

REPUBLIC OF CAPE VERDE

DRAFT LEGISLATION ON

ON

MEDIATION CENTERS

DECREE-LAW N.º/2004
OF OF

The strengthening of the quality of democracy and the deepening of the citizenship suggest building a system in which the administration of justice has to be characterized by greater accessibility, proximity, speed, economy, multiplicity, diversity, proportionality, informality, opportunity, visibility, communicability, intelligibility, equality, participation, legitimacy, responsibility and effective reparation.

Well, it is in this context that the new means of prevention and the different modality of supuration of conflicts gain their own space, at the same time that the organizational expressions of the civil society are asked to add to its greater civic demand the

Article 3
Principle of independence

The mediation centers must offer guarantees of independence and impartiality in their actions, specifically through the prohibition of intervention in proceedings subsequent to the Mediation, judicial or extra-judicial, to professionals that collaborate with the center, even if they have not intervened, directly or indirectly in the Mediation.

Article 4
Principle of transparency

- 1 – The mediation centers must have an internal regulation that pronounces on:
 - a) The nature and scope of the conflicts that may be submitted to their review;
 - b) The rules of the proceeding, including the preliminary diligences eventually imposed upon the parts, as well as other procedural provisions, namely those relative to its written or verbal character, the competence of the interested subjects and other stakeholders and to the language utilized;
 - c) The principles and rules applicable to the mediation and the mediators, such as good conduct codes and deontological norms;
 - d) The financial responsibilities for the mediation, specifically the Mediators' honoraries and the administrative charges with the mediation, in harmony with the rates in effect as well as with the form and the time table for their liquidation.

- 2 – The list of the mediators who collaborate with the center and the Official list of mediators, published by the Ministry of Justice.

Article 4
Rules of proceeding

- 1 – The rules applicable to the conflict resolution proceedings regulated in this law and in the Mediation Decree-Law must likewise be included in the operational regulation and refer expressly that:
 - a) The parts are assured the right to be represented or accompanied by a lawyer or another procurator with special powers or by a duly credentialed representative;
 - b) The deadlines to practice any acts as well as the minimum formalism for its validity must be clear and precisely defined;
 - c) The intervening powers of the entity competent to conduct the proceedings must be clearly identified and defined with rigor and precision.

Article 5
Coordination

- 1 – The mediation centers shall have a mediator who will be included in the Official Mediators List and who will be competent to:
 - a) Coordinate and superintend all the services pertaining to mediation;
 - b) Designate the Mediators charged with responsibility to assist the parts in the resolution of the conflicts submitted to Law Firms, when the former do not proceed to the choice or do not agree on the mediator;

- c) Promote the collection of the registration fees, mediator honoraries, the administrative charges and other expenses resulting from the mediation due and not paid by any of the parts.

2 – The coordinator should strive to have the Mediators collaborate with the center, in the respective Mediation processes, comply with the ethical norms defined in the Mediation Decree-Law, in the Mediator's Ethical and Deontological Regulation, suspending the mediation immediately when some of these norms have been violated.

3 – The Center's regulation may determine that the coordinator, with prior agreement of the parts, may attend as observer to one or mediation sessions.

Article 6

Administrative charges and mediators' honoraries

1 – The remuneration attributed to the mediator who intervenes in the mediation center's mediation services is calculated under the terms of the articles that follow and of the attached tables.

2 – The mediation charges include the registration fee, the administrative charges, the mediators' expenses and the extraordinary expenses.

3 – The mediation charges are supported by the parts, in equal fractions, save for convention to the contrary.

4 – In the absence of stipulation expressly to the contrary, the referred honoraries as well as the administrative charges, shall be supported by the parts, in equal proportions.

Article 7

Calculation

1 – The mediation costs are calculated in percentages, based on the value of the case.

2 – When, in the judgement of the Coordinator, the value of the case is either

Article 9°
Administrative charges

1 – The administrative charges correspond to a maximum of 5% (five per cent) of the case value and are fixed in the pre-mediation session. The form and payment deadline should also be stipulated.

2 – Whatever the value under discussion, the value of the administrative charges cannot exceed ecv 50.000\$00.

3 – The amount corresponding to the administrative charges are independent from the number of sessions eventually had.

Article 10°
Mediator's honoraries

The mediators' honoraries correspond to a maximum amount of 8% (eight per cent) of the case value.

Article 11°
Payment of mediators' honoraries

1 – The mediators' honoraries are paid in two parcels, with half being paid with the pre-mediation session and the other half between the end of the last mediation session and the signature of the Mediation Term of Agreement, unless another form of payment is

Article 13°

Deadline for the payment

- 1 – The parts must pay the mediators' expenses within three days, counting from the date of their notification by the mediation centers, save if another deadline is determined for it.

- 2 – The notification is accompanied by a document discriminating the expenses made by the mediators.

2 – The Ministry of Justice shall fix, by Ordinance, the registration procedures and admissibility rules.

3 – The Ministry of Justice shall publish, annually, the identification of the entities with credentials as mediation centers.

Article 18
Supervision

1 – It behooves the Ministry of Justice to strive for the respect of the provisions of this

Júlio Lopes Correia

Armindo Cipriano Maurício

Manuel Monteiro da Veiga

Maria Madalena de Brito Neves

Filomena de Fátima Ribeiro Vieira Martins

Sidónio Fontes Lima Monteiro

João Pereira Silva

Ilídio Alexandre da Cruz

João Pinto Serra

Promulgated on ____/____/2004.

Publish it.

The President of the Republic,

Pedro Verona Rodrigues Pires

Referenced on ____/____/2004.

The Prime Minister,

José Maria Pereira Neves.

ANNEX