

Law no. 29/2013 of 19th April

Establishing the general principles applicable to mediation carried out in Portugal, as well as the legal framework for civil and commercial mediation, for mediators and for public mediation

Pursuant to the terms of sub-paragraph c) of article 161 of the Constitution, the Assembly of the Republic decrees as follows:

**CHAPTER I
General Provisions**

Article 1

Object

The present Law determines:

- a) The general principles applicable to mediation carried out in Portugal;
- b) The legal framework for civil and commercial mediation;
- c) The legal framework for mediators;
- d) The legal framework for public mediation systems.

**Article 2
Definitions**

For the purposes of the present Law:

- a) “Mediation” is deemed to be the form of alternative dispute resolution, carried out by private or public entities, by which two or more parties in dispute voluntarily seek to reach a settlement with the assistance of a mediator;
- b) “Mediator” is deemed to be an impartial and independent third party, devoid of powers of imposition upon the parties to the mediation, who assists the parties in their attempt to obtain a final settlement on the subject matter in dispute.

CHAPTER II

Principles

Article 3

Mediation Principles

The principles set out in the present chapter are applicable to all the mediations carried out in Portugal, regardless of the nature of the dispute that is the subject of mediation.

Article 4

The Principle of Voluntariness

1 - The mediation procedure is voluntary, it being necessary to obtain the clarified and informed consent of the parties to the realisation of mediation, whereby they shall be responsible for the decisions made in the course of the procedure.

2 - During the mediation procedure the parties may, at any moment, jointly or unilaterally, revoke their consent to the participation in the said procedure.

3 - The refusal of parties to initiate or proceed with the mediation procedure shall not constitute violation of the duty to cooperate pursuant to the provisions foreseen in the Portuguese Civil Procedure Code.

Article 5

The Principle of Confidentiality

1 - The mediation procedure shall be confidential. The mediator shall keep confidential all information that comes to his knowledge within the ambit of the mediation procedure, he cannot use this information for his own benefit or that of others.

2 - The information provided as confidential to the mediator by one of the parties may not be communicated, without his consent, to the remaining parties involved in the mediation procedure.

3 - The duty of confidentiality regarding the information on the content of the mediation may only cease due to reasons of public policy, in particular to ensure the protection of the superior interests of the child, when the protection of the physical or psychological integrity of any person is at stake, or when such is necessary for the implementation or enforcement of the settlement agreement obtained through mediation, strictly insofar as, in concrete terms, it reveals necessary for the protection of the referred interests.

4 - Except for the situations foreseen in the previous paragraph or in respect of the settlement agreement obtained, the content of the mediation sessions may not be used in court or in arbitration proceedings.

Article 6

The Principle of Equality and Impartiality

1 - The parties must be treated equally throughout the mediation procedure, whereby the mediator shall be responsible to manage the procedure such as to guarantee the balance of powers and the possibility for both parties to participate herein.

2 - The mediator is not an interested party to the dispute, he must act towards the parties in an impartial manner throughout the mediation.

Article 7

The Principle of Independence

1 - The mediator has the duty to safeguard the independence inherent to his function.

2 - The mediator must act independent and free of any pressure, whether as a result of his own interests, personal values or as a result of external influences.

3 - The mediator is responsible for his actions, and is not subject to subordination, technical or ethical, by professionals of other areas, without prejudice, within the ambit of public mediation, to the competences of the managing entities of these said systems.

Article 8

The Principle of Competence & Responsibility

1 - Without prejudice to the provisions of sub-paragraph e) of paragraph 1 and 3 of the following article, in order to acquire the competences adequate to the performance of his activity the mediator may attend training programs that provide him with specific skills, theoretical and practical, in particular the mediator training course organized by a training entity certified by the Portuguese Ministry of Justice, pursuant to article 24.

2 - The mediator that violates the duties of performing the respective mediation activity, in particular those set out in the present law, and, in the case of public mediation, in the acts of constitution or regulation of the public mediation systems, bears civil responsibility for the damages caused, pursuant to the general terms of law.

Article 9
The Principle of Enforceability

1 - The mediation settlement agreement is enforceable, without a need for judicial homologation:

- a) That concerns a dispute that may be subjected to mediation and for which the law does not demand judicial homologation;
- b) For which the parties had capacity to agree hereon;
- c) That is obtained through mediation carried out pursuant to the terms legally foreseen;
- d) The content of which does not violate public policy; and
- e) In which a mediator participated who is registered on the list of mediators organised by the Portuguese Ministry of Justice.

2 - The provisions of sub-paragraph e) of the previous paragraph are not applicable to mediations carried out within the ambit of a public mediation system.

3 - The qualifications and further requirements for registration on the list referred to in sub-paragraph e) of paragraph 1, including the mediators which are nationals of the Member States of the European Union or of the European Economic Area coming from other Member States, as well as the service of the Portuguese Ministry of Justice competent to organise the list and the means of access and publication of the said list, are defined by ordinance of the member of the Portuguese Government responsible for justice matters.

4 - The mediation settlement agreement obtained through mediation carried out in another Member State of the European Union that respects the provisions of sub-paragraphs a) and d) of paragraph 1 is equally enforceable, if the legal system of this State also attributes it enforceability.

CHAPTER III
Civil and Commercial Mediation

SECTION I
General Provisions

Article 10
Scope of Application

1 - The provisions of the present chapter are applicable to mediation of disputes on civil and commercial matters carried out in Portugal.

2 - The present chapter is not applicable to:

- a) Disputes that can be the subject of family mediation;
- b) Disputes that can be the subject of labour mediation;
- c) Disputes that can be the subject of criminal mediation.

Article 11

Civil and Commercial Mediation Disputes

1 - Those disputes relating to matters of a civil and commercial nature, may be the subject of mediation that, within these matters, concern interests of a patrimonial nature.

2 - Furthermore the disputes on civil and commercial matters that do not involve interests of a patrimonial nature may be the subject of mediation, provided that the parties may settle the legal matter at issue.

Article 12

Agreement to Mediate

1 - The parties may foresee, within the ambit of a contract, that possible disputes resulting from this contractual relation shall be submitted to mediation.

2 - The agreement referred to in the paragraph above must be in writing. The written form requirement shall be met if the agreement consists of a written document signed by the parties, an exchange of letters, telegrams, faxes or other means of telecommunications that provide written proof, including electronic means of communication.

3 - The agreement to mediate is null and void if it is made in breach of the provisions set out in the previous paragraphs or the previous article.

4 - The state court before which an action is brought in a matter which is the subject of an agreement to mediate shall, upon request of the respondent no later than when submitting his first statement on the merits of the dispute, suspend the proceedings and refer the case to mediation.

SECTION II

Pre-court Mediation

Article 13

Pre-court Mediation and the Suspension of Time-limits

1 - The parties may, prior to submitting any litigation to court, resort to mediation in order to resolve these disputes.

2 - The recourse to mediation suspends the limitation and prescription periods as of the date on which the agreement to mediate is signed or, in the case of mediation carried out in the public mediation systems, on which all the parties agreed to undertake mediation.

3 - The limitation and prescription periods resume with the termination of the mediation procedure due to the refusal of one of the parties to continue the procedure, due to the lapse of the maximum period established for the duration of the procedure, or furthermore when the mediator determines the end of the procedure.

4 - For the purpose of the aforementioned paragraphs the moment of performance of the act that initiates or terminates the mediation procedure, respectively, is considered.

5 - The acts that determine the continuation of the limitation and prescription periods foreseen in paragraph 3 are attested by the mediator, or in the case of mediation carried out in the public mediation systems, by the managing entity where the mediation occurred.

6 - For the purpose of the present article, the mediator, or in the case of mediation carried out in the public mediation systems, the respective managing entities must issue, whenever so requested, proof of suspension of the time-limits in which the following elements shall be included:

- a) The indication of the identity of the party that submitted the request and of the counterparty;
- b) The indication of the subject matter of the mediation;
- c) The date of signature of the agreement to mediate, or in the case of mediation carried out in the public mediation systems, on which all the parties agreed to undertake mediation;
- d) The reason for termination of the mediation procedure, if such already occurred;
- e) The date of termination of the mediation procedure, if such already occurred.

Article 14

Homologation of Settlement Agreement obtained through Mediation

1 - In those cases in which the law does not determine its obligation, the parties have the option to request the judicial homologation of the settlement agreement obtained through pre-court mediation.

2 - The request referred to in the previous paragraph is presented jointly by the parties in any state court competent on the matter, preferably electronically, pursuant to the terms to be defined by ordinance of the member of the Portuguese Government responsible for justice matters.

3 - The judicial homologation of the settlement agreement obtained through pre-court mediation serves to verify if the agreement concerns a dispute that may be the subject of mediation, the capacity of the parties to agree hereon, if it respects the general principles of law, if it respects good faith, if it does not constitute an abuse of law and if its content does not violate public policy.

4 - The request referred to in the previous paragraph is of an urgent nature, it shall be decided without a need for prior distribution.

5 - In the case of refusal of homologation, the settlement agreement shall be null and void and the parties may, within a time-limit of 10 days, submit a new settlement agreement for homologation.

Article 15

Mediation carried out in another Member State of the European Union

The provisions of the present section are applicable, with the necessary adaptations, to the mediation procedures carried out in another Member State of the European Union, insofar as these respect the principles and standards of the legal system of this State.

SECTION III

Mediation Procedure

Article 16

Commencement of Mediation Procedure

1 - The mediation procedure entails an initial contact to schedule the pre-mediation session, with an informative character, in which the mediator explains the procedure of the mediation and the rules of procedure.

2 - The consent of the parties to proceed with the mediation procedure is manifested by signing an agreement to mediate.

3 - The agreement to mediate is signed by the parties and by the mediator and shall contain:

- a) The indication of the identity of the parties;
- b) The indication of the identity and professional domicile of the mediator, and, if applicable, of the managing entity of the mediation system;
- c) The declaration of consent by the parties;
- d) The undertaking by the parties and the mediator to respect the confidentiality principle;
- e) The summary description of the dispute or subject;

- f) The rules of procedure for the mediation as agreed to between the parties and the mediator;
- g) The time-table for the mediation procedure and the determination of the maximum duration period, even if future changes may occur;
- h) The determination of the mediator fees, pursuant to article 29, except for mediations carried out in public mediation systems;
- i) The date.

Article 17

Appointment of Mediator

1 - The parties are responsible for agreeing on the appointment of one or more mediators.

2 - Before accepting his appointment or nomination, the mediator shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality and independence, pursuant to article 27.

Article 18

Presence of the Parties, Lawyers and other Experts in the Mediation Procedure

1 - The parties may be present in person at the mediation sessions or appoint a representative. They may be accompanied by lawyers, lawyer-trainees or bailiffs.

2 - The parties may furthermore be accompanied by other experts whose presence they deem necessary for the good development of the mediation procedure, insofar as the other party does not oppose hereto.

3 - All those involved in the mediation procedure shall be subjected to the principle of confidentiality.

Article 19

Termination of Mediation Procedure

The mediation procedure terminates when:

- a) The parties reach a settlement agreement;
- b) One of the parties withdraws from the mediation;
- c) The mediator takes a founded decision to this effect;
- d) The impossibility to reach a settlement arises;
- e) The maximum duration period of the mediation procedure is reached, including possible extensions thereof.

Article 20
Settlement Agreement

The content of the settlement agreement is freely determined by the parties and must be made in writing, signed by the parties and by the mediator.

Article 21
Duration of Mediation Procedure

1 - The mediation procedure shall be as expeditious as possible and concentrated in the least possible number of sessions.

2 - The duration of the mediation procedure is set in the agreement to mediate. The period may however be changed during the procedure upon agreement of the parties.

Article 22
Suspension of Mediation Procedure

1 - The mediation procedure may be suspended, in exceptional and duly founded situations, in particular with the aim to test provisional agreements.

2 - The suspension of the mediation procedure, agreed to in writing by the parties, does not hinder the suspension of the limitation and prescription periods, pursuant to paragraph 2 of article 13.

CHAPTER IV
Mediators

Article 23
The Statute of Mediators

1 - The present chapter establishes the statute of mediators that exercise their mediation activity in Portugal.

2 - The mediators that exercise their mediation activity in national territory and provide their services as a freelancer enjoy the rights and are subject to the obligations, prohibitions, conditions or limitations inherent to the exercise of the functions given to them taking into consideration the occasional and sporadic nature of that activity, in particular those mentioned in articles 5 to 8, 16 to 22, and 25 to 29.

Article 24

Training Courses and Training Entities

1 - The frequency and pass in courses taught by training entities certified by the service of the Portuguese Ministry of Justice, defined by ordinance of the member of the Portuguese Government responsible for justice matters, is considered training specifically geared to the pursuit of the mediator profession.

2 - The member of the Portuguese Government responsible for justice matters approves by ordinance the certification regime for training entities referred to in the previous paragraph.

3 - The certification of the training entities by the service referred to in paragraph 1, whether expressed or implied, is communicated to the central competent service of the Portuguese ministry responsible for matters of professional training within a time-limit of 10 days.

4 - The certified training entities shall communicate to the service of the Portuguese Ministry of Justice foreseen in paragraph 1:

- a) The training courses for mediators to be taught, prior to their occurrence;
- b) The list of participants that pass these training courses, within a maximum time-limit of 20 days after termination of the training course.

5 - The training courses taught to mediators by training entities that are not certified pursuant to the present article are considered to not provide regulated training to exercise the mediation profession.

6 - The member of the Portuguese Government responsible for justice matters defines by ordinance the authority competent for the implementation of Law no. 9/2009, of 4th March, amended by Law no. 41/2012, of 28th August, regarding the requests for qualification recognition submitted in other Member States of the European Union or the European Economic Area by nationals of Member States trained in accordance with the national legislation.

Article 25

Rights of the Mediator

The mediator has the right to:

- a) Pursue the mediation autonomously, in particular regarding the methods and procedures to adopt in the mediation sessions, respecting the law and the ethical and code of conduct standards;
- b) Be remunerated for the service provided;
- c) Invoke his quality as mediator and promote mediation, publishing books or studies, respecting the duty of confidentiality;

- d) Request of the managing entity, within the ambit of public mediation systems, the means and the working conditions that promote the respect for the ethics and code of conduct;
- e) Refuse tasks or functions considered to be incompatible with his statute and his rights or duties.

Article 26

Duties of the Mediator

The mediator has the duty to:

- a) Inform the parties on the nature, aim, fundamental principles and phases of the mediation;
- b) Abstain from imposing any agreement on the mediation parties, as well as from making any promises or giving any guarantees as to the results of the procedure, adopting a responsible behaviour and one of openly collaborating with the parties;
- c) Ensure that mediation parties have the legitimacy and possibility to intervene in the mediation procedure, obtain the informed consent of the mediation parties to intervene in this procedure, and, if necessary, speak separately with each one of them;
- d) Guarantee the confidential character of the information that he comes to receive in the course of the mediation;
- e) Suggest to the mediation parties the intervention or consultation of experts specialised in certain matters, when such is deemed necessary or useful to clarify and for the well-being of the parties;
- f) Disclose to those involved in the procedure any impediment or relation that may jeopardise his impartiality or independence, and to not conduct the procedure in these circumstances;
- g) Accept to merely conduct procedures for which he considers himself capable, personally and technically, acting in accordance with the principles that guide the mediation and other applicable standards;
- h) Ensure the quality of the services provided and of his level of training and qualifications;
- i) Act with courtesy, in particular towards the parties, the managing entity of the public mediation and the other mediators;
- j) Not intervene in mediation procedures that are accompanied by another mediator unless so requested, in cases of co-mediation, or in duly founded cases;
- k) Act in accordance with the standards of ethics and code of conduct foreseen in the present law and in the European Code of Conduct for Mediators of the European Commission.

Article 27
Impediments and Excuse of the Mediator

1 - The mediator shall, before accepting his appointment or nomination in a mediation procedure disclose all circumstances that may give rise to founded doubts as to his independence, impartiality and reputability.

2 - The mediator shall furthermore, throughout the mediation procedure, immediately disclose to the parties the circumstances referred to in the previous paragraph that are supervening or only came to his knowledge after accepting the appointment or nomination as mediator.

3 - The mediator that, for legal, ethical or deontological reasons, considers his independence, impartiality or reputability compromised, shall not accept the appointment as mediator and, if the procedure already commenced, the mediator shall interrupt the procedure and request to be excused.

4 - In particular the following are relevant circumstances for the purposes of the previous paragraphs, which shall, at least, be disclosed to the parties:

- a) A current or former family relation or personal relation with one of the parties;
- b) A direct or indirect financial interest in the outcome of the mediation;
- c) A current or former professional relation with one of the parties.

5 - The mediator shall furthermore refuse appointment or nomination in a mediation procedure when he considers that, in virtue of the number of mediation procedures for which he is responsible, or due to other professional activities, it will not be possible to conclude the mediation procedure timely.

6 - The intervention by the same mediator in the pre-mediation and mediation session does not constitute impediment.

7 - The refusals pursuant to the previous paragraphs do not determine the loss or harm of any rights of the mediator, in particular within the ambit of public mediation systems.

Article 28
Impediments resulting from the Principle of Confidentiality

Without prejudice to the provisions of paragraph 3 of article 5, the mediator cannot act as a witness, expert or representative in any matter related, even if indirectly, to the subject matter of the mediation procedure.

Article 29
Remuneration of the Mediator

The remuneration of the mediator is agreed to between the mediator and the parties, which are responsible for its payment, and set out in the agreement to mediate agreed to at the beginning of each procedure.

CHAPTER V
Public Mediation Systems

SECTION I
The Public Mediation Systems Regime

Article 30
Public Mediation Systems

The public mediation systems aim to provide citizens with expeditious means of alternative dispute resolution, through mediation services that are created and managed by public entities.

Article 31
Managing Entity

1 - Each public mediation system is managed by a public entity, as identified in the respective act of constitution or regulation.

2 - The managing entity is responsible for the functioning and monitoring of the respective public mediation system, preferably through an IT platform.

3 - The information gathered in the mediation procedures may be used for purposes of statistics, mediation system management and scientific investigation, in accordance with the Portuguese law on the Protection of Personal Data.

4 - Any complaints originating in the use of a public mediation system shall be directed at the respective managing entity.

Article 32
Public Mediation System Competence

The public mediation systems are competent to mediate any disputes that fall within the scope of their competences on the subject matter, as defined in the

respective acts of constitution or regulation, regardless of the location of the domicile or residence of the parties.

Article 33 **Charges**

The charges due for the recourse to public mediation systems are fixed pursuant to the provisions of the respective acts of constitution or regulation, which also provide for possible exemptions or reductions of these charges.

Article 34 **Commencement of Procedure in the Public Mediation Systems**

The commencement of the mediation procedure in the public mediation systems can be requested by the parties, by the state court, by the Public Prosecutor (*Ministério Público*) or by the Civil Registration Office (*Conservatória do Registo Civil*), without prejudice to the referral of mediation requests to the managing entities of the public mediation systems by other public or private entities.

Article 35 **Duration of Mediation Procedure in the Public Mediation Systems**

The maximum duration of a mediation procedure in the public mediation systems is determined in the respective acts of constitution or regulation, in absence of such determination the provisions of article 21 shall apply.

Article 36 **Presence of the Parties**

The acts of constitution or regulation of the public mediation systems may determine the obligation of the parties to appear in person at the mediation sessions, not enabling their representation.

Article 37 **The Principle of Publicity**

1 - The information provided to the public in general, regarding public mediation, is made available through the websites of the managing entities of the public mediation systems.

2 - The information regarding the functioning of the public mediation systems and the mediation procedures is provided in person, by telephone contact, by email or on the website of the respective managing entity of the system.

SECTION II

Mediators

Article 38

Appointment of Mediators in the Public Mediation Systems

1 - The parties may indicate the mediator of their choice, choosing from a list of mediators made available by each public mediation system.

2 - When no mediator is indicated by the parties, the appointment is made in a sequential manner, in accordance with the order resulting from the list on which the mediator is registered, preferably by a computer system.

Article 39

Persons qualified to act as Mediator

The requirements necessary to perform the functions of mediator in each of the public mediation systems are defined in the respective acts of constitution or regulation.

Article 40

Registration

1 - The registration of mediators on the lists of each of the public mediation systems is done by a selection procedure pursuant to the provisions of the acts of constitution or regulation of each system

2 - The acts of constitution or regulation of each public mediation system further establish the registration regime for mediators, which are nationals of Member States of the European Union or of the European Economic Area coming from other Member States.

3 - The registration of mediators on the lists of the public mediation systems does not constitute a legal relation of public employment, nor does it guarantee the payment of any fixed remuneration by the State.

Article 41

Impediments and Excuse of the Mediator in the Public Mediation Systems

Whenever one of the situations foreseen in article 27 occurs the mediator shall also immediately communicate this fact to the managing entity of the public mediation system, which, when necessary, proceeds, after hearing the parties, to the appointment of a new mediator.

Article 42
Remuneration of the Mediator in the Public Mediation Systems

The remuneration of the mediator in the public mediation systems is established as foreseen in the acts of constitution or regulation of each system.

SECTION III
Supervision

Article 43
Mediation Supervision

1 - The managing entities of the public mediation systems are responsible, following a complaint filed against the mediators within the ambit of the performance of their function as mediator, or by their own initiative, as part of the continuous monitoring of the respective public mediation systems, to supervise the performance.

2 - After an inspection, and after hearing the mediator, the chief authority of the managing entity makes his decision, founding the reasons of fact and law, indicating the measure to be applied to the mediator, if such is the case, in accordance with the seriousness of the act at hand.

Article 44
Effects of Irregularities

1 - The chief authority of the managing entity of the public mediation system can apply the following measures, in accordance with the seriousness of the act of the mediator:

- a) Reprimand;
- b) Suspension from the lists; or
- c) Exclusion from the lists.

2 - In those cases of violation of the duty of confidentiality by the mediator to which article 195 of the Portuguese Penal Code applies, the managing entity of the public mediation system shall communicate the infringement to the competent authorities.

CHAPTER VI
Final And Miscellaneous Provisions

Article 45
Homologation of the Settlement Agreement established pending Suit

The settlement agreement established in a procedure remitted to mediation pursuant to article 279-A of the Portuguese Civil Procedure Code shall be homologated pursuant to the provisions of article 14.

Article 46
Collective Labour Conflicts Mediation

The provisions of the present law are applicable to the mediation of collective labour conflicts merely insofar as it is not incompatible with the provisions of articles 526 to 528 of the Portuguese Labour Code, approved by Law no. 7/2009, of 12th February.

Article 47
Subsidiary Law

In all matters not regulated by the present law, the provisions of the respective acts of constitution or regulation apply to the public systems of mediation.

Article 48
Complementary Legal Regime

Within three months the Portuguese Government will establish the regulation of a legal supervision system for private mediation.

Article 49
Revocation

Hereby the following are revoked:

- a) Articles 249-A to 249-C of the Portuguese Civil Procedure Code;
- b) Paragraph 6 of article 10 of Law no. 21/2007, of 12th June;
- c) Article 85 of Law no. 29/2009, of 29th June, amended by Laws no. 1/2010, of 15th January and 44/2010, 3rd September;

- d) Sub-paragraph c) of paragraph 3 of article 4 of Ordinance no. 68-C/2008, of 22nd January, amended by Ordinance no 732/2009, 8th July;
- e) Ordinance no. 203/2011, of 20th May.

Article 50
Entry into Force

This law shall enter into force 30 days after its publication date.

Passed on 8th March 2013.

The President of the Assembly of the Republic, *Maria da Assunção A. Esteves*.

Promulgated on 9th April 2013.

Hereby published.

The President of the Republic, ANÍBAL CAVACO SILVA.

Approved on 10th April 2013.

The Prime-Minister, *Pedro Passos Coelho*.