

**REPUBLIC OF CAPE VERDE**

**OF**

**THE ARBITRATION LAW**

# **LAW N.º 76/VI/2005**

**OF 16 August OF 2005**

The National Assembly decrees, under the terms of subparagraph d) of article 174º of the Constitution, the following:

## **CHAPTER I**

### **General Principles**

Article 1º

#### **Object**

The present law regulates the arbitration as a means of the resolution of non jurisdictional conflicts

Article 2º

4 – The State and other collective persons under public law may celebrate arbitration conventions, if so authorized by special law or if they have as object conflicts pertaining to private law relationships.

#### Article 4°

#### **Exclusions**

The following cannot be the object of arbitration:

- a) The conflicts pertaining to indispensable rights;
- b) Those that, by special law, are submitted exclusively to a judicial court or to necessary arbitration;
- c) The conflicts in which minors, the stakeholders are incapacitated or disabled under the terms of the civil law, even if they are legally represented.

#### Article 5°

#### **Requisites of the convention**

1 – An arbitration convention must be done in writing.

2 – An arbitration convention is considered done in writing if it is included in a document signed by the parts, or in an exchange of letters, telex, telegrams, **electronic mail** or other means of telecommunications, that leave written proof, whether these documents contain the convention directly, or they contain a clause

2 – The renunciation does not impede the

a) Some of the designated arbiters dies, excuses him/herself or renders him/herself permanently incapable to exercise the function or if the designation remains without effect, as long as he/she is not substituted under the terms of Article 19.

b) If the decision is not proffered in the established deadline in accordance with the provisions of number 2 of Article 24°

2 – Save for convention to the contrary, the death or extinction of the parts does not lead to the expiration of the arbitration convention nor does it extinguish the instance in the arbitral court.

Article 11°

### **Financial responsibilities of the process**

The remuneration of the arbiters and the other parties intervening in the process, as well as its partition between the parts, must be fixed in the arbitration convention or in a subsequent document subscribed to by the parts, unless they result from the arbitration regulation of the entity chosen under the terms of 43°.

## **CHAPTER III**

### **OF THE ARBITERS AND THE ARBITRAL COURT**

Article 12°

#### **Composition of the court**

1 – The arbitral court may be constituted by a single arbiter or by several arbiters, in an odd number.

2 – If the number of members in the arbitral court is not fixed in the arbitration convention or in subsequent writing subscribed to by the parts, nor does it result from them, the court shall be composed by three arbiters.

Article 13°

#### **Competence of the court**

Only the arbitral courts constituted under the terms of this Law are competent to decide conflicts submitted to arbitration.

## Article 14°

### **Designation of the arbiters**

1 – The parts must, in the arbitration convention or in subsequent written document signed by them, designate the arbiter or arbiters that will constitute the court, or fix the mode by which they are to be chosen.

2 – If the parts do not designate the arbiter or arbiters, nor fix the mode by which they are chosen, and there is no agreement between them regarding this designation, each one shall indicate an arbiter, and the arbiters thus designated shall choose the arbiter that will complete the constitution of the tribunal.

## Article 15°

### **Arbiters: requisites**

The arbiters must be singular persons and plainly capable of fulfilling the requisites stipulated by the parts, or, by the arbitration entities indicated by them.

## Article 16°

### **Freedom to accept; excuse**

1 – No one can be obligated to function as an arbiter, but if the responsibility is accepted, it shall be legitimately excused based on supervening cause that makes it impossible for the designated person to exercise the function.

2 – The responsibility is considered accepted whenever the designated person reveals the intention to act as an arbiter or does not declare, in writing addressed to any of the parts, within the ten days subsequent to the communication of the designation, that he/she does not wish to exercise the function.

3 – Having accepted the responsibility, if the arbiter unjustifiably excuses him/herself from the exercise of his/her function he/she shall respond for the damages he/she may have caused.

## Article 17°

### **Impediments and refusals**

1 – The impediments and excuses regime, established in the civil process law for the judges, is applicable to the arbiters not appointed by agreement between the parts.

2 – Whosoever has exercised the mediation activity in any issue related to the object of the conflict, cannot be indicated as arbiter, save by express acceptance of the parts.

3 – The part cannot refuse the arbiter designated by him/her, save in the event of occurrence of a supervening cause of impediment or excuse, under the terms of the preceding number.

4 – It behooves the president of the arbitral court the decisions on impediments and refusals.

#### Article 18°

#### **Constitution of the court**

1 – The part that proposes to present a case in the arbitral court must notify the opposite part of this fact.

2 – The notification is made by registered letter with return receipt or by other communication means that permit proof of the notification and of its reception.

3 – The notification must indicate the arbitration convention and indicate precisely the object of conflict, if it is not already determined in the convention.

4 – If it is incumbent on the parts to designate one or more arbiters, the notification shall contain the designation of the arbiter or arbiters by the part that proposes to institute the action, as well as the invitation addressed to the other part to designate the arbiter or arbiters incumbent upon him/her to indicate.

5 – In the cases in which the arbiter must be designated by agreement of the two parts, the notification shall contain the indication of the arbiter proposed and the indication to the other part to accept the designation.

6 – If it behooves a third party to designate one or more arbiters and such designation has not yet been made, the third party shall be notified to do so and inform both parts accordingly.

#### Article 19

#### **Nomination of the arbiters and determination of the object of the conflict by a judicial court**

1 – In all the cases in which the nomination of an arbiter or arbiters in conformity with the provisions of the preceding articles is missing, the nomination falls on the president of the district court with jurisdiction over the place fixed for the arbitration or, if the place has not been fixed, that of the district court of the requestor's domicile.

2 – The nomination may be requested, after one month has elapsed over the date of the notification foreseen in number 1 of Article 17, in the case contemplated in numbers 4 and 5 of this article, within one month counting from the nomination of the last of the arbiters in the case referred to in Article 12, n. ° 2.

3 – The nominations made under the terms of the preceding numbers are not susceptible of impugnation.

4 – If within the deadline referred to in n. ° 2 the parts do not reach agreement on the determination of the object of the conflict, it shall behoove the court to decide. This decision may be appealed with aggravation, to be heard immediately.

5 – If the arbitration convention is manifestly null the court must declare that there is no need to nominate the arbiters or to determine the object of the conflict.

#### Article 20°

##### **Substitution of the arbiters**

If any of the arbiters dies, excuses him/herself or becomes permanently unable to exercise the functions or if the designation becomes ineffective, substitution of the same



Article 22°

**Ethical duties of the arbiters**

1 – The arbiter cannot:

- a) Represent the interests of either of the parts;
- b) Receive or obtain, before, after or during the arbitration, any remuneration, premium or patrimonial advantage from persons with direct or indirect interest in the arbitration.

2 – The arbiter must:

Article 24°

**Fundamental principles to be observed in the process**

On any case, the arbitration process procedures should abide by the following fundamental principles:

- a) The parts shall be treated with absolute equality;
- b) The demanded shall be summoned to defend him/herself;
- c) In all the phases of the process strict observance of the principle of the contradictory shall be observed;
- d) Both parts must be heard, verbally or in writing, before a final decision is proffered.

Article 25°

**Representation of the parts**

The parts may designate someone to represent or assist them in court.

Article 26°

**Proof**

- 1 – Any proof admitted by law may be produced before the arbitral court.
- 2 – When the proof to be produced depends on the will of one of the parts, or, of a third party and the same refuse the necessary collaboration, the interested party may, once the authorization is obtained from the arbitral court, solicit to the judicial court that the proof be produced before it, and the results should be remitted to that first court.

Article 27°

**Cautionary measures**

Save for stipulation to the contrary by the parts, the arbitral court can, at the request of one of the parts, order that any of them take the provisional measures it considers necessary in relation to the object of the conflict, even to request the posting of a guarantee.

**CHAPTER IV  
OF THE ARBITRAL DECISION**

Article 28°

**Time limit for the decision**

- 1 – The parts may fix the time limit for the arbitral court's decision or the mode for establishing that time limit, in the arbitration convention or in subsequent writing, up to time of acceptance of the first arbiter.
- 2 – The time limit for the decision shall be six months, if not otherwise agreed upon by the parts, under the terms

2 – The incompetence of the arbitral court can only be argued up to presentation of the defense at the bottom-line of the case, or jointly with it.

3 – The decision by which the arbitral court declares itself competent can be reviewed by the judicial court only after the bottom-line decision has been proffered and by the means specified in articles 33 and 38.



d) There was a violation of Article 29 n. ° 1, subparagraph f), 2 and 3;

e) The court acquired knowledge of issues it was not supposed to know, or did not pronounce on issues it should have reviewed.

2 – The fundament of the annulment foreseen in subparagraph b) of the preceding number cannot be invoked by the part who had knowledge of it in the course of the arbitration and that, being able to do so, did not allege it opportunely.

Article 37°

### **Right to request annulment; time limit**

1 – The right to request annulment of the arbiters' decision is not renounceable.

2 – The annulment action can be attempted within one month counting from the notification of the arbitral decision, In the Supreme Court of Justice.

## **CHAPTER VII**

### **EXECUTION OF THE ARBITRAL DECISION**

Article 38°

#### **Execution of the decision**

The execution of the arbitral decision occurs in the court of the 1st instance, under the terms of the civil process law.

Article 39°

#### **Opposition to the execution**

The course of the deadline to attempt the annulment action does not impede its fundaments to be invoked as a way to oppose the execution of the arbitral decision.

## **CHAPTER VIII**

### **OF INTERNATIONAL ARBITRATION**

Article 40°

#### **Concept of international arbitration**

1 – The arbitration assumes an international character when some of the following circumstances occur with it:

- a) That, at the moment of celebrating the arbitral compromise, the parts have domiciles in different states;
- b) That the juridical relationship that gives rise to the conflict affects international trade principles.

#### Article 41°

##### **Applicable law**

- 1 – The parts may choose the substantive law to be applied by the arbiters, if they have not authorized the arbiters to judge according to equity.
- 2 – In the absence of a choice, the court applies the law that is more appropriate to the conflict.

#### Article 42°

##### **Appeals**

In the event of an international arbitration, the court's decision cannot be appealed, save if the parts have agreed to the possibility of appeal and regulated its terms.

#### Article 43°

##### **Friendly composition**

If the parts entrust it with this function, the court may decide the conflict by appeal to the composition of the parts on the basis of the equilibrium of the interests at play.

### **CHAPTER IX**

#### **Acknowledgement and Execution of Overseas Arbitration Decisions**

#### Article 44°

##### **Acknowledgement and Execution**

1. The overseas arbitration decision, irrespective of the State where it is pronounced, is acknowledged as having mandatory force and, upon a written

request submitted to the competent court, it should be enforced, without prejudice to what is written in this, and the next article.

2. The party invoking the arbitration decision, or requesting its enforcement, should provide the original arbitration decision, or an authenticated copy, as well as the original Arbitration Convention mentioned in article 5, or its copy. If said arbitration decision and convention are written in a language other than the portuguese, the party should submit their authenticated translations.

#### Article 45°

#### **Justifications for Acknowledgment and Execution Refusal**

1. An overseas arbitration decision acknowledgement or execution may be refused, by request of the party against which it is invoked, if that party submits to the competent court to which the acknowledgement and execution is requested proof that:
  - a) The arbitration convention is not valid under the law provisions to which the parties are subordinated or, lacking indications to this purpose, under the law provisions of the State where the arbitration decision was passed;
  - b) It was not properly informed about the designation or selection of an arbitrator or about the arbitration proceedings, or that it was impossible to assert its rights for any other reason;
  - c) The arbitration decision pertains to a litigation that was not the object of an arbitration convention, or includes decisions that go beyond the arbitration convention scope, however, its acknowledged that the arbitration decision dispositions regarding to the issues submitted arbitration may be dissociated from those not submitted to arbitration; acknowledgement or execution refusal may only apply to parts of arbitration decisions pertaining to issues not submitted to arbitration;
  - d) The arbitration court or process constituion is not in compliance with the parties' convention or, lacking such convention, to the law of the State where the arbitration took place;
  - e) The arbitration decision has not yet become mandatory to the parties or has been annuled or suspended by a competent State court where, or under whose law provisions, it had been passed



2. Acknowledgement or execution can be equally refused if the court understands that:

- a) The litigation object is not susceptible to be decided through arbitration, under article 4 terms;
- b) The arbitration decision acknowledgement or execution contravenes public order;
- c) The State where the arbitration decision was passed would refuse acknowledgement or execution of arbitration decisions passed in Cape Verde.

3. If an arbitration decision annulment or suspension is requested of a State competent court where, or under whose law, the arbitration decision had been passed, the court to which the request for acknowledgement or execution has

been referred may, if it is satisfied that the arbitration decision is not enforceable in Cape Verde, refuse to acknowledge or execute it.

Approved on June 30, 2005

The Chairman of the National Assembly, Aristides Raimundo Lima

Promulgated on July 29, 2005

To be Published

The President of Reublic, PEDRO VERONA RODRIGUES PIRES

Signed on August 1, 2005

The Chairman of the National Assembly, Aristides Raimundo Lima