

**Decree - law n.º 3/2006**

**of January 16**

With the development of the Country new forms of organization of commercial establishments, are appearing, more complex and inclusive, embracing, among other, subjects of ordinance of the territory, of the protection of the environment, of the promotion of the competition and of the public health.

On the other hand, the proliferation of the commercial activity in the last years, claims innovative forms of action, above all, in the domain of the surveillance of the commercial establishments.

It is in this context, and in the one of the adaptation of the commercial legislation to the norms of the World Trade Organization, to the development of the economy and of the commercial sector, as well as, to our main commercial partners' legislations, that results the need of approving the present diploma about the installation conditions and modification of the commercial establishment, seeking to implicate the main sectors involved in this matter and to confer larger velocity, effectiveness and transparency to the authorization process for the installation and modification of the commercial establishments, as well as, to create the conditions for the regularization of some establishments that are already operating in the market.

The business associations and the National Association of the Municipal districts were heard.

In the use of the faculty granted by the paragraph a) of n.º 2 of the article 203rd of the Constitution, the Government decrees the following:

## CHAPTER I

### **General dispositions**

#### Article 1st

##### **Extent**

1. The present diploma establishes the authorization regime to which is subject the installation and the modification of the trade establishments for wholesale and retail, of the trade for wholesale and retail in free services, as well as the installation of the commercial groups, incorporated by the article 4th.
2. The regime of authorization of the trade establishments and commercial groups referred in the previous number is still subject to the defined norms in the environmental and sanitary legislation.

#### Article 2nd

##### **Objective**

The regime instituted by the present diploma seeks to regulate the installation and the modification of the commercial establishments, in way to assure the coexistence and balance of the several commercial formats, having at last the defense of the consumers' interest and the quality of the citizens' life.

#### Article 3rd

##### **Definitions**

1. For effects of this diploma, it is understood for:

- a) "Commercial establishments", all the installation, of fixed and permanent character, where it is exercised, exclusive or mainly, of usual and professional way, one or more commercial activities, for wholesale and retail.
- b) "Establishment of wholesale Trade", the place where the trade activities are exercised for wholesale, in the terms of the law.
- c) "Trade for wholesale in free service", the trade activities for wholesale defined in the terms mentioned in the previous paragraph and whose sale method characterizes for the goods being exposed and to the customers' reach who, by serving themselves, take them to the Cashier to make the payment;
- d) "Trade establishment to retail", the place where the trade activities are exercised to retail, in the terms of the law.
- e) "Trade to retail in free service", the trade activities to retail is defined in the terms mentioned in the previous paragraph and whose sale method characterizes for the goods being exposed and to the customers' reach, who by serving themselves, take them to the Cashier to make the payment;
- f) " Alimentary trade Establishment", the place where is exercised an activity of alimentary trade exclusively or where this represents a percentage equal or superior to 90% of the respective total volume of sales;
- g) " Non alimentary trade establishment ", the place where is exercised a trade activity exclusively not to feed or where this represents a percentage equal or superior to 90% of the respective total volume of sales;
- h) "Establishment of mixed trade", the place where are exercised, in simultaneous, activities of alimentary trade and not to feed and the one that is not applicable the determination in the paragraphs f) and g);
- i) "Shops ", the group of the organized structure for the exercise of the trade to retail or compared one, whichever the section or sections of products and although they integrate simple grocery stores;

- j) "General grocery stores", the group of the organic structure designed exclusively to the wholesale trade, whichever is the section or sections of products;
- k) "Great commercial surfaces", the trade infrastructures for wholesale and to retail with a useful commercial surface not inferior to 1.500 m<sup>2</sup>, being considered useful commercial surface the one that is destined for sale and accessible to the public or the buyers.
- l) "Commercial group", the planned and integrated enterprise, composed by one or more buildings in which one find installed a diversified group of retail trade establishments and of services rendered, being or not property or explored by the same entity, that fills out the following requirements, cumulatively:
  - i) Have a group of means become significant to allow to a same clientele the access to the several establishments;
  - ii) Be object of a responsible common administration, namely for the availability of collective services, for the institution of common practices and for the communication politics and animation of the enterprise;
- n) "Municipal markets", the infrastructures destined by the municipal authorities to the meeting of producers or simple middlemen of these with the aim of marketing the products traditionally destined to the consuming public's provisioning, namely in fresh or other foods;
- o) "Fairs", the places that, in the regulated terms, are destined to the periodic or seasonal meeting of only merchants or only of farmers or entrepreneurs or of some and the other jointly, with the goal to expose the offer of the goods of their trade or production.
- p) "Sales in the public road", the places infra - structured or not by the municipal authorities and destined or suitable by them for the exercise of the trade by the street sellers.
- q) "Installation", the activity from which results the creation of an establishment or commercial group, either if these activities translates itself in new constructions or

results of works or constructions already existent;

- r) "Modification", the reconstruction, enlargement, alteration or expansion of the area of sale of an establishment, as well as any location and branch changes of the trade;
- s) "Sale area ", the whole destined area to the sale where the buyers have access or the products are exposed or they are prepared for immediate delivery. In the sale area are included the busy area by the exit boxes and the areas of circulation of the consumers internal to the establishment, namely the connection stairways among the several floors;
- t) "Gross Area (ABL)", the area that produces income in the commercial (leased or sold) group, affected to the trade establishments. It includes the sale area as well as the storage spaces and offices affected to the establishments;

2. They are compared to stores, the grocery stores, pastry shops, bars, and taverns and similar for effects of retail sale of their products.

#### Article 4th

##### **Authorization regimes**

1. The installation or modification of trade establishments for wholesale and retail, are subject to the following authorization regimes:
  - a) Simplified Regime, for the trade establishments for wholesale and retail with an area of sale inferior or equal to 1.000 m<sup>2</sup>.
  - b) General Regime, for the trade establishments for wholesale and retail with an area of sale superior to 1.000 m<sup>2</sup>.
2. The establishments and the commercial groups included by the present diploma that there is more than 12 months are deactivated; they are equally subject to the present

authorization regime, in case the respective titular intend to put them into operation again.

#### Article 5th

##### **Location approval**

1. The installation or modification of trade establishments for wholesale and retail and the installation of commercial groups included by the present diploma, lack previous authorization of location, to be emitted by the municipal district of the installation area or modification of the establishment.
2. Whenever the establishments of trade for wholesale and retail and the commercial groups, included by the present diplomas, have a sale area equal or superior to 1.000 m<sup>2</sup>, the municipal district of the installation area or modification of the establishment, should hear the General Directorate of the Environment and that of the Trade.
3. The authorization and the view referred in the previous numbers 1 and 2 are released from, whenever the projects in cause are placed in area that, according to the national or municipal plans of ordinance of the respective territory, or of license or authorization in lots in force, be expressly affected to the proposed use.
4. In the situations referred in n.º 2 of this article is applied the determination in the numbers 1 and 2 of the article 9th of the present diploma.

#### CHAPTER II

##### **Authorization of the Commercial Establishments**

#### Article 6th

##### **Coordination and authorization**

1. The competence for the coordination of authorization procedures and modification of the commercial establishments for wholesale and retail, including the technical and administrative support, it falls to the responsible Government's member for the sector of the trade and to the municipal district of the installation area or modification of the establishment, according as the case.
2. The authorization for installation and modification of the commercial establishments for wholesale and retail and of commercial groups, with sale area equal or inferior to 1000 m<sup>2</sup>, it falls to the General Director of Trade, or the Chambers of Commerce, in case of delegation of competences, and to the municipal district of the area of location of the establishment, respectively, whenever heard the General Directorate of the Environment and the business association of the area of location of the establishment.
3. The authorization for installation and modification of the commercial establishments for wholesale and of commercial groups, with area of sale superior to 1000 m<sup>2</sup>, it falls to the General Directorate of the Trade, whenever heard the General Directorate of Environment, the business association and the municipal district of the installation or modification area of the establishment.
4. The authorization for installation and modification of the trade establishments to retail sale with a sale area equal or superior to 1000 m<sup>2</sup>, it falls to the municipal district, by favorable view of the General Directorate of the Trade, owing this, to hear the General Directorate of Environment and the business associations of the installation or modification area of the establishment.

### CHAPTER III

#### **Procedure of Authorization**

##### Article 7th

#### **Authorization requests**

1. The authorization requests to which refers the number 1 of the article 5th and the numbers 2, 3 and 4 of the article 6th, should be presented in the General Directorate of Trade, in case of delegation of competences in the Chambers of

Commerce, or in the municipal district area of the installation or modification of the establishment.

2. The establishments of the wholesale and retail trade, they should obey the existent conditionings of commercial urbanization in the respective approved town planning strategy to the place in that it is located, or just in the town planning strategy, in the lack of those conditionings.
3. In the lack of town planning plans, the municipal district will pronounce concerning the social-economic interest of the unit to implant.
4. In the lack of regulation as for the hygiene conditions and salubrity, the municipal district, in articulation with the sanitary authorities, they will emit a view in agreement with the criteria of warranty of minimum conditions for the defense of the public health.
5. In any of the situations foreseen in the numbers 3 and 4, it is considered that was emitted a favorable view to the pretension of the interested party, if the municipal district doesn't pronounce in the period of 30 useful days, counted of the date of the presentation of the respective application.

#### Article 8th

#### **Formalities / Procedures**

1. Without damage of the other rules to observe in the terms foreseen in the present diploma, the authorization requests, of installation or modification of trade establishments and of authorization of installation of commercial groups they are subject to the following proceeding formalities:
  - a) The authorization requests are driven to the General Directorate of Trade and the respective City Hall, by application of the interested party (ahead designated by petitioner), accompanied of the elements referred in the enclosure I and II of the present diploma, respectively, as it is the regime of general formalities or of the regime of simplified formalities, which could be in electronic support.
  - b) The petitioner should make proof of the property right on the premise, to which



the request is moderated or of any other juridical position proving of rights or legitimate interests on the same;

- c) For effects of the determination in the no. 1 of the article 5th, the petitioner owes, equally, to join application of which consists the request of previous authorization or the location approval.

2. The verification of the instructive documents of the authorization process competes to the General Directorate of the Trade and the Municipal district where is located the establishment, owing these, in the period of seven days to count of the date of the reception of the request, properly well instructed, to grant or to refuse the authorization.

3. For the requests of installation and modification of commercial establishments for wholesale and retail, with an area of sale inferior to 300 m2, the enclosure II, is applied with the due adaptations.

4. When in the verification of the instructive documents of the process if it is verified that this is not in accordance with the determination in the no.1 of the present article, the General Directorate of the Trade, or the Municipal district where is located the establishment, requests the petitioner, in the period of five useful days, to count of the date of reception of the request, the sending of the lacking elements.

5. The process is only considered properly well instructed from the date of the reception of the last of the lacking elements.

6. Elapsed hundred and eighty days without the elements in lack being supplied, in the terms of the no. 4, the process is considered null and it is filed.

#### Article 9th

#### **Opinion**

1. The entities referred in n.º 2 of the article 5th and in the numbers 3 and 4 of the article 6th of the present diploma, they emit its opinion in the period of fifteen days to count of the date of the reception of the process sent by the Municipal district or by the General Directorate of the Trade, according to the case.

2. In the case of the view to which refers the no. 4 of the article 6<sup>th</sup>, the General Directorate of the Trade will release its view in the maximum period of twenty-one days.

3. The lack of emission of the views by the entities, in the period fastened in n.º 1 of the present article is considered as favorable view.

#### Article 10th

#### **Impugnation /Impugnement/Counterplea**

1. Of the decision of the Chambers of Commerce, for the wholesale trade, impugnation falls for the General Director of the Trade and appeal to the responsible Government's member for the area of trade.

2. Of the municipal decision, for the retail trade, appeal fits in the terms of the law.

#### CHAPTER IV

#### **Functioning of the establishments and commercial groups**

#### Article 11th

#### **Inspection**

1. Having into consideration the verification of the execution of the general and specific requirements that were the basis for the installation authorization or modification of the commercial establishment or of installation of the commercial group, the entities, proceed to an inspection, being written the competent act.
2. For effects of the determination in the previous number, the date of the inspection should be communicated to the interested party, with a minimum antecedence of seven days.

3. The inspection will be regularized in own diploma.

## CHAPTER V

### **Surveillance and sanctions**

#### Article 12th

##### **Surveillance**

The surveillance of the execution of the determination in the present diploma competes to the General Directorate of Trade and to the municipal district of the area of location of the establishment, without damage of the competences legally endorsed to other entities.

#### Article 13th

##### **Infractions**

1. Without damage of the penal responsibility that there is place, the infractions to the norms foreseen in the present diploma constitute punishable against-ordination in the following terms.

- a) From 5.000\$00 to 1.000.000\$00, for the violation of the determination in the numbers 2, 3 and 4 of the article 6th.
- b) From 5.000\$00 to 50.000\$00, for the violation of the determination in the no. 1 of the article 14th, by the companies in individual name.
- c) From 50.000\$00 to 500.000\$00, for the violation of the determination in the no. 1

of the article 14th, for the collective people.

2. The negligence is punishable.

3. The product of the applied penalties in the extent of the present diploma reverts:

a) 60% for the State;

b) 30% for the entity that proceeds to the instruction of the process;

c) 10% for the entity that lifts the news act.

#### Article 14th

##### **Taxes**

1. For besides the taxes foreseen in specific legislation, the acts relative to the installation authorization and of modification of the trade establishments and of installation of the commercial groups, included by the present diploma, including the inspections, are subject to the payment of taxes, whose amounts will be fastened by common decree of the members of the Government responsible for the areas of trade and finances.

2. The collection of the taxes to which refers the present article competes to the entities referred in the previous number.

#### CHAPTER VI

## **Transitory and final dispositions**

### Article 15th

#### **Validity maintenance**

The Decrees numbers 41/2004, and 43/2004, of October 4, continue in force until they be revoked.

### Article 16th

#### **Entrance in force**

The present law goes into effect 30 days after its publication.

Seen and approved in Council of Ministers.

*José Maria Pereira Neves. João Pereira Silva*

*Promulgated in December 16<sup>th</sup> of 2005*

*Be published*

*The President,*

*Pedro Verona Rodrigues Pires*

*Countersigned on December 22<sup>nd</sup> of 2005*

The Prime Minister

## **ENCLOSURE I**

### **Regime of General Procedures referred by article 8th**

Elements that should accompany the installation request or modification of trade establishments or the request of installation of commercial groups, in agreement with the foreseen it in the paragraph a) of the no. 1 of the article 8th of the present diploma:

a) Identification of the petitioner:

- Name, or social denomination, complete;
- Address / phone / fax / electronic address;
- Number of fiscal identification (NIF)
- Number and location of establishments that fill out the requirements foreseen in the article 4th of the present diploma that, eventually, already detain, referring the respective years of opening, sale areas and number of workers
- Person to contact (responsible speaker for the company);

b) Legitimacy for presentation of the request:

- Property title, contract-promise or any other plenty document, that results or it can come to result the legitimacy of the petitioner to build the establishment or commercial group in cause or, in case these exist already, for exploring them commercially;

c) Characteristics of the trade (applicable to the requests of installation authorization and of modification of trade establishments) establishment:

- Location;
- Name / designation;
- Trade (to feed, not to feed, with indication of the respective activity branch or mixed) branch;
- Number of floors;
- Gross Area
- Areas of sale/ storage areas, of support services and of offices;
- Number of parking places and of load and unload of vehicles foreseen and

respective areas;

- Number of establishments that integrate the commercial group where the establishment is enclosed (when applicable);
- Number of workstations intended;
- Foreseeable period of construction and of opening to the public;
- Descriptive memory of the enterprise that explicit, namely, the characterization of the total surface of the land, of the implantation areas, of construction and sale, of the volumetric, of the impermeable area, of the destiny of the buildings, **cerci** and number of floors above and below the **sill quota** for each building and areas, properly dimensioned, destined to accesses, to parking and load and unload of vehicles, including, if it is the case of that, parking areas in buildings;
- Location plan of the project to the scale of 1:2000 or superior, with the foreseen delimitation of the land;
- Synthesis sketch, to the scale of 1:2500 or superior, indicating, namely, the modeling proposed for the land, its structures road and their relationships with the exterior, implantation and destiny of the buildings to be build, with the **cerci** indication and number of floors above and below the **sill quota** and delimitation of the areas destined to parking and load and unload of vehicles;
- Sketch of the interior of the establishment indicating the part destined to the trade and the sale (disaggregating alimentary branch and not to feed, if applicable) area, the areas of customers' circulation, of sanitariums, of storage (shelves), safety's systems, illumination and ventilation, as well as, the support services and that of offices.

d) Characteristics of the commercial (applicable to the requests of installation of commercial groups) group:

- Location;
- Name / designation;
- Number of floors;
- Gross Area ;
- Storage areas, of support services and of offices;
- Number of parking places and to load and unload vehicles foreseen and respective areas;
- Number of the trade establishments that will integrate the commercial group and foreseen commercial mix;
- Number of workstations calculated;
- Services to make available for the common administration of the enterprise;
- Foreseeable period of construction and of opening to the public;
- Descriptive memory of the enterprise that explicit, namely, the characterization of the total surface of the land, of the implantation areas, of construction and sale, of the volumetric, of the impermeable area, of the destiny of the buildings, **cerci** and

number of floors above and below the sill quota for each building and areas, properly dimensioned, destined to accesses, to parking and load and unload of vehicles, including, if it is the case of that, parking areas in buildings;

- Location plan of the project to the scale of 1:2000 or superior, with the foreseen delimitation of the land;
- Synthesis sketch, to the scale of 1:2500 or superior, indicating, namely, the model proposed for the land, its road structures and their relationships with the exterior, implantation and destiny of the buildings to build, with the **cerci** indication and number of floors above and below the **sill quota** and delimitation of the areas destined to parking and load and unload vehicles;
- Interior sketch of the establishment indicating the part destined to the trade and the sale area (disaggregating alimentary and non nourishing branches, if applicable), the areas of customers' circulation, of sanitariums, of storage (shelves), safety's systems, illumination and ventilation, as well as, the support services and that of offices.

## **ENCLOSURE II**

### **Regime of Simplified procedures which is referred by article 8th**

Elements that should accompany the installation request or modification of trade establishments or the request of installation of commercial groups, in agreement with the foreseen in the paragraph a) of the no. 1 of the article 8th of the present diploma:

#### a) Identification of the petitioner:

- Name, or social denomination, complete;
- Address / phone/ fax / electronic address;
- Number of fiscal identification (NIF)
- Person to contact (responsible speaker for the company);

#### b) Legitimacy for presentation of the request:

- Property title, contract-promise or any other plenty document, that results or can come to result the legitimacy of the petitioner to build the establishment or commercial group in cause or, in case that these exist already, for exploring them



commercially;

c) Characteristics of the trade (applicable to the requests of installation authorization and of modification of trade establishments) establishment:

- Location;
- Name / designation;
- Trade (to feed, not to feed, with indication of the respective activities branch or mixed) branch;
- Number of floors;
- Number of workstations;
- Foreseeable period of construction and of opening to the public;
- Location plan of the project to the scale of 1:2000 or superior, with the foreseen delimitation of the land;
- Synthesis plan, to the scale of 1:2500 or superior, indicating, namely, the modeling proposed for the land, implantation and destiny of the buildings to build, with the **cerci** indication and number of floors above and below the **sill quota** and delimitation of the areas destined to parking and load and unload of vehicles;
- Plan of the interior of the establishment indicating the part destined to the trade and the sale area, the areas of sanitariums and of storage (shelves), as well as, safety's systems, illumination and ventilation.

d) Characteristics of the commercial (applicable to the requests of installation of commercial groups) group:

- Location;
- Name / designation;
- Number of floors;
- Gross Area;
- Storage areas, of support services and of offices;
- Number of the trade establishments that integrate the commercial group and foreseen commercial mix;
- Number of workstations;
- Services to make available for the common administration of the enterprise;
- Foreseeable period of construction and of opening to the public;
- Location plan of the project to the scale of 1:2000 or superior, with the foreseen delimitation of the land;
- Synthesis plan, to the scale of 1:2500 or superior, indicating, namely, the modeling proposed for the land, implantation and destiny of the buildings to build, with the **cerci** indication and number of floors above and below the **sill quota** and delimitation of the areas destined to parking and load and unload;
- Plan of the interior of the establishment indicating the part destined to the trade and the sale area, the areas of sanitariums and of storage (shelves), as well as, safety's systems, illumination and ventilation.

The Prime Minister, José Maria Pereira Neves