

**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

- 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 m². 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;

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- 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 m².

2. The installation or modification of a wholesale commercial establishment, with a sales area greater than 500 m².
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 m² 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 m², 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 m².
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 m², 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 m², 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 m², 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

- 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

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

- 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

m² 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 m² but smaller than 1000m², 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 m² but smaller than 1000m², 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 m²;
- 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 m²;
- c) The installation of commercial group with gross rentable area equal to or greater than 5000 m².

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^o 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

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 interv

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.

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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

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 m² and less than or equal to 1500 m² 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 se

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,

h) Description of the provisionment policy of the establishment:

Sources of provisionment and contractual re

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;

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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 provi

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.