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# A REVIEW OF PROPOSED LEGISLATION IN CAPE VERDE

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Draft Report

*Bureau for Private Enterprise  
U.S. Agency for International Development*

*Prepared for: USAID/Cape Verde*

*Prepared by: The Services Group*

*Sponsored by: Private Enterprise Development Support Project II  
Project Number 940-2028.03  
Prime Contractor: Arthur Young*

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1815 N. Lynn Street, Suite 200  
Arlington, VA 22209  
(703) 528-7444*

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**REVIEW OF PROPOSED INDUSTRIAL DEVELOPMENT, ENTREPOT,  
AND OFFSHORE BANKING LEGISLATION IN CAPE VERDE**

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## I. INTRODUCTION

This review of proposed legislation in Cape Verde has been undertaken by The Services Group for the United States Agency for International Development Mission in Cape Verde under the auspices of the Private Enterprise Development Support Project. The legislation reviewed consists of four separate but related pieces of legislation aimed at promoting industrial development in Cape Verde, and legislation to foster the establishment of offshore banking. The review has been undertaken from economic perspective, not a legal one, with reference to the incentives and their implementation from the perspective of potential investors. The purpose of the review is to provide the Government of Cape Verde with a preliminary analysis, based on the experience of The Services Group in other countries, particularly with respect to export-oriented industry, and the specialized expertise of R. Keith Richard in Customs regulations and procedures. It is hoped that the review will assist the Government in formulating final legislation and in preparing implementing regulations where required.

On balance, the legislation proposed reflects careful analysis and the incorporation of well defined economic policy priorities. The suggestions for changes or additions contained in the review, however, merit serious consideration to make the proposed legislation more effective. The Industrial Development Law provides the overall policy framework and goals for this legislative initiative, and consists primarily of an articulation of industrial development policy. It attaches a high degree of importance to the stimulation of export-oriented industry, while at the same time providing incentives for firms producing for the local market. The Industrial Statute consists of a further refinement and definition of the incentives, procedures, and requirements for eligibility. The External Industrial Investment Law provides essential guarantees for foreign investment in industry. The Customs Regulations for Entrepots establishes the operating guidelines for export oriented industry as defined under the Law and Statute, as well as for commercial entrepots. Together these four statutes constitute an effective regime for the encouragement of industry.

With respect to the overall organization of the legislation, two recommendations made in the review should be noted. First, the government may wish to consider broadening the scope of the external industrial investment law to encompass all foreign investment, or alternatively to incorporate it into the Industrial Development Law if it is to be confined to industry. Second, the tariff exemptions proposed for industry will establish a system of effective protection for import-substitution industries. The project team believes the government should carefully evaluate this

industrialization strategy in the light of the experience of other nations, particularly those with small domestic markets such as Cape Verde. This experience has not been positive in most countries, and many are now faced with the task of reorienting expensive, inefficient local industries which can never achieve competitiveness, and taking policy measures to reduce the distortions their protection and support have inflicted on the rest of the economy.

The offshore banking legislation will provide the basis for the establishment of this sector in Cape Verde. Most of the suggestions made in the review can be implemented, if desired, through the subsequent issuance of regulations rather than adopting changes in the legislation. The legislation proposes a careful balance between the particular requirements for this sector, such as lack of traditional banking regulations and secrecy of accounts and transactions, and the need for vetting and monitoring of offshore banks.

The project team consisted of Carl Goderez, Director of Projects of The Services Group, James Emery, Vice President; Robert Rauth, Senior Consultant, and R. Keith Richard, Consultant to The Services Group. This project benefited from the translation and interpretation efforts of Jose Luis Pinheiro of Initium, Lisbon. In addition, project team members James Emery and Robert Rauth also benefited from the information gained in a recent field assignment particularly from Tom Luche of USAID/Cape Verde. The opinions expressed in this review remain those of The Services Group.

## II. INDUSTRIAL DEVELOPMENT LAW

### Introduction

The Industrial Development Law (IDL) is the instrument which, in final approved form, will define the Government's policy objectives, development strategy, institutional structure and regulatory framework related to the country's industrial sector as a whole. The draft law submitted to and reviewed by the consultants, while lacking some specifics often included in this type of policy statement, is a comprehensive and ambitious statement which will formulate a workable legal regime in support of industrial development.

### Specific Observations

(Note: Articles and subsectors not listed below imply "no comment")

### Chapter I - Objectives of Industrial Development

Article 3 - The 17 distinct "guidelines" listed in this Article, Sub-paragraphs (a) - (s), constitute a comprehensive set of targeted activities and practices needed to achieve the main objectives listed in Article 2. The GOCV pledges to follow a number of policies that, if implemented, could transform the Cape Verdean economy. These steps include:

- 1) "to establish a legal framework and a system of incentives which shall be both simple and clear, generic and tailored to the features of the industrial activity;"
- 2) "to simplify administrative procedures in such a way that it will improve the flexibility and the quickness of decisions..."
- 3) "to support and stimulate the export of national industrial products and settlement of export oriented industrial units;"
- 4) "to stimulate foreign investment...particularly by introducing export-oriented producers."

These four clauses are only the highlights of the 18 guidelines listed. Of the 18, only sub-paragraph (f) could be viewed as negative as it will seek to stimulate small and medium industrial companies through "import substitution projects" -- a policy approach that has achieved limited success in other nations and may constrain the costs of larger industrial projects by increasing the

costs of local inputs, particularly in Cape Verde with its small domestic market. In this way, an import substitution policy can actually prove detrimental to the creation of backward linkages.

In terms of omissions, there is no reference in Article 3 to the need for protecting the ecology and controlling pollution and we suggest that appropriate wording be added in a specific subparagraph ("y" or other, if inserted elsewhere). This issue is important, especially if international development funding sources are to be approached in the future. (Institutions such as the World Bank and regional development banks scrutinize carefully the ecological implications of Government policy and project design before approving loans.)

Article 5 - Though not specific, this article declares the critical role that industry will play in Cape Verde's future development.

Article 6, Sub-paragraph 2 - It might be useful to add to the sentence "... as provided for in the External Industrial Investment Law."

Article 7, Sub-paragraph 2 - The policy that public sector projects should be "... preferably in association with a national or foreign private enterprise" is good. However, the preceding phrase establishing the "special interest" category, i.e. by "... taking into consideration special interests of the national economy ..." is so indefinite that it could lead to conflict and misunderstandings with legitimate private interests. We would suggest that the sentence be modified by inserting after industrial plants the phrase "... in productive activities that have not attracted private capital ...", or similar wording.

As a corollary, the Law (or the Implementing Statute) could list the industry sectors meeting the governments special interest criteria. In other countries such designation includes, typically, such industries as: mining and refining of radioactive minerals and other strategic minerals (tungsten, molybdenium, titanium, etc.); petroleum extraction and refining, manufacture of arms, ammunition, gunpowder and explosives in general. A priori existence of a defined list of special interest activities is much preferable to a negotiating process subject to potential "special pressures" and deals.

Article 8 - This statement, together with the principle of "openness" in Article 6 and the limitation of the role of government as a producer in Article 7, makes a clear policy statement in support of private enterprise as the main force in industrial development in Cape Verde. This marks a definitive shift in policy from the past, where the government intervened directly by investing in industrial projects.

Article 12 - This article clearly states the role of government as supporting industrial activity, as distinct from reserving a role for the state as a producer, except as noted above. In addition, we would suggest:

- (a) clearly stating which department is responsible (We assume the Ministry of Industry and Energy).
- (b) substitute "regulate" for "manage." Manage implies too much public sector intervention, "regulation" is closer to the legitimate functions of government. (Note: the Portuguese word used is "administration", which may have the same meaning as "management". In any event, the Government should "regulate", not "manage" or "administer" the industrial sector.)

Article 13 - Same comment as in Article 12 (a).

Article 14 - The move to create an autonomous Industrial Promotion Service is laudable. To create an efficient Industrial Promotion Service necessitates a well-conceived design. Use of the word "autonomous" makes the eventual form of the organization unclear. The formation of an autonomous promotional group is often used when it is necessary or desirable to operate outside the civil service system and usually is structured to include strong private sector participation and financial support. If the considered intention is to place this activity in an autonomous entity outside the Ministry, the Statute should define the structure, staffing, financial aspects (who provides the operating budget?), procedures, etc.

While this is a move forward, the GOCV should realize that the establishment of a wholly new group can take two to three years to create.

Article 15 - Here also, exactly what form will the Industrial Development Fund take? Will it be a separate specialized bank, i.e. a Development Finance Company as defined by the World Bank? Will it lend money or provide grants, or both? In its simplest form, it could be an account in a public or private bank subject to disbursements, as loan or grant, as instructed by the Administration of the Fund. In that case, who is responsible for monitoring loan repayment, loan arrears, collections, etc.? If a full service new development bank is contemplated, the Government should anticipate a very long gestation period. Alternatively, the Administration of the Fund could function as a technical assistance group with all banking functions discharged by the banking institution holding the account.

Article 17- (Incentives) The general statements in this article will be detailed in the Statute and will be covered in our comments on the Statute. However, the provision in No. 2 for incentives

varying in degree according to the objectives requires comment at this level. The principle stated that incentives should be "universally and immediately applied to all operators" should also be extended to the degree of incentives. That is, any variation in incentives should be clearly defined and not subject to case-by-case review by the government. Governments which have attempted to "fine-tune" the incentives to match individual investments often find their actions create a climate of uncertainty, and exposes the evaluation process to bargaining and influence by individual investors seeking greater incentives.

Article 24 - The provision on quality control for industrial products -- especially those for export -- makes little sense. If the goods are not of sufficient standard, the producer will lose his market. In this way, the market is naturally the most efficient guide to quality control. Having the government undertake a massive program to check quality may allow the government to construct an unnecessary level of bureaucracy.

Article 27 - (Expatriate workers) Care should be taken in formulating a reasonable body of regulations governing the immigration and length of stay permissible for foreign personnel. If overly restrictive, the rules could have a negative impact on the attraction of foreign capital, whether in free zones or otherwise.

Article 32 - Sub-paragraph (1) is an important point in that it recognizes the flexibility needed by manufacturers to compete effectively on the world market. Completely inflexible labor policies have stymied industrial development in numerous countries.

Article 36 - This clause recognizes the obstacle an overvalued currency can have on exports. The move to more realistic exchange rates had substantial impact on the growth of export-oriented industries in Mexico, the Dominican Republic, and Jamaica. In addition, Taiwan, South Korea, Hong Kong, Singapore, and Japan have long followed exchange rate policies that emphasized exports over imports.

Article 38, Sub-paragraph 2(b) - Reference to "Industrial Administration" needs clarification.

Article 43 - This provision, like Article 3, pledges to "provide greater flexibility quickness, and efficiency to departmental services related to industrial development." "The simplification of administrative procedures" and "The suppression of every unnecessary bureaucratic requirements or overlapping responsibilities" are crucial to Cape Verde's objective to the development of an industrial sector.

### III. EXTERNAL INDUSTRIAL INVESTMENT LAW

#### Introduction

This law provides the framework for defining and providing guarantees for foreign investment in industrial enterprises. As such, it complements the Industrial Development Law and the accompanying industrial statute. However, given the lack of other legislation governing foreign investment in general, the Republic of Cape Verde may wish to consider extending the scope of the current external Industrial Investment Law to encompass all foreign investment. This is commonly done in other countries, where general guarantees and regulations governing foreign investment are established in legislation for that purpose, and incentives and other measures are contained in sector-specific legislation, such as the Industrial Development Law.

In this case, the general guarantees and definitions of foreign investment are supplemented with a definition of eligible sectors or activities. This can be done either through a "positive" list, which defines the sectors in which foreign investment is permitted. Or through a "negative" list, in which sectors reserved exclusively for local investors are defined. For example, a positive list might include industry, mining, and other natural resource extraction, agriculture, agro-industry, international transportation, tourism, and other services such as insurance, data processing, etc. A negative list might include small-scale business, internal transportation, domestic banking and financial services, domestic commerce, or other sectors in which the government does not wish to permit foreign investment as a matter of policy. The law could also allow foreign investment in otherwise restricted sectors, but without benefit of incentives such as tax exemptions.

Alternatively, if the government wishes to keep the focus of the current law narrowly defined to industry, the provisions of the law could be included as a separate chapter in the Industrial Investment Law. Subsequent legislation designed to promote other activities in which foreign investment is sought, such as tourism, would then have similar chapters governing foreign investment, as this would not be covered in the law.

Either of these alternatives would be preferable to the current definition of the External Industrial Investment Law, as each would act to simplify the overall legal framework governing economic activities in which foreign investment is sought.

Specific Comments:

Article 1, Subparagraph 4 (a) - The English translation refers to the creation of a "new industrial company ... on behalf of an individual or as a partnership company." But the Portuguese version refers to "individual" or "sociedade". The word "sociedade," -- as in Spanish, means corporation. To allow investors the greatest number of possible options, new industrial companies should be established whether owned by individuals, partnerships, or corporations.

Article 2 - (External Industrial Investor) - This article defines the External Industrial Investor as any individual or legal person. As in Article 1, this does not seem to allow partnerships. This oversight should be resolved. In addition, the external industrial investor should be better defined. For example, the present definition leaves the question of whether a Cape Verdean citizen, residing in Cape Verde, can repatriate foreign funds for investment. Does he qualify in reality?

The law should also clearly define the value of industrial "know-how" and patents, service contacts, technical assistance agreements and technology licenses as contributions to registered foreign investment. Although there is a provision in 2.b. for final imports of services, it is not sufficiently precise and should be clarified, give that these specific services are very commonly components of investment in developing countries, and investors welcome their inclusion in the valuation of the investment.

Article 3 - (Authorization) While it is certainly standard that the government must first approve any foreign investment before the commencement of operations, this law remains too undefined. The countries that have been most successful in attracting foreign investment are those with clear guidelines of how long the approval process should take and which agency (or agencies) has the authority to grant approval. Hong Kong, for example, features a one-stop shop that approves projects in one day. Most other countries have laws that state approval will be granted within 30 days. In addition, it must be mentioned that foreign investors prefer to do business in countries where all documentation and approval processing occurs in one agency or Ministry, thus reducing the amount of legwork required of the investor.

Article 4 - As a general principle, foreign firms should be promised equal treatment under the law.

Article 5 -- (Expropriation) - To reassure foreign investors this provision should be stronger. It should state: "The GOCV renounces the right to nationalize or expropriate any foreign investment for any nationalistic purposes." Despite this proviso, the law should retain the legal means for assessing compensation. At present, the term utilized -- "fair compensation" is not defined.

Possible criteria that could be employed include: replacement value, fair market value, or depreciated value. Time limits in reaching agreement should also be specified -- otherwise, the compensation process may become too lengthy.

Article 6, Sub-paragraph 8 - The interest rate should be more precisely stated - not as a percentage, but in relation to some international index such as LIBOR.

Article 7, Sub-paragraph 1 (a) and (b) - Sub-paragraph (a) clearly exempts dividends and profit distributions from taxation for five years, regardless (implicitly) of what the recipient does with the income. But then Sub-paragraph (b) "extends" the exemption to profits/dividends invested in the same or at another industrial activity. Do this mean after the five years total tax exemption period? This needs clarification.

Article 8 - (Stabilization of Tax Regime) - Article 7 declared that profits and dividends are exempt for five years. In Article 8, this statement is contradicted by noting that profits and dividends are subject to a 15 percent tax. Does this 15 percent tax refer to after the original five year period? If not, when does the 15 percent tax rate apply? The apparent contradiction between Articles 7 and 8 requires resolution.

Article 9 - (Conflict Settlement) - This is a well-conceived clause that could facilitate dispute resolution.

### General

Overall, this law requires further refinement. The apparent contradiction in Articles 7 and 8 needs clarification. In addition, the clause renouncing expropriations should be stronger. Foreign investors must also be assured of treatment equivalent to that received by local investors. Additionally, consideration should be given to the suggestions in the introduction for broadening the scope of law, or including its provisions in the Industrial Development Law.

## IV. INDUSTRIAL STATUTE

### Introduction

As with the Law, the draft Statute constitutes a good start in formulating the complex body of rules and regulations, procedures and practices which are needed to implement on a day-to-day basis the intent of the Law. Evidently, considerable thought has gone into preparing this statute (although certain issues are still unsolved and "alternatives" are noted in the draft). It is divided into five chapters covering broad regulatory areas as indicated below:

#### Chapter I, Articles 4-19, 20-23.

Procedures for approval and registration of industries, i.e., licencing (Art. 4-19); and manufacturing permits authorizing start-up of operations (Art. 20-23);

#### Chapter II, Articles 24-37.

Incentives, including liberalized import/export regime, exoneration of customs duties, income tax exemption, miscellaneous special benefits.

#### Chapter III, Articles 44-49.

Special rules for Exporting Industrial Companies (i.e., firms exporting 100 percent of production.

#### Chapter IV, Articles 50-56.

Inspection and Penalties

#### Chapter V, Articles 57-64.

#### Miscellaneous and Provisional

### **Specific Comments**

Article 2 (definitions) - Subparagraph 3 and 5 define "exporting industrial plant" and "exporting industrial company" respectively. These constitute an entity very close to the traditional free zone concept. The apparently rigid 100 percent product export rule, however is relaxed in Article 58 where Government authorities can authorize the role of up to 5 percent of product in the domestic market. Question - why the 5 percent limit? Since Government authorization is needed in any case, it is conceivable that, under

certain circumstances, the Government might wish to approve 10 or 20 percent or more for domestic distribution (in a case of temporary shortages of the normally available product, for example).

Article 7 (b) - This article may be considered too vague by some investors. Some countries prefer to list the types of activities considered in violation of the "fundamental public order principles."

Article 7 (2) - Many countries have found that an automaticity clause allowing for automatic approval if the appropriate agency finds no objection to the project helpful. This is effectively accomplished by the 60-day time limit on the right to oppose, and further reinforced by the provisions of Article 9. However, it should be noted that a 30 day approval period is common in other countries.

Article 10 (Registration Requirements) - Subparagraph 2 seems to have been printed with the sentences after "... and other industrial laws ..." missing.

Article 20 (3) - Issuing the manufacturing permit after the completion of construction and installation of machinery is less preferable than issuing it after showing the plans to the appropriate agency. The proposed clause, as presently stated, could become a disincentive to capital investment as a project could be disapproved after the operations and machinery have been set up. If the company's operations could potentially pose safety or health problems, this is a matter which is most inexpensively alleviated during the planning stages.

Article 21 - As in the above, the locking up and sealing off of equipment is less desirable than solving health and safety concerns in an earlier stage of the project. Ongoing enforcement of these and other standards is provided in Article 22.

Article 26 - This is an excellent provision providing a legal basis for the priority of free imports of goods necessary for the operation of industrial enterprises. It is reinforced by the automatic import license granted in Article 27, and the provisions of Article 28 which promise streamlined procedures for capital goods imports.

Article 29 (1) - This is a very good provision. However, the "maximum amounts" allowed as recorded in the industrial register could pose as a problem beyond the short-term. As firms grow and diversify in their production, additional volumes of imports will be required. If a separate application procedure is required, then this poses a constraint upon industrial growth and successful operations. A simplified procedure for increasing the maximum

amounts, or the types of products imported, should be considered so as not to create a disincentive.

Article 29 (2) - Given the provisions of Articles 26 and 27 for automaticity of imports, we interpret this provision to be a reporting requirement to be made within 30 days of the importation, and not a prior approval requirement, to be made 30 days prior to the importation. If the latter is intended, this will contradict the intention of these earlier articles. From a practical perspective, many export industries in particular are dependent on rapid turnaround times, and may have rush orders, emergency need for spare parts to resume production, etc. In this context, thirty days notice for imports is unnecessarily constraining. Given the delays in transport and other factors which may be encountered, a 30 day prior approval period simply adds another delay. If the intent, however, is to state a reporting requirement, the limit is reasonable.

Article 30 - The provisions for duty free entry of capital goods and production inputs under the Industrial Entrepot regime are adequate, as noted in the discussion of those regulations.

Article 31 - The exemption for Customs duties on equipment and production inputs, as provided for here, establishes a system of effective protection for local producers. While it is understood that export industrial plants' imports of equipment and production inputs receive perpetual exemption from duty under the industrial entrepot regime, the duty exemption here is applicable to producers for the local market. Duty exemptions on capital equipment are a common incentive to reduce the "up-front" costs of investment, where these costs are high due to transportation costs, etc. When combined with the maintenance of high tariffs on imports of final products, the exemptions for production inputs create a high degree of effective protection. Even though their phasing out is envisioned under No. 2, the experience of most countries has been that industries established with this degree of protection cannot survive competition from imports without the protection inherent in duty-free imports of intermediate goods, and these exemptions are either extended or the industries cease operations after the exemptions are phased out. Given the negative experience of other countries following this type of import substitution policy, Cabo Verde may wish to consider the removal of the duty exemptions for production inputs, and concentrate instead on an overhaul of the tariff structure in general to achieve the necessary incentives for local producers.

Article 32 - The same comments as above apply. In addition, it should be noted that incentives for regional dispersion of investment have largely proved ineffective.

Article 33 (1) and (2) - We assume that the regime of progressive duty reduction provides for a rebate or refund of duties paid on

raw materials subsequently exported. This is an important incentive to export sales by industrial firms, and is a common aspect of duty "drawback" provisions of Customs codes, as further expanded upon in section (2).

Article 33 (3) - Exports should also be exempt from sales or any other taxes, in addition to customs duties and fees. The imposition of taxes on exports creates a direct disincentive, which counteracts the incentives being proposed elsewhere in this statute. Rather than create a complex series of incentives and disincentives, it is preferable to simply remove disincentives. See also the discussion of Article 47.

Article 34 (1) - This clause states that industries remain subject to the stamp tax. To ensure competitiveness for exports, the stamp tax should be eligible for rebate under the drawback provision of Article 33. The broad nature of the tax exemption specified in the industrial entrepot regime for export industries we have interpreted to encompass the Stamp tax, and the same provision should be extended to exports from other industrial producers. The law also mentions "fees owed as payment of services" -- fees based on storage and warehousing costs is considered standard in export manufacturing centers but this clause, as mentioned above, should not include any approximation of a stamp tax.

Article 34 (2) - Incentives granted only to goods that are not already produced within Cape Verde on the basis of price, quality, and delivery time could prove to be harmful. Countries with similar provisions have found that determining price, quality and delivery time is not as easy as it seems and can prove to be extremely subjective and opens the possibilities of favoritism. By imposing this requirement, a review procedure would be required which is in conflict with the automatic import license provision of Article 27. This provision also directly contradicts the intention of free importation as expressed in Article 26, which mentions only currency crises as a reason for control.

Article 35 - This provision could be simplified by stating that the sale or transfer of equipment imported duty free can be made upon payment of duty, although the duty so calculated should take into consideration the depreciation of the goods in question. The provision for transfer to another registered company is suitable.

Article 38 (a) - The full income tax exemption for companies is a common incentive and sufficient for industries serving the local market. However, many countries such as Jamaica, Costa Rica, and Honduras have recently extended their income tax exemptions for export-oriented industries. In the cases of Jamaica and Honduras, the exemptions are now granted in perpetuity. To be more fully competitive, a minimum ten-year tax exemption for export industries

in Cape Verde is recommended, and could be included in Article 47. In addition, it should be clarified as to whether this provision includes complementary income tax as well.

Article 38 (c) and (d) - To clarify, the phrase "after the income tax exemption period expires" should be added. Otherwise, the provision for additional deduction has no effect, if training expenses or reinvested profits are incurred during the holiday period. Additionally, it should be noted that employee training expenses are normally deductible as a business expense. To increase the incentive to provide training, some countries allow a tax credit, applicable after the general holiday expires, or allow firms to deduct a multiple (150-200%) of training expenses from taxable income.

Article 38 (2) - This is an investment tax credit for individuals investing in industrial countries and will be a strong incentive. It is often overlooked in other countries, and has the effect of extending the tax benefits from industrial activities to the individual investor.

Article 39 (Regional Incentives) - Many countries have tried to attract industry to rural and/or remote areas by means of enhanced incentives. Results have not been too encouraging, in general, industry, with a few exceptions, locate according to their evaluation of the availability, quality and price competitiveness of the basic factors of production. To be effective, regional incentives should be directed at reducing the existing disincentives to locating in outlying areas. As such, the provision for extension of duty reduction to transportation equipment for workers (presumably buses) in Article 32 b is directly aimed at one associated cost of locating outside of Praia and Mindelo. Additional incentives, such as government assumption the costs of needed infrastructure improvements, may also be considered. As noted above, tax incentives alone, except insofar as they reduce the initial investment cost, as in duty exemptions for capital equipment, are often not sufficient to overcome the costs of locating outside major commercial centers.

Article 40 (Reimbursement of Customs Duty) - This Article provides what is usually referred to as "drawback" of customs duties, although in this case it is indirect. This is a good provision which should help manufacturers become more price competitive and could well induce growing linkages with domestic manufacturers and suppliers of intermediate and finished goods for sale to the Exporting Industrial Companies.

Article 41 (1) - The first version is preferable to the alternative version as it provides an important incentive for incremental exports from industrial firms. Care should be given to ensure however, that the tax regime for export industrial companies also

includes more comprehensive profits tax relief, as suggested above.

Article 41 Subparagraph 2 is an excellent corollary. By defining exports as including sales (by domestic firms) to Exporting Industrial Companies, both will be stimulated to develop linkages.

Article 43 - Most branches and subsidiaries of foreign firms prefer to utilize the accounting principles accepted in their home base countries. This provision, however appears directed at local firms. The requirement to keep reasonable and accurate records is important for demonstrating eligibility for a number of the incentives of the statute.

Article 46 - Article 30 specifically states that exporting industrial companies are subject to the regime of industrial entrepots, which contains provisions for the duty free entry of goods. This should be reiterated here and the reference to the progressive duties reduction removed, unless there are special provisions of that regime not encompassed in the industrial entrepot regime.

Article 47 - This provision should be extended in perpetuity, as noted earlier, for all export sales. The removal of direct export taxes in often one of the first reforms made in countries seeking to increase incentives to exports.

Article 48 (Exchange Rate Rules) - Subparagraph 1 - This is a well-formulated provision. Subparagraph 2 - Generally, an Exporting Industrial Company will earn surplus foreign exchange (over and above its own needs for foreign exchange remittances). Occasionally, there could develop a need for "bridge finance" and such needs are often urgent (when, for example, a foreign collection is overdue for whatever reason while a transfer must be made to "liberate" a shipment of raw materials). Procedures to obtain short-term foreign exchange credits (30, 60, or 90 days) should not be too onerous if the export industry has a legitimate transitory need.

Article 51 - Penalties in other countries typically range from 20 to 100 percent addition to the taxes due as well as the full taxes due inclusive of interest payments.

Article 55 - A clause allowing for unlimited responsibility is highly unusual and would prove detrimental to attracting foreign investment from corporations. International practice recognizes that a corporation is a legal entity and in itself is subject to unlimited responsibility. This level of responsibility is sufficient.

Article 58 - As mentioned earlier in the Article 2 comments, the allowance for local sales is good. The allowance for sale of five percent could be increased as most countries allow 10-20 percent

local sale of total production. In the case of Costa Rica, 49 percent of production can be sold on the local market. As with the comments made on Article 47, the mechanism handling these sales is as important as the provision permitting them. An approval mechanism should be established where the appropriate ministries have 30 days to disapprove the sale.

**Alternative B.** The alternative tax incentives proposed in this series of Articles is not preferable to that proposed in the main alternative, as modified with the suggestions in this review. The principal difference is the perpetual tax holiday. Although, as noted above, an extended tax holiday is an important incentive for export producers to ensure the competitiveness of Cape Verde in export markets, it may not be justified for all producers approved under the industrial development law. The profits tax does not distort relative prices, and a gradual movement away from transactions taxes and import duties towards taxes on income has characterized most nation's development. The 15 percent tax imposed under the industrial development law is not prohibitive, especially when combined with a 5 year holiday, and is well below the norm for developing countries.

## V. COMMENTARY ON PROPOSED CUSTOMS LEGISLATION

### Introduction

The proposed Cape Verde entrepot program will allow merchandise imported into the customs territory of Cape Verde to be temporarily stored without the payment of customs duties and associated taxes. Two types of entrepots are allowed in the proposed regime -- stockage entrepots for the general storage of merchandise not to be processed or manufactured and industrial entrepots where merchandise can be manufactured or processed into other goods. Two types of stockage entrepots are to be authorized -- public entrepots operated by concession holders for the use of the general public and private entrepots operated by individual importers for their exclusive use.

### General Comments

In summary, many of the procedures to be established by the proposed Cape Verde legislation are common to such programs in other countries. As a result, international organizations will find the Cape Verde program to be familiar.

Except for our comments concerning private stockage entrepots, the proposed regime is complete and well organized. As discussed in more detail in the following sections, some provisions can be enhanced to more clearly identify responsibilities and procedures and to help prevent misinterpretations and applications not intended by the General Parliament. However extensive revision and reorganization is not necessary.

### Specific Comments

Each of the articles of the regime where modification or clarification is suggested is addressed separately with comments regarding additions, deletions or reorganizations. For those articles not listed below no suggestions were felt to be warranted. Each article is identified with a title established during our review to help understand the contents and arrangement of the regime; these titles are not part of the copy of the regime used in our review.

In some cases, specific phrases are suggested for consideration. These suggestions are not considered mandatory; they should be considered carefully in accordance with the intention of the General Parliament and the administration of the Republic of Cape Verde, particularly since the nuances of language translations may result in unintended implications.

**Private Stockage Entrepots** - There seems to be a need to more clearly identify procedures applicable to private stockage entrepots. Nearly all of the discussion concerning stockage entrepots (Articles 4 through 13) preface the authorization statements with the term "public entrepots". Generally, except by implications and assumptions, provisions concerning private

entrepots can be considered to be virtually non-existent in the regime. In such cases, interpretations can lead to private entrepots being excluded from the provisions of these articles which could be a serious deficiency in the regime.

Some suggestions to cure this problem are presented in the discussion concerning each article. Generally, the matter can be resolved by the following method:

- a. Define the term "stockage entrepots" and operations which can be carried out in all stockage entrepots regardless of whether private or public. (Article 4)
- b. In subsequent articles (5 through 13), use the term 'stockage entrepots' instead of 'public entrepots' when the provisions of the articles are intended to apply to both private and public entrepots.

#### Article 2 (Entrepot Definition)

1. The benefit of the suspension of duties can be clearly limited to imported goods while they are confined in entrepots by adding the phrase "while the goods are confined in an entrepots" or a similar phrase. Without such a phrase, the matter could be misinterpreted.

2. The term "other economic and tax provisions" is very broad and can possibly be interpreted to include all economic and tax provisions. It may be important to modify the phrase to include a provision as follows:

"....suspension of duties and other customs impositions, taxes, forbiddance and other economic and tax provisions as established by specific government decree."

#### Article 4 (Public Entrepots, Private Entrepots, Warehouses Renamed)

1. The phrase "...committed to third persons" may prevent importers from storing merchandise committed to their own use. In cases where importers do not have enough volume of importations to justify a private entrepot, a public entrepots can provide a valuable method for all importers to have equal access to the benefits of an entrepot. If it is intended to include all importers in the ability to use entrepots, the referenced term may be deleted.

2. This section does not establish the uses which can be applied to merchandise in private entrepots as is done in section 4.1. Either a definition can be applied to section 4.2 or a general definition can be added as discussed below.

3. In order to help identify the responsibilities and limitations of private stockage entrepots, considerations may be given toward defining the activities of stockage entrepots in

general, with such provisions to be applied to both public and private entrepots. If such a decision is made, this article can be reorganized as follows:

Article 4 (Stockage Entrepots)

1. Allowable operations within stockage entrepots (public and private)
2. Public entrepots defined
3. Private entrepots defined
4. Warehouses renamed

Article 6 (Public Entrepots - Government Responsibilities)

1. Part 3 of Article 6 is apparently incomplete on the copy of the proposed regime used in the review.

2. The previous comments concerning private entrepots apply to this article. As the article is currently written, private firms are excluded from the operation of "public" entrepots, and restricted only to operations for their own exclusive use, as "private entrepots," except insofar as they may operate through trade associations. Many countries have found that private firms are more capable of the management of entrepot facilities, under the control of customs and other authorities, and in cooperation with port authorities and transportation companies. The changes suggested above can be used to simplify the terms employed and remove the exclusion of private firms, unless this is the express intent of the regulation. (Note: any application for operation of a public entrepot would still be subject to the authorization and ongoing control of the relevant government agencies.)

Article 7 (Public Entrepots - Access; Exclusion of Goods)

1. With reference to collateral security (financial guarantee) (part 7.3), some countries do require financial guarantees for goods placed in public and private entrepots to assure that the government is protected in case of loss of revenue. This differs from the provisions for industrial entrepots (Article 18).

2. Note that there may be an implication that part 2 of this article may not apply to private entrepots.

Article 8 (Public Entrepots - Storage Period)

1. The three year period is a reasonable time period and is similar to provisions in other countries.

2. Note that the article refers specifically to public entrepots with the resulting implications that private entrepots are not subject to this limitation.

#### Article 9 (Public Entrepots - Allowable Disposition)

Note that the article refers specifically to public entrepots with the resulting implications that private entrepots are not subject to the limitations of this article.

#### Article 10 (Public Entrepots - Merchandise Manipulation)

1. It is a common function in commercial or stockage entrepots to repackage goods from bulk containers into those required in local or export markets, label, and otherwise prepare them for distribution. This activity does not constitute "processing", as there is no substantial transformation of the goods or significant value added, and does not therefore require the designation of "industrial entrepot." Although this type of activity appears to be permitted in Section 1.a)i., it will be better to specify repackaging and labelling as a permitted activity. This is particularly important in the context of a transshipment center which is envisioned in Cape Verde.

2. Note that the article refers specifically to public entrepots with the resulting implications that private entrepots are not subject to the limitations of this article.

#### Article 11 (Public Entrepots - Facility Security)

Note that the article refers specifically to public entrepots with the resulting implications that private entrepots are not subject to the limitations of this article.

#### Article 12 (Public Entrepots - Operator Responsibilities)

1. It may be appropriate to refer to the concession holders as public and/or private operators in order to clearly establish the liabilities of the concessionaires in all cases as desired.

2. In some countries, the entrepot operators (concessionaires) are required to provide collateral security (financial guarantee) that they will meet their obligations to the government in protecting imported goods within their facilities.

#### Article 13 (Public Entrepots - Destroyed Merchandise)

1. Note that the article refers specifically to public entrepots with the resulting implications that private entrepots are not subject to the limitations of this article.

2. It is unclear as to what is specifically intended by this article. (This may be a language interpretation problem.) In view of this situation, the following general comments may be useful.

There is often a need to clearly understand the difference between damaged goods and destroyed goods.

Damaged goods often refers to goods which have been changed in condition that renders them useless for their original intended purpose but still have usefulness (perhaps for another purpose) and value (although the value usually is less than the value of the goods in their original condition). Damaged goods are often allowed to be imported with duty paid according to the reduced value of the good in the condition in which it is imported (rather than its value and condition at the time of entering the entrepot).

Destroyed goods are usually identified as goods which have been rendered useless for any purpose and therefore valueless. Destroyed goods are often treated as duty free because they are valueless and do not harm the economy of the importing country when imported.

3. Part 4 of this article refers to "small losses". Such a term is often difficult to interpret because of the ambiguities of its generality. In addition, the meaning of the term is relative to the associated product. For example, a 5% loss in value may be small to large product, such as steel, but could be significant in cases of a precious metal.

Accordingly, it may be useful to define the term "small" in more concrete terms such as "1 half of 1 percent in value" or a similar concept.

4. Also with respect to Part 4 of this article, the term "loss" may need to be defined because as it is used now it could include shortages, destruction, damages and similar concepts. Generally, a loss can be considered to exist when a product suffers a loss in quantity, size or value because of any reason (shortages, theft, destruction or damages).

### Article 15 (Transfer Between Entrepots)

1. There may be a need to establish controls and responsibilities for methods used to transfer goods between entrepots. Some things to consider include:

- a. Who is liable for losses which occur while the goods are in transit?

Generally, the owner of the goods is usually responsible for the loss; however, according to circumstances and the intention of the Parliament, responsibility and liability may also be assigned to the concessionaire of the entrepot (if a public entrepot) from which the goods departed, or the carrier (transporter) of the goods if the goods are being transported by a public carrier or third party.

- b. Since the transported goods will still be under Customs control, such transfers are often made under the direct supervision of a Customs officer who will physically accompany the shipment from the departure point to the destination point.

### Article 17 (Industrial Entrepots - Cancellation of Authorization)

This is an important article and will serve to provide a basis for assuring that industrial companies meet their responsibilities in order to continue to operate with the benefits of the entrepot program.

### Article 18 (Industrial Entrepots - Allowable Goods, Financial Guarantee)

1. Quite often in other entrepot situations, questions have arisen concerning the Customs treatment of capital equipment (production equipment that is not raw materials or other goods which will appear in the finished goods) imported and used for production in entrepots. The provisions of this article do not cover such circumstances.

The treatment of capital equipment varies from country to country. In some cases, such equipment is allowed entry into an entrepot without the payment of duty; in other cases, duty is required to be paid as if the equipment were imported. Generally in most cases, such equipment is subject to the payment of duties and taxes as if the equipment is imported.

2. Another matter often of concern is the treatment of goods in an industrial entrepot which are not intended to be included in a manufacturing process or which will not be incorporated into a finished product. This circumstance is similar to the import of goods into a stockage entrepot.

It is often advantageous for industrial entrepots to be used as a stockage entrepot for such purposes as imported spare parts to be sold to third parties and similar techniques.

Accordingly, it seems appropriate to include in this article provision for the importation of goods which will not be changed in condition and which will be subject to the same requirements as goods in stockage entrepots. In effect, the industrial entrepot can also be designated as a private entrepot.

3. The requirement for collateral security is customary in many locations for individual factories operating as "industrial entrepots", as distinct from entrepots used by multiple firms where the administration of the entrepot shares in the responsibility for enforcement and control. This requirement for financial guarantees for individual industrial entrepots reflects the fact that it is more difficult to enforce the presence and use of duty free goods in a number of individual locations, as opposed to a central warehousing facility or stockage entrepot.

#### Article 19 (Industrial Entrepots - Storage Period)

1. The proposed length of time in the industrial entrepot (1 year plus a 6 month extension) is standard in many locations. In some cases, longer periods may be appropriate; however, this is unusual.

2. If it is decided to allow an industrial entrepot to also operate as a stockage entrepot as discussed above, the storage period can be the same as public and private entrepots for such goods.

#### Article 20 (Industrial Entrepots - Allowable Disposition)

The requirement for separate accounting for finished goods transferred from an industrial entrepot to a stockage entrepot is particularly important and good.

#### Article 21 (Industrial Entrepots - Sales of Goods)

1. The term "sale" may be imprecise. Another term "transfer of title" is sometime used to assure that all possible conditions are included in the intention that the goods must remain the property and responsibility of the person or organization entering the goods into the entrepot.

This is another important feature and is common to entrepots in many countries.

2. The limitation on sales is often applied to goods in all entrepots -- not just those in industrial entrepots. Accordingly, it may be appropriate to consider applying this provision to stockage entrepots.

## Article 22 (Industrial Entrepots - Waste and Losses)

1. There is a need to establish the dutiability of losses not suitable for economic processing destroyed in the entrepot. Are such losses to be taxed at (a) the rate assigned to the original material, (b) a rate assigned to a "loss" category, or (c) at no rate of duty (duty free)? As discussed above (Article 13), goods which do not have any economic value and cannot harm the local economy are often allowed duty-free status. This seems to be an appropriate technique to apply in matters presented in part 1 of this article and may be considered for inclusion in this article.

2. With respect to wastes suitable for economic processing (valuable waste), again there is a need to establish the dutiable classification of the waste product -- either dutiable at the rate assigned to the original product or at a rate assigned to waste products. Again, principles of importing indicate that the product should be taxed on its own identity -- that which it is when it leaves the entrepot -- "waste" in this case and not the original product from which it was derived from.

3. The provisions of part 3 of this article imply that a standard rate of loss will be established to determine the quantity of non-waste products to be used to establish duty and tax liability. A common technique to assure the validity of such determinations is to periodically require the importer/entrepot operator to validate a loss rate through the use of records and Customs inspection and verification.

## Article 23 (Industrial Entrepots - Production Sharing)

As in the case of transporting goods between entrepots (Article 15), there may be a need to establish the responsibility for the duty and taxes on goods while in the possession of third parties. In such cases, the third party is often made responsible to Customs while the goods are in their possession. Additionally, the owner of the goods or the entrepot concessionaire are not relieved of their responsibility to Customs when goods are in the hands of third parties.

## Article 25 (Documentation)

1. The Customs authorities should have the right to examine concessionaire's records of goods entering and departing entrepots. The records of the concessionaire should be periodically compared and reconciled with those maintained by the Customs authorities.

2. The requirement of recordkeeping is very important and will provide an alternative basis for assuring that the interests of the Republic are protected.

### Article 26 (Customs Access to Entrepots Inventory)

This is a another good and important procedure for protecting the interests of the government.

### Article 27 (Operator Responsibilities)

It may also be necessary to establish the responsibilities of the owner of the goods when goods are stored in a public entrepot. Generally, goods missing from a public entrepot are the responsibility of both the concessionaire and the owner; with the concessionaire assigned primary responsibility and the owner assigned secondary responsibility. This is another technique use to assure that the government interest is protected to the maximum.

### Summary of Comments

The proposed regime will satisfactorily establish a foundation for entrepots. The suggestions presented for consideration in this analysis are directed primarily toward clarifications of responsibilities and privileges and attempt to limit ambiguities which can lead to administrative difficulties after the regime is implemented.

As discussed in the preceding sections, the important matters to be considered in finalizing the regime include the following matters of significance.

- Clear identification of responsibilities and liabilities of private entrepots and a complete definition of stockage entrepots that applies to both private and public stockage entrepots (Articles 4, 6, 7, 8, 9, 10, 11, and 13).
- Additional definitions concerning wastes, losses, destroyed goods, and damaged goods (Articles 13 and 22).
- The authority to allow industrial entrepots to be also designated as private stockage entrepots (Articles 18 and 19).
- Procedures for the treatment of capital equipment in industrial entrepots (Article 18).
- Clear establishment of responsibilities and liabilities to be assigned to importers, owners, concessionaires, and third parties (Articles 12, 15, 23 and 27).
- Definition of such terms as "small" (Article 13), "sale" (Article 21).
- Consideration of collateral security (financial guarantee) from concessionaire and merchandise owners or importers using private and public entrepots (Articles 7, 12, and 18).

-- The authority of Customs officials to examine inventory records of concessionaires and merchandise owners to verify activities and the disposition of goods in public, private and industrial entrepots (Articles 25 and 26).

The consideration of these matters will help to strengthen the proposed regime to provide a solid foundation for the development of a successful entrepot program.

## VI. OFFSHORE BANKING

### Introduction

Cape Verde's offshore banking law establishes the general framework for transforming Cape Verde into an offshore banking center. The law offers a number of important articles which are vital to the creation of offshore banking. In addition, the law is strengthened by the fact that it is generally clear and well-written. Nevertheless, the law leaves room for improvement. The law contrasts with those existing in other offshore banking centers in that much is left unspecified. This lack of specifics could be a negative factor for potential banking investors who need to understand what the groundrules are in the country.

### Specific Observations

(Note: Some articles and sub-sections of the law required no comment.)

Article 2: The first part of Article 2 is standard for an offshore banking law. As the law stipulates that anyone who is not resident in Cape Verde may utilize offshore banking unit (OBU) facilities, offshore banking in Cape Verde will be legal for the numerous Cape Verdean expatriates or people of Cape Verdean descent to use. This provision is important because it could provide an additional market niche for Cape Verde OBUs to serve. Further discussion on the role of expatriate residents is conducted under the Article 8 provision.

The second part of the sentence in this article is also important for it seems to make the necessary exemptions for offshore banking to exist in Cape Verde. However, because of the irregular banking situation currently in Cape Verde -- essentially only one government-owned bank serving the entire country -- it would be wise for this article to state the exemptions more clearly. The following provisions are those which are common to offshore banking centers.

- 1) No reserve requirements, mandatory liquidity ratios, or minimum capital-asset ratios will be imposed.
- 2) There will be no constraints on the establishment of interest rates for either deposits or lending.
- 3) OBUs will not be subject to any form of foreign currency or exchange control.

4) No restrictions will be maintained on the size, negotiability, maturity, and currency denomination (excepting Cape Verde escudos) of bank liabilities.

5) OBUs may freely remit all profits, dividends, and capital.

6) OBUs are to be exempt from all forms of taxation -- this includes taxes on corporate income (gross or net), interest income, dividends, assets, or transaction taxes such as stamp duties.

7) OBUs are to be exempt from any type of mandatory deposit insurance program.

The indispensable nature of these provisions cannot be overemphasized. The absence of just one of the above clauses can critically handicap the most promising offshore banking program. Offshore banking in the Channel Islands did not flourish, for example, until 1979 when interest rate ceilings and foreign exchange controls were eliminated.

Article 3: This article is essential in that it describes the type of activities allowed in the offshore banking sector. Sub-paragraph (a) allows for general banking trade. This provision may be in need of greater specifics for the protection of both bankers and the Government of Cape Verde (GOCV).

Sub-paragraph (b) specifically allows offshore insurance activities. As offshore banking and insurance industries are highly complementary, this provision could lead to mutually reinforcing activity. However, if the GOCV wishes to establish an offshore insurance sector in Cape Verde, a separate set of regulations would be required.

Sub-paragraph (c) permits the management of real estate or investment funds, which is an important activity within offshore banking centers such as Gibraltar and the Channel Islands. Fiduciary management may be limited in the start-up phase of offshore banking in Cape Verde but will eventually become increasingly important; this, therefore, is a far-sighted provision.

Articles 4 and 5: These provisions for the establishment of OBUs are not specific enough. The law should state the documents that are required by the GOCV before an OBU license can be granted. Most offshore banking centers require a copy of the corporate charter and by-laws, financial statements, and resumes of the firm's Board of Directors. Once this information has been properly assembled, the GOCV should be able to grant approval in a few days. This time frame should be explicitly stated in the law.

It is also important that the law give the authority to some government agency, such as the BCV, to grant and revoke offshore banking licenses.

At some point, the law or regulations need to discuss minimum capital outlays or paid-in capital. Nearly every offshore banking center requires minimum capital outlay and paid-in capital for a license. The paid-in capital amount varies widely, and is normally much lower than the actual minimum capital requirement. In the Bahamas, for example, the stated minimum capital outlay is \$500,000 but only \$6,000 must actually be paid in. These funds may be deposited in the OBU, the Central Bank, or overseas, with banking investors naturally preferring OBU centers that allow these funds to be deposited overseas in interest-bearing accounts.

Article 6: This article establishes that there will be two classes of OBUs in Cape Verde. This framework is sufficient but the GOCV may want to consider three classes of banks as is common in many Caribbean offshore banking centers to attain a clearer gradation of the different banking activities that are being practiced in-country.

Article 8: This article prohibits the utilization of offshore banking facilities by Cape Verde residents. Generally the standard procedure is to make offshore banking illegal to local citizens, not local residents. Only the Bahamas, which allows OBUs to loan money to the Bahamian government, and Panama, which allows OBUs to do business with free zone firms, allow offshore banking facilities to do business with local citizens or organizations.

In an approach utilized to attract a community of wealthy expatriates, the Channel Islands, Gibraltar, the Bahamas, and the Cayman Islands have allowed non-citizens use of OBUs with complete tax exemption on interests and dividends earned by holders of offshore accounts. This type of activity seems to be allowed by the statement "except under the terms and legal requirements under which such residents may perform the same operations with banking institutions established in other territories with different currencies." If this reading is correct, it should be clarified.

Article 9: This provision concerns the all-important element of secrecy and is sufficiently strong to assure investors. To further strengthen this clause, the GOCV may wish to follow the lead of other offshore banking centers such as the Cayman Islands and Vanuatu which mandate automatic mandatory jail sentences of two and five years, respectively, for the breach of banking secrecy.

The government should also consider the degree to which secrecy will be enforced. The greatest degree of secrecy is afforded by Panama which follows a policy of explicit territoriality, meaning that it would take no action in response to a crime committed elsewhere, even if the action was also considered a crime in

Panama. A less stringent form of secrecy is followed by Switzerland, the Bahamas, and the Cayman Islands and is known as the principle of double incrimination. Under this approach, banking confidentiality will only be broken when the offense committed by a foreign citizen is also a crime under local law. As a result, tax evasion and insider trading, which are not criminal offenses in these countries, are not sufficient reasons to release bank records.

Article 10: This article allows the government the right to earn licensing fees from OBUs. If reasonable, this is an expense that is willingly paid for by banking investors. The actual fee need not be expressed in the law as it would be cumbersome to change the law each time the GOCV wished to adjust the fee in response to world market conditions. Nonetheless, the frequency of the fee changes should be addressed as well as who or what agency is to determine the fee. As presently stated, this provision is open-ended.

Article 6 states that there will be two forms of permissible offshore financial institutions. Will the licensing fees vary between the two groups as is common in Caribbean offshore banking centers with multiple banking classes?

Article 11: The provision for the local management is in need of further clarification. As OBUs in the start-up phase are usually managed by expatriates, it is important to add a sentence allowing for the granting of work permits for expatriates in the offshore banking center. In addition, as Cape Verde's offshore banking competition is in large part located in areas with no personal income taxes, it is critical that Cape Verde offer considerable - or even total -- income tax exemption for expatriates in the offshore banking sector. Both these provisions will increase the incentives for establishing locally-based management and staff.

Article 13: This article is very open-ended and might prove detrimental in attracting foreign investors. In the case of Cape Verde, it will be difficult to police the OBUs but the law should state that "offshore financial institutions are subject to the loss of their operating license if they knowingly undertake criminal activities."

Several offshore banking centers have found that an effective policy regarding the conduct of local OBUs is through the adoption of a comprehensive Code of Conduct for the banking community. This is an approach that has been largely successful in discouraging banks from engaging in criminal activities. Although the codes are not generally supported by comprehensive policing measures, they do stipulate that banks in violation of the code will have their license revoked. Normally, this document is written by the offshore banking community with input from the local regulatory agency or Central Bank.

Article 15: This provision states that the law will eventually be combined with regulations, thus allowing for more in-depth specifications at a later date.

### **Summary**

Overall, Cape Verde's offshore banking law makes a number of highly competitive provisions. It is the beginning of a foundation for an attractive offshore banking incentive package. At present, the document is in need of further clarification for the protection of both the GOCV and investors. It is assumed that many of the issues raised in this review will be addressed in the forthcoming regulations discussed in Article 15. If so, much of the above discussion may become redundant. Until these issues are expounded upon, however, the offshore banking law remains a good, but incomplete, document.

ENGLISH TRA

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**ANNEX 1**  
**INDUSTRIAL DEVELOPMENT LAW**  
**(DRAFT)**

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**INDUSTRIAL DEVELOPMENT LAW  
(DRAFT)**

**ARTICLE 1  
(Purpose)**

It is the purpose of this law to set up the objectives, the principles, the means and the basic instruments as well as the policies that shall frame the industrial development.

**CHAPTER I**

**THE OBJECTIVES OF INDUSTRIAL DEVELOPMENT**

**ARTICLE 2  
(Main objectives)**

Industrial development aims at ensuring the viability of the national economy as a whole and at providing a contribution to improve the people's standards and quality of life, by achieving the following main objectives:

- a) to improve the fulfillment of the basic needs of the population;
- b) to set up a technical and economic resource base, by ensuring an expansion of the productive sector and the development of an adequate national technological capability;
- c) to reduce the deficit of external economic relations, namely by taking advantage of the country's geo-strategic situation;
- d) to increase the level of employment and upgrade the qualifications of the labor force;
- e) to increase the value of the country's natural

environment favoring the performance of industrial economic age namely by observing the following action guidelines:

- a) to establish a legal frame and a system of incentives which shall be both simple and clear, generic and tailored to the features of industrial activity;
- b) to reinforce the department and institutions which frame and provide support to industrial activities, namely the planning, administrative and promotional departments of the Administration;
- c) to simplify administrative procedures in such a way that it will improve the flexibility and the quickness of decisions and feedback of the Administration Services without losing the necessary control;
- d) to encourage productivity and competitiveness of industrial companies;
- e) to support and stimulate the export of national industrial products and settlement of export oriented industrial units;
- f) to support and stimulate small and medium size industrial companies, seeking among other aims the fulfillment of the people's needs through import substitution projects which are technically, financially and economically feasible;
- g) to support and stimulate artisanal and informal production as well as industrial cooperatives and other means of association of direct producers in order to provide better conditions for the settlement of people in rural areas;
- h) to stimulate foreign investment that may contribute to the achievement of the industrial development main objectives, particularly by introducing export oriented productions;
- i) to encourage the development of infrastructures and support services to industrial activities;
- j) to contribute to upgrade the worker's technical and professional education and training;
- l) to encourage the good use and processing of natural resources in order to increase gradually the national added value of industrial products;

- m) to promote the quality and standardization of industrial products;
- n) to encourage industrial innovation applied research and technological development by means of an adequate selection, adoption, adjustment and public diffusion of technologies related to the industrial sector;
- o) to contribute to set up an adequate system to protect patent rights;
- p) to improve physical labor conditions in industry, concerning safety, hygiene and healthiness of industrial premises;
- q) to encourage industrial business associations and the establishment of appropriate forms of development and articulation between the State and the entities which represent the entrepreneurs and workers;
- r) to cooperate in establishing other horizontal and sectorial policies relevant to industrial activity and ensure an adequate coordination and articulation among the sectors;
- s) to promote international industrial cooperation and particularly to settle bilateral or multilateral agreements so that the national industrial products may get into foreign markets easily and obtain capital, knowledge and technologies required for industrial development.

## **CHAPTER II**

### **THE PRINCIPLES OF INDUSTRIAL DEVELOPMENT**

#### **ARTICLE 4 (Compliance with the NDP)**

Industrial development shall fit into the overall social and economic development policy and will be carried out in accordance with the National Development Plan.

#### **ARTICLE 5 (The role of industry)**

In the context of article 4, the industry has a driving role in Cape Verde's social and economic development.

ARTICLE 6  
(Access to industry)

1. The access to industrial activity and the performance of an industrial activity are free, under the terms of the law, in any sector for every individual or legal person, either national or foreign, once they comply with the basic political economic and social principles of the State of Cape Verde.
2. Foreign industrial investment is subject to prior authorization of the Government.

ARTICLE 7  
(The role of the State as Promoter)

1. It shall be the role of the State to provide guidance, promote and support industrial activities.
2. When the State, taking into consideration special interests of the national economy, should directly create industrial plants it shall do it preferably in association with a national or foreign private enterprise.

ARTICLE 8  
(Private enterprise)

Private enterprise is acknowledged to have an essential role in the process of industrial development.

ARTICLE 9  
(Special support)

The State stimulates and provides special support:

- a) to the production of export goods;
- b) to small and medium size industrial companies;
- c) to artisanal and informal production, namely to industrial cooperatives and other means of association of direct industrial producers;
- d) to new industries;
- e) to industries whose premises are located outside the main urban centers.

ARTICLE 10  
(Emigrants)

Industrial investments made by emigrants from Cape Verde with allocations coming from countries abroad are considered as foreign industrial investment for all purposes, including its protection.

ARTICLE 11  
(Balanced Regional Development)

The State will adopt measures designed to avoid or ease the effects of regional imbalances that may eventually result from industrial development.

CHAPTER III  
THE MEANS AND INSTRUMENTS OF  
INDUSTRIAL DEVELOPMENT

ARTICLE 12  
(Government)

It is a task of the Government through the department responsible for the industrial sector to establish and implement the industrial development policy and to orient promote and manage the industrial activity.

ARTICLE 13  
(Strengthening of the Industrial Administration)

The Government will improve the means and instruments of the governmental department responsible for the industrial sector and will set up permanent and effective mechanisms to allow dialogue and articulation between that department, other state agencies and services and with the different economic and social agents which play a role in the industrial area.

ARTICLE 14  
(Industrial Promotion Service)

The Government will create an autonomous service for industrial promotion, provided with sufficient means and instruments to perform namely the following tasks:

- a) to promote and encourage industrial initiatives and investments;

- b) to provide direct technical assistance to entrepreneurs and industrial companies in order to develop their investment projects and to solve specific matters on any field of their activities;
- c) to collect, process and divulge adequately any information which may be of interest to industrial activities;
- d) to study and recommend measures to promote and rationalize the national industry;
- e) to cooperate in designing and implementing training actions, publishing trade promotions and dissemination abroad of the country's industrial potentialities;
- f) to ensure or participate in the management of public funds allocated to industrial promotion.

ARTICLE 15  
(Industrial Development Fund)

The Government will create an Industrial Development Fund through which the State may participate in setting up and developing industrial companies on such cases as:

- a) expenses with the training of national workers;
- b) expenses with the participation in trade fairs and other exhibitions to promote industrial products;
- c) expenses with the development and adaptation of technologies;
- d) expenses with pre-investment studies of small or medium size industrial companies;
- e) formation of risk capital of small or medium size companies;
- f) collateral guarantees for bank loans of small or medium size companies.

ARTICLE 16  
(Industrial Investments Committee)

1. The Government will create up an advisory inter-departmental committee for industrial investments.

2. The committee will comprise representatives of the State Administration in the sectors of industry, foreign trade, public finance, customs and banking.

3. The advice of the Committee must be obtained prior to any establishing agreement or to any declared industrial projects in which the total investment, including a cash fund, exceeds a minimum relevant amount, no less than 50 million escudos, as fixed by the Government.

#### ARTICLE 17 (Incentives)

1. The State will provide incentives to all industrial projects that may contribute to fulfilling the objectives of industrial development, regardless of the area in which they fit.

2. The system of incentives will be universally and immediately applied to all operators that meet the legal requirements. Their level, however, will only depend on the objectives of the projects.

3. The incentives comprise essentially administrative facilities, tax and duties exemptions and reductions. No subsidies will be granted except through the Industrial Development Fund as foreseen under Article 15.

4. The incentives are determined by law or by the establishing agreement.

5. Export oriented industrial projects have special and more favorable incentives.

6. Special incentives are also anticipated to favor the settlement of industrial units outside the main urban centers and the technical and professional training of national workers as well as of new industries.

7. The repeated or serious violation of legal or contract obligations may, under the terms of the law, determine the loss or suspension of the incentives that a company enjoys.

#### ARTICLE 18 (Industrial Statute)

1. An "Industrial Statute" will define the rules of industrial activity.

2. The "Industrial Statute" will define specifically, the conditions for access to and performance of an industrial activity, the incentives granted to the industrial activity, the inspection

procedures of the execution of these rules and the penalties for their violation. The Statute will also aim at fixing more simplified and quicker administrative procedures relating to industrial activities.

ARTICLE 19  
(Export Industries)

The Industrial Statute shall foresee special rules to motivate export oriented industrial production.

ARTICLE 20  
(External Industrial Investments Law)

The basis of industrial investment laws through contributions from countries abroad as well as the guarantees and incentives to external industrial investors will be defined in the "External Industrial Investment Law".

ARTICLE 21  
(Support Program to Small and Medium Size Industry)

The Government will set up a Support Program to Small and Medium Size Industry seeking to promote and stimulate private investment in small and medium size industrial projects and to follow up the performances of small and medium size industrial companies providing for technical assistance or helping them to find better ways to settle their problems and providing adequate and efficient financing mechanisms.

ARTICLE 22  
(Special rules for artisanal and informal production)

Special rules will be set up to support and stimulate adequately the development of artisanal and informal production and foster industrial cooperatives and other forms of association of direct industrial producers.

ARTICLE 23  
(Mining Industries)

Mining industries shall be ruled by special laws.

ARTICLE 24  
(Quality Control)

The Government will establish a system of standardized rules and quality control of industrial products.

ARTICLE 25  
(Safety, Hygiene and healthiness)

The safety, hygiene and healthiness conditions of industrial premises will be subject to special laws.

ARTICLE 26  
(Industrial Patent Rights)

Special laws shall regulate the concession, register, use and protection of industrial patent rights.

ARTICLE 27  
(Expatriate Workers)

Special laws shall regulate the legal conditions to be applied to expatriate workers in the industry.

ARTICLE 28  
(Establishing Agreement)

1. An establishing agreement is the written contract signed at the proposal of the Government between the State and an industrial promoter to accomplish a strategic industrial project.

2. The establishing agreement defines an exceptional legal situation and therefore can only be made in such cases of industrial projects that have an exceptional interest to the national development strategy, because of their size or purpose, their economic sector, their economic, social or technological implications, or that, for other reasons, require negotiating provisions, cautions, guarantees, incentives or special conditions which are not included under the general rules of industrial investment.

3. The establishing agreement may allocate better incentives than those which are foreseen under the Industrial Statute provided that they stay within the limits that are fixed every year in the law that approves the General State Budget.

4. The signing of an Establishing Agreement has to be previously authorized by a Council of Ministers' order which shall

specifically indicate the essential elements of the project to which it refers as well as the articles of the contract, requirements, conditions and special incentives to be granted.

5. The industrial projects under establishing agreements will be further regulated by the Industrial Statute.

ARTICLE 29  
(Penalties)

1. The violation of laws and industrial regulations which is not qualified as a crime will be punished with fines, if and when the law does not foresee other penalties.

2. The Government can not fix for each violation any fine exceeding 1 million escudos.

3. Fines may be aggravated up to the double of their value if offenders reoccur.

4. Offenders shall always be ensured the right to defend themselves and appeal, under the terms of the law.

CHAPTER IV

COORDINATION OF POLICIES

ARTICLE 30  
(General principle)

The Government will coordinate the industrial policy with the definition and implementation of other policies that are a basic support to industrial development.

ARTICLE 31  
(Education and professional training)

1. The system of professional education and training shall take into special consideration the needs of the industrial sector for professionals and qualified workers.

2. The Government will define and implement an education and training plan for the industrial sector.

ARTICLE 32  
(Labor policy)

1. Although preserving an adequate workers protection, the labor policy shall be flexible enough to attend to the specific features of industrial activities, namely the seasonal productions or products subject to strong variations in demand and to the need to providing incentives to productivity and to ensure the competitiveness of industrial companies.
2. The Government will encourage and favor schemes and systems of social conflict settlement as well as entertainment and occupation of industrial workers job-free periods.

ARTICLE 33  
(Transports and communications)

1. In order to take proper advantage and appraise Cape Verde's geo-strategic situation, the Government will carry out a development policy of the system of international transportation and communications to create easier and better conditions for Cabs Verde's industrial products to get into foreign markets.
2. The Government will particularly promote the setting up of a competitive system of regular and diversified oceanlines and airlines as well as the modernization and permanent updating of the country's international telecommunications system.

ARTICLE 34  
(External policy)

External policy shall intensify an acting presence on international organizations related to industry and promote international bilateral or multilateral agreements to allow an easier access to Cape Verde's industrial products to external markets and to make publicly known abroad the existing potentialities in its industrial sector.

ARTICLE 35  
(Credit policy)

1. All industrial companies are allowed access to loans provided by national banking institutions.
2. Industrial companies may obtain foreign loans under the terms of the law.
3. The Bank of Cape Verde's credit policy shall take into due attention the specific needs of industry, namely in the areas of

investments loans, export loans and loans to finance cash funds (circulating capital) of industrial companies.

4. Special loan schemes will be defined with more simplified procedures and preference conditions to small and medium size companies, to artisanal and informal production, to industrial cooperatives and other associations of direct producers.

5. The Government will seek to negotiate abroad lines of credit to finance the foreign currency needs of the industrial sector.

ARTICLE 36  
(Exchange rate policy)

1. The exchange rate policy shall take into due consideration the need to maintain and stimulate the competitiveness of national products in foreign markets.

2. In managing foreign currency, the requirement of the industrial sector should be dealt with as high priority, immediately after the goods which are essential to meeting the basic needs of the population.

3. Industries that export all their production will benefit from more flexible exchange rate conditions appropriate to their particular activities.

ARTICLE 37  
(Energy and hydric resources policies)

1. Energy and hydric resources policies when being established and carried out shall take into consideration the needs of the industry regarding quantities, quality and prices.

2. The State will encourage products and production methods that are less intensive in water and energy and will, as well, stimulate savings in industry of those two factors and its production by the companies themselves when warranted.

3. The use of alternative renewable sources of energy will also be encouraged as well as the adoption of efficient water residues recycling systems.

ARTICLE 38  
(Industrial sites)

1. The State will promote a balanced availability of sites for industrial purposes with adequate infrastructures.

2. To the effects of 1.:

a) a close coordination shall be established between industrial development policy and Urban regional or national planning policies;

b) local municipalities shall promote and implement, within urban plans, the creation of industry zoning or industrial sites to be managed together with the Industrial Administration.

#### ARTICLE 39

(Technology and research policy)

1. The Government will promote efforts to create a national capacity to obtain, master, change, produce and publish technology adjusted to the country's development.

2. The Government will encourage technological research related to industrial production.

#### ARTICLE 40

(Tax policy)

The Tax policy shall take into consideration the objectives and priorities of industrial development, encourage investment and industrial activities and work out as a promotion factor of exports.

#### ARTICLE 41

(Industrial support services)

The State encourages and provides incentives to the development of national expertise on services such as architecture, accounting, technical, economic, legal and financial assistance and related advisory services, auditing, forwarding and shipping agents, industrial maintenance and repairs and other skilled and qualified support services to industrial activities.

#### ARTICLE 42

(Insurance)

1. The Insurance and the Social Welfare Institute shall be provided with instruments to meet the requirements of industrial development, namely by offering competitive services, by launching new kinds of insurance and improving its procedures.

2. The Insurance and Social Welfare Institute shall, in particular, develop adequate mechanisms for the export credit insurance.

ARTICLE 43  
(Administrative Reform)

In order to provide greater flexibility, quickness and efficiency to departmental services related to industrial development, the Administrative Reform shall promote in these departmental services:

- a) the suppression of every unnecessary bureaucratic requirements or overlapping of responsibilities.
- b) the simplification of administrative procedures;
- c) permanent adaptation to new technologies and requirements;
- d) encouragement of a positive, cooperative and ready to help attitude on the relations between administrative personnel and officials and industry executives.

ARTICLE 44  
(Associations)

The State supports and stimulates association of direct producers as well as associations of industrial companies.

**CHAPTER V**  
**MISCELLANEOUS, PROVISIONAL AND FINAL PROVISIONS**

ARTICLE 45  
(Establishing agreements and other  
agreements already signed)

The establishing agreements and other agreements on industrial matters between the Government and foreign investors to the date in which this law is approved are valid and shall continue to be enforced according to its contents up to the end of the original agreed period of enforcement, except if the contracting companies decide to be under the general provisions established in the Industrial Statute in which case they shall notify the Government in writing.

ARTICLE 46  
(Legislative Authorization)

The Government receives a legislative authorization valid for a period of 6 months to issue legislation by Decree-law establishing the Industrial Statute as foreseen under Articles 18 and 19 above.

ARTICLE 47  
(Regulations)

The Government shall prepare the regulations of this law.

ARTICLE 48  
(Enforcement)

This law shall be enforced .....

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**ANNEX 2**  
**EXTERNAL INDUSTRIAL DEVELOPMENT LAW**  
**(DRAFT)**

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**EXTERNAL INDUSTRIAL INVESTMENT LAW  
(DRAFT)**

**CHAPTER I  
GENERAL PROVISIONS**

**ARTICLE 1  
(External Industrial Investment)**

1. An external industrial investment is, for the purpose of this law, any contribution from abroad to participate in the share capital of an industrial company if such contribution can be evaluated in cash.
2. Contributions from abroad can be of one of the following kinds:
  - a) free exchangeable currency transferred to Cape Verde according to prevailing rules on foreign exchange operations rules;
  - b) final imports of goods and services without currency expenditure for the country;
  - c) available funds deposited at the Bank of Cape Verde (BCV) in a foreign and free exchangeable currency in the cases and under the conditions allowed by the respective regulations;
  - d) projects and dividends resulting from an external industrial investment.
3. The contributions referred to under b) of the above paragraph shall be evaluated by the Ministry of Industry and Energy according to the rules to be established in specific regulations.
4. External industrial investment may consist in:
  - a) the creation up of a new industrial company in Cape Verde either on behalf of an individual or as a partnership company;
  - b) the purchase of share capital or the participation in a capital raise of an already established industrial company in Cape Verde.

## ARTICLE 2

### (External Industrial Investor)

An external industrial investor is, for the purposes of this law, any individual or legal person that makes an external industrial investment.

## ARTICLE 3

### (Submission to prior authorization)

1. A prior Government authorization is required to make an external industrial investment.
2. A prior Government authorization is also required to sell or give as a security any assets and rights that make part of any external industrial investment; if such authorization is not granted, the contracts will be void.
3. The procedure for granting the prior authorization will be ruled by a decree.

## CHAPTER II

### GUARANTEES

## ARTICLE 4

### (General Principle)

The State guarantees the security and legal protection of the assets and rights related to an external industrial investment.

## ARTICLE 5

### (Expropriation)

1. The expropriation of any assets and rights related to an external industrial investment can only be validated on public utility grounds, under the terms of the law, and shall always allow the external investor the right to a fair compensation based on the investment's real value at the date of the expropriation.
2. The compensation referred to in the above paragraph shall be fixed by mutual agreement between the Government and the investor or, in the absence of such an agreement, by an arbitration committee established under the terms of Art. 9.

## ARTICLE 6

### (Currency transfer)

1. It is guaranteed ensured to every external industrial investor the transference abroad in a free exchangeable currency:

a) of the profits and dividends resulting from an external industrial investment;

b) The proceeds derived from selling any assets and rights related to an external industrial investment resulting from the liquidation of such assets, in case the industrial activity is terminated;

c) the compensation for expropriation referred to in Art. 5;

d) the installments related to capital and interest repayments of external loans for which the external industrial investor is directly responsible and that have been authorized under the terms of the law;

e) personal income resulting from the performance of management or executive functions in the context of an external industrial investment.

2. The fund transfer referred to under 1. above can only be made after the fulfillment of tax obligations related to the funds to be transferred.

3. The fund transfers referred under a), b) and e) of 1. above shall be made no later than 60 days after a justified application to that effect is filled in and submitted to the Bank of Cape Verde.

4. The fund transfers referred to under c) of 1. above shall be made at a time no later than 90 days after the amount of the compensation is fixed.

5. The fund transfer referred to under (d) of 1. above shall be made no later than 30 days after a justified application to that effect is filled in and submitted to the Bank of Cape Verde.

6. Whenever the value of the fund transfers referred under (b) 1. above can cause disturbances in the balance of payments, they may be divided into equal and successive quarterly remittances up to a maximum of 8, being the first made no later than 60 days after a justified application to that effect is filled and submitted to the Bank of Cape Verde; the remaining payments will be effected every 90 days.

7. The fund transfers referred to under the 1. above shall be made on the same free exchangeable currency in which the external investment has been done unless otherwise agreed between the external investor and the B.C.V.

8. When the transfers have been divided in installments under the terms of 5. above, the funds which have not been transferred and that are deposited at the Bank of Cape Verde shall earn interest after the first remittance, under conditions to be regulated by the Government.

### CHAPTER III

#### INCENTIVES TO THE EXTERNAL INDUSTRIAL INVESTOR

##### ARTICLE 7

(Tax exemptions)

1. The profits and dividends allocated to external industrial investment authorized under this law, are exempt from taxation in the following cases:

- a) over a period of 5 years from the date in which the investment was authorized;
- b) when they are invested at the same or at another industrial activity.

2. The payments of principal and interest of external loans for which the external industrial investor is directly responsible and that has been authorized under the terms of the law, are exempt from taxation.

##### ARTICLE 8

(Stabilization of the tax regime)

The profits and dividends allocated to the external industrial investor and resulting from an external industrial investment authorized under the terms of this law are subject to a 15% single tax rate whenever they do not benefit from tax exemption under the terms of 1. above of Art. 7 and provided that this provision does not collide with any agreement signed between the State of Cape Verde and the State of nationality of the external investor.

**CHAPTER IV**  
**CONFLICT SETTLEMENT**

**ARTICLE 9**

1. The disputes between the State and the external investor regarding the external industrial investment shall be settled through arbitration under the terms of this Article unless otherwise established in international agreements signed by the State of Cape Verde or mutually agreed by both parties.
2. Arbitration will be settled by a Committee of Arbitration comprising three arbitrators, one appointed by the Government, another by the external investor and the third one, who shall preside, will be chosen by mutual agreement between the State and the external investor.
3. If no agreement is reached on the presiding Arbitrator, the parties may request that the choice be done by the Supreme Judiciary Council or, if the investor is not a residing national of Cape Verde, by an international arbitration organization that both parties agree upon.
4. Arbitrators shall have a reputation for skillfulness and integrity and provide guarantees of independence and impartiality; these arbitrators might be foreign citizens but they can not have the same nationality of the investor.
5. In settling conflicts the following shall be applied:
  - a) the laws of the Republic of Cape Verde;
  - b) the agreements signed between Cape Verde and the State of origin of the external investor.
6. The arbitration will take place in Cape Verde.
7. The language used in arbitration procedures will be Portuguese unless otherwise agreed by the parties.
8. The Arbitrators' decision shall be final and no further appeal shall be allowed.

CHAPTER V

FINAL RULES

ARTICLE 10

(Conditions of preference)

The Government may grant conditions of preference unforeseen under this law to external industrial investments allocated to industrial projects particularly important to the national economy and national development, by means of an establishing agreement signed under the terms of the law.

ARTICLE 11

The Government shall regulate this law by an appropriate legal diploma (Portaria \*).

ARTICLE 12

(Revokement)

Decree - Law no. .... of ..... is hereby revoked in what relates to industrial companies.

ARTICLE 13

This law is enforceable ..... days after publication.

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\* Portaria means a legal diploma signed by one minister versus a decree law which is generally signed also by the prime-minister.

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**ANNEX 3**  
**INDUSTRIAL STATUTE**  
**(DRAFT)**

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**INDUSTRIAL STATUTE  
(DRAFT)**

**PART I**

**INTRODUCTORY PROVISIONS**

**ARTICLE 1  
(Purpose)**

This law establishes the Industrial Statute hereinafter referred to as the Statute.

**ARTICLE 2  
(Definitions)**

For the purposes of the Statute the following definitions are asserted:

1. Industrial activity - an economic activity classified as such by decree;
2. Industrial plant - a number of assets utilized to perform at a given place and by the same organization a certain industrial activity;
3. Exporting industrial plant - an industrial plant in which the production is only for export;
4. Industrial company - any individual or legal person organized under the terms of the law to perform and hold with or without exclusivity an industrial business;
5. Exporting industrial company - an industrial company that produces and sells only for exports;
6. Industrial project - a number of activities aiming at:
  - a) the installation of a new industrial plant;
  - b) the introduction of substantial changes by renewing or expanding an existing industrial plant;
7. Promoter - individuals or legal persons who acting by them selves or in an organized way, seek to carry out an industrial project.

ARTICLE 3  
(Purpose of the Statute)

The Statute defines general and common rules to be applied to any industrial activity.

PART II  
THE INDUSTRIAL STATUTE

CHAPTER I  
ACCESS AND OPERATING OF THE INDUSTRY

ARTICLE 4  
(Access to industry)

The access to an industrial activity and its performance are free in any sector for all individuals or legal persons under the conditions established in this Statute and in the law.

SECTION 1  
PREVIOUS STATEMENT

ARTICLE 5  
(Compulsive previous project statement)

1. Industrial projects shall be previously declared to the services within the Ministry of Industry and Energy, except for these cases indicated under 2. below.
2. Small industrial projects are exempt from the previous statement.
3. To the effects of 2., small industrial projects are those in which the investment in fixed capital is below a minimum relevant limit as fixed by regulation from the Minister of Industry and Energy.

ARTICLE 6  
(Statement procedure)

1. The Statement is made by delivering a specific printed application form which should be filled in and documented in accordance with the instructions contained therein.

2. The delivery of the application is certified on a printed form receipt.

ARTICLE 7  
(The right to oppose)

1. The Minister of Industry and Energy may oppose the carrying out of industrial projects based on the following grounds:

- a) obvious violation of the main principles and objectives of the economic policy as established in the National Development Plan or those of the industrial policy as defined in the Industrial Development Law;
- b) violation of Cabo Verde's fundamental public order principles;
- c) danger for national security, health or ecological balance;
- d) violation of international commitments of the State of Cabo Verde;
- e) obvious and proved lack of integrity of the promoter.

2. The right to oppose expires 60 days after the delivery of the statement as per Article 6 and should be effected through a written justified notice addressed to the promoter.

3. The Minister of Industry and Energy may interrupt the 60 days countdown period by proposing in writing to the promoter negotiations towards an Establishing Agreement but that period will run again if negotiations are not closed 60 days after the proposal has been made.

4. If a decision not to oppose the project is taken before the 60 days term runs out the promoter should be informed in writing.

ARTICLE 8  
(Result of Opposition)

The opposition from the Minister of Industry and Energy involves the forbiddance to carry on the project although the promoter is granted the right to appeal through usual procedures.

ARTICLE 9  
(Result of the absence of opposition)

1. Absence of opposition to the project legitimizes all further steps required to carry on the project and the right to organize an industrial company regardless of any other authorization and to file the project in the industrial register.
2. Absence of opposition to the project is proved by exhibiting the application statement receipt or by any other legal means, namely by a certificate or receipt note issued by the appropriate services of the Ministry of Industry and Energy.

SECTION II  
INDUSTRIAL REGISTRATION

ARTICLE 10  
(Registration Requirements)

1. Industrial companies must be registered at the appropriate registration offices of the Ministry of Industry and Energy.
2. Independently from other penalties foreseen in the law, the non registration in the official Industrial Registration office as established in the Statute and other industrial laws.\*

ARTICLE 11  
(Registration procedure)

1. The Register is made by filling in a printed application form.
2. On receiving the application a printed form receipt shall be issued.

ARTICLE 12  
(Records)

At the initiative of the services or at the company's request and attached to the registration, the following data shall be recorded:

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\* NOTE: This paragraph does not make sense in the original Portuguese version. We believe that it relates to a typo which missed a full sentence. It probably deals with the non eligibility for incentives and other rights under the Statute.

- a) industrial projects against which no opposition has been raised under Article 7;
- b) those industrial projects which are not subject to previous project statement as per paragraph 2. of Article 5;
- c) the establishing agreements signed by the company;
- d) any acts involving the sale, use as collateral or lease of the industrial plant, and in general, any other situations that imply a transfer of ownership or that may affect the right to explore an industrial plant;
- e) the manufacturing permit, its suspension or revocation;
- f) yearly record updating;
- g) the suspension of the register;
- h) any change that may occur in the registration data;
- i) any other fact or act as determined by law or regulation.

ARTICLE 13  
(Cancellation or revocation)

1. Records mentioned under (a) and (b) of Art. 12 may be revoked if over a period of 1 year after they become effective, the promoter does not carry out activities that show beyond doubt its determination to implement the project.
2. Revocation under 1. involves the forbiddance to carry on the project.

ARTICLE 14  
(Updating)

1. The industrial register will be updated every year.
2. For the purpose of 1. registered industrial companies will send to the industrial registration offices every year by January 31, an update printed form card duly filled in.

ARTICLE 15  
(Suspension of registration)

Industrial registration may be suspended if the company does not comply with the provision contained in paragraph 2. of Art. 14 and the suspension will be kept until the registration offices receives the updating card.

ARTICLE 16  
(Cancellation of the Registration)

Industrial registration will be cancelled, when:

- a) the company ceases to exist;
- b) the company's industrial activities are interrupted over more than one year;
- c) other situations occur as foreseen in the law.

ARTICLE 17  
(Publications)

1. The registration and records mentioned under Art. 15 and 17 may be published on the Official Bulletin at the company's request and at its expense.

2. The records mentioned in (a) and (b) of Art. 12 as well as the suspension and cancellation either of the company's register or of a manufacturing permit will be notified in writing to the authorities dealing with foreign trade, taxes, customs and banking operations, and the municipal authorities.

ARTICLE 18  
(Evidence)

1. The evidence of a company's registration and its further records is done by exhibiting either a copy of the Official Bulletin in which they have published, or by means of a copy or a Xerox done and certified by the industrial registration office.

2. Documents referred to in the 2nd. part of 1. are valid until the end of the civil year in which they have been issued and may be validated again by the industrial registration office if the company's register has not changed over the year.

ARTICLE 19  
(Regulations)

The Minister of Industry and Energy will issue industrial registration regulations.

SECTION III

MANUFACTURING PERMIT

ARTICLE 20  
(Requirements to obtain a manufacturing Permit)

1. A manufacturing permit is required to:
  - a) start production in new industrial plants;
  - b) start production in industrial plants that have been substantially changed, expanded or renewed;
  - c) start production in industrial plants that have changed its location;
  - d) to reopen industrial plants closed down over more than one year.
2. The manufacturing permit will be granted after an inspection is made in accordance with specific regulations to verify and approve the safety, hygiene and health conditions as well as the fulfillment of technical rules.
3. The grant of the manufacturing permit will be immediately recorded in the company's industrial registration records at the initiative of the services.
4. A provisional manufacturing permit is understood to have been granted if an inspection is not carried out 30 days after submitting the appropriate inspection request and the company is not responsible for the delay, provided that the authorities with preventive powers had not issued an unfavorable opinion.

ARTICLE 21  
(Penalty)

If the provisions of Art. 20 are violated, the appropriate services of the Ministry of Industry and Energy may order the plants immediate lock up and seal the equipment until the installations are checked out and approved.

ARTICLE 22  
(Other inspections)

The appropriate services within the Ministry of Industry and Energy may order further inspections of industrial plants whenever they deem it necessary and as provided by the regulations.

ARTICLE 23  
(Regulations)

The provisions under this Section will be regulated by ministerial decree.

CHAPTER II  
INCENTIVES TO INDUSTRIAL ACTIVITIES

SECTION I  
GENERAL PROVISIONS

ARTICLE 24  
(Access to incentives)

1. Only companies registered at the industrial registration office may benefit from the incentives established in this Statute and other industrial laws.
2. The concession of the incentives established in this Statute and other laws depends on each case, upon the justified request of the interested company; the application might be made in a standard printed form.

ARTICLE 25  
(Companies with mixed activities)

Whenever a company performs at the same time an industrial activity and another or several other activities, the incentives established in this Statute and in other industrial laws will be applied only to the company's industrial activity.

## SECTION II

### IMPORT AND EXPORT OF GOODS \*

#### ARTICLE 26 (Unrestricted)

The import of equipment commodities, raw and subsidiary materials, spare parts, finished or semi-finished products and other goods necessary to carry out registered industrial projects or to the regular operation of industrial plants can not be subject to quantity restrictions, unless justified by exceptional circumstances of obvious shortage of foreign currency to make external payments.

#### ARTICLE 27 (Import Licence)

Industrial companies that meet legal requirements will be enlisted as importers for the respective classes of products or goods as provided under Art. 26 just by proving that the industrial project was recorded at the industrial registration offices.

#### ARTICLE 28 (Imports of Equipment goods)

The import procedures for equipment goods by industrial companies will be regulated by a decree signed by the Prime-minister after hearing the advice of the Ministers to Industry, Economy, Finance, Trade and the Bank of Cabo Verde in order to make such regulation as simple and quick as possible while keeping the necessary control.

#### ARTICLE 29 (Import of Raw and subsidiary materials)

1. Imports of raw and subsidiary materials, finished or semi-finished products and unrecoverable packages mentioned as such in the industrial registration records will be made without any prior approval up to the maximum amounts recorded in the register which shall be notified to foreign trade authorities, customs and foreign exchange referred to in 2. Art. 27.

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\* NOTE: The Portuguese reads "Imports and Exportation of goods" which appears to be a typing error.

2. Imports referred to in 1. shall be notified with no less than a 30 days notice to foreign trade and exchange rate authorities.

ARTICLE 30  
(Regime of Export Industrial Plants)

Export industrial plants are subject to the regime of industrial entrepots under the terms of the law.

ARTICLE 31  
(Customs Incentives for Imports)

1. Industrial companies are free from customs duties, consumption tax and general customs fees when importing the following commodities and used in recorded industrial projects;

a) building materials including metal structures to install, expand or renew industrial plants;

b) machinery, apparatus, tools and utensils as well as their related pieces of equipment and spare parts to be used in buildings and factory equipment of industrial plants;

c) commodities referred to in b) once to be used in installing administrative equipment for the first time or services of industrial plants;

d) cargo and transportation equipment for the exclusive use in industrial plants required to develop their activities.

2. Industrial companies also benefit from exemption and reduction in custom duties and consumption tax, in importing raw and subsidiary materials, finished and semi-finished products and materials to be incorporated in products coming out of recorded industrial projects, under the following conditions:

a) exemption over the two initial years from the date of the manufacturing permit.

b) reduction of 75%, 50% and 25% respectively on the 3rd., fourth and fifth following years.

3. Whenever commodities referred to in 2. are to be incorporated in products produced for the first time in the country, the exemption period foreseen in a) will be of 4 years after which the reductions foreseen in b) will be applied.

ARTICLE 32  
(Regional Incentives)

Imported products to be used in industrial plants located outside the urban areas of Praia and S. Vicente municipalities and outside Sal's municipality will also benefit from the following incentives:

- a) the exemption period foreseen in Art. 31, 2. a) will be of 6 years after which the reduction foreseen in b) will be applied;
- b) the exemption referred to in Art. 31, 1. d) also covers transportation equipment for workers, except cars and motorcycles.

ARTICLE 33  
(Export Customs Incentives)

1. Imported raw and subsidiary materials, finished and semi-finished products and materials to be incorporated in the production of export commodities are subject to the customs regime of progressive duties deduction.
2. The duties, tax consumption and general customs fees that may have been changed when importing products or commodities referred to in 1. above incorporated afterwards in exports products, will be paid back if payment is requested no later than 120 days from the date of export. The reimbursement mechanism will be regulated through a written determination of the Minister of Finance.
3. Industrial products which are exported are free from any duties or general customs fees.

ARTICLE 34  
(Limits of Customs Incentives)

1. The tax and customs incentives provided under this Section are not exempt from the payment of the stamp tax and the fees owed as payment of services.
2. The tax and customs incentives provided under this Section shall only be granted to import goods which are not produced in the country on similar conditions of price, quality and delivery term.

ARTICLE 35  
(Restrictions to the disposal of imported goods)

Any products or commodities imported with tax or customs incentives as provided under this Section may not be sold over a period of 5

years from the import date without prior authorization of the General Director of Customs after hearing the General Director of Industry, and may become subject to the payment of duties and other charges calculated over the customs value accepted or determined on the sales date, unless the buyer is, by law, entitled to benefit from the same regimes.

ARTICLE 36  
(Duties resulting from customs incentives)

1. Industrial companies shall keep inventories and update records for 5 years of all products imported with duties or tax reduction or exemption and of their destination, or otherwise they can not benefit from the incentives established in the Statute or in the remaining industrial legislation.

2. Industrial companies also have the obligation of cooperating with supervising agents on the verification of inventories and records referred to in the immediately above paragraph specifically by allowing quick access to them and giving all necessary information when asked to do so.

ARTICLE 37  
(Fraud or embezzlement)

Fraud committed to obtain customs incentives foreseen in this Statute or other industrial laws, and the misuse of the benefited goods for purpose other than those intended, are qualified as embezzlement.

SECTION III  
TAX INCENTIVES

ARTICLE 38  
(Industrial and Complementary Income Tax Incentives)

1. Industrial companies are entitled to the following industrial and complementary income tax incentives:

- a) tax exemption on the income from every new recorded industrial plant for a period of 5 years from the date in which the manufacturing permit was issued;
- b) tax exemption on the income from every expanded or renewed industrial project (recorded) for a period of 3 years from the date in which the manufacturing permit was issued;

c) deduction on the taxable income of all profits actually reinvested by the company in the same or another industrial activity;

d) deduction on the taxable income of expenses with training of the company's workers nationals of Cabo Verde.

2. The funds invested by individuals in industrial companies are deducted from the taxable income related to the following year's complementary income tax up to the limit of 70% of the taxable income.

ARTICLE 39  
(Regional Incentive)

The periods of tax exemption and reduction mentioned under 1. a) and b) of Art. 38 are doubled if the industrial plants to which the income refers to are located outside the urban areas of the municipalities of Praia and S. Vicente or outside Sal's municipality.

ARTICLE 40  
(Reimbursement of customs duties)

Industrial companies that buy in the national market raw and subsidiary materials, commodities finished or semi-finished products whose direct import would entitle them to duties and consumption tax exemption or reduction, shall receive back the corresponding amount included in the purchase price, if the reimbursement is request no later than 120 days from the date of purchase. The reimbursement mechanism will be regulated by written determination of the Minister of Finance.

ARTICLE 41  
(Export Tax Incentives)

1. Industrial and complementary income tax that would be paid by an industrial company under the provisions of the law and regulations, shall benefit from a reduction equivalent to the percentage of the FOB value of export sales over the company's total sales value.

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(Alternative version)

1. Industrial and complementary income tax that would be paid by industrial company under the provisions of the law and regulations, shall benefit from a percentage reduction given by the following rule:  $70 \times ES/TS$

Whereas ES is the FOB value of export sales and TS is the total sales value.

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2. For the purpose of 1., sales to exporting industrial companies should be regarded as sales for exports.

ARTICLE 42  
(Real profit taxation)

Industrial companies are taxed according to the actual and real profit shown by the company's accounts, unless they don't have organized accounting procedures under the respective legal provisions.

ARTICLE 43  
(Premium for Good Accounting records)

Industrial companies shall keep their accounting organized as provided in the law and in such a way as to allow easy verification of the income resulting from each industrial project; otherwise companies can not benefit from tax incentives provided in the Statute and remaining industrial legislation.

CHAPTER III  
SPECIAL RULES FOR EXPORTING INDUSTRIAL COMPANIES

ARTICLE 44  
(Regime)

Exporting industrial companies are regulated by the common rules applied generally to industrial companies and by the rules of this Chapter.

ARTICLE 45  
(Special Register)

Exporting industrial companies are registered in a specific Section of the industrial register.

ARTICLE 46  
(Import Rights)

Exporting industrial companies can import directly from abroad any equipment goods, raw and subsidiary materials, spare parts,

commodities, finished or semi-finished products necessary to carry out recorded industrial projects or to the regular operating of their industrial plants being entitled to the customs regime of progressive duties deduction.

ARTICLE 47  
(Tax Incentive)

Exporting industrial companies are exempt from sales tax for a period of 10 years from the date in which the manufacturing permit is issue.

ARTICLE 48  
(Exchange rate rules)

1. Exporting industrial companies do not need any authorization to make foreign exchange transfers and may open for this purpose at the Bank of Cabo Verde a bank account in convertible currencies through which all exchange rate operations will be freely made.
2. An exporting industrial company may only buy foreign currency at the Bank of Cabo Verde in exceptional circumstances and authorized by the Prime-Minister after hearing the Ministers of Finance and Industry and Energy.
3. The Bank of Cabo Verde shall regulate the conditions of the opening of the bank account referred to in 1. above.

ARTICLE 49  
(Internal Costs)

An exporting industrial company must pay all its expenses and internal costs through a bank current account in Cabo Verde escudos, opened at the Bank of Cabo Verde which can only be credited through the conversion of funds transferred from the convertible foreign currency account mentioned in Art. 48.

CHAPTER IV  
INSPECTION AND PENALTIES

ARTICLE 50  
(Inspection)

1. The General Board of Industry and its branch offices holds the power to inspect the execution of industrial activity rules except for the powers given to other department on their specific areas.
2. For the purposes of 1. the General Board of Industry and its branch offices may require that, at any time, the industrial companies provide information and record data that they deem necessary.
3. Administrative and police authorities shall give all the assistance necessary to inspect the execution and the enforcement of industrial activities rules.

ARTICLE 51  
(Penalties)

1. The infraction of industrial activities binding legal regulations will be punished with a fine from \_\_\_\_\_ up to \_\_\_\_\_ unless a more severe penalty is fixed in the law.
2. The minimum and maximum limits fixed in 1. are doubled if the offender reincides.
3. Together with the fine it shall be imposed the loss in favor of the State of the assets, funds, rights and benefits directly obtained or purchased related to the infraction.

ARTICLE 52  
(Graduation)

Fines fixed in the above article shall be graduated in accordance with the nature of the offence, damage or the risk implied, the intention, the criminal record of the offender and his economic capability.

ARTICLE 53  
(Power to determine penalties)

The power of determine a penalty for any infraction to industrial activities' rules belongs to the Minister of Industry and Energy who may delegate such power, as a whole or just a part of it, on

the General Director of Industry, or the Regional Director of Industry and Energy or on Government Delegates, being such delegation published at the Official Bulletin.

ARTICLE 54  
(Infraction Procedure)

1. Whenever they become aware of any infraction to the laws that rule industrial activities, the appropriate officials or administrative agents shall record an infraction notice under common penal procedure law, which shall be immediately sent over to the General Board of Industry.
2. If the infraction notice accounts for a violation whose penalty can only be a fine (and does not constitute a criminal offence), the General Board of Industry shall notify the offender in writing with delivery notice to file in the defence no later than 15 days after such notice.
3. After receiving the defence and having performed all required inquiries hearings and related investigation actions, or on determination of the notice delay to file in the defence, the prosecutor administrative agent shall send the proceedings with his advice to the appropriate authority for decision under Art. 53.
4. If the proceedings show that a criminal offence has been committed, the General Board of Industry will send over the infraction notice to the Public Prosecutor's Office with any complementary information deemed necessary.

ARTICLE 55  
(Unlimited Responsibility)

The executive directors, members of the Board, managers or others that hold an executive management capacity in the company will be held in joint responsibility on their personal assets together with the company for the payment of fines applied under this law if they have ordered or taken part in the approval or carried out acts leading to the infraction.

ARTICLE 56  
(Coercive Charges Fines)

The coercing execution of fines determined under this law shall be done through the Tax Exaction Court.

## CHAPTER V

### MISCELLANEOUS, PROVISIONAL AND FINAL RULES

#### ARTICLE 57

(Technology transfer contracts)

1. The contracts related to transfers of technology require the prior approval of the Minister of Industry and Energy as a condition of validity.
2. The approval implies the authorization to import goods or services and currency export that the contract may involve.
3. A Prime-Minister's decree will regulate the provisions of this article after hearing the Ministers of Finance and Industry and the Bank of Cabo Verde.

#### ARTICLE 58

(Sales in the internal market by an  
Exporting Industrial Plant)

1. Industrial companies may be authorized by a joint determination of the Ministers of Industry and Energy, Trade Transportation and Tourism and Finance to sell in the internal market up to 5% of the production of every single exporting industrial plants that they explore, by paying the duties taxes and fees which would be owed if the products had been imported under the provisions of customs laws.
2. The joint decision referred to in paragraph 1. shall indicate the products and quantities authorized for each business operation as well as the term over which the operation may be carried out.

#### ARTICLE 59

(Transportation Insurance)

The transportation to and from Cabo Verde of commodities produced or to exporting industrial companies might be insured in foreign insurance companies.

#### ARTICLE 60

(Regulations)

1. Unless otherwise provided for, the Minister of Industry and Energy has the power of determining by decree the regulations to carry out the provisions of this law.

2. The regulations referred to in this article shall be published 90 days after this law is published.

ARTICLE 61  
(Existing companies)

Industrial companies already in activity shall proceed over a period of 60 days from the enforcement of this law to their registration at the competent register office of the Ministry of Industry and Energy and to the records related to their respective industrial plants and projects.

ARTICLE 62  
(Revoked provisions)

1. The laws of industrial confinement are hereby abolished.

2. The following laws are revoked:

Decree - laws nr. 46.666, from the 24th November 1965; nr. 48.581, from the 16th December 1968; nr. 122/70, from the 20th March; articles 3 a), b) and e) and §§ 2 to 5 of Decree -Law nr. 41.024 from the 28th February 1957, as well as the Provincial Decree nr. 7924 from the 29th July 1967.

3. Regarding the matters ruled on this Statute, the following laws are revoked:

a) Articles 7 §2, 8 and 21 of Decree-Law nr. 27/84 from the 24th March;

b) Decree-Law nr. 183/70 from the 28th April 1970, published at the Official Bulletin nr. 30 of July the 25th 1970.

ARTICLE 63  
(Interpretation)

Any question that may arise from the application and execution of this Statute will be solved in a way that shall bind the whole Administration, by a Council of Ministers Order under proposal from the Minister of Industry and Energy.

ARTICLE 64  
(Enforcement)

This law shall be enforced 90 days after it has been published.

**ALTERNATIVE B**

**SECTION III**

**TAX REGIME**

**ARTICLE 38**  
**(Special provisions)**

1. Industrial companies are exempt from industrial and complementary income tax.
2. However, industrial companies shall pay to the State, the sales tax as foreseen in Art. 14.

**ARTICLE 39**  
**(Sales Tax)**

1. Sales tax to be paid by industrial companies to the State shall have the following rates:
  - a) Export sales: 1% (exempt, as alternative);
  - b) Company's own production sales in the internal market: 3%;
  - c) Other sales in the internal market: 5%;
2. The Government shall regulate by decree the sales tax.

**ARTICLE 40**  
**(Incentives to new projects)**

The sale of goods produced within projects recorded at the industrial register are exempt from the payment of the tax referred to in Art. 43 over a period of 3 years from the date the manufacturing permit has been issued.

**ARTICLE 41**  
**(Regional Incentives)**

The exemption period referred to in Art. 45 is doubled if the industrial plants to which it is related are located outside the urban areas of the municipalities of Praia and S. Vicente and outside Sal's municipality.

ARTICLE 42  
(Individual Industrial Investment Incentive)

The funds invested by individuals in industrial companies are deducted from the taxable income of the following year's complementary income tax up to the maximum of 70% of the taxable income.

ARTICLE 43  
(Customs Duties and Consumption Tax Reimbursement)

Industrial companies that buy in the national market raw and subsidiary materials, commodities, finished or semi-finished products whose direct import would entitle them to duties and consumption tax exemption or reduction, shall receive back the corresponding amount included on the purchase price if reimbursement is requested no later than 120 days from the date of purchase. The Minister of Finance will approve the regulations of the reimbursement mechanism.

ARTICLE 44  
(Premium for Organized Accounting)

Industrial companies shall keep their accounts organized in accordance with the law and in such a way as to allow easy verification of the sales from each industrial project; otherwise, companies can not benefit from tax incentives provided in the Statute and other industrial laws.

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**ANNEX 4**  
**LEGAL REGIME OF ENTREPOTS DECREE**  
**(DRAFT)**

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LEGAL REGIME OF ENTREPOTS DECREE  
(DRAFT)

ARTICLE 1

It is hereby created within the Customs of Cabo Verde the legal regime of Customs' entrepots.

ARTICLE 2

The legal regime of customs' entrepots allows the storage of goods in settled places under Customs control with the suspension of duties and other customs impositions, taxes, forbiddances and other economic and tax provisions.

ARTICLE 3

1. Customs entrepots may be:
  - a) stockage entrepots
  - b) industrial entrepots
2. Stockage entrepots are of the following categories:
  - a) public entrepots
  - b) private entrepots

ARTICLE 4

1. The public entrepot is designed to meet the general interest needs and aims at stocking goods coming from abroad in the same condition as they were imported and which are committed to third persons.
2. The private entrepot is for the exclusive use of an importer for the needs of his industry or trade.
3. The private entrepot may be:
  - a) warranted
  - b) under customs control\*

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\* It operates like a customs facility.

4. The warranted warehouses and warehouses under customs control, as foreseen under paragraph 1 c) and d) of Art. 736 of the Customs Organic Statute are from now on named respectively:

- a) private warranted entrepot
- b) private entrepot under customs control

#### ARTICLE 5

The industrial entrepot is for the exclusive use of industrial companies which operate for exports or the domestic market, to store goods coming from abroad and goods to be utilized in the incorporation or in processing products manufactured by such companies.

#### ARTICLE 6

1. The concession of the regime of public entrepots is the responsibility of the Minister of Finance with the advice of the Ministry responsible for trade.

2. The authorization to explore the entrepots referred to in the above paragraph can only be granted to the port and airport Administrations, the national air company, local municipalities, the Chamber of Trade and Industry and to trade Associations.

3. The location, construction or utilization of public entrepots buildings shall be approved by the General Director of Customs.

#### ARTICLE 7

1. Public entrepots are opened to any importers and all the goods shall be subject to customs' control.

2. The Minister of Finance shall publish by decree the list of the goods to be excluded from this legal regime.

3. The goods stored in a public entrepot are not subject to any kind of collateral security (financial guarantee).

#### ARTICLE 8

Goods are allowed to be stored at public entrepots over a period not exceeding 3 years.

ARTICLE 9

Goods stored at a public entrepot may be exported again or imported for consumption.

ARTICLE 10

1. In public entrepots it shall be forbidden:

a) to change the goods containers or casks, except in the following cases:

1st. When for reexporting or relocation purposes a part of a container's goods must be removed;

2nd. When a risk of damage or leaking occurs or when it is indispensable to recondition the contents for further freightage or reexport;

3rd. When specifically authorized by law.

b) To process or change by any possible means the nature of the goods, with the following exceptions:

1st. Precious metalwork which can be crushed or made into pieces;

2nd. Samples, which can be cut, divided or changed in such a way that doesn't raise any doubts on their utilization; in case of fabrics, furs, cardboard and similar goods, cutting may be replaced by puncturing so that it doesn't affect the good appearance of the said samples;

3rd. Packages conditions goods, which may be cut so that they come useless;

4th. Steel or iron drums taxed as such in the respective duty item which be may turned to no other use except as junk iron; in case of drums temporarily imported they shall be turned useless within the temporary import period;

5th. Any other cases as authorized by specific law.

2. At public entrepots it will be allowed simple dust cleaning, handling of goods to ensure their proper maintenance and repairs of any damages occurred during transportation.

## ARTICLE 11

1. The buildings in which public entrepots operate must comply with the following requirements:

a) to be built with especially resistant materials and to have the necessary conditions to establishing an adequate tax confinement;

b) to have only one way out with direct access to a public way or to sites confining and with access to a road in such a way that customs may at any time keep a convenient watch over the said buildings;

c) the door shall have two keys of different patterns provided by the customs at the owner's charge; one key will be kept by the owner and another one by the Customs Station authority;

d) the windows, skylights and other outside openings existing in the same building must be sealed with strong iron net no larger than 1 cm<sup>2</sup>.

2. Whenever they may deem it necessary, Customs may replace the warehouse's keys referred to under c) of this article at the owner's charge.

3. Public entrepots are subject to the Customs' permanent surveillance.

## ARTICLE 12

1. Concession holders are responsible before Customs for any duties and other impositions concerning the import of goods stored in public entrepots.

2. The disappearances of goods reported in the said entrepots constitutes tax violation under the terms of the Customs Procedure Law.

## ARTICLE 13

1. If an accident occurs at a public entrepot, destroyed goods will pay duties once it has been proved in a duly organized and documented supporting file that the accident was not the direct cause of the damages and that the duties over the destroyed goods were insured against the accident that destroyed them.

2. The provisions on damages stated under the Preliminary Instructions of Customs' Items are applied to the goods that may

have been simply damage, once the formalities on destroyed goods contained there in are observed.

3. At the request of the interested persons, the damaged goods may be turned useless under Customs supervision and with no costs for the State, remaining subject to the payment of the duties owed in the condition in which they are found.

4. Small losses resulting from any of the operations referred to under 2. of Art. 10 are considered as goods exempted of duties.

#### ARTICLE 14

The rules of the Organic Statute relating to warranted warehouses and warehouses under Customs control are applied to private warranted entrepots and to private entrepots under Customs' control.

#### ARTICLE 15

It is allowed to transfer goods from one stockage entrepot to another, but the storage period runs without interruption.

#### ARTICLE 16

1. The concession of an industrial entrepot regime is the responsibility of the Minister of Finance with the advice of the Ministry responsible for industry.

2. Industrial companies may benefit from the industrial entrepot legal regime once their premises meet the minimum requirements to that effect.

#### ARTICLE 17

The authorization to operate an industrial entrepot may be cancelled at any time if the established requirements are not fulfilled or if legal regulations are violated.

#### ARTICLE 18

1. Raw materials and finished or semi-finished products are allowed admittance to industrial entrepots to be processed or manufactured.

2. The industrial entrepot legal regime is subject to a collateral security (financial guarantee).

#### ARTICLE 19

1. The maximum period over which goods can be kept at an industrial entrepot is one year renewable for another 6 months.
2. When this term expires, if there has been no renewal, the payment of duties and other impositions on goods that are under this legal regime will be immediately requested.

#### ARTICLE 20

1. Finished products manufactured under the industrial entrepot legal regime may be exported, imported for consumption or stored at a stockage entrepot.
2. If finished products are imported for consumption, the duties and other impositions will be those of imported goods utilized in processing or manufacturing the products, according to the statement made on their admittance to the industrial entrepot.
3. When the finished products manufactured under the legal regime of industrial entrepots are transferred to a stockage entrepot they shall be stored in separate compartments and have separate accounting records.

#### ARTICLE 21

Except when authorized by the Customs Administration, the goods that have been imported under the industrial entrepot legal regime can not be sold as long as they are under such legal regime.

#### ARTICLE 22

1. At the industrial entrepots, the production wastes which are unsuitable for any economic processing shall be destroyed at the expense of the entrepreneur.
2. The wastes which are suitable for any economic processing shall pay duties and other impositions related to them.
3. A rate of loss or to admitted loss will be fixed for the purpose of excluding tax responsibilities.

#### ARTICLE 23

1. The General Director of Customs may authorize splitting the production among industrial plants, that benefit from the same legal regime.

2. The suspension of duties and other customs' impositions will be maintained in relation to the products sent by an entrepot to another plant either belonging to the same company or to third persons for manufacturing completion once the products return to the entrepot.

#### ARTICLE 24

1. The materials imported by the Cabo Verde's Naval Shipyards to be used in shipbuilding and in naval repairs follow the industrial entrepot legal regime.

2. The maximum period over which the products referred to under the above paragraph may be stored can not exceed 3 years.

#### ARTICLE 25

1. The Statement of admittance of goods into entrepots is done by exhibiting a forwarding printed from model "B" on behalf of the receiver.

2. The admission and exit of goods must be recorded on books or proper filing cards by the concession holder and by the customs station of the respective area.

#### ARTICLE 26

The customs' authority may request at, any time, that the goods stored at a customs entrepot be displayed as well as to make the inventories that it may deem necessary.

#### ARTICLE 27

The entrepot's concession holder is responsible in case of disappearances or damaged goods for the payment of duties and other impositions and is subject to any penalties impending on the date such a fact is found out.

#### ARTICLE 28

1. A place temporarily used to receive foreign goods exhibition, trade fairs or a similar purpose may be qualified as a customs' entrepot.

2. The legal entrepot regime can be declared for a period not exceeding 30 days before or after the event takes place.

ARTICLE 29

1. The maximum storing period at real and special warehouses is 30 days for air goods and 90 days for sea freighted goods.
2. Upon the determination of those terms, the goods must be either reexported or placed at public entrepots.

ARTICLE 30

Any doubts resulting from the application of this decree shall be resolved through a written determination of the Minister of Finance.

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**ANNEX 5**  
**OFFSHORE BANKING REGULATIONS**  
**(DRAFT)**

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OFFSHORE BANKING REGULATIONS  
LAW NUMBER .... /88  
(DRAFT)

On behalf of the people, The People's National Assembly decrees under the terms of Art. 58 (b) of the Constitution, as follows:

ARTICLE 1  
(Establishment of offshore financial institutions)

The constitution or establishment and the operation of offshore banking institutions are allowed under the requirements and conditions of this law.

ARTICLE 2  
(Offshore banking institutions definition and purpose)

Offshore banking institutions shall have as their exclusive purpose to perform international banking operations in foreign currency with persons who are not resident in Cabo Verde, without being subject to the prevailing legal provisions that regulate the monetary, banking and foreign exchange markets.

ARTICLE 3  
(Allowed offshore financial operations)

The offshore banking operations referred to under the above article will include specifically, the following:

- a) general banking trade, including exchange rate operations;
- b) any form of insurance activities;
- c) the management of real estate or investment funds;
- d) issuing of negotiable credit bonds, either on their own behalf or on behalf of third persons;
- e) financial leasing and similar operations.

ARTICLE 4  
(Authorization)

The constitution or the establishment of offshore financial institutions is subject to prior Governmental authorization to be granted under the terms of the law.

ARTICLE 5  
(Eligibility)

The authorization referred to under the above article can only be granted to national or foreign entities of acknowledge reputation and financial capability.

ARTICLE 6  
(Form)

1. Offshore financial institutions shall adopt one of the following forms:

a) Local branch offices of monetary or non monetary financial institutions;

b) An autonomous entity established in Cabo Verde as a legal person, according to the existing laws and authorized by the Government to perform an offshore financial activity within the requirements of this law.

2. The local branch offices referred to under (a) of the above article shall correspond to a perfectly identified center, specifically regarding the office premises, staff, documentation and accounting.

3. The autonomous entity referred to under 1. (b) must assume the form of an incorporated stock company.

ARTICLE 7  
(Compulsory designation)

1. The designation of offshore financial institutions must include:

a) the name of the applying entity as it is registered in the country of origin, as well as the expression "Cabo Verde's offshore branch", in the case of 1. (a), Art. 6;

b) the name adopted by the autonomous entity referred to under 1. (b) Art. 6, as well as the word "offshore".

2. The expressions referred to under the above paragraph must be known at visible places both at the office premises and on all company's documents or letters, so that the public may not be induced in error regarding the kind of operations that the company may perform.

ARTICLE 8  
(Unauthorized operations)

Offshore financial institutions are not allowed to have any trade with Cabo Verde's residents whatever the form or kind of business, except under the terms and legal requirements under which such residents may perform the same operations with banking institutions established in other territories with different currencies.

ARTICLE 9  
(Confidentiality and secrecy)

1. Offshore financial institutions managers and other employees can not disclose or use information that has come to their knowledge because of the functions they hold, namely clients' names, deposit accounts numbers and turnovers, banking, exchange rate and financing operations and any other similar pieces of information.

2. The violation of the secrecy obligations, be it attempted or effective, besides the inherent civil liability, constitutes a fair cause for office discharging and grounds for dismissal and shall be punished according to the existing penal laws.

ARTICLE 10  
(Establishing and operating licenses)

Offshore financial institutions will be subject to the payment of an establishing licence and a yearly operating licence under the conditions and amounts to be defined by the Government.

ARTICLE 11  
(Management)

The executive management of offshore banking companies shall be under the responsibility of a person or persons permanently residing in Cabo Verde who will hold the necessary powers to deal and handle every business or matter related to the respective activities performed in Cabo Verde.

ARTICLE 12  
(Enforcement of a foreign court decision)

Any court sentence enforcing bankruptcy or the liquidation of an institution which has its head office abroad, can only be extended to its local branch offices as referred to under §1 (a) of Art. 6, once reviewed by the Courts of Cabo Verde under the terms of the law.

ARTICLE 13  
(State supervision)

Offshore financial institutions are subject to the State's supervision under the terms to be defined by the Government.

ARTICLE 14  
(Legislative authorization)

It is hereby granted to the Government an authorization to legislate, valid up to the 31st. March 1990, on the following matters:

(a) the constitution and operations of offshore international financial institutions concerning the grant of an authorization, the establishing of branch offices, the constitution of the entity referred to under 1. (a) of Art. 6, the registration and guaranteeing the operations to be performed.

(b) the legal tax regime to be applied to offshore financial institutions and their shareholders.

ARTICLE 15  
(Regulations)

The Government will approve by decree the regulations required for the application of this law.

## BACKGROUND NOTES TO THE REPORT

### The PEDS Project

This study was conducted under the Private Enterprise Development Support Project. The PEDS Project is a five year (FY88 - FY92) \$20 million project managed by the Bureau for Private Enterprise. The PEDS Project is designed to provide a wide range of expertise in private sector development. Areas of technical assistance include the following:

- Policy analysis related to private sector development
- Sector assessments and analyses
- USAID private sector strategy development
- Legal and regulatory analysis and reform
- Small-scale business development
- Trade promotion
- Investment promotion
- Free trade zone development
- Financial institutions and instruments
- Management and financial training
- The role of women in private enterprise
- Applications of MAPS: Manual for Action in the Private Sector

USAID Missions have the resources of thirteen contractors available to them through the PEDS Project.

- |                                    |                          |
|------------------------------------|--------------------------|
| ● Arthur Young (prime)             | ● Ferris & Company       |
| ● SRI International                | ● Metametrics            |
| ● Management Systems International | ● Elliot Berg Associates |
| ● The Services Group               | ● Robert Carlson Ass.    |
| ● Trade and Development, Inc.      | ● Ronco                  |
| ● Multinational Strategies         | ● Dimpex Associates      |
| ● J.E. Austin Associates           |                          |

### The Consultancy

USAID/Cape Verde is in the process of formulating a project to stimulate private sector development and export promotion, in which The Services Group provided assistance at the PID stage through the PEDS Project. The purpose of the project will be in part to support many of the policy initiatives proposed in the legislation reviewed in this study. This review was undertaken at the request of the Government of Cape Verde to provide a preliminary analysis from an economic perspective of the proposed legislation. The legislation review consists of four separate but related pieces of legislation aimed at promoting industrial development in Cape Verde, and legislation to foster the establishment of offshore banking.

## The Authors

Carl D. Goderez is the Director of Projects at The Services Group. He is a professional engineer with over 40 years of experience in industrial development; he specializes in planning, evaluating and implementing industrial estate and export processing zone projects, and assessing the infrastructure and financial requirements of small and medium-scale export enterprises. Mr. Goderez came to TSG after 18 years as Senior Industrial Development Officer at the World Bank, where he specialized in the technical and financial analysis of export-oriented industrial estate and export processing zone programs. At TSG, he has served as Senior Technical Advisor in export processing zone studies in some 25 countries worldwide, including Mexico, Costa Rica, Belize, Guatemala, Honduras, El Salvador, Panama, the Dominican Republic, Jamaica, Barbados, St. Lucia, Grenada, the Bahamas, Ecuador, Egypt, Yugoslavia, Antigua, Haiti, Uruguay and Madagascar. Formerly a senior corporate executive with a multinational pharmaceuticals company, Mr. Goderez has had extensive experience in plant installation and operations in Latin America and Asia. He holds a B.S. in Engineering from the City College of New York and has pursued advanced studies at Princeton University and the Massachusetts Institute of Technology.

James Emery is the Vice-President of Operations at The Services Group. He specializes in international economics and has considerable experience in international trade and finance, free zone financial and market analysis, and export finance. Previously, Mr. Emery worked at the Office of International Development Policy at the U.S. Treasury, as well as Morgan Guarantee Trust. Mr. Emery holds a Master's Degree in International Relations from the Fletcher School at Tufts University, and a B.A. in Economics from Reed College.

Robert K. Rauth, Jr. is a Staff Consultant of The Services Group, where he specializes in market analysis and financial analysis of free zones. Previously, he investigated opportunities in the U.S. for unsubsidized provision of transit services for the Urban Mass Transit Administration of the Department of Transportation. Mr. Rauth is a graduate of Northwestern University and holds an M.B.A. from the American Graduate School of International Management.

R. Keith Richard is a specialist in the assessment of customs and import procedures and in the design of computer-based inventory and recordkeeping systems for government and international commercial clients. Mr. Richard formerly held the post of Deputy Assistant Regional Commissioner with the U.S. Customs Service and has an in-depth knowledge of the operational aspects of customs supervision and monitoring procedures in free zones, duty drawback schemes, offshore assembly and twin plant manufacturing. As an independent consultant, Mr. Richard has undertaken assessments of customs policies and practices in Africa, the Caribbean and Central America. A frequent speaker at trade conferences, he is also the author of a guidebook on customs compliance for U.S. foreign-trade