

**REPUBLIC OF CAPE VERDE**  
**DRAFT JUSTIFICATION NOTE**  
**ON**  
**THE ARBITRATION LAW**

## **ARBITRATION**

### **- JUSTIFYING NOTE -**

The international experiences demonstrate that, as long as they guarantee the respect for certain essential principles, the alternative mechanisms for the resolution of conflicts, may assure good results whether for the parts or for the professionals, reducing the cost and the time for the resolution of conflicts.

Save for some exceptions, many of the conflicts that arise in every day life may be entrusted to the decision of arbiters, by free personal initiative: this constitutes voluntary arbitration.

That is what frequently happens in commercial life, in the various issues raised by the interpretation of and compliance with the most diverse contracts (purchase and sale, renting, construction projects, etc.), in the domain of real rights (when, for example, when two or more persons are simultaneously owners of the same building), of necessary law (partition of an inheritance, for example), etc.

Arbitration is a conflict resolution process by which the parts entrust its resolution to an arbiter or to various arbiters, organized into an Arbitration Tribunal.

The conflict submitted to arbitration must pertain to existing laws and the decision emitted has the same value as a judicial sentence, which may be executed in the Courts.

The parts may choose the arbiters themselves and the rules of the process or entrust the organizing and operation of the Arbitration Tribunal to an institutional entity (Arbitration Center). In the first case the arbitration is designated as "ad-hoc" and, in the second, by institutionalized arbitration. The parts may, likewise, if the arbiters must judge according to the law (Constituted Law) or according to equity (material justice applied to the concrete case).

Arbitration is thus characterized by flexibility, in the sense that the parts are, in principle, free to resort to this method, of deciding which organization, or which person shall be in charge of the process, or choosing to participate in person or to be represented during the process, or of deciding the direction to impart to the process.

Once the conflict is resolved, this consensus and voluntary approach increases the possibilities that the parts may maintain their commercial or other type of relationship.

Thus, arbitration fits plainly in the context of the policies on the improvement of the access to justice, in fact playing a complementary role relatively to the jurisdictional procedures and plays yet an important role as an instrument in the service of social peace.