of the key elements of the success of Cabo Verde in becoming a developed country.

As referred to in **1.2 Regulatory Framework for Foreign Direct Investment (FDI)**, investment is regulated by the IL. This statute is applicable to both foreign and domestic investors and provides the principle of free investment. No local ownership is required to set up and operate a business vehicle in Cabo Verde. However, a minority of sectors is limited to Cabo Verdean nationals. These include fishing, and inter-island shipping, among others.

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Article 7 of the IL provides that an investor may repatriate funds as long as (i) all the obligations to which it is bound have been complied with; and (ii) the investment from which such funds arose has been registered with the Central Bank of Cabo Verde.

The funds referred to above include the following:

- earnings from the sale of shares;
- net operation profits, including dividends and interest on capital;
- royalties and fees earned for the provision of investment-related services; and
- earnings from the sale of a business or part thereof.

As mentioned above, the IL provides that foreign investments must be registered with the Central Bank of Cabo Verde and that this registration must be made through *Cabo Verde Investimento*. This entity has since been replaced by Cabo Verde TradeInvest, despite maintaining its key features and competence. This procedure requires that all the relevant information and documentation be submitted to Cabo Verde TradeInvest, which forwards it to the Central Bank of Cabo Verde.

Despite there being a procedure laid out for the registration and approval of foreign investment, the law provides no sanctions for failing to comply with such requirement, other than increased difficulty (and, in some cases, impossibility) in repatriating funds arising from the investment.

In addition, approved investment projects may benefit from the incentives provided under the IL, most notably, tax incentives.

The IL includes, as did previous legal frameworks applicable to investment in Cabo Verde, the concept of the Establishment Convention.

This is a special framework applicable to a specific project which, due to its nature or relevance, is deemed to require special rules. In these cases, an Establishment Convention is entered into between the State of Cabo Verde and the investor.

One of the main criticisms that has been made about the Cabo Verdean investment regime is that the majority of foreign investments follow a specific and sometimes ad hoc procedure. This framework has been described as a reaction framework, to which investors submit investment proposals and the conditions to which such investment will be subject are negotiated on a case-by-case basis. In such a scenario, the risk of discrimination and overly cumbersome administrative proceedings is very high.

Some efforts have been made towards unification of the framework for investment review and the establishment of clear criteria according to which incentives are granted, thus reducing the scope of administrative discretion and equalising the various investment projects.

7.2 Criteria for Review

The framework applicable to foreign investment does not provide specific criteria for the approval of investment projects. As referred to in **7.1 Applicable Regulator and Process Overview**, the bulk of foreign investment is approved on a case-by-case basis.

However, the IL does provide some goals for investment in Cabo Verde, which may be used as criteria for the review of investment proposals. These goals include:

- promoting the economic, social and cultural well-being of the population;
- reducing regional socio-economic imbalances;
- ensuring the environmental balance;

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- strengthening of the national corporate fabric and production capacity;
- creating jobs;
- improving the quality of the Cabo Verdean workforce;
- fomenting technological innovation;
- increasing and diversifying exports;
- improving the payment balance;
- effectively supplying the internal market;
- improving the country's economic infrastructures; and
- competitively integrating the regional market.

The criteria outlined above do not vary according to the business structure adopted for each investment.

7.3 Remedies and Commitments

The legal framework applicable to foreign investment does not provide specific remedies or commitments to which foreign investors may be subject. However, as referred to in **7.1 Applicable Regulator and Process Overview**, investors may enter into Establishment Conventions with the government of Cabo Verde. These are the result of ad hoc negotiations held specifically for a certain investment project. Such Establishment Conventions usually make the granting of benefits (the most common of which are of a fiscal nature) to the foreign investor dependent on the compliance by such foreign investor with a specific set of conditions, which may vary in accordance with the sector in which the investment is to be made; the specific services that are to be provided under such investment project; etc. The conditions set out under Establishment Conventions are always provided on a case-by-case basis.

7.4 Enforcement

The legal framework provided for investment in Cabo Verde is not designed to grant either Cabo Verde TradeInvest or the Central Bank of Cabo

Verde the authority to block or otherwise challenge FDI before it is made.

Furthermore, and as referred to above, non-compliance with the procedures outlined in the previous questions result in the investor not being able to repatriate funds and profits arising from such investments and not being able to transfer funds abroad.

This is not, however, a sanction actively imposed by the competent authorities, but rather the consequence of non-compliance with the required procedures.

However, when an Establishment Convention is approved, the investor may be bound to some duties which, if breached, may result in the revocation of the approval of such investment.

8. OTHER REVIEW / APPROVALS

8.1 Other Regimes Sector-Specific Matters

In Cabo Verde, some sectors are subject to specific legal frameworks, such as:

- fisheries – fishing in national maritime waters, both by domestic or foreign investors, is subject to a fishing licence (furthermore, any activities related to fishing to be conducted in maritime waters under the jurisdiction of Cabo Verde are subject to prior authorisation by the competent fishing authority, according to the General Framework for the Management and Planning of Fishing Activities in National Maritime Waters and in the Open Seas approved by Legislative Decree No 2/2020, of 19 March 2020); and
- national maritime transport – according to Article 428 of the Maritime Code, approved by Legislative Decree No 14/2010, of 15

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November 2010, amended by Legislative Decree No 3/2020, of 28 May 2020, national maritime transport is restricted to national shipping companies and, exceptionally, where there are no national shipping companies, the maritime administration may authorise other (foreign) shipowners to carry out national maritime transport.

Foreign Exchange Matters

Foreign investors may, after complying with the obligations to which they may be bound, convert the earnings arising from their investment to any other freely convertible currency and transfer such funds abroad, as long as their investment is duly registered with the Central Bank of Cabo Verde.

The transfer of funds abroad must be authorised by the Central Bank of Cabo Verde, and authorisation must be granted within 30 days of the submission of the corresponding request.

The opening and operating of bank accounts in Cabo Verde is free in both local and foreign currency.

Environmental Matters

Some projects, due to their specific nature or to the area in which they are to be implemented, may be subject to an environmental impact assessment. This procedure is regulated by Decree-Law No 27/2020, of 19 March 2020. This statute provides the criteria by which a project is deemed to have an environmental impact that triggers an environmental impact assessment.

The assessment procedure culminates in an environmental impact statement, according to which the competent authorities may issue an environmental licence, which enables the applicant to undertake its proposed activities. These licences are issued for a limited time and usually require the investor to comply with some

conditions, under penalty of having the licence revoked.

Real Estate Considerations

Matters related to land and real estate (including use and transfer thereof) are specifically regulated by Legislative Decree No 2/2007, of 19 July 2007.

This statute, in line with the Cabo Verdean constitution, protects property rights over land, regardless of nationality.

Rights over land must be registered with the competent services, and property documents usually include a land registry (*certidão do registo predial*), which includes the main features and key details concerning a specific piece of land; and a certificate issued by the tax authorities (*certidão matricial*).

Despite the legal framework being sophisticated, the registration of land does not cover, in practice, the whole of the national territory.

9. TAX

9.1 Taxation of Business Activities

Corporate Income Tax

Corporate income tax (CIT) is governed by Law 82/VIII/2015 of 8 January 2015 (the “Corporate Income Tax Code” or CITC), by which tax is levied on the income of corporate entities.

Article 2 of the CITC lists the entities which are subject to CIT. These include commercial companies, public companies, and other public or private law entities resident in the national territory.

For the purposes of the CITC, legal persons and other entities having their registered office

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or effective management in national territory are deemed to be resident.

In addition, entities not resident in the national territory which earn income in the national territory that is not subject to personal income tax, are also subject to CIT.

The following income obtained by the entities mentioned above is subject to CIT:

- profit, in the case of commercial companies, public companies and other legal entities whose main activity is of a commercial, industrial, agricultural or fishing nature; and
- global income, corresponding to the sum of the income of the various categories considered for personal income tax purposes.

In the case of foreign entities, the tax is levied on the income generated in Cabo Verde, which is attributable to the permanent establishment of such entities, located in national territory.

The application of CIT is not dependent on the type of corporate entity adopted by the investor.

CIT is applied at a general rate of 25%.

Stamp Duty

Stamp duty is applicable to several operations, including corporate operations, transfer of assets and documented legal acts.

This tax is levied at a rate of up to 15%, depending on the relevant operation and the corresponding amount.

Value Added Tax

VAT is levied on the onerous transfer of goods and provision of services in the national territory. It is applicable to individuals or corporate entities, which usually undertake productive and commercial activities or provision of services.

The applicable rate is 15%, although there are some exemptions, namely, banking and finance operations, as well as for the import of some goods.

Single Tax on Assets

Single Tax on Assets (*Imposto Único sobre o Património*) is levied on the following items, among others, at a rate of 1.5%:

- the holding of real estate property and any operations related to such assets (eg, transfers and constitution of minor property rights);
- corporate operations subject to public deed; and
- the value of vehicles subject to registration.

9.2 Withholding Taxes on Dividends, Interest, Etc

Pursuant to Article 85 of the CITC, capital income obtained in the national territory by (i) residents; or (ii) non-residents with a permanent establishment, is subject to withholding tax at a rate of 20%. However, some specific capital gains are subject to a withholding rate of 10%. These include:

- interest and other forms of remuneration of public debt securities, bonds and products of a similar nature, participation securities, certificates of consignment, cash bonds or other similar securities issued by public or private entities, and other instruments of financial application, namely, bills of exchange, promissory notes, income from deposits, or other savings products with banking entities and other negotiable debt securities; and
- income obtained from participation in the equity of any type of entity, such as dividends, and any participation in the profits of companies, including advances on account of profits and those determined in liquidation, as well as any other utility received by an entity

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by virtue of its status as a partner, shareholder or associate.

Cabo Verde is a party to some double-taxation agreements (most notably, with Macau, Portugal and Spain), which entitle citizens of the signatories (both individuals and corporate entities) to more favourable tax rates.

9.3 Tax Mitigation Strategies

The IL provides some benefits that may be granted to investments registered with the Central Bank of Cabo Verde through the intervention of Cabo Verde TradelInvest. These may be of a fiscal nature. However, as described in **7.1 Applicable Regulator and Process Overview**, the granting of benefits does not follow very clear and transparent (and especially not applicable across the board) criteria and, as such, the granting of benefits is usually made through Establishment Conventions negotiated on a case-by-case basis.

9.4 Tax on Sale or Other Dispositions of FDI

As described in **9.1 Taxation of Business Activities**, capital gains are taxed under CIT, regardless of whether the investor is a resident or non-resident for tax purposes, as long as the relevant income has been obtained in Cabo Verde.

Capital gains are not usually exempt from tax. However, the benefits granted under an Establishment Convention may, in principle, include such a benefit.

See **9.3 Tax Mitigation Strategies**.

9.5 Anti-evasion Regimes

With regards to the transfer pricing regime, commercial transactions between associated corporate entities are obliged to be subject to terms and conditions equivalent to those which would be acceptable and agreed between independent

and non-related parties. Under this arm's length principle, corporate entities must keep updated documentation with their transfer pricing policies. The following entities are subject to this obligation:

- large taxpayers (as legally defined);
- entities under a more favourable tax regime;
- permanent establishments of non-resident entities; and
- other entities which the tax authorities consider should be subject to this obligation.

10. EMPLOYMENT AND LABOUR

10.1 Employment and Labour Framework

The Labour Code, approved by Legislative Decree No 5/2007 of 16 October 2007, and amended by Legislative Decree No 5/2010, of 16 June 2010, and Legislative Decree No 1/2016, of 3 February 2016 (the "Labour Code"), is applicable to all employment relationships, regardless of whether the employer is a private or public entity, unless it is covered by the framework applicable to public servants.

Despite being the most prominent statute regulating employment relationships, the Labour Code is not the only source of labour regulation. The constitution, international conventions and treaties to which Cabo Verde is a party, and other domestic statutes also contribute to providing a comprehensive legal framework applicable to employment relationships.

Employment contracts, collective bargaining and other types of collective agreements may provide the employee with more favourable conditions than those established by the Labour Code.

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The general principles applicable to employment relationships provided by the Labour Code include the following:

- free access to work, including the prohibition of clauses preventing the employee from working after a certain employment relationship is terminated;
- equality in the workplace, most notably, regarding access to promotions, labour conditions, and compensation; and
- freedom of association (concerning labour unions and similar entities).

Foreign employees working in Cabo Verde under an employment relationship governed by the laws of Cabo Verde have, in principle, the same rights as a Cabo Verdean employee.

Employment agreements are not subject to any formality, unless the law expressly provides otherwise. As long as they do not involve the reduction of acquired rights, either party may, at any time, ask the other to enter into a written agreement, which must include the identification of the parties, the date of hiring, the place of work, the professional category and the compensation received by the employee, as well as other elements that the parties may deem to be of interest.

The general rights granted to employees under the Labour Code include the following:

- to be promoted in accordance with the access regime established for the professional career in which the employee is integrated;
- to obtain compensation for damages resulting from work accidents or occupational diseases, pursuant to the legally defined terms;
- to benefit from adequate health and safety conditions at work;
- not to be discriminated against;
- to receive timely payment for labour; and

- to effectively enjoy legally or conventionally established resting periods.

Employees hired for an indefinite period are entitled to a holiday period of 22 working days for each year of service provided.

Despite the protection of freedom of association regarding labour unions and similar organisations, collective bargaining and other kinds of collective agreement are not common.

Under this framework, the employer must draft and implement an internal regulation regarding the work organisation and discipline where the company has ten or more employees. This internal regulation must address the following matters: definition of the company's staff; occupational categories and respective admission conditions, remunerations and promotions; and work organisation and discipline, such as management positions and hierarchical organisation.

10.2 Employee Compensation

Compensation is usually composed of a fixed salary and a variable component, dependent on performance, results and/or other criteria.

Compensation may be paid in cash or in kind and, unless proven otherwise, all provisions granted by the employer to the employee will be deemed as compensation under the Labour Law.

As described in **10.3 Employment Protection**, the compensation of employees is not, in principle, affected by an acquisition, merger, change of control or similar transaction.

10.3 Employment Protection

In principle, an acquisition, merger or other operation which affects the legal standing of the employer does not affect the employee and the rights the employee had under the labour

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relationship with its former employer. Without prejudice to a case-by-case review, the Labour Law provides that the new employer will inherit the position previously occupied by the former employer in the labour relationship with its employees.

However, specific collective bargains and union policies to which an employer may be bound may have a different impact in such a situation.

The employees affected by such change must be notified thereof at least 30 days prior to the change producing effects.

11. INTELLECTUAL PROPERTY AND DATA PROTECTION

11.1 Intellectual Property Considerations for Approval of FDI

The IL does not include any review related to intellectual property to which FDI must be subject.

For more information, see **11.2 Intellectual Property Protections**.

11.2 Intellectual Property Protections

The legal framework provided in Cabo Verde for the protection of intellectual property is mainly composed of Copyright Law, approved by Decree-Law No 1/2009, of 27 April 2009; the Industrial Property Code, approved by Legislative Decree No 4/2007, of 20 August 2007; and Regulating Decree No 35/2014, of 5 December 2014, which provides the attributions of the Institute for Quality and Intellectual Property Management (IGQPI), an entity responsible for the promotion and protection of intellectual property in Cabo Verde and abroad.

Cabo Verde is considered to provide adequate intellectual property protections, having a legal framework adapted to the World Intellectual Property Organisation agreements.

Since the establishment of the IGQPI, in 2014, very few registrations have been filed by Cabo Verdean nationals, due to limited research capacity, and most of the requests for registration have been filed by foreigners seeking protection for their business.

11.3 Data Protection and Privacy Considerations

The General Legal Regime of Personal Data Protection (GLRPDP) was approved by Law No 133/V/2001, of 22 January 2001, amended and republished by Law No 12/IX/2021, of 17 March 2021, provides the legal framework applicable to the protection of data.

This statute is applicable to the handling of personal data in Cabo Verde or of Cabo Verdean nationals.

The GLRPDP defines the entity responsible for defining the purposes and means of handling personal data as “responsible for handling”. This framework is applicable to the handling of personal data:

- within the scope of activity of the entity “responsible for handling” in Cabo Verde;
- outside of Cabo Verdean territory in places where the laws of Cabo Verde are applicable due to public and/or private international law; and
- by entities “responsible for handling” which, despite not having a main office in Cabo Verde, use means located in Cabo Verde for the handling of such data.

The violation of data protection rights and/or provisions of the GLRPDP may result in pen-

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alties which are proportionately applied. These penalties range from CVE50,000 to CVE3 million, and some violations may be punished with a maximum of four-and-a-half years' imprisonment, depending on the specific violation and the seriousness thereof.

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Morais Leitão, Galvão Teles, Soares da Silva & Associados – in conjunction with its integrated network of law firms in Angola (ALC Advogados), Mozambique (MDR Advogados) and Cabo Verde (VPQ Advogados), and through the Morais Leitão Legal Circle, a team based in Portugal dealing with Lusophone transactions – ensures a seamless service to international clients investing in Lusophone Africa. The team advises clients on both cross-border inbound and outbound investments into Lusophone Africa, very often in respect of large-scale project

finance deals, and is jointly led by André de Sousa Vieira and Claudia Santos Cruz, together qualified in four different jurisdictions. The team combines international experience of best practice backed up with expert local knowledge and the support of the whole network, enabling each firm to maximise the resources available to its clients. The members of the team are qualified in civil and common law jurisdictions and have advised on some of the most complex and large-scale deals in Portugal, Lusophone Africa and Lusophone Asia.

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Claudia Santos Cruz joined Morais Leitão as a senior consultant in 2015, assisting clients on the international aspects of their investments in Portugal, Angola and

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André de Sousa Vieira joined Morais Leitão in 2020 as a partner. He is co-responsible for a banking and finance team, and integrating the international committee of the firm. He is a

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from 1996 to 2002, focusing on criminal law, civil law, labour law and administrative law. Vera was then a senior technician at the General Labour Inspection, namely, as the instructor on misdemeanour procedures, as well as at the Ministry of Labour and Social Security, intervening in the transposition of community directives in the area of safety and health at work and in the drafting of other legislation related to the same matter. She was also a labour inspector at the Authority for Working Conditions. Vera was deputy ombudsman of the Republic of Cabo Verde until September 2020.

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