

## Justification Note

Decree-Law No. 50/2003, of 24 November (ratified in O.B. No. 9, I Series of 22/03/2004), which defines the juridical regime of foreign trade, regulates, up to the present, the activities of registration and authorization of the commercial activity and the licensing conditions of commercial establishments.

Following on the country's development new forms of organization of commercial establishments have surfaced, more complex and encompassing, raising questions on territorial organization, the environment, the safeguard of consumers' interests and public health and above all, of defense and promotion of competition.

On the other hand, the promotion of the commercial activity in the latter years demands innovative ways of acting, above all in the domain of licensing and oversight of the conditions of the commercial establishments.

It is in this context and in the framework of updating the contents of this legislation to the WTO norms, but above all, of the development of the economy and of the commercial sector, that arises the need to separate the conditions of separation and modification of the establishments object of this legislation, from the conditions of registration of commercial operators and of the authorization to exercise them.

The objective is, on the one hand, to face the complexity of this matter, involve the principal actors on this matter and, on the other hand, confer greater speed and efficacy to the process of authorization for the modification of the commercial establishments, as well as to "legalize"/regulate the existing establishments.

Thus, with this legislation it is pretended to bet strongly on the transparency of the entire process and on oversight, assuring the coexistence and the balance between the diverse commercial formats and guarantee their respective special insertion in accordance with the criteria that safeguard an integrated and valuable perspective of the development of the economy, the protection of the environment, territorial organization, commercial urbanism, having as an ultimate purpose the defense of the interests of the consumer and the quality of life of the citizens., in a framework of sustainable development and of social responsibility of the enterprises.

**Draft legislation regarding  
the installation and modification of commercial establishments**

Decree-Law No. ....../2005  
of...../...../2005

In as much as there the need to proceed with the separation between the conditions of separation and modification of commercial establishments and the registration of the commercial activity;

Considering how important it is for the government to take measures to simplify the procedures that seek to eliminate the administrative obstacles to the economic development, reducing the bureaucracy and increasing the transparency of the administrative action, as well as to update our legislation to the WTO agreements on this matter and to the legislation of our principal commercial partners;

Considering further, the need to assure the coexistence and balance between the diverse commercial formats and guarantee their respective spatial insertion in accordance with the criteria that safeguard an integrated and enhancing of the development of the economy, the environmental protection, and the territorial organization and commercial urbanism, having as ultimate objective the safeguard of the interest of the consumer and the quality of life of the citizen, in a framework of sustainable development and of social responsibility of the enterprises;

Having heard the representatives of the commercial associations and the municipalities,

In the use of the faculty conferred by subparagraph a), No. 2 of Article 203 of the Constitution, the Government decrees the following:

**CHAPTER I  
General Provisions**

**Article 1  
Ambit**

1. This legislation established the authorization regime that the installation and the modification that the commercial wholesale and retail establishments in free service are subject to and in the installation of the commercial groups, covered by Article 4.
2. The commercial establishments and commercial groups referred to in the preceding number are subject to the norms defined in base law of the environment, when applicable.

**Article 2  
Objectives**

The regime instituted by this law seeks to regulate the installation, the transformation and the development of the entrepreneurial commercial, so as to ensure the coexistence and balance of the diverse commercial formats and guarantee the respective spatial

insertion in accordance with the criteria that safeguard an integrated and enhancing perspective of the development of the economy, the protection of the environment and of the territorial organization and commercial urbanism, having as ultimate purpose the defense of the interests of the consumers and the quality of life of the citizens, in a framework of sustainable development and social responsibility of the enterprises.

### **Article 3** **Definitions**

1. For the purpose of this legislation the following definitions apply:

- a) **Commercial Establishments** – Any fixed or permanent installation where exclusively or principally, habitually and professionally are exercised one or more commercial activities, by wholesale or by retail, such as are defined in Article 4 of Decree-Law No ...../2005 of ...../2005, that establishes the juridical regime to which the exercise of the commercial activity is subjected;
- b) **Wholesale Commercial Establishment** – The location where the wholesale commercial activity, such as it is defined in Article 5 of Decree-Law No. ..../2005, of ...../2005, that establishes the juridical regime to which the exercise of commercial activity is subjected;
- c) **Wholesale in Free Service** – The wholesale commercial activity, under the terms mentioned in the preceding subparagraph, is exercised, and whose sale method is characterized by the goods being exposed and within reach of the clients that, serving themselves, carries them by the box to make the payment;
- d) **Retail Commercial Establishment** – The location in which the retail commercial activity, is exercised, such as it is defined in Article 6 of Decree-Law No. ..../2005, of ...../2005, that established the juridical regime to which the exercise of the commercial activity is subjected;
- e) **Food-Commerce Establishment** – The location in which is exercised exclusively a food commerce activity or where this activity represents 90% or more of the respective total sales volume;
- f) **Non-Food Commerce Establishment** – A location where a non-food commerce is exercised exclusively or in which this activity represents 90% or more of the respective total sale volume;
- g) **Mixed Commerce Establishment** – The location that simultaneously exercises the food and non-food commerce activity to which the provisions of subparagraphs d) and e) are not applicable;
- h) **Commercial Group** – The planned and integrated enterprise composed by one or more buildings in which is installed a diversified group of retail commerce and services activities, whether or not they are the property of or being explored by the same entity that fulfills cumulatively the following requisites:

- i) Disposes of a set of facilities conceived so as to permit the same clientele access to the diverse establishments;
- ii) Is the object of a common responsible management, specifically for the availability of collective services, by the institution of common practices and by the policy of communication and animation of the enterprises;
- j) **Stores** - The group of structures organized for the exercise of the retail or comparable commerce, regardless of the class or classes of products and that also integrate simple warehouses;
- k) **General Warehouses** - The group of organic structures destined exclusively for the wholesale commerce, regardless of the class or classes of products;
- l) **Commercial Centers** – The complex of establishments that conglomerate within the same structure, units of independent stores that practice retail commerce for different classes of products;
- m) **Large Commercial Surfaces** – The retail commerce structures with a useful commercial surface not smaller than 1,500 m<sup>2</sup>. Useful commercial surface is considered to be a surface destined for sales and accessible to the public and to the buyers;
- n) **Installation** – The activity from which results the creation of an establishment or commercial group, whether the activity translates into new buildings or results in improvement work on existing buildings;
- o) **Modification** – The reconstruction, amplification, alteration or expansion of the sales area of an establishment, as well as any change of location, type of activity, commerce branch, insignia or the title holder of the exploration;
- p) **Sales Area** – All the area destined for sales where the buyers have access or the goods are exposed or are prepared for immediate delivery. In the sales area are included a zone occupied by the exit cash registers and the circulation zones for the consumers internal to the establishment, namely the connecting stairs between several floors;
- q) **Gross Rental Area - (GRA)** – The area that produces revenue in the commercial group (rented or sold), affected to the commerce establishments. It includes the sales area as well as the storage spaces and offices affected to the establishments;
- r) **Area of Influence** – The parish or group of parishes that integrate a geographical area defined as a function of a maximum limit of travel time for the consumer to the establishment or commercial group in questions, counted from the latter, which may vary, namely, as a function of the respective dimension and type of commerce exercised, the leisure and service that may be associated to it, of its insertion in the urban or rural setting, of the quality of the infrastructures that serve as access to it and of the existing commercial equipment in the area under consideration;

- s) **Enterprise** – Any entity encompassed by Article 6 of Decree-Law No. 53/2004, of 24 November;
- t) **Group** – The group of enterprises that, although juridically distinct, maintain between them an inter-dependency or subordination ensuing from the utilization of the same insignias or of the rights and powers enumerated in Ni.1 of Article 8 of Decree-Law No. 53/2004, of 24 November;
- u) **Municipal Markets** – The infrastructures destined by the municipal authorities for the meeting of producers or simple intermediaries of the producers for the purpose of commercializing the products traditionally destined to supply the consuming public namely in produce and other food;
- v) **Fairs** – The locations that, according to regulation, are destined for the periodic or seasonal meeting either of merchants, or of farmers or of industrials, alone or together, for the purpose of exposing their offer of goods they trade and produce;
- w) **Street Sales** – The locations, infrastructured or not by the municipal authorities and destined for or indicated by those authorities for the exercise of commerce by street salespersons;
- x) **Social Responsibility of the Enterprise** – The voluntary integration, by the enterprise, of social and environmental concerns in pursuing their activity and interconnection of the same with the local communities and other interested parts;
- y) **Interlocutor Responsible for the Project** – The person or entity designated by the requestor for the purpose of demonstrating that the project is in conformity with the applicable legislation and to relate with the coordinating entity and other intervening entities in the authorization process;
- z) **Manager of the Process** – Technician designated by the coordinating entity to verify the documentation of the authorization request and follow up on the various stages of the authorization process, constituting itself as a privileged interlocutor of the requestor.

2. The restaurants, hotels, pastry shops, bars, and similars are considered comparable to stores for the purpose of the retail commerce of their products, if the contrary does not result from prior authorization, and save for the provisions of special specific legislation of the tourism sector.

#### **Article 4**

#### **Obligatoriness of Authorization**

The following are subject to authorization from the general authorization regime:

1. The installation or modification of retail commercial establishments, with a sales area greater than 500 m<sup>2</sup>.

2. The installation or modification of a wholesale commercial establishment, with a sales area greater than 500 m<sup>2</sup>.
3. Prior expert opinion is required from the General Directorates of Commerce and Territorial Organization:
  - a) To the installation or modification of retail commerce establishments with a sales area greater than 2000 m<sup>2</sup> or of establishments that belong to the same enterprise that utilizes one or more insignias or are integrated in a group, that dispose of, on a national level, an operational cumulative sales area, equal to or greater than 5000 m<sup>2</sup>, independently of the sales area of the establishments;
  - b) The installation of commercial groups that have a rentable gross area equal to or greater than 5000 m<sup>2</sup>.
4. The installation of commerce establishments integrated in commercial groups is also subject to authorization, under the terms foreseen under Nos. 1, 2 and 3 of this Article, as well as the respective modification, save when the same consists of simple change location of the same inside a building or buildings affected to the commercial group in question.
5. The establishments or commercial groups covered by this law that have been deactivated for more than twelve months are likewise subject to this authorization regime, should the respective owners pretend to place them back into operation.
6. Without prejudice to eventual consultations to the General Directorate of Commerce on the operations in question, and the obligatoriness of registration established in Article 23, the modifications of retail and wholesale commerce establishments in unencumbered service are exceptions to the application of this legislation whenever such modifications configure operations of merger of companies subject to prior notification under the terms of the provisions of Article 7, of Decree-Law No. 53/2004, that establishes the defense of competition.
7. The installation or modification of retail or wholesale commerce establishments with a sales area smaller than 500 m<sup>2</sup>, which are subject to the simplified authorization regime, are exceptions to the provisions of the preceding numbers.
8. The provisions of this legislation are not applicable to the installation or modifications of the retail commerce establishments for automobiles, motorcycles, recreation ships, tractors, agricultural machinery and equipment, as well as establishments in which are exercised retail commerce activities that are the object of specific regulation.

## **Article 5**

### **Approval of the Location**

1. The installation or modification of retail commerce establishments with a sales area equal to or greater than 2000 m<sup>2</sup>, as well as the installation or modification of wholesale commerce establishments in unencumbered service, and the installation of

commercial groups covered by this law, require prior authorization of the location, to be emitted by the municipality of the installation or modification zone of the establishment, upon prior expert opinion of the general Directorate of Commerce.

2. To emit its expert opinion referred to in the preceding number, the General Directorate of Commerce should solicit expert opinions of the General Directorates responsible for Territory Organization and the Environment, and of the Roads Institute, when applicable.

3. The expert opinion and the authorization referred to in No. 1 is dispensed with, whenever the projects in question are located in area that, under the efficacious national or municipal territory organization plan (PNMOT), or of license or lot authorization in effect, is expressly affected to the proposed use.

4. The prior location authorization requests referred to in No. 1 of this Article are presented to the respective municipality, simultaneously with the installation or modification request.

5. In the situations referred to in No. 1 of this Article the provisions of Article 14 of this diploma apply.

6. The provisions of this Article are not applicable to the installation or modification of integrated commerce establishments integrated in commercial groups covered by this law.

## **CHAPTER II**

### **Competences, Authorizations and Decision Criteria**

#### **Article 6**

#### **Coordinating Entity**

1. The competence for the coordination of the proceedings, including the technical and administrative support to the commissions referred to in the Article that follows, is the competence of the Commerce General Directorate and the municipality of the zone of installation or modification of the establishment, as the case may be.

2. The coordination referred to in the preceding number must be done in concertation with the other public departments, by reason of the subjects.

#### **Article 7.**

#### **Competent Entity for the Decision**

1. The competence to grant authorization for the installation and modification of retail commerce establishments falls on the municipality of the zone of installation or modification of the establishment.

2. The competence to grant authorization for the installation or modification of wholesale commerce establishments falls on General Directorate of Commerce.

3. The competence to grant authorization for the installation or modification of retail commerce establishments with a sales area greater than 2000 m<sup>2</sup>, the modification when the same translates into an expansion of the sales area in a percentage equal to or greater than 20% or the installation of commercial groups covered by this law, falls on the municipality, upon prior expert opinion of the General Directorate of Commerce.

4. The authorizations referred to in No. 1 of this Article constitute the documental proof of the approval of the location by the central or local, for the purposes foreseen in the legislation applicable to urbanization and construction.

5. Non-granting of the installation or modification authorization referred to in No. 1 of this Article makes it impossible for the respective municipality to approve the respective municipal license or authorization requests pertaining to the commercial establishment or commercial group in question, under penalty of nullifying all the acts practiced.

### **Article 8** **Authorizations**

In the ambit of the decision process relative to the installation or modification authorizations of establishments, referred to in the preceding Article, the municipality of the establishment installation or modification shall evaluate the requests presented and determine the authorizations to be granted, taking into account:

- a) The prioritization of the candidacies;
- b) The commercial equipment already authorized, considering the number of formats per operators present, namely the one that integrates the establishment or commercial group to be installed;
- c) The number of residents in the area of influence under consideration and its evolution in the last decade, conjugated with the regional/municipality purchasing power index.

### **Article 9** **Decision Criteria**

1. The installation or modification of the commercial establishments and the installation of commercial groups covered by this law, should contribute to the fulfillment of the objectives defined in Article 2

2. In compliance with the provisions of the preceding number, the evaluation of the authorization requests is based on the following criteria:

- a) Guarantee of a correct framework on the matter of environmental protection, respect for the territorial organization rules, and insertion in the landscape;
- b) Availability of adequate parking areas and loading and unloading areas;

- c) Contribution for the improvement of the conditions of competition of the distribution sector, in a framework of coexistence and balance between the various forms of commerce and update of the commercial structure to the needs and conditions of the consumers' life;
- d) Contribution to the development of jobs, evaluating the global balance of the direct and indirect effects on the same;
- e) Intersectorial integration of the entrepreneurial sector, as a function of the dimension, quality and stability of the contractual provisionment relationships and effects induced in the matter of competitiveness and technological progress of the economic sectors ahead, at the relevant municipal level.

3. For the purpose of decision making, the competent entities shall take into account the value of the project (VP), in accordance with the following parameters:

- a) In the application of the criterion foreseen in subparagraph a) of No. 2, the legislation in effect on environmental matters and on matters of territorial organization and the contribution of the project to the development of the quality of the urbanism should be attended to, considering the following aspects:
  - i) Conformity with the territorial management instruments in effect and integration of the project in the surrounding area;
  - ii) Contribution to the sustainability of the urban development;
- b) Respect for the criterion foreseen in subparagraph b) of No. 2 requires the creation of minimum areas for parking, loading and unloading, inside the parcel destined for the commercial establishment of the commercial group;
- c) In the application of the criterion referred to in subparagraph c) of No. 2, the impact of the project should be pondered, considering the following aspects:
  - i) Density and quality of the commercial structure existing in the zone of influence, as well as the forms of commerce present, and the diversity, quality and adequacy of the offer to the conditions of consumption;
  - ii) Introduction of new technologies and innovative practices or contribution to the respective diffusion, with a view to a more efficient response to the needs of the consumers, aside from the non-discrimination of the disabled citizens;
- d) In the application of the criterion established in subparagraph d) of No. 2, the following should be taken into consideration:
  - i).....The commitments assumed by the requestor on matters of net jobs stability and quality generated by the project;
  - ii).....The performance foreseen on the matter of professional training;

a. In the application of the criterion established in subparagraph e) of No. 2 the following should be taken into account:

i) The influence of the project in the promotion of an adequate intersectoral integration of the entrepreneurial fabric, through the establishment of representative provisionment contracts with the industrial and agricultural producers and of the corresponding effects induced in the economic development, at the relevant local level;

ii) For the purpose of the preceding point the commitments in matters of stability of contractual relations with production, particularly when the commercialization of PME industrial products, and non-industrial agricultural companies, should likewise be taken into account.

4. The commitments referred to in subparagraphs d) and e) of the preceding number should be presented in an adequately quantified form and are, during a period of six years counting from the date the establishment begins operation, object of annual verification by the competent entities.

5. The criterion foreseen and concretized in subparagraph e) of No. 3, respectively, is not applicable to the installation of commercial groups.

6. The formula to calculate the VP, the methodology for its calculation and the remaining technical rules necessary to the execution of the provisions of No. 3 are fixed by ordinance of the Minister of Economy.

7. The authorization for the installation and modification of commercial establishments and the installation of commercial groups covered by this law should be denied when the project does not contribute positively to the sustainable development of the area of influence by virtue of having a negative evaluation on the criteria foreseen in subparagraphs a) and b) of No. 2 and concretized in subparagraphs a) and b) of No. 3, respectively.

### **CHAPTER III**

#### **Authorization Procedure**

#### **Article 10**

##### **Authorization Requests**

1. The authorization requests referred to in Nos. 1 and 2 of Article 5 should be presented at the municipality of the installation or modification zone of the establishment or to the General Directorate of Commerce.

2. The wholesale and retail commercial establishments should abide by the commercial urbanism conditions existing in the respective urban plan approved by the locality in which they are situated, or simply in the urban plans, in the absence of those conditions.

3. In the absence of urban plans, the municipality shall pronounce itself on the socio-economic interests of the unit to be implemented.
4. In the absence of regulation regarding the hygiene and salubrity conditions, the municipality, in articulation with the sanitary authorities, shall emit expert opinions in accordance with the criteria of guarantee of minimum conditions for the defense of public health.
5. In any of the situations foreseen in Nos. 2 and 3, the expert opinion is considered to be favorable to the interested party if the municipality does not emit any opinion within 30 workdays, counted from the date the respective request is presented.

### **Article 11** **Tramits**

1. Without prejudice to the remaining rules to be observed under the terms foreseen in this law, the requests for authorization, installation or modification of commercial establishment and authorization for the installation of commercial groups are subject to the following procedural tramits:
  - a) The requests for authorization are presented to the highest representative of the government department responsible for the sector of commerce and to the president of the respective municipality, by an application of the interested party (hereinafter referred to as the requester), accompanied by the elements referred to in Annex I of this legislation and that constitute integral part of the same. The documents may be presented electronically;
  - b) The requester must make proof of ownership of the local to which the request refers or of any other juridical position that are proof of legitimate rights or interests over the same;
  - c) For the purpose of the provisions of Nos. 1 and 2 of Article 5, the requester must, likewise, add documental proof of the prior authorization request or approval of the location, annexing, to that end, the elements referred to in Annex II of this law and constitute integral part of the same;
  - d) The requester should add a favorable environmental impact declaration, emitted under the terms of Legislative Decree 14/97, of 1 July – that develops the bases for the environmental policy, or documental proof that the necessary period has elapsed for the production of the necessary tacit approval, under the terms foreseen in the same legislation, in the applicable cases;
  - e) If the requester considers that the demand for any of the elements referred to in the cited Annexes I and II are not applicable to his/her particular case, specifically when modifications to retail and wholesale commercial establishments in unencumbered service are at stake, he/she should so mention expressly in application, justifying the reason for such understanding.
2. The verification of the documents of the authorization process is the competence of the General Directorate of Commerce and the municipality where the establishment is

located, and the latter should, within 15 days counting from the date the duly documented request is received, grant or deny the authorization.

3. When in the verification of the documents of the process it is discovered that the same are not in conformity with the provisions of No. 1 of this Article, the General Directorate of Commerce, or the municipality where the establishment is located, solicits the requester, within five days counting from the date the request is received, to send the missing documents. A maximum period of 10 days shall be established for the remittance of the missing documents.

4. The process is considered duly documented only on the date the last of the missing elements is received, counted from the deadline referred to in subparagraph f).

5. The realization of public consultation, under the terms of Article 16, is the competence of the General Directorate of Commerce or the municipality that is a coordinating entity. The latter should, within the deadline referred to in the preceding number, proceed to the publication of the notice referred to in No. 2 of the cited Article in two of the newspapers with the largest distribution in the area of influence of the project.

## **Article 12**

### **Deadline of the Consultation Tramits**

1. For the purpose of the provisions of No. 2 of Article 5 of this legislation, the municipalities dispose of 45 days, counting from the date of reception of the process remitted by the General Directorate of Commerce, under the terms of Article 5, to pronounce on the requests. Included in this period are the eventual consultations to other entities. In the absence of a response in the referred period, the location is considered approved.

2. The approval of the location referred to in the preceding number binds the competent entities for a decision on an eventual prior information, licensing or authorization request for the urban operation it pertains to, as long as such request is presented within a year counting from the date of notification of the same to the requester.

## **Article 13**

### **Expert Opinions of the DGA, the DGOT and the IE**

1. For the purpose of the provisions of No. 2 of Article 5 of this legislation, The General Directorate of Customs, the OT and the Roads Institute, shall emit their expert opinions within 30 days counting from the date of reception of the process remitted by the General Directorate of Commerce or by the municipality, in the case of retail commerce.

2. The expert opinion to be emitted by the entities referred to in the preceding number should ponder the impact of the implementation of the commercial establishment of commercial group from the environmental and territorial organization points of view, attending to the following aspects:

- a) Landscaping integration in the surrounding area;
- b) Management of the effluents and the solid residue generated;
- c) Noise values resulting from the respective entry into operation, taking into account the increase in road traffic foreseen, the characteristics of the accesses and the equipments to be installed;
- d) Articulation with the correct territorial organization, specifically in terms of the urban framework and aspects related to traffic.

3. The requester disposes of a period of ten days counting from the date of reception of the respective request to, upon solicitation from the general Directorate of Commerce or the municipality of the area of installation or modification of the establishment, supply the missing documents. The deadline considered in No.1 is considered suspended, for the elaboration of the respective opinion until the remittance of the solicited elements.

4. Without prejudice to the suspensions foreseen in the preceding number, non-emission of the expert opinions by the entities, within the periods established in Nos. 1 and 5 of this Article, respectively, is considered as a favorable opinion, counted from the period referred in No. 1 of this Article.

#### **Article 14**

##### **Expert Opinion from the General Directorate of Commerce**

1. The General Directorate of Commerce emits its own expert opinion within 45 days, counting from the date the process is received, under the terms of subparagraph e), No. 1 of Article 11, without prejudice to the provisions of the Article that follows.

2. The opinion to be emitted by the General Directorate of Commerce is based on the verification of the compliance with the criteria foreseen in subparagraphs c), d) and e) of No. 2, Article 9, with the observance of the provisions of No. 3 and pondering the provisions of No. 4 of the referred Article.

3. The General Directorate of Commerce may solicit, in the first 10 days of the respective period, for clarification or complementary information, from the requester, the municipality or other public or private entities. The deadline for the elaboration of respective expert opinion is considered suspended until the remittance by the former, of the solicited elements.

4. Without prejudice for the suspensions referred to in this Article, non-emission of the expert opinion by the General Directorate of Commerce within the period referred to in No. 1 is considered to be a favorable opinion.

#### **Article 15**

##### **Simplified Tramit**

1. Without prejudice to the other rules to be observed under the terms foreseen in this law, the wholesale and commercial establishments with a sales area smaller than 500

m<sup>2</sup> are subject to a simplified tramit, to be defined by the General Directorate of Commerce and by the respective municipalities, as the case may be.

2. Without prejudice to other rules to be observed under the terms foreseen in this legislation, the retail commercial establishments with a sales area equal to or greater than 500 m<sup>2</sup> but smaller than 1000m<sup>2</sup>, that do not belong to the same enterprise that utilize one or more insignias or not integrated in a group, are subjected to a simplified procedural tramit based on the verification of compliance with the criterion foreseen in subparagraph c) of No. 2, Article 9 of this legislation, by the General Directorate of Commerce or the municipality of the area where the establishment is located.

3. Without prejudice to the other rules to be observed under the terms foreseen in this law, the wholesale commercial establishments with a sales area greater than 500 m<sup>2</sup> but smaller than 1000m<sup>2</sup>, that do not belong to the same enterprise that utilizes one or more insignias or are not integrated in a group, are subjected to a simplified procedural tramit, based on the verification of compliance with the criterion foreseen in subparagraph c) of No. 2, Article 9 of this legislation, by the General Directorate of Commerce.

4. In the situations foreseen in Nos. 2 and 3 above, the deadline for the emission of the expert opinion by the General Directorate of Commerce is 20 days, counting from the date the case-file is received, under the terms of sub-paragraphs e) of No. 2, Article 11, By the same token, the provisions of Articles 3 and 4 of the preceding number are applied to them should it be necessary to solicit complementary clarifications or information.

5. Without prejudice to the suspensions foreseen in the preceding number, non-emission of the expert opinion by the General Directorate of Commerce within the established deadline is considered as a favorable opinion.

## **Article 16** **Public Consultation**

1. The following are subject to public consultation:

- a) The establishment of retail commercial establishments with a sales area equal of greater than 3000 m<sup>2</sup>;
- b) The expansion of a retail commercial establishment that implies an increase of the respective sales area on a percentage equal to or greater than 50% and translates into a sales area equal to or greater 3000 m<sup>2</sup>;
- c) The installation of commercial group with gross rentable area equal to or greater than 5000 m<sup>2</sup>.

2. The provisions of the preceding number does not apply to the installation and expansion of commercial establishments integrated in commercial groups covered in this legislation.

3. The public consultation consists in the collection of comments regarding the installation or modification of establishment or the installation of commercial groups, and the same should be announced through a notice, published under the terms of the provisions of No. 2, Article 11 of this legislation and in which should be indicated the manner in which the interested parties should present their comments.

4. The public consultation period cannot last less than 3<sup>o</sup> days nor more than 40 days, and should be announced at least eight in advance.

5. In the ambit of the coordination committed to the General Directorate of Commerce or the municipality of the area where the establishment is located, the same must elaborate a report containing the results of the public consultation to be considered in the decision making process.

### **Article 17**

#### **Impugnation**

1. The decision regarding wholesale commerce may be impugned by the member of the Government responsible for the area of Commerce. If the appellant does not agree with the decision of the latter, it can appeal to the competent court.

2. The decision for the retail commerce can be appealed under the terms of the law.

### **Article 18**

#### **Record of the Commercial Establishments**

1. The records of the commercial establishments shall be organized on the basis of information provided by the register, in conformity with Annex III and shall be managed electronically.

2. The creation and regulation of the commercial record shall be established in an appropriate legislation.

### **Article 19**

#### **Expiration of the Authorization**

1. The authorization granted expires in 30 days counting from the date of emission of the respective authorization, if the commercial establishment or the group it pertains to do not start operations.

2. The General Directorate of Commerce and the municipality where the establishment is located may prorogue the authorization granted up to a maximum of a year, in the case of a commercial group, based on a request by the interested party, duly fundamented and filed, with a maximum of 45 days in advance of the expiration date of the authorization.

**Article 20**  
**Modifications Subsequent to the Authorization Decision**

1. The modifications the requester pretends to introduce in the project, between the date the authorization is emitted and the beginning of operations of the commercial establishment or the commercial group susceptible of altering the assumptions in which the former was based and that pertain to, namely, the gross rentable sales area, the location, the type of activity, the branch of commerce or to the entity that explore sit, are mandatorily communicated to the General Directorate of Commerce or to the municipality of the area where the establishment is located, up to 45 days before the date foreseen for the beginning of operation of the establishment of the commercial group.
2. Within three days counting from the date of its reception, the General Directorate of Commerce or the municipality of the area where the establishment is located remits the modification request to the entities that intervened in the authorization process, for their review.
3. The entities referred to in the preceding number shall elaborate an expert opinion within 30 days counting from the date the request is received.
4. Non-emission of the opinion within the deadline established in the preceding number is considered as a favorable opinion.
5. The competent entity decides, within a maximum of 15 days counting from the date of reception of the last of the opinions referred to in No. 3 or of the end of the last deadline for the respective emission, at the end of which, if a decision has not been made, it is considered that the modification request is approved.

**CHAPTER IV**  
**Start-up of Operations of the Commercial Establishment or Commercial Grouping**

**Article 21**  
**Inspections**

1. It is mandatory to inspect the authorized establishments referred to in this legislation.
2. The inspection shall have its own regulation.

**Article 22**  
**Non-compliance with the Requisites of the Authorization**

1. When during the inspection referred to in the preceding Article non-compliance is detected in the requisites that fundamented the authorization, for installation or modification, such situation, which must be recorded in the inspection report, is cause for preventing the beginning of operations of the commercial establishment or commercial group.

2. The non-compliance situation referred to in the preceding number is communicated to the requester by the General Directorate of Commerce and the municipality where the establishment is located, in a duly fundamented form, within three days after the inspection is made.

### **Article 23 Inscription**

1. The installation and the modification of commercial establishments and the installation of commercial groups covered by this legislation shall be the object of inscription in the commercial record in the General Directorate of Commerce by delivery, by the interested party, and preferentially by electronic means (Internet) of a duly filled out form.

2. The form mentioned in the preceding number should contain the elements referred to in Annex III of this legislation, of which it is integral part.

3. The registration referred to in this Article must be made within a maximum of 10 days after the date of beginning of operations of the commercial establishment or commercial group in question.

4. The regime for inscription of the establishments in the record is established in an appropriate legislation.

### **Article 24 Start-up of Operations**

1. When, in the inspection referred to in Article 21 of this legislation, non-compliance with the requisites that fundamented the installation or modification authorization is discovered, the General Directorate of Commerce or the municipality where the establishment is locate shall communicate the situation to the requester within three days after the inspection is made.

2. The beginning of operation of the commercial establishment or of the commercial group depends on the notification referred to in the preceding number.

## **CHAPTER V Information Requests, Oversight and Sanctions**

### **Article 25 Information Requests**

1. The General Directorate of Commerce or the municipality of the area where the establishment is located, in the exercise of the competences that are conferred to them by this legislation, may solicit information to any of the entities, enterprises or associations of enterprises, establishing, to that end, the deadlines they deem reasonable.

2. The owners of the commercial establishments or the commercial groups, covered by Article 4, should send to the General Directorate of Commerce, up to 30 May of each year, preferentially by Internet, the elements discriminated in Annex IV of this legislation, of which it is an integral part.

## **Article 26** **Oversight**

Oversight of the compliance with the provisions of this legislation is the competence of Economic Activities General Inspection (IGAE), without prejudice to the competences legally attributed to other entities.

## **Article 27** **Infractions**

1. Without prejudice for the criminal responsibility that may have taken place, the infractions to the norms foreseen in this legislation constitute contra-ordinations punishable with a fine under the terms of the numbers that follow:

2. The following constitute contra-ordinations punishable with the following fines, when committed by singular persons:

- a) From ecv 100,000\$00 to ecv 1,000,000\$00, for the violation of the provisions of Nos. 1 to 5 of Article 4 and non-compliance with the conditions and obligations referred to in Nos. 1 and 2 of Article 7;
- b) From ecv 20,000\$00 to ecv 100,000\$00, for infraction of the duty to inscribe, foreseen in Article 23;
- c) From ecv 20,000\$00 to ecv 100,000\$00, for non-remittance of the elements solicited under the provisions of No. 2, Article 25.

3. The following constitute contra-ordinations punishable with the following fines, when committed by collective person:

- a) From ecv 500,000\$00 to ecv 3,000,000\$00, for the violation of the provisions of Nos. 1 to 5 of Article 4 and non-compliance with the conditions and obligations referred to in Nos. 1 and 2 of Article 7;
- b) From ecv 50,000 to ecv 250,000\$00, for infraction of the duty to inscribe, foreseen in Article 23;
- c) From ecv 50,000\$00 to ecv 250,000\$00, for non-remittance of the elements solicited under the provisions of No. 2, Article 25.

4. Negligence is punishable.

5. The oversight entities may solicit the collaboration of any other entities whenever they deem it necessary to the exercise of their functions.

6. The documenting of a contra-ordination process is the competence of the Economic Activities General Inspection (IGAE) and other entities with an oversight function.

7. The proceeds from the fines applied in the ambit of this legislation are distributed as follows:

- a) 60% to the State;
- b) 30% to the entity that does the documenting of the case;
- c) 10% to the entity that prepares the news information.

### **Article 28**

#### **Embargo, Demolition of Work Site, Replacement of Building Lot**

Without prejudice to the provisions in the base-law on territorial organization and urbanism (regimes for the coordination of the national and municipal ambits of the territorial management system, the general regime for the use of the soil, and the regime for the elaboration, approval, execution and evaluation of the territorial management instruments), the president of the respective municipality is competent to determine the embargo, the demolition of the construction and reposition of the land, and apply, to that end, the provisions in the matter of urban tutelage legality measures applicable to the urbanization of the construction.

### **Article 29**

#### **Fees**

#### **(Make it Sufficient to Cover the Authorization Expenses)**

1. Aside from the fees foreseen in specific legislation, the acts relative to the review and authorization of the installation and modification of commercial establishments and installation of commercial groups, covered by this legislation, including the inspections and the prorogations, are subjected to the payment of fees whose amounts vary as a function of the sales area or the gross rentable area object of authorization and of the study and evaluation made to the project area of influence.

2. Without prejudice to the provisions of Nos. 3 and 4, the formulae to determine the correct amount of the fees foreseen in the preceding number, as well as the rules relative to their update, is defined by joint ordinance of the ministries of Finance and Economy.

3. The authorization fees cannot, in any case, be less than ecv 500\$00 per square meter of the sales area or the gross rentable sales area object of the authorization request.

4. The proceeds resulting from the collection of the fees for inspection, prorogation and authorization fees revert in 40% to the General Directorate of Commerce or to the municipality of the area where the establishment is located and the remainder is prorated in equal parts to the intervening entities.

5. The proceeds from the authorization fees reverts in favor of the support fund for the commercial enterprises as well as to the maintenance and operation of the computerized

data base and of the General Directorate of Commerce's reference center, to be created, whose objective shall be to support the modernization of the commercial activity, specifically in centers for a predominantly independent proximity commerce or rural zones, and to promote training actions and programs directed to the commerce sector.

6. The collection of the fees referred to in this Article is the competence of the General Directorate of Commerce or the municipality of the area where the establishment is located, as the case may be.

## **CHAPTER VI** **Final and Transitory Provisions**

### **Article 30** **Transitory Norm**

1. The provisions of this legislation apply to the commercial establishments and commercial groups, covered by Article 4, that are pending on the date this legislation goes into effect, under the provisions of Decree-Law No. 50/2003, of 24 November.

2. The provisions of this law do not apply to commercial establishments and commercial groups, covered by Article 4, relatively to which favorable prior information, a license or authorization may have been emitted, under the terms of the legislation that defines the juridical regime for construction and of urbanization.

3. For the purpose of the application of the provisions of No. 1 of this Article, the case files are returned to the requesters, having in view their reformulation in accordance with rules defined in this legislation.

### **Article 31** **Final Provision**

The entities processing the revenues from the collection of fees and fines foreseen in this legislation transfer the respective shares to other entities, by bank transfer or by check, with a list attached of the cases they refer to, by the 10th day of each month.

### **Article 32** **Revocation Norm**

Ordinance No. 43/2004, of 4 October, is hereby revoked.

### **Article 33** **Effective Date**

This legislation goes into effect on 1 January 2006.

**Viewed in Council of Ministers.**  
*José Maria Pereira Neves – João Pereira Silva.*  
*Promulgated on ...../...../2005*  
*Publish it.*

*The President of the Republic, PEDRO VERONA RODRIGUES PIRES*  
*Referended on...../...../ 2005*

**ANNEX I**

Elements that should accompany the installation and modification requests for commercial establishments or installation request for commercial groups, in accordance with the provisions of subparagraph a) of No. 1, Article 11 of this legislation.

**A. General Regime**

In the case of commercial establishments and commercial groups covered by Article 4, with the exception of commercial establishments with sales surface greater than or equal to 500 m<sup>2</sup> and less than or equal to 1500 m<sup>2</sup> and that do not belong to a same enterprise, that utilizes one or more insignias, or not integrated in a group, the authorization requests should be accompanied by:

**a) Identification of the requester:**

Name, firm or commercial denomination, complete;  
Mail address/telephone/fax/e-mail;  
Identification number of the collective person;  
CAE to four digits;  
Background in the distribution sector (when applicable);  
Number and location of the establishments that fulfill the requisites foreseen in Article 4 of this legislation that, eventually, already has, referring to the respective years of operation, sales area, number of commercialized references, number of workers and characterization of the contractual relations with the production, in particular with industrial PMEs, agricultural enterprises and crafts;  
Number and location of the commercial groups that fulfill the requisites in No. 3 of Article 4 of this legislation that, eventually, already have, relating to the respective years of operation, gross rentable areas, number of establishments that constitute them, mixed commercial and number of establishments in operation;  
Person to be contacted (interlocutor responsible for the project);

**b) Identification of the entity that explores the establishment or commercial group:**

Name, firm or commercial denomination, complete;  
Mail address/telephone/fax and e-mail;  
Identification number of the collective person;  
Four CAE digits;

**c) Legitimacy to file the request:**

Title of property ownership, promise-contract or any other document from which results or may result the legitimacy of the requester to build the establishment or commercial group in question or, if the same already exists, to explore them commercially;

**d) Characteristics of the commercial establishment (applicable to the requests for authorization of installation and modification of commercial establishments)**

Location;  
Name/insignia/designation;  
Branch of commerce (food, non-food, with indication of the respective branch of activity or mixed);  
Number of floors;  
Area for sales/Areas for storage, services, support and for offices;  
Number of parking places and areas for loading and unloading foreseen in the respective areas;  
Number of establishments that integrate the commercial group where the establishment is inserted (when applicable);  
Estimated number of references to be commercialized;  
Estimated annual business volume;  
Estimated number of jobs;  
Foreseeable deadline for the construction and opening to the public;

**e) Characterization of the commercial group (applicable to the installation requests for commercial groups):**

Location;  
Name/designation;  
Number of floors;  
Gross rentable area;  
Areas for storage, support services and offices;  
Number of parking places and places for loading and unloading foreseen and respective areas;  
Number of commercial establishments that shall integrate the commercial group and commercial mix foreseen;  
Estimated number of jobs;  
Services to be made available by the common management of the undertaking;  
Foreseeable deadline for the construction and opening to the public;

**f) Definition of the area of influence:**

Identification and characterization of the area of influence the request and presentation of the subjacent methodology.

**g) Description of the commercial competition that took place in the area of influence that the request pertains to:**

Number and characteristics of the existing establishments and of the requisites foreseen in Article 4 of this legislation, specifying, specifically, the respective sales areas, insignias commercial branches and sales methods;  
Number and characteristics of the commercial groups that fulfill the requisites foreseen in subparagraph b) of No. 3, Article 4 of this legislation, eventually existing, specifying specifically, the respective location, gross rentable areas and number and characteristics of the establishments inserted in the same;

**h) Description of the provisionment policy of the establishment:**

Sources of provisionment and contractual relations with the suppliers, specifying: contractual relations with production, specifically with regard to regional/local products of industrial PME and of agricultural and crafts enterprises, payment deadlines, connections with national or international purchasing centrals;

**i) Compliance with the decision criteria:**

Demonstration of compliance by the project of the criteria referred to in subparagraph c) of No. 2 Article 9 of this legislation, including filing of documents which indicate the commitments referred to in No. 7 of the referred Article 9

**B — Simplified Regime**

In the case of processes whose documenting is covered by Article 15 of this legislation, the requests for installation or modification of establishments should be accompanied by the elements referred to in part A of this Annex, with the necessary adaptations and the following exceptions:

a) Subparagraph h) — sending of the elements referred to in this subparagraph is dispensed with;

b) Subparagraph i) — fundamenting is required only for the installation or modification to indicate that the establishment satisfies the criterion established in subparagraph c) of No. 2, Article 9 of this legislation.

## **ANNEX II**

Elements that should accompany the prior authorization request or the approval of the location, in accordance with the provisions of sub-paragraph c) of No. 1, Article 11 of this Legislation:

- a) Description of the undertaking that makes explicit, specifically, the characterization of the total area of the land, of the implantation areas, of construction and sale, of volumetric, of the impermeable area, of the destination of the building, height and number of floors above and below the entrance level for each building and zones, duly dimensioned, destined to accesses, parking, loading and unloading of vehicles, including, if such is the case, in building parking area;
- b) Organization plant and conditions of the municipal director plan and of other applicable territorial management instruments;
- c) Plant of the location of the project on a scale of 1:2000 or greater, with the land delimitation foreseen;
- d) Statement of the national agricultural reserve letter covering the soils pretended to be utilized, in the cases in which there is no public and effective municipal director plan;
- e) Synthesis plant, on a scale of 1:2500 or greater, indicating the proposed modeling for the terrain, road structure and its relation with the exterior, implantation and destination of the edifices to be built, indicating height and number of floors above and below the entry level and delimitation of the parking areas and loading and unloading areas;
- g) Declaration of favorable environmental impact, issued according to the environmental base-law, or documental proof that the necessary period has elapsed for tacit deferment, under the terms foreseen in the same law, in the applicable cases;
- h) Qualitative and quantitative characterization of the liquid effluent and solid residues created and indication of their final destination;
- i) Acoustic evaluation certifying compliance with the law on noise pollution;
- j) Measure of the undertaking's landscape integration in the surrounding area;
- l) Callendarization of the construction and entry of the undertaking into operation;
- m) Traffic study that justifies the options presented regarding access and parking spaces and vehicle loading and unloading areas;
- n) Study of circulation and parking in the surrounding area, which shall incorporate the principal means of access and crossing;
- o) Any other elements that the requester considers of interest, better to clarify the request.

### **ANNEX III**

Elements that should be contained in the form for installation or modification of commercial establishments or installation of commercial groups, to send to the General Directorate of Commerce, according to the provisions of Article 19 of this legislation:

#### **a) Identification of the type of movement:**

Installation;

Modification (expansion of the sales area/change of location/alteration of type of activity or branch of commerce/change in ownership of the exploration or of insignia);

#### **b) Identification and characterization of the commercial establishment:**

Location;

Name/insignia/designation;

Mail address/telephone/fax/e-mail;

Branch of commerce;

Global dimension of the undertaking, discriminating the total area of the terrain, of the commercial establishment and the covered and uncovered parking areas (indicating areas and parking places and loading and unloading areas), when applicable;

Dimensioning of commercial establishment, discriminating the sales area (separating food and non-food branch, if applicable) storage, support services and office space;

Number of floors and number of exit boxes;

Number of commercialized references;

Number of jobs;

Date operations begin;

#### **c) Identification and characterization of the commercial group:**

Location;

Name/designation;

Building number and respective number of levels;

Gross rentable area;

Storage, support services and office areas;

Number of parking places, loading and unloading areas;

Number of commercial establishments that constitute the commercial group and number of commercial establishments in operation;

Number of jobs;

Services made available by the management of the undertaking;

Date operations begin;

#### **d) Identification of owner of the commercial establishment or commercial group:**

Name, firm or commercial denomination, complete;

Mailing address/telephone/Fax/E-mail;

Identification number of the collective person;

CAE four digits;

Person to contact (responsible for the filling out).

## ANNEX IV

The owners of the commercial establishment or commercial groups should send to the General Directorate of Commerce, according to the provisions of No. 2, Article 25, of this legislation, a complete list of the respective commercial establishments and commercial groups located in the continent, indicating:

- a) Owner identification, under the terms indicated in Annex III;
- b) List of the commercial establishments and commercial groups, including their updated characterization should there be alterations to the elements referred to in Annex III, previously delivered to the General Directorate of Commerce or municipality of the area where the establishment is located;
- c) Business volume per establishment, the exercises of the last two years (gross sales and net sales, separated by groups of items) not applicable to commercial groups);
- d) Provisionment policy (per establishment or enterprise/group owner) (not applicable to commercial groups);
- e) Reports and accounts rendering pertaining to the last exercise (consolidated and/or from each enterprise in the distribution area);
- f) Copy of the tax liquidation form (IRC) pertaining to the last exercise.