

B.O. No. 39, I Series of 24 November 2003

COUNCIL OF MINISTERS

**DECRETO-LEI 50/2003
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Juridical Regime of the Commerce Sector

The Decree-law 5/99, of February 1, consecrated the profound mutations operated in the country in the domain of trading activity, reflecting a role reserved either to the private sector or to the State in the trading activity.

It happens, however, that the mentioned diploma has never been regulated, from this fact resulting that some of its provisions have never come into force, in practice.

Besides, that legal text was published with many misprints – that even make it difficult to apply some of its precepts – of which some have been corrected opportunely, reason why it urges to make a new publication, without misprints and with the introduction of some innovations, namely, regarding the delegation of powers in the firm-related associations of the sector of trade or geographic area, validity period of the

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Article 2
Scope

1. The present diploma applies to the ~~single~~ persons, to the trading societies, to

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Article 4

Free exercise the trading activities

1. The right to free exercise the trading activities, under the terms and conditions and within the limits established by law, is recognized to all persons, single or collective.

2. Whenever important reasons of public interest and fundamental for the national economy, particularly the guaranty of supply in essential or public health goods, so require, and that cannot be assured otherwise, The Government may reserve for the public or private sector enterprises, the trading exploitation of certain trading activities.

Article 5

Free competition

The trading activity will be exercised in regime of free and loyal competition in the market, under the terms and within the limits of the law of competition of prices.

Article 6

Co-existence

1. In the exercise of the trading activity, the private sector and supplementary the private one, will co-exist.

2. For the purposes of the previous number,

- a) the public enterprises and the trading societies of capital exclusively and largely public integrate the public sector;
- b) the individual enterprises, the trading societies with capital entirely or less private, as well as the consumption cooperatives or retailers and the agriculture or industrial production cooperatives which also integrate in their object the activity of acquisition or sale, wholesale or retail, of materials and goods necessary to their operation or of products of their activity, respectively, integrate the private sector.

Article 7

Consumer protection

1. The Government, in the definition of its general trading activity, has as objective the promotion and protection of the consumers' interests, especially in what concerns the security in the supply of essential goods, the formation and fiscalization of the prices and the prevention and campaign against anti-economic infractions and infractions against public health.

2. For the purposes of the previous number provision, the Government supports the creation and the development of associations for the consumers' protection.

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Article 8

Quality control

1. The Government's trading policy has the fundamental preoccupation of ensuring a rigorous quality control of the traded products, of national production or imported, either they are destined to internal consumption or to exports.

2. The inspection and quality control and protection of public health measures, and the forms of obtaining the respective certificates will be regulated by decree-law.

Article 9

Environment protection

In the definition of its general trading policy, the Government will pay particular attention to its consequences at the environment level, according to the principles of the Basic Law on the Environment and complementary legislation, and in particular, in what concerns the protection of national patrimony, fauna and flora.

Article 10

International agreements

The Government's general trading policy is guided by the integral respect for the international agreements, treaties and conventions received in the Cape Verdean judicial order.

CHAPTER III

Trading activities

SECTION I

Types of trading activities

Article 11

Trading activities

1. For the purposes of application of the legal provisions relative to the exercise of the trading activity, the wholesale and retail trading activities are taken into consideration.

2. Meanings:

- a) every physical or collective person who, regularly and professionally buys goods in his own name and on his own account and resells them either to wholesalers or to retailers, either to transformers or to professional or great users, exercises the wholesale trading activity;

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- b) Every physical or collective person who, regularly and professionally buys goods in his own name and on his own account, and resells them directly to the final consumer, ~~exercises~~ the retail trading activity.

3. The activities of purchase and sale of goods by the public, military, public security, social assistance teaching and public health entities are not considered trading activities when they are destined to the inherent consumption, to respective

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- c) Marketer: he who exercises retail trading in a sedentary manner, in covered markets or in installations not solidly fixed to the ground, in usually designated fairs and markets;
- d)

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2. The trading activities comprised within the types defined in articles 12, 13 and

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Article 23

Prohibitions and accumulations for the marketer

1. The marketer is prohibited to accumulate the importer, exporter, wholesaler, retailer or trade agent activities with his own.

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following considered as such, provided that the legal and regulatory requirements are fulfilled:

- a) Stores, the ensemble of the organized structure for the exercise the retail trading or similar, regardless of the class or classes of products and that integrate simple warehouses;
- b) General warehouses, the ensemble of the organic structure destined exclusively to the wholesale trading, regardless of the class of classes of products;
- c) Malls (Shopping centers), the complex establishments that

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the duty of services rendered to all trading ~~and~~ of its territorial area, regardless of

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- f) To have as minimal qualifications the 4th year of schooling.
- g) When it's about a collective person, its definite registration or proof that it can be done in the competent organisms.
- h) To have warehouses adapted to the type of activity for which prior authorization is requested.
- i) To have met the fiscal obligations.

2. The requirement mentioned in subparagraph of the previous number is relieved:

- a) When the request for prior authorization has as object the exercise of retailer, peddler or marketer activities;
- b) In cases where succession occurs, due to death , relatively to the surviving spouse, when the request for prior authorization has as object the activity or activities validly exercised by the deceased.
- c) In cases of conveyance of property, cessation of usufruct, cessation of exploitation of any other form of transmission, free or onerous, of the establishment or warehouse in favor of the workers, when the request for authorization has as object the activity or activities that the transmitter was authorized to exercise.

Article 34

Requisites related to establishments

1. In the cases where the exercise of the activity involves the existence of establishment/store, warehouse or office, these must obey conditionalisms of commercial urbanism existent in the respective urbanistic plans approved for the locality where they are situated, or only the urbanistic plans, in the absence of those conditionalisms.

2. In the absence of urbanistic plans, the city councils and the business-related associations of the respective sector or geographic area will pronounce themselves about the economic-social interest of the unity to be implanted.

3. In the absence of regulation about the conditions of hygiene and salubrity, the city councils, in articulation with the sanitary authorities, will emit an opinion according to the criteria of guarantee of minimal conditions for the protection of public health.

4. In any of the situations provided for in numbers 2 and 3, it is considered that an

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pronounce itself within 30 working days from the date of presentation of the respective application.

5. The opinion may be replaced, in cases of free or onerous transmission of the establishment/store or warehouse, by the reference to the prior authorization of the former title-holder, provided that in the proof of implantation the same activity is carried out, without alteration or enlargement.

6. The requirements that must be met by the warehouses destined to the warehousing of food products will be decided by joint decree of the government members in charge of the trading and health areas.

Article 35
Inspection

1. For purposes of granting of the prior authorization provided for in article 29, commercial establishments that are devoted to wholesale or retail of foodstuff, are inspected by a commission constituted by a representative of the city council, who

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Article 37
Procedures of collective persons

1. Applications by collective persons,

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3. The notifications will be made by registered letter to the address included in the application or to the competent entities that have organized the process of prior authorization and are considered done from the third day from the issue.

4. 180 days passed, and the gaps mentioned in the final part of point 1 have not been corrected, the processes will be considered null.

Article 40

Certificate of authorization

1. In case of approval of the application, the competent authority or, in case of delegation of competences according to point 2 of article 30, the business-related association of the respective sector or geographic area will give to the applicant the certificate mentioned in point 2 of article 29.

2. If the decision to grant or refuse prior authorization is not made within the deadline mentioned in points 1 and 2 of previous article, one will consider that the concerned person is authorized to exercise the activity, working as certificate, for all purposes, the application duly signed by the service where it has been delivered.

Article 41

Causes for revocation

1. The authorization to exercise the trading activity will be revoked and the

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- g) By the transfer or any other form of definite transmission, free or onerous, of the property or usufruct of the establishment/store or warehouse;
- h) By the effective exercise of the ~~trading~~ activity by entity different from the one inscribed in the respective registration;
- i) By the loss of the general requirements mentioned in point 1 of article 33;
- j) By the non-payment of the taxes due according to article 47, for a period of time superior to two years.

2. The revocation mentioned in sub-paragraph ~~of~~ the previous number

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cases, or, in case of delegation of competence according to point 2 of article 30, to the

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- a) To have a minimum capital affected to the trading activity which amount will be defined by ordinance of the governmental member in charge of the trading area, after consulting the business-related associations:
- b) To have warehouse adapted to the trading branch and volume of affairs and with the other legal requirements;
- c) To have the accounting organized in accordance with the requirements of the National Plan of Accounting, under the responsibility of an idoneous expert on accounts, with credentials in the Ministry of Finances.

Article 52

Proof of requirements

1. Proof of requirements mentioned in subparagraph of the previous article is done through the presentation of certificate of matriculation at the trading registration which reports the capital of the dealer, individually or the trading society, or information on his financial capacity rendered by a credit institution, pro banking or another idoneous one which indicates that the applicant dispose of the minimum capital required.

2. Proof of requirements mentioned in subparagraph of the previous article is done through presentation of the property title or other right that gives to the applicant the usage and fruition of warehouse for a period longer than two years, without loss of the provision of article 34.

3. Proof of requirements mentioned in subparagraph of the previous article is done through presentation of:

- a) Plan of accounts to be adopted by the concerned person;
- b) Affidavit for the organization of the cited plan of accounts assumed by the accounting expert with credentials in the Ministry of Finances.

SUBSECTION II

Exporter

Article 53

Proof of requirements

1- Only the individuals who, besides the general requirements mentioned in article 33, meet the following special requirements provided in subparagraphs a) and c) of article 51 may exercise the exporter activity:

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2- To the proof of requirements established in the previous number apply with the necessary adaptations, the provisions of numbers 2 and 3 of article 52.

**SUBSECTION III
Wholesaler or warehouseman**

**Article 54
Indication and proof of requirements**

1. Only the individuals who, besides the general requirements mentioned in article 33, meet the especial requirements provided for in subparagraph ~~b) and c)~~ of article 51 may exercise the wholesaler or warehouseman activity.

2. The provisions of numbers 1 and 3 of article 52 apply to the proof of requirements established in the previous number, with the necessary adaptations.

**SUBSECTION IV
Retailer**

**Article 55
Indication and proof of requirements**

1. Only the individuals, who, besides the general requirements mentioned in article 33, meet the following special requirements, may exercise the retailer activity:

- a) To have a minimum capital affected to the trading activity which amount will be defined by ordinance of the governmental member in

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Article 56

Peddlers

In development of the provisions of subparagraph ~~of~~ article 13, peddlers are all the individuals who:

- a) Transporting the goods of their trade, by themselves or any adequate means, sell them to the public consumer in the places of their transit;
- b) Outside of the municipal markets in fixed places, demarcated by the city councils, sell the goods they transport, utilizing in the sale their own means or others put at their disposal by the mentioned city councils;
- c) Transporting their goods in vehicles, sell the goods in them, either in the places of their transit or in fixed places, demarcated by the competent city councils outside of the market;
- d) Utilizing automobiles or trailers, in them, in the public way or in fixed places determined by the city councils, cook light meals or other comestibles prepared in a traditional way.

Article 57

Exercise of moving sale

1. The exercise of moving sale is ~~plotted~~ to the trading societies, to the

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1. In the transportation, arrangement, exposition and storage of the products it is mandatory to separate the foods according to their nature, as well as among them, separate the ones that in any way, may be affected by the proximity of the others.

2. When they are not exposed for sale, food products should be kept in places adequate to the preservation of their state, and, also, in hygienic-sanitary conditions that protect them from dusts, contaminations and contacts that, in any way, may affect the consumers' health.

3. The seller, whenever it is required, will have to indicate to the entities competent for the fiscalization the place where he keeps his merchandise, permitting the access to the same.

4. In the packaging or conditioning of food stuffs one may use only paper or other material that has not yet been utilized and that doesn't contain drawings, paintings, or sayings printed or written in the interior.

Article 62

Specific competences of the City Councils

It belongs specifically to the City Councils:

- a) To restrict, condition or prohibit the sale of products, taking into consideration the hygienic-sanitary, and esthetic and commodity aspects for the public;
- b) To interdict zones to the exercise of the moving trade, attending to the transit and security needs of the pedestrians and vehicles, after consulting the competent authorities;
- c) To establish zones and fixed places for the exercise, with their own means or means granted by the City Councils, the peddling activity;
- d) To delimit places or zones to which the vehicles and trailers utilized in the peddling sale will have access;
- e) To establish zones and places especially destined to the peddling trade of certain specific categories;
- f) To emit and renovate the card for the exercise of the peddling sale;
- g) To determine the cases of apprehension of the contravention instruments, movable or immovable, which will guarantee the infractor's responsibility.

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Article 63

Localization of the peddler's activities

1. In the localities endowed of markets with proper installations it will only be allowed the activity of paddling of products that are sold in those markets when there aren't vacant for the fixed sale of those products.

2. When there are places in the markets mentioned in the previous number, but in certain areas there is insufficient public supply, the City Councils may determine places or zones, within the same areas, for the exercise of the peddling trade limited in the previous number.

3. The provisions of the previous numbers don't apply to the peddling sale of fish.

Article 64

Peddler's card

1. The peddler must have, for immediate presentation to the competent authorities for fiscalization, the card of peddler duly updated.

2. The peddler's card is valid only in the area of the respective municipality and for the period of one year from the date of issue or renovation.

3. The peddler's card is personal and not transferable.

4. The model of peddler's card will be approved by decree of the Government member in charge of the trading sector.

Article 65

City Council registration

The city Councils must organize a record of the peddlers who are authorized to exercise their activity in the area of the respective municipality. A copy of it will be sent to the General Inspection of Economic Activities and to the Governmental department in charge of the trading sector, as well as the respective updates.

Article 66

Personal production

The peddling of workmanship articles, fruits, horticultural products or any other products of personal fabrication or production is subject to the provisions of this subsection.

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**SUBSECTION VI
Marketer**

**Article 67
Authorization**

1. Using the respective attributions, it belongs to the City Councils to authorize the realization of fairs and markets, while the interests of the populations so recommend and taking into account the existing trading equipments, after consulting the labor unions, business-related associations and consumers associations.

2. When the circumstances justify it, the governmental department in charge of the trading sector may also be consulted.

**Article 68
Prohibition**

In the fairs and markets only the holders of a marketer card may exercise the activity:

**Article 69
Specific competence of the City Councils**

It belongs specifically to the City Councils:

- a) To issue and renovate the card for the exercise of sale in the fair; Pr9rcr te501D 0

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2. The marketer's card is valid only in the area of the respective municipality and for the period of one year from the date of issue or renovation.

3. The marketer's card is personal and not transferable.

4. The model of marketer's card will be approved by decree of the Government member in charge of the trading sector.

Article 71

City Council registration

The City Councils must organize a record of the marketers who are authorized to

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1. The participants in the packaging, transportation or sale of foodstuff will be obligatorily carriers of sanitary bulletins, according to the legislation in force.

2. Whenever there are doubts about the state of sanity of the seller or any of the individuals mentioned in the previous number, these will be summoned to present themselves to the competent sanitary authority for inspection.

Article 74
Prohibited sale

The sale of all the products whose specific legislation so determines, in fairs and markets, is prohibited.

Article 75
Personal production

The sale of workmanship articles, fruits, horticultural products or any other products of personal fabrication or production is subject to the provisions of this subsection.

SUBSECTION VII
Trading agent

Article 76
Indication of the requirements

1. The activity of trading agent is exercised through contract of agency or representation and, when it is on behalf of a foreign entity, can be exercised only jointly with importers.

2. The activity of trading agent for imported products can be exercised by

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- d) To have accounting organized in accordance with the requirements of the National Plan of Accounting, under the responsibility of an idoneous expert on accounts.

3. The foreign enterprises may exercise the activity of trading agent in

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1. The dossier of the trading establishments mentioned in n. 2 of article 26 is created with the purpose of ensuring the knowledge of the trading sector, through the identification and characterization of the trading establishments and forms of trading exercise in them.

2. The trading dossier is centralized in the governmental department in charge of

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Article 85
Peddlers and marketers

1. The provision of the present section doesn't apply to peddlers and makers;
2. The governmental department in charge of the trading sector may, however, ask the City Councils for the remittance of elements about the activity of the peddlers and marketers that may appear convenient.

CHAPTER V
Infractions and fiscalization

Article 86
Counter-ordinances

1. The infractions to the provisions of the present diploma constitute counter-ordinances.
2. The exercise of any of the activities mentioned in articles 12, 13 and 14 by the authorities who are not duly authorized or whose authorizations have been suspended or revoked, is punished with a 5000\$00 to 1000.000\$00 fine.
3. The non-observance of the provision of number 1, article 45, is punished with a 5000\$00 to 50 000\$00 fine.

Article 87
Fiscalization competence

The prevention and corrective action about the infractions to the norms provided for in this diploma, as well as the respective regulation and connected legislation, belong to the General Inspection of Economic Activities, General Inspection of Labor, Police of

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The procedure of licensing, installation and operation of the large trading surfaces will be object of a special diploma.

Article 92
Forms

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3. Once passed the deadlines fixed on the timetable mentioned in the previous number and the applications have not been presented, the permit or license will be considered invalid, except if, within 4 months from the end of those deadlines, the motive of non-presentation in time of application is duly justified.

4. After the replacement, the respective certificates will be sent to the concerned person or to the business-related association in cases where the request for replacement has been sent by these.

6. No taxes will be due for the reactop. wb.2()5.In ient l5.In(n)3.s be

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III Fats and animal or vegetable oils; Products of their dissociation;

IV

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VI

VII

VIII

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X

XI

XII

XIII

XIV

XV

XVI

XVII

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XVIII	Optics, photography or cinematography, measurement, control or precision instruments and equipments; Medical-surgery instruments and equipments; watch making articles; musical instruments, their parts and accessories.
XIX	Guns and ammunitions, their parts and accessories.
XX	Goods and diverse products. Objects of art, collectibles or antiques.

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