

REPUBLIC OF CAPE VERDE
LEGISLATION ON
ON
MEDIATION

**Decree-Law n°31/2005
OF 9 May OF 2005**

The issue of access to Justice and to Law has been the object of great discussions world-wide. The slowness in the realization of justice causes 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 IV Legislation 2001-2005, approved by Resolution n.º 5-A/2001, of 13 March, identifies indications of an accentuated crisis 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 all citizens, quick in its operation, that gives security to the citizen and is up to respond 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, to the 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 last analysis, it is a mechanism that assures amplified access to justice and to the law by 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 law 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:

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

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

Article 22
Impediment

The mediator is impeded from acting or being directly or indi

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.

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.

José Maria Pereira Neves

Manuel Inocêncio Sousa

