

REPUBLIC OF CAPE VERDE

DECREE-LAW 31/2005

Of 9 May 2005

ON

MEDIATION

COUNCIL OF MINISTERS

Decree-Law N. ° 31/2005

of 9 May 2005

Mediation

The issue of access to Justice and to Law has been the object of great discussions worldwide. The slowness in the realization of justice carries high costs to be incurred by persons and businesses. In as much as these social and individual needs require dynamic solutions and, given the essentially private character subjacent to many conflicts, students and practitioners in the field of law have recommended the adoption of quick and effective instruments better suited for the treatment of conflicts.

The Government's Program for the VI Legislature 2001-2005, approved by Resolution n.º 5-A/2001, of 13 March, identifies indications of an accentuated crisis in justice and affirms that the same must be faced up to with determination and overcome through a vigorous and coherent movement of reforms leading to the affirmation and structuring of an effectively independent justice, accessible by the citizens, quick in its operation, that gives security to the citizen and is capable of responding to the challenges of development. To alleviate the excess of conflicts and courts overload, it is proposed, among other alternatives, the incentive to a conciliatory resolution of conflicts, through institutes suited to that end, namely, the arbitration centers and mediation instances.

Well, the recourse to mediation offers quickness and celerity in conflict resolution by consensus. In the final analysis, it is a mechanism that assures amplification of the access to justice and to the right of the citizens susceptible, for that reason, of reforming the operation of justice and the exercise of citizenship.

As an alternative form of conflict resolution, mediation presents itself as a possibility to undo the bottlenecks in the courts and, consequently, to strengthen their prestige before the citizens. In truth, the objective is a quick, secure and effective resolution of conflicts.

It is concluded, therefore, for the coexistence of a formal jurisprudence with an alternative conflict resolution, in as much as mediation does not seek to replace or weaken the Judicial Power, but rather, adds to it with the purpose of contributing to strengthening the amplification of the access to justice and to the law and, consequently, to making effective the fundamental rights and guarantees of the individual.

In one form or another, the access to justice and the courts for the defense of the rights constitutes an indispensable fundamental guarantee of full citizenship.

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:

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
Predominance of the Will of the Parts

- 1 – The will of the parts 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
Mediation Centers

- 1 – Official or private mediation structures denominated mediation centers may be created, that avail to any interested party the access to mediation, as an alternative form of conflict resolution.
- 2 – The centers shall have as objective to stimulate the preliminary resolution of conflicts by agreement of the parts.
- 3 – The Government defines by decree-law the operation and registration regime of the mediation centers.

Article 7
Mediators

1 – The Mediators are singular persons, national or non-national, fully able, of proven moral and professional credibility that enables them to mediate the conflicts or cases submitted to the mediation centers included in the Official Mediators List.

2 - The mediator must meet the following requisites:

- a) Be more than 25 years of age;
- b) Have completed the 11th year of school (11th Grade);
- c) Have completed a course on mediation, recognized by the Ministry of Justice;
- d) Be preferentially a resident in the district or island where he/she proposes to exercise the function of mediator.

3 – In the exercise of the functions for which they are indicated or appointed, the mediators obey the precepts contained in this Law, in the Mediators’ Deontological Regulad-d2796 Tediat.0003 Tce.’s{3 for)T631.085 0 TD-.0002280.0412 T0005.hMediatorsn-27s

**CHAPTER II
OF REPRESENTATION OF THE PARTS**

**Article 8
Representation**

1 – The parts participate in the process, personally. In the proven impossibility to do so, they may be represented by someone else, with a power of attorney that delegates the powers of decision.

2 – The parts may be accompanied by attorneys, by other persons they trust, as long as it is agreed to between them and considered by the mediator as useful and pertinent to the Mediation process.

**Article 9
Mandatory Representation**

Representation is mandatory, when the part is blind, deaf, mute, analphabet, not knowledgeable in the Portuguese or Creole language or if, for any reason, it is in a position of manifest inferiority.

**CHAPTER III
MEDIATION**

**SECTION I
PRE-MEDIATION**

**Article 10
Introducing the Case to Mediation**

1 – A case may be introduced to Mediation verbally or in writing.

2 – When done in writing, the part presents a mediation request with the most complete identification possible of the parts and a summary description of the conflict, adding the documents considered useful for the resolution of the conflict.

3 – Whenever mediation is solicited for the resolution of a conflict, the mediation center coordinator verifies from the outset if the issue presented is applicable to mediation as well as its origin.

4 – If there is any reason that excludes the conflict from the scope of mediation, the fact and the reasons are immediately communicated to mediation requestor.

**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 should 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

- c) Final session and signature of the Agreement, if obtained.

**Article 16
Agreement**

1 – Having obtained the agreement, the mediator elaborates the corresponding term, signed by the parts and by two witnesses, overseeing as an extra-judicial executive.

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

**Article 21
Impartiality and Independence**

The person designated to act as mediator must be must be impartial and independent, and remain so through the entire mediation process. This duty is extensive to the co-mediator, in the event of Co-Mediation.

**Article 22
Impediment**

The mediator is impeded from acting or being directly or indirectly involved in processes subsequent to the Mediation, such as the arbitration or the judicial process, independently of the success of the Mediation, unless the parts determine differently.

**Article 23
Confidentiality**

1 – The Mediation information are confidential and privileged.

2 – The mediator, any of the parts or any person that participates in the Mediation, cannot reveal to third parties or be called or compelled, including in subsequent arbitration or judicial process, to reveal facts, proposals or any other information obtained during the Mediation.

3 – The documents presented during the Mediation must be returned to the parts, after they have been analyzed. The remaining documents must be destroyed or archived as agreed upon.

**Article 24
Responsibility**

The mediator cannot be made responsible by any of the parts, by acts of omission related to the Mediation conducted according to this decree-law, the Mediators Ethical and Deontological Regulation and rules agreed to by the parts, except when there is proof of cheating, fraud or violation of confidentiality.

**CHAPTER V
CLOSING OF THE MEDIATION PROCESS**

**Article 25
Closing of the Mediation Process**

Aside from the means already foreseen in this law, the Mediation Process may be ended by decision of the coordinator of the mediation center when there are fundamented motives to believe that the mediation rules or principles established in this Decree-Law, in the Mediators Deontological Code or in remaining applicable legislation, were violated.

**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 – Interested parties that meet the requisites foreseen in Article 7 of this Decree-Law, inscribe in the List.
- 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.
- 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.

«If a conflict arises by reason of this contract or subsequent addenda, namely, non-compliance with it, its termination, validity or invalidity, the parts shall agree beforehand that shall first of all seek a solution by way of Mediation, founded on the principle of good faith, before resorting to other judicial or extra-judicial means for the resolution of conflicts»

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.

José Maria Pereira Neves, Manuel Inocêncio Sousa, Basílio Moço Ramos, Victor Manuel Barbosa Borges, Maria Cristina Fontes Lima, 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 14 April 2005.

Publish it.

The President of the Republic, PEDRO VERONA RODRIGUES PIRES

Referenced on 15 April 2005

The Prime Minister, *José Maria Pereira Neves.*