

REPUBLIC OF CAPE VERDE

**Proposal
of
Decree-Law**

The issue of access to Justice and to Law has been the object of great discussions world-

In these terms,

In the use of the faculty conferred by subparagraph a) of number 2 Article 203 of the Constitution, the Government decrees the following:

CHAPTER I GENERAL PRINCIPLES

Article 1 **Object**

This decree-law regulates the use of Mediation in the resolution of conflicts by agreements of the parts.

Article 2 **Definition**

For the purpose of the preceding article, Mediation is an alternative way of conflict resolution by which the parts, assisted by a neutral, impartial and independent third party, seek to reach an agreement that resolves the issue that divides them.

Article 3 **General principles of Mediation**

Mediation is governed by the following general principles:

- a) impartiality;
- b) equality;
- c) informality;
- d) speed;
- e) confidentiality;
- f) autonomy and will;
- g) respect;
- h) cooperation;
- i) good faith,
- j) voluntarism;
- l) self-composition

Article 4 **Nature of the case**

1 – The conflicts on civil, administrative, commercial, financial, labor, family or even criminal matters may be object of mediation, as long as the same are based on available legislation.

2 – Without prejudice to the provisions in special legislation, the cases of an alimentary, **falimentar**, fiscal, and those pertaining to the state or capacity of individuals and pertain to the interests of the Public Treasury, among others, cannot be the object of Mediation.

Article 5

Predomination of the will of the parts

1 – The will of the parties always predominates in mediation.

2 – The parts negotiate the conflict discretely, with the objective of finding a solution that contemplates and satisfies their interests.

Article 6

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CHAPTER II
REPRESENTATION OF THE PARTS

Article 8
Representation

1 – The parts participate in the process, persArtefulTand sCHA pr MedJ5le ian

Article 8 9

Article 11

Notification of the request to the other part

1 – The other part is notified, in two days from the filing of the request. Within ten days of receipt of the notification, the other part must manifest its acceptance or refusal to be submitted to the mediation process.

2 – Not responding within the deadline established shall be considered as non-acceptance of the mediation, which shall be communicated immediately to the requestor.

Article 12

Pre-mediation session

When the invitation to mediate is accepted by the opposite part, the parts are convoked to participate in preliminary interview, denominated Pre-Mediation Session.

Article 13

Course of the pre-mediation

The Pre-Mediation interview will follow the following course:

- a) The mediator listens to the parts for the purpose of comprehending the nature and extent of the conflict;
- b) Seeks clarification from the parts regarding the object of the conflict and the

f) The honoraries as well as the expenses incurred during the Mediation and

2 – If there should be no agreement regarding the pretended objective of the Mediation no fact or circumstance revealed or occurred during this phase shall result in harm to the rights of any of the parts, in an eventual arbitration or judicial process that may follow.

CHAPTER IV MEDIATOR

Article 17 Choice of a Mediator

1 – The parts will freely choose the mediator, and the choice may fall on the mediator who performed the Pre-mediation.

2 – The parts may choose more than one mediator.

3 – By common agreement the parts may, exceptionally, choose a mediator that does not belong in the list of the mediators that collaborate with the mediation center and in duly justified cases, that are not included in the Official List of Mediators.

4 – The parts may delegate the of the mediator to the mediation center of their choice.

Artigo18 Co-Mediation

The chosen mediator may recommend a Co-Mediator, depending on the nature and complexity of the controversy and

CHAPTER VI FINAL PROVISIONS

Article 26

List of Mediators

- 1 – The names and professional domiciles of the persons qualified to exercise the functions of mediator, under the regime of liberal profession, and or in collaboration with the mediation centers, shall be included in the Official Mediation List, in alphabetical order.
- 2 – The lists are updated annually by dispatch of the Ministry of Justice and published in the Official Bulletin.
- 3 – Inscription in the lists is made by interested parties that meet the requisites foreseen in Article 7 of this Decree-Law.
- 4 – The referred inscription does not give those inscribed the quality of agents, nor does it guarantee the payment of any remuneration fixed by the State.
- 5 – The Government oversees and regulates the mediators' activity.

Article 27

Honoraries and charges

- 1 – Each mediation center shall adopt its own Regulation, adjusting, among others, the rules on honoraries and administrative charges according to the rates in effect, published by the Ministry of Justice.
- 2 – The mediation charges include the mediation fee, the administrative charges, the mediators' honoraries, the mediators' expenses and the extraordinary expenses.
- 3 – The charges for mediation are supported by the parts in equal fractions, save for convention to the contrary.
- 4 – The Government shall establish the maximum amounts of the honoraries and charges to be observed by the mediation centers.

Article 28

Publication of agreements

- 1 – When there is interest from the parts, and by express authorization of the same, the results divulged in the Mediation may be divulged.
- 2 – The publication of the agreements obtained must always preserve the identity of the parts.

Article 29
Mediation Clause

It is recommended that the parts start inserting a Mediation Clause in the contracts in general that they may sign, such as the proposed model:

«Se surgir um litígio em razão deste contrato ou posteriores adendas, nomeadamente, o seu incumprimento, término, validade ou invalidade, as partes convencionam desde já que primeiramente procurarão uma solução por meio de Mediação, fundadas no princípio da boa-fé, antes de recorrer a outros meios judiciais ou extrajudiciais para resolução de litígios».

Article 30
Transitory provisions

1 – The Government shall promote, during the year 2005, the selection and the specific training of mediators for the Official List.

2 – The selection to qualify to provide the mediation services is done by curricular bid, open to that effect.

3 – Regulation of the bid process is approved by Ordinance from the Ministry of Justice..

Article 31
Integration of loopholes

The eventual loopholes in this decree-law shall be overcome by the parts and under the terms of the general law.

Article 32°
Effective date

This law goes into effect 90 days after its publication.

Viewed and approved in the Council of Ministers.

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Ilídio Alexandre da Cruz

João Pinto Serra

Promulgated on ____/____/2004.

Publish it.

The President of the Republic,

Pedro Verona Rodrigues Pires

Referended on ____/____/2004.

The Prime Minister,

José Maria Pereira Neves.