



LEGAL NEWS

Cape Verde

July through December 2019

TOURISM

Institute of Tourism Created

Following the reorganization of the institutional framework for managing the tourism sector, the Government created, through Decree-Law No. 37/2019, of 25 July 2019, the Cape Verde Institute of Tourism, I.P. (“ITCV”), whose main purpose is to regulate and oversee the tourism sector.

By means of the same statute the ITCV By-laws were approved, under the General Legal Regime of Public Institutes, enacted by Law No. 92/VIII/2015, of 13 July 2015.

REAL ESTATE

Construction on the Island of Boa Vista Regulated

Boa Vista Municipality Resolution No. 1/2019, of 25 April 2019, published on 4 July 2019, defined rules for the onerous concession of the right to build on the island of Boa Vista, with a view to adapting urban projects in all buildable areas, whether covered by

the Municipal Master Plan or not, in accordance with the new urbanistic construction parameters and other buildability rules.

New Duties of Disclosure for Real Estate Agents

Implementing the objectives of the Anti-Money Laundering Law (Law No. 38/VII/2009) and the Law on Prevention of the Financing of Terrorism (Law No. 27/VIII/2013), the Inspectorate General of Construction and Real Estate issued Regulation No. 01/IGCI/2019, of 28 August 2019, imposing on entities engaged in the brokerage, purchase, sale, purchase for re-sale or exchange of real estate, in real estate development, and in the leasing of immovable property, the duty to control the transactions in which they are involved. Among others, a special duty has now been established to collect information regarding the entities' clients, founders, beneficiaries and directors, as well as to report such information to the competent authorities. Regulation No. 01/IGCI/2019 entered into force on 30 September 2019.

COMMERCIAL

New Commercial Code and Companies Code

By means of Legislative-Decree Nos. 1/2019 and 2/2019, both of 23 July 2019, a new Commercial Code and Companies Code, respectively, were approved. The 1888 Commercial Code and the 1999 Companies Code were thus revoked.

The Commercial Code introduces several new features. With regard to the Companies Code, the changes are less profound in material terms, but quite significant from a formal standpoint.

The new Commercial Code and Companies Code entered into force on 21 October 2019.

INVESTMENT

Sovereign Guarantee Fund for Private Investment Created

With a view to fostering the financing of the Cape Verdean economy and companies, Law No. 65/IX/2019, of 14 August 2019, recently set up the Sovereign Guarantee Fund for Private Investment, with an initial share capital of € 100m. The purpose of the Fund is to guarantee the issuance by private Cape Verdean companies of securities, notably debt securities, in regulated markets and to guarantee the financing operations for their investments. Law No. 65/IX/2019 entered into force on 15 August 2019, while the Fund is expected to become operational in 2020.

Agreement with São Tomé e Príncipe Approved for Reciprocal Investment Protection

Through Decree No. 12/2019, of 23 December 2019, the Agreement with São Tomé e Príncipe for Reciprocal Investment Protection was approved. The agreement between the two countries was executed in New York in September 2019.

ENERGY

Power Grid Code Approved

The Power Grid Code was published by means of Decree-Law No. 31/2019, of 11 July 2019, entering into force on 12 August 2019.

The Code defines the technical requirements for electric power generating facilities and energy storage systems that must be connected to the country's electric energy systems, thus completing the statute that established the framework for the electric system (Decree-Law No. 54/99, of 30 August 1999, as amended by Decree-Law No. 14/2006, of 20 February 2006). The Code aims at allowing the stable and safe operation of the national electric system in order to increase the share of energy coming from renewable sources.

This new framework applies to the stages of planning, construction and operation, including modifications of facilities, energy storage systems and voltage control devices which are, or may in the future be, connected to electrical networks at any level of

voltage, and which are considered to be significant. It should be noted that only facilities which are now, or will be, connected to the main grids of the inhabited islands are involved; the Code does not cover microsystems that are not connected to the main grid. The statute imposes minimum technical requirements for all energy facilities that may be set up after the Code's entry into force.

Sale of Electricity Produced by Micro-Producer Units

Order No. 43/2019, of 3 December 2019, approved the draft of the Sale and Purchase Agreement for Electricity produced by Micro-Producer customers, to be entered into between the Concessionaire, who will buy the energy, and the Micro-Producer, who will sell electricity produced by means of micro-generation units for self-consumption based on renewable energy sources.

PUBLIC FINANCES

Basic Law for State Budget Approved

Law No. 55/IX/2019, of 1 July 2019, rectified on 11 October, was approved, setting forth the legal basis for the State Budget, defining the principles and rules governing its formulation, programming, approval, execution, evaluation, control and accountability. The statute contains the fundamental rules and principles of public finances, and defines competencies and responsibilities with regard to the preparation of the State Budget. The law entered into force on 1 January 2020 and does not apply to the phases of the State Budget prior to its entry into force.

LABOR

ILO Conventions Approved

Resolution Nos. 129/IX/2019 and 130/IX/2019, both of 15 July 2019, approved respectively, for ratification, International Labor Organization (“ILO”) Convention No. 144, regarding Tripartite Consultations to Promote the Implementation of International Labor Standards, adopted on 21 June 1976 in Geneva, and ILO Convention No. 102, regarding Minimum Standards of Social Security, adopted on 28 June 1952 in Geneva.

BANKING AND CAPITAL MARKET

New Rules for Electronic Currency and Payment Institutions

Following on from Legislative Decree No. 9/2018, of 28 November 2019, on payment service providers and access to the activity of electronic money institutions, the Bank of Cape Verde, by means of Order No. 06/2019, of 18 July 2019, regulated the process of authorizing payment institutions and electronic currency institutions and established additional rules on minimum share capital, own funds and requirements to protect funds received by said institutions. The Order entered into force on 19 July 2019.

New Rules on Payments and Revenues by Bodies Managing State Resources

In order to implement the Central Bank’s role as Treasury Cashier, and to bring together all revenues into the State Treasury, Decree-Law No. 36/2019, of 25 July 2019, defined rules and procedures for the management of the payment and revenue system, whether tax-related or not, by the bodies that manage the State’s resources. The statute applies to Public Administration services, autonomous services and funds, public institutes, project management units and any other public bodies which have financial autonomy and can collect revenues and make payments. Decree-Law No. 36/2019 entered into force on 26 August 2019.

Capital and Loan-Based Crowdfunding Regulated

Following on from Law No. 34/IX/2018, of 6 June 2018, which enacted the Legal Framework on Crowdfunding, the General Audit of the Securities Market (“AGMVM”) issued Regulation No. 2/2019, of 8 August 2019, regulating access to the activity of crowdfunding intermediation and the need for prior registration with the AGMVM of entities managing electronic platforms for crowdfunding, as well as the refusal, lapsing, suspension and cancellation of such registration. The Regulations also establish procedures to be followed by these entities in terms of internal control, the provision of information to beneficiaries and investors, and the prevention of fraud, money laundering and the financing of terrorism, among other things. The entry into force of Regulation No. 2/2019 was subject to the regulation on violations of the Legal Framework for Capital or Loan-based Crowdfunding, enacted by the Decree-Law No. 51/2019, of 5 December 2019.

Sanction Framework Applicable to Crowdfunding

Decree-Law No. 51/2019, of 5 December 2019, defined the sanction framework applicable to infringement of the duties set forth under Law No. 34/IX/2018, of 6 July 2018, which set out the Legal Framework on Crowdfunding. Under said statute, which entered into force on 6 December 2019, entities subject to this regime that do not comply with the relevant duties can be sanctioned with fines of between 2,500\$00 and 6,000,000\$00, depending on the type of infraction involved. Ancillary penalties may also apply.

MARITIME

Inter-Islands Maritime Transportation of Passengers, General Cargo and Mixed

Decree-Law No. 41/2019, of 24 September 2019, enacted regulations for access to and engagement in inter-islands activities involving maritime transportation of passengers, general cargo and mixed. Decree-Law No. 26/93, of 10 May 1993, defining and regulating access to and engagement in the business activities of maritime transportation, was thus revoked. The provisions of the Maritime Code which contradict the new legal regime in respect of national maritime transportation were also revoked.

Changes to Legal Regime of Mandatory Maritime Insurance

Decree-Law No. 44/2019, of 24 September 2019, amended Decree-Law No. 70/2015, of 31 December 2015, which regulates mandatory maritime insurance. The changes relate to the object, definitions, contracting of mandatory insurance, book-keeping obligation, payment of insurance premium, disposal of vessels, proof of insurance, conditions to navigate, exclusions and minimum insurance value for material damage and injury.

STATE

State Business Sector

Law No. 58/IX/2019, of 29 July 2019, amended Law No. 104/VIII/2016, of 6 January 2016, which established the principles and rules applicable to the State business sector, revising Article 13 in order to establish the exercising of the State's function as a shareholder by the Minister of Finance or by a public entity managing the States' shares, created by the Government and supervised by the Ministry of Finance.

Amendment to the Legal Framework of the Judicial Courts

Law No. 59/IX/2019, of 29 July 2019, amended several provisions of Law No. 88/VII/2011, of 14 February 2011, and republished the statute which defines the organization, competence and functioning of the judicial courts. The main amendments

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concern the jurisdiction of the Supreme Court of Justice, as well as its composition, organization, number of sections and their respective competences. There were also amendments in respect of the composition of the Court of Appeal, the classification of District Courts according to development of the career of magistrate, the presidency of the District Courts, and the competence of Small-Claims Courts and their location.

Sea Institute Created

In order to ensure the sustainability of research and technological development activities in terms of the sea and its resources, the Government, through Decree-Law No. 40/2019, of 24 September 2019, created the Sea Institute (*Instituto do Mar*, I.P.), to ensure that a number of reforms are implemented in the sector. With the entry into force of this statute, the National Institute for the Development of Fisheries was extinguished.

CIVIL AVIATION

New Legal Framework for Concession of Airport Public Service Supporting Civil Aviation

Law No. 64/IX/2019, of 12 August 2019, enacted the legal framework for the concession of an airport public service to support civil aviation, regulating the airport public domain, licensing, economic regulation, charges, and the national airport system.

With the entry into force of the new statute, Legislative-Decree No. 1/2014, of 29 September 2014, which established the previous legal framework, was revoked.

New By-Laws of Civil Aviation Agency

Decree-Law No. 47/2019, of 28 October 2019, approved the new Civil Aviation Agency (“AAC”) By-laws. Amendments to the relevant wording aim at consolidating solutions adopted over the years, reinforcing the stability required to ensure operators and consumers’ confidence in the AAC, and at clarifying several provisions. Created by means of Decree-Law No. 28/2004, of 12 July 2004, the AAC is the civil aviation regulatory authority.

Bases for Public Airport Service Concession Approved

Under Law No. 64/IX/2019, of 12 August 2019, which set out the legal framework for the public airport service concession for civil aviation, it is for the Government to approve, by Decree-Law, the bases for the public airport service concession, as well as the awarding of the concession to a private entity and the terms of the transfer of assets of the national company *Empresa Nacional de Aeroportos e Segurança Aérea*, S.A. ("ASA, S.A."), necessary for the concession.

To that effect, Decree-Law No. 52/2019, of 5 December 2019, was approved, establishing the bases for the public airport service concession, which constitute the general contractual framework of the concession contract to be entered into with the Concessionaire (selected by means of a public tender, tender limited by prior qualification, restricted tender, or by direct award, whichever is the most appropriate in each case).

The statute lays down the rules for the granting to private entities of the right to operate the public airport service in support of civil aviation at the International Airports Amílcar Cabral (Sal), Nelson Mandela (Santiago), Cesária Évora (São Vicente), and Aristides Pereira (Boavista), and at the Aerodromes of São Nicolau, Maio and São Filipe (Fogo).

Decree-Law No. 52/2019 sets out the regime covering the assets allocated to the concession and liability for the risks inherent to the concession. It also establishes conditions of the concessionaire's performance, which should be regular, continuous and efficient. For this purpose, the Decree-Law adopts the RTM (minimum technical quality and availability requirements), the Sectorial Parameters of Public Service, and the standards of quality and security demanded by law or by applicable regulations, at all times and in accordance with the concession contract, for each airport or aerodrome.

Until the execution of the concession contract, the operating concession will continue to be carried out in the same way as it has been by ASA, S.A. and with the same object.

New Airline Fares for Regular Domestic Passenger Air Transport

By means of Decree-Law No. 54/2019, of 10 December 2019, rectified on 26 December 2019, the regulation of the legal framework was approved for setting and updating the structure of airline fares applicable to domestic passenger air transport. The regulation applies to air carriers licensed by the Civil Aviation Agency to engage in the activity of regular domestic passenger air transport.

The regulation of the fares is particularly important in the current scenario of the national market of regular domestic passenger air transport, which is occupied exclusively by two companies whose share capital is mainly privately owned. This requires the adoption of a system that ensures predictability and transparency in the sector in terms of tariff methodology.

Decree-Law No. 54/2019 entered into force on 11 December 2019.

COPYRIGHT

Entry into Force of WIPO Treaties on Copyright and Performances and Phonograms

By means of Notice Nos. 6/2019 and 7/2019 of the Legal Affairs and Treaties Service of the Ministry of Foreign Affairs and Communities, published on 28 November 2019, it was announced that the International Treaties of the World Intellectual Property Organization (“WIPO”) on Copyright and on Performances and Phonograms, respectively, had entered into force in Cape Verde on 21 May 2019.

The WIPO Treaty on Copyright explicitly confers protection to computer programs and databases. The Treaty also recognizes the right of making works available to the public through interactive means, and establishes obligations of a technological nature. The WIPO Performances and Phonograms Treaty enshrines rights related to the digital environment for performers and producers of phonograms.

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