

**REPUBLIC OF CAPE VERDE**

**DRAFT LEGISLATION ON**

**ON**

**ARBITRATION CENTERS**

**Project**  
**of**  
**Decree-Law n.º ---/--**

In the diffusion of the voluntary arbitration mechanisms there will be one of the avenues to unblock the activities of the courts; additionally, there is the circumstance of the comparative experiences revealing that this alternative means of the judicial justice possesses virtuosities of realization of an equally certain and dignified justice.

It so happens that to disseminate these solutions, the existence of institutionalized and permanently operational centers shall contribute significantly, as if professionalizing the activity; in the countries with a more intensive economic life, such arbitration centers tend to absorb much of what was previously imputed to “ad-hoc” arbitration.

The Arbitration Centers are alternative consumption conflicts resolution centers that may have as objective the sectorial conflicts such as the automobile and automobile insurance, cases that are said to be of vertical scope, or of a generic competence, embracing any type of generic conflict, that may have occurred in a certain geographical area, in which case they are said to be of a horizontal scope.

Among the services normally rendered by the Arbitration Centers are included:

- **information**,
- **mediation** the claimed and the claimant, seeking to clarify and bring the respective positions,
- **conciliation**, seeking to bring these diverging positions closer and even proposing the basis for an agreement,
- **arbitration**, through which the parts delegate the conflict resolution to one or to several arbiters, through decisions that are conferred the same force as that of a judicial sentence of first instance.

The parts may, likewise, determine if the arbiters must judge according to the law (Constituted Law) or according to equity (material justice applied to the concrete case).

Giving execution to the provisions of article 43 of law \_\_\_\_\_ it was sought, by giving it compliance, to congregate the objective of not committing to the Government, through the Ministry of Justice, an uncontrollable discretionary power, with that of not establishing excessively rigid legal criteria that detract from the natural flexibility of the system.

Thus, in developing article 43 of Law n.º \_\_\_\_/\_\_\_\_, de \_\_\_\_ de \_\_\_\_, the Government decrees, under the terms of subparagraph \_\_\_\_ of n.º \_\_\_\_ of article \_\_\_\_ of the Constitution, the following:

#### Article 1

##### **Formulating the request**

1 – The entities that, in the ambit of Law No. \_\_\_\_\_, propose to promote, with an institutionalized character, to perform voluntary arbitration, must request authorization to the Ministry of Justice to create the respective centers.

2 – In the request referred to in the preceding number the interested entities must justify fully their pretensions, delimiting the object of the arbitrations they propose to perform.

#### Article 2.º

##### **Review**

In reviewing the requests formulated under the terms of the preceding article, the Ministry of Justice must take into account the representativity of the requesting entity and his/her credibility to prosecute the activity he/she proposes to carry out, in order to verify that all conditions that assure an adequate execution of such activity are met.

#### Article 3.º

##### **Decision**

The dispatch proffered on the request must be fundamented, specifying on a case by case basis, the specialized or generalized character of the arbitrations the requesting entity proposes perform.

#### Article 4.º

##### **List of authorized entities**

1- A Ordinance from the Ministry of Justice shall contain a list of the entities authorized to perform institutionalized voluntary arbitration, with a mention, for each one, of the general or specialized character of the latter.

2- The list referred to in the preceding number shall be updated annually.

Article 5.º

**Revocation of an authorization**

- 1- The authorization granted under the terms of this law may be revoked if some fact occurs that demonstrates that the entity in question ceased to possess the technical conditions and credibility to perform the institutionalized voluntary arbitrations.
- 2- The duly fundamented revocation dispatch is published in the Official Bulletin.

Article 6.º

**Fines**

- 1- The entities that perform institutionalized voluntary arbitration without having obtained prior authorization are punished with a fine of ecv \_\_\_\_\_\$\_\_ to \_\_\_\_\_\$\_\_ .
- 2 – It behooves the Ministry of Justice to apply the fine referred to in the preceding number.

Article 7.º

**Effective date**

This law goes into effect 90 days after its publication.

Viewed and approved in the Council of Ministers.

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Promulgated on \_\_\_\_/\_\_\_\_/2004.

Publish it.

The President of the Republic,

Pedro Verona Rodrigues Pires

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

The Prime Minister,

José Maria Pereira Neves.