

## **Regulatory Decree n° 8/2005**

**Dated October 10**

The Justice Sector Government Program is being implemented through a vigorous and coherent reform movement geared towards the affirmation and structuring of an effectively independent justice, accessible to citizens, swift in its operation, which provides security to the citizen and is capable of meeting the development challenges.

To obviate the litigation excess and the courts overload, diplomas that promote legal dispute solution through appropriate instances, namely arbitration.

The dissemination of voluntary arbitration mechanisms may provide one of the ways to unblock the courts activity; additionally, the comparative experiences reveal that this alternative means to court justice possesses the capacity to provide an equally right and dignified justice.

It so happens that for the dissemination of such solution will significantly contribute the existence of institutionalized and permanently operating centers, as if making this activity professional; such arbitration centers have a tendency, in countries where the economic life is more intense, to absorb much of what was ascribed to *ad hoc* arbitration.

The state, bringing other people and other institutions to actively providing justice, reserves itself, as it is its authority and duty, the right to impartially regulate and frame legislate such centers, thus preventing situations that happened in other countries, where the emergence of numerous arbitration centers of doubtful legitimacy and with the purpose to enrich at the expenses of the operators' inexperience brought about difficulties and gave rise to mistrust.

Thus, it is added, to the referred to objectives, that of giving confidence to the operators, without committing the Government, through the Ministry of Justice, a non-controllable discretionarity and, naturally, that not pre-establishment of unduly rigid legal criteria, which would misconstrue the system natural flexibility.

Under the terms of article 46° of Law 76/VI/2005, dated August 16, and using the faculties provided by sub paragraph b) of article 204°, n° 2 of the Constitution, the Government decrees the following:

### **Article 1°**

#### **Request**

1. The entities which, under the terms of article 46° of Law 76/VI/2005, dated August 16, that regulates the resolution of conflicts through arbitration, wish to promote, with an institutionalized nature, the exercise of voluntary arbitration, should request to the Ministry of Justice the authorization to create the respective centers.
2. The request should include the following documentation:
  - a) The petitioner's identification, either as a firm or individual, headquarters, and constitution date;
  - b) Headquarter's address;
  - c) The identification of the manager, by name, birthdate, residential address, as well as, the date and place of identity document issue;
  - d) Manager's criminal records certificate;
  - e) Commercial registry document proof;
  - f) Document proving the fulfillment of fiscal obligations

## **Article 2°**

### **Assessment**

In assessing the requests submitted under the terms of the previous article, the Justice Minister should take into consideration the representativeness of the requesting entity, and its idoniety to perform the activity it proposes to, so as to ensure that conditions to carry out such activity are met.

## **Article 3°**

### **Reasoning**

The dispatch over the request should provide its justification, specifying, in each case, the specialized or general nature of arbitration to be conducted by the requesting entity.

## **Article 4°**

### **Arbitration Centers List**

1. A Minister of Justice decree will include a list of arbitration centers authorized to conduct institutionalized voluntary arbitration, irrespective of the fact that the authorization dispatch have immediate effect.
2. The list mentioned in the previous article is to be updated yearly.

## **Article 5º**

### **Authorization Revocation**

1. The authorizations granted under the term of this diploma may be revoked if any circumstances occur that proves that the center under scrutiny no longer fulfill the technical or legitimacy conditions to conduct institutionalized voluntary arbitration.
2. The revocation dispatch, duly commented, is to be published in the Official Gazette.

## **Article 6º**

### **Regulatory Offence**

1. The exercise of institutionalized voluntary arbitration by non-authorized entities constitutes a regulatory offence.
2. Entities engaged in institutionalized voluntary arbitration without having received previous authorization are punished with fines ranging from CVE 500.000\$00 to CVE 1.300.000\$00.
3. The regulatory offence processing and the fine application as established in the previous paragraph is the Ministry of Justice's prerogative.

## **Article 7º**

### **Effective Date**

This diploma becomes effective the day after its publication.

Reviewed and approved by the Council of Ministers

*José Maria Pereira Neves – Maria Cristina Fontes Lima – João Pereira Silva – Ilídio Alexandre da Cruz – João Pinto Serra*

Promulgated on September 26, 2005

To Be Published

The President of the Republic, PEDRO VERONA RODRIGUES PIRES

Referended on September 26, 2005

The Prime Minister, José Maria Pereira Neves