

**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 supposition 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 responsibility for a new and true protagonism in the daily and concrete realization of justice.

Little known among us, but sufficiently experimented in other places, the modalities of alternative resolution of conflicts may offer the scope and circumstance for another, well different acting by the State.

It is that, in contrast with the exclusivist intervention and of absolute reservation of power that is invariably attributed in this domain, the State may here and now bet on a true partition of competences with other social agents, impelling a movement capable of promoting a distinct partitioning of attributions, better able to serve the citizens and the collectivity.

Bringing other persons and other institutions to compete actively in the realization of justice, the State can, with advantage, keep for itself alone its primordial function of regulation and impartial frameworking.

**Article 1**  
**Mediation Centers**

1 – Any private entity may install, organize and develop mediation centers, not for profit, with the objective of through a composition of the interests of the parts. Attained by the parts themselves with the help of a third, neutral and impartial, duly qualified part, obtain the resolution of an existing or emerging conflict.

2 – The mediation centers shall assist or promote the resolution of the conflicts that are submitted to them through the Mediators, duly included in the Official List of mediators thus assuring the coordination and administrative support of these professionals.

3 – The mediation centers may specialize their competences according to the nature of the conflict.

4 – This law does not cover arbitration.

**Article 2**  
**Registration system**

1 – The mediation proceedings registration system is hereby created.

2 – The entities that propose to document extra judicial conflict resolution procedures through the mediation centers, must request their respective registration before the Ministry of Justice, subject to the principles and procedural rules foreseen in this law.

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 indeterminate or cannot be estimated, the value of the registration fee, the administrative charges or the mediator honoraries to be paid are calculated in accordance with the complexity of the matter and other circumstances deemed pertinent.

3 – The maximum limit of the expenses cannot exceed 1/5 of the value of the case.

#### Article 8

##### **Registration fee**

The mediation request must be accompanied by the payment of the registration fee, in a maximum amount corresponding to **3% (three per cent)** of the value of the case.

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 conventioned between the parts and the mediator and accepted by the mediation center.

2 – The amounts of the honoraries are independent of the number of sessions eventually had.

Article 12°  
**Mediators' expenses**

1 – The mediators' expenses correspond to the total of the travel and lodging costs, whenever dealing with a mediator who resides in another municipality or in another island, or when, for imperatives of the process, the mediator has to travel to perform specific diligences.

2 – The expenses referred to in the preceding number are fixed by the Coordinator, as a function of its effective cost.

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.

Article 14°  
**Consequences of non-payment of the costs**

- 1 – In the absence of non-payment of any charges or honoraries foreseen in this law the mediation center may determine for the suspension of the mediation underway.
- 2 – However, any of the parts may **sub-rogar-se** to the part that defaulted in the payment of the costs, reserving the right to recover the amount paid.
- 3 – Once the payment is made, the mediation process shall follow its normal course.

Article 15  
**Atendimento e apoio administrativo**

1. The mediation center's regulation must define the organization of the center's public attendance and administrative support services.
2. The services must guide their actions in accordance with the principles of quality, trust, effective and transparent communication, simplicity, responsibility and participative management.
3. Computers may be used in the treatment and execution of any act forms or requirements, as long as the rules pertaining to the protection of personal data are respected and this use is mentioned.

Article 16.  
**Partnerships and interchanges**

On being set-up, the mediation centers may effect partnerships or protocols with the Municipalities, which may propose to the General Directorate of Administration the installation of a mediation center in their municipality:

Article 17  
**Registration**

- 1 – The mediation centers requesting the registration foreseen in n. ° 1 of Article 2 cannot initiate their activities before the Ministry of Justice notifies them that their registration has been formalized.

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 law, with the power to, specifically, determine the extinction of the registration.

2 – In the case foreseen in the preceding number the Minister of Justice may publish the extinction of the registration and the suppression of the entity indicated in the publication foreseen in this law.

3 – The mediation centers must send to the Ministry of Justice a semi-annual report pertaining to their activities. The report must permit the evaluation of the results obtained and identify the nature of the conflicts submitted to the center.

#### Article 19 **Effective date**

1 – The law goes into effect on the date of publication of the Ordinance referred to in Article 17º

2 – The Ordinance referred to in the preceding number must be published within 90 days, counting from the date of publication of this law:

. 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 \_\_\_\_/\_\_\_\_/2004.

Publish it.

The President of the Republic,

Pedro Verona Rodrigues Pires

Referended on \_\_\_\_/\_\_\_\_/2004.

The Prime Minister,

José Maria Pereira Neves.

## ANNEX

Table referred to in Article 27 of Decree-Law -----

### CALCULATION OF THE CHARGES WITH MEDIATION

(Registration fee, administrative charges and mediators' honoraries)

Charges	%	10.000\$00	50.000\$00	150.000\$00	250.000\$00	1.000.000\$00
Registration fee	3%	300\$00	1.500\$00	4.500\$00	7.500\$00	30.000\$00
Administrative Charges	5%	500\$00	2.500\$00	7.500\$00	12.500\$00	50.000\$00
Mediators' Honoraries	8%	800\$00	4.000\$00	12.000\$00	20.000\$00	80.000\$00
Total	16%	1.600\$00	8.000\$00	24.000\$00	40.000\$00	160.000\$00