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Environment | Cape Verde: New Water and Sewage Code (WSC)

The Government of Cape Verde has **approved Legislative-Decree no 3/2015, October 19**, establishing the new Water and Sewage Code (WSC)

Object

The WSC defines:

- > The **main principles applicable to water resources** and establishes the rules that guarantee its preservation, quality, sustainability and rational use
- > The **public supply and sewage systems** and the **economic-financial sustainability mechanisms** and the establishment of **protection mechanisms for water resources**

Scope

- > The WSC applies to **all water resources existent in the soil, sub-soil and in the atmosphere of the national territory, including the surface and underground interior waters and the water produced by desalination**
- > Maritime interior waters, archipelagic waters, territorial sea and the exclusive economic zone, except if they interfere with the remaining water resources, are excluded from the scope of the WSC

Government competences

- > Organize and maintain a national registry of water resources
- > Monitor the use of licenses and the execution of concession agreements
- > Ensure the execution of the targets and principles of water policy
- > Prevent and restrain the breach of third parties' lawful interests and rights

Municipalities' duties

Establish and manage, directly through municipal services, autonomous municipal services, municipal, public municipal or multi-municipal companies:

- > Public water supply systems in their respective territories;
- > Collection, treatment, reuse and discharge of waste waters and treated mud systems, in their respective territories;

Whenever said services are not comprised within the scope of the concession awarded by the Government or regarding the part of the services excluded from the scope.

Management of water resources

- > **At a central level**
 - > Government
 - > National Advisory Body
 - > Regulatory Entities
 - > Managing entity of the national water resources system
 - > Central services supporting the management of water resources
- > **At a local level**
 - > Local Advisory Bodies
 - > Managing entities of the local water resources systems
 - > Local services supporting the management of water resources
- > **At an intermediate level**
 - > Comprising two or more basic units of one or more islands
 - > The basic unit of water resources management is the hydrological circumscription – basic unit of planning and management of water resources which limits may coincide with a water basin, a set of water basins and/or an island

Ownership of Water Resources

- > All water resources **belong to the public domain of the Government of Cape Verde**
- > Hydraulic works and the sewage infrastructures executed by public companies, those destined to a public use or to public utility purposes, as well as hydraulic works, sewage infrastructures, installations and remaining real estate belonging to concessions of management of water resources also belong to the public domain of the Government of Cape Verde

Public Domain Regime

Water resources, hydraulic works, sewage infrastructures and remaining assets of the public hydric domain:

- > **May not be the object of third-party rights**, except by the means and within the limits set forth in the governing law
- > **Are inalienable, unchallengeable, not subject to a time limit and not subject to any encumbrance** according to private law
- > **May be subject to property transfers and reserved for certain uses**

Water Resources Spatial Planning

- > Aims to harmonize its uses with the protection and valuation of resources in order to ensure its sustainable use, binding Public Administration and individuals
- > Must respect the national instruments of spatial planning, establishing the spatial framework of the actions with territorial impact and defining the major options relevant for the planning of the national territory

Water Resources Planning

- > Aims to define the framework for its protection and integrated management, ensuring a sustainable use and harmonizing its uses and availabilities, as well as promoting poverty reduction and gender equality

Water resources planning instruments:

- > The **National Plan of Integrated Management of Water Resources**
- > The **Strategic National Plan for Water and Sewage**
- > The **Master Plans for Water Supply and Sewage**

Use of Water Resources

- > The **common use** of water resources is free
- > The **privative use** of water resources:
 - > Is charged
 - > Is subject to the payment of charges, levies, fees or other encumbrances
 - > May be free, subject to a prior notice
 - > Excluding the cases of free use, is carried out under an administrative permission – authorisation, license or concession agreement

Uses subject to a license

- > Production of desalinated water and removal of phreatic levels
- > Independent production and self-production of water
- > Water distribution for vehicles and fountains
- > Rendering of services of water production and distribution, as well as sewage services, when provided within a limited area located in geographically isolated places
- > Discharge of wastewater
- > Reuse of treated wastewater
- > Installation of facilities and equipment in public hydric domain areas
- > Installation of hydraulic infrastructures
- > Execution of landfills or excavations
- > Removal of inert in river beds and interior waters
- > Other activities that can put at risk the status of the water resources and that may be limited by law or specific regulation

The license may be granted for a **maximum period of 30 years**.

Uses subject to a concession

- > Rendering of services of water distribution and the rendering of services of sewage for public purposes

- > Use of public hydric domain land destined to the construction of touristic developments and similar facilities
- > Installation of hydraulic infrastructures destined to the above mentioned purposes

The concession is subject to a **public tender procedure**, except in exceptional cases of relevant public interest in which the Government authorizes its waiver, the **concession term**, including renewals, being **limited to 80 years**.

The **initial term of the concession for the exploitation of water resources** within the scope of the concession of services for public water supply or sewage **may not exceed 50 years**.

Water Resources Registry

- > The **national water resources registry** aims to advertise and describe every use of water resources, including the existence of vicissitudes of hydraulic works, water sources and sewage infrastructures
- > The responsible Technical Regulator (administrative entity responsible by law for the technical regulation of the water and sewage sector) in the territory of Cape Verde shall organize and maintain a **National Hydric Registry** of water sources, containing the identification and rigorous locations of water sources, groundwater and any other hydric source susceptible of being used for the uses permitted by law, as well as the destined use and respective title holders

Water Resources Economic and Financial Regime

Levies

The title holders of water use rights may be subject to the payment of the following levies (value in cash to be paid by the title holder of concessions and licenses for the use of water resources):

- > Water withdrawal levy
- > Water discharge levy
- > Special levies

Charges

The title holders of water use rights may be subject to the payment of the following charges:

- > Use charge
- > Conservation and exploitation charge
- > Charge for removal of inert in river beds
- > Levy for occupation of land or water surfaces

Tariffs

The title holders of water use rights may be subject to the payment of tariffs established by the Economic Regulator (independent administrative entity responsible by law for the economic regulation of the water and sewage sector) to be performed by the entities that render the public water supply and sewage services

Tariffs must:

- > Be established so as to constitute sufficient incentive to promote efficiency and the rational use of water and of the sewage system

- > Be indexed so as to reflect changes in the prices of goods and services in Cape Verde
- > Reflect the costs of the services supplied to the various consumer categories and the costs associated to the operation of assets in which the concessionaire did not invest or of those that have been donated to the Government
- > Reflect the costs associated to the prevention or mitigation of damages to the environment, health or public security

Fees

The title holders of water use rights may be subject to the payment of fees due and paid previously to the respective act, among which:

- > Issue and renewal of licenses for water use rights
- > Authorizations for the construction, amendment or disabling of hydraulic works
- > Registration, remarks, certificates and other acts of registration of water resources

Public water supply and sewage systems

A managing entity responsible for the conception, construction and exploitation of public water supply and sewage systems must always exist. This entity may be the Government, a municipality, a group of municipalities or another public or private entity, legally or contractually authorised to execute the correspondent activities.

Supervision, Water Misdemeanours and Penalties

Water Misdemeanours

Every illicit and reprehensible fact that breaches mandatory provisions of the WSC or of the legal and regulatory applicable instruments, in relation to which a fine is foreseen, constitutes a water misdemeanour.

Water misdemeanours are divided in the following categories:

- > Misdemeanours regarding the use of water resources
- > Misdemeanours regarding the public water supply and sewage systems
- > Misdemeanours regarding administrative easements and restrictions regarding water
- > Misdemeanours regarding the quality of water resources
- > Misdemeanours regarding hydraulic works and sewage infrastructures
- > Misdemeanours regarding the economic and financial regime of water resources

Fines

- > The maximum limit of the fine applicable to **individuals** may amount to **500.000\$00** (negligence) and to **1.000.000\$00** (wilful misconduct)
- > The maximum limit of the fine applicable to **companies** or similar may amount to **50.000.000\$00** (negligence) and to **100.000.000\$00** (wilful misconduct)
- > **Misdemeanours for which a specific fine is not determined** are sanctioned with a fine ranging between **3.000\$00** to **500.000\$00**, for **individuals**, and between **100.000\$00** to **5.000.000\$00**, for **companies**

Simultaneously with the fine, **ancillary penalties** may be applied.

The competent entity to apply the fine may determine the obligation to cease the infraction and to replace the situation prior to the practice of the misdemeanour.

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Revoked Legislation

The WSC revokes the following legislation:

- > Law no. 41/II/84, June 18;
- > Decree no. 82/87, August 1;
- > Decree no.166/87, December 31;
- > Decree no. 167/87, December 31;
- > Decree-Law no. 30/2013, September 12.

Entry into force

- > The WSC shall enter into force on December 18, 2015.