

Approves the regulations for the industrial, commercial and services activities within the institutional scope of the Madeira Free Trade Zone.

The definition of the legal conditions of installation and operation of the entities aiming at operating within the institutional scope of the Madeira Free Trade Zone as well as the regulations in respect of the industrial, commercial and services activities within such scope, are an essential and undelayable objective to the full implementation of the Free Trade Zone which is now pursued.

The legal provisions contained in this decree shall not apply to offshore financial activities, that have been subject to specific regulation through the Regional Regulatory Decree Nr 16/87/M of July 13.

In addition to the mentioned legal scope, one must underline the procedural methodology now established. In fact, the Madeira Free Trade Zone project requires, within its economic and social aspects contributing for the development of the Madeira Autonomous Region, a fast, proficient and expedient management. The concession granted to the company named "S.D.M. – Sociedade de Desenvolvimento da Madeira, S.A.", congregating public and private capital, is a step towards this direction. One may easily understand the need to simplify and speed up the decision process which, being outdated and inflexible with unnecessary complexities and procedural delays, discourages the investment, namely when requested by entities located in more open and dynamic regimes.

Accordingly and pursuant to the provisions of paragraph (b), article 33 of Decree Law Nr 318D/76, April 30 and article 4 of Regional Legislative Decree Nr 22/86/M, October 2, the Madeira Regional Government decrees as follows:

**Article 1
(Approval)**

The regulations for the industrial, commercial and service activities within the institutional scope of the Madeira Free Trade Zone are hereby approved and published in an annex which forms integral part of the present decree.

**Article 2
(Force)**

The present decree enters into force immediately.

Approved in the Regional Government Council July 23, 1987.

The President of the Regional Government, *Alberto João Cardoso Gonçalves Jardim*.

Signed on August 12, 1987.

To be published.

The Minister of the Republic for the Autonomous Region of Madeira, *Lino Dias Miguel*.

ANNEX I

Regulations of the industrial, commercial and services activities within the institutional scope of the Madeira Free Trade Zone.

I - Administration and concession of the Madeira Free Trade Zone

Article 1 (Object)

These regulations govern the installation and operation of the entities intending to operate within the institutional scope of the Madeira Free Trade Zone, through the development of industrial, commercial and service activities within such scope the administration and exploitation of which is the responsibility of S.D.M. - SOCIEDADE DE DESENVOLVIMENTO DA MADEIRA, S.A., hereinafter referred to as the concessionaire, or merely as S.D.M., by virtue of the administrative concession agreement entered into with the Autonomous Region of Madeira on April 8, 1987.

Article 2 (Administration and exploitation)

- 1- The administration and exploitation of the Madeira Free Trade Zone is of the exclusive responsibility of S.D.M., in the terms of the relevant concession agreement referred to in article 1 of these Regulations.
- 2- S.D.M. has the following obligations:
 - a) To observe and enforce all relevant laws, regulations and instructions, in the exploitation of the Free Trade Zone;
 - b) To organise the administration services of the Free Trade Zone;
 - c) To ensure that all the installations, buildings and equipment existing in the geographically delimited area of Caniçal are maintained in good order and condition.

II - Licenses

Article 3 (Nature of the licenses)

- 1- The licenses for the installation, operation and development of industrial, commercial and services activities, within the institutional scope of the Free Trade Zone, have the nature of an administrative authorisation for the activities to which they relate and are inherent to the entities operating in such scope and to which they relate and may not be autonomously subject to legal contracts.
- 2- The *inter vivos* transfer of establishments which installation, re-opening, equipment change or location change have been licensed, is conditional upon the prior consent of the Regional Secretary for Planning.
- 3- The entering into contracts in breach of the provisions of the preceding numbers shall cause the termination of the license.

Article 4 (Licensing)

- 1- The Regional Secretary for Planning is empowered to license the activities referred to in article 1 of these regulations.
- 2- The concessionaire shall issue and sign the documents incorporating the said licenses.

Article 5 (Period for issue)

The authorisation for the installation, operation and development of the activities by the users must be granted within a period of 30 days as from the filing of the corresponding application with the concessionaire. The referred period is extendable for an equal period, in case additional clarifications, any documents indispensable for its issue or for the performance of other legal formalities, or the hearing of any other entities have been requested to the concessionaire.

Article 6 (Authorisation requisites and refusal)

- 1- The Regional Secretary for Planning will evaluate the idoneousness of the applicant and the economic interest of the activity to be carried out.
- 2- The authorisation mentioned in the preceding number may be refused in the following cases:
 - a) For reasons of national security or public interest;
 - b) If the envisaged activity is prohibited by law;

- c) In the event of a negative opinion or decision by the relevant authorities on the matter.

Article 7 (Elements)

The licenses shall mention the period, object, model, rent and conditions of installation of the users.

Article 8 (Period of installation and operation)

- 1- The minimum period for installation, operation and development of the activities by the entities intending to operate with physical installations in the geographically delimited area in Caniçal is of 5 years, extendable for minimum periods of 2 years, at the request of the interested parties which must be filed within a period of 6 months prior to the term of the initial period or each of the corresponding extensions.
- 2- In the event that the activity of the user totally and definitively terminates before the end of the licensed period or its extensions, the concessionaire will be entitled to receive all fees due for the entire period or its renewals, if such renewals had already been granted, under the terms of articles 9, 10 and 11 of these Regulations.

Article 9 (Fees)

- 1- The entities operating within the institutional scope of the Free Trade Zone shall pay to the concessionaire in consideration for the installation, utilisation of the facilities and execution of operations, the following fees, respectively:
 - a) Installation fee;
 - b) Annual operating fee.
- 2- The amount of the fees referred to in the preceding number is listed in annex II to this decree.
- 3- The amount of the fees will be reviewed through an Order of the Madeira Regional Government, upon proposal of the concessionaire, being the revised amounts applicable only to the users that are installed after the date of revision.
- 4- The concessionaire may not charge fees different from those approved.
- 5- The licenses to be issued shall stipulate the updating coefficient of the fees due until the end of the initial period granted, whenever such stipulation is justified.

Article 10

(Collection of fees)

- 1- The collection of fees referred to in the previous article is effected as follows:
 - a) The installation fee in respect of the authorisation for installation shall be collected upon the filing of the application;
 - b) The annual operating fee in respect of the authorisation for operating in such year shall be collected upon the issue of the license;
 - c) The annual operating fee corresponding to the authorisation to operate shall be paid in January of each year in one instalment, failure of which shall cause immediate termination of the authorisation granted.
- 2- In case the authorisation is not granted, due to a reason not related to the applicant, the latter will be entitled to be refunded of the amounts paid for the application for the authorisation of installation.
- 3- In case the authorisation for installation and operation is granted during the second half of the year, the amount of the annual operating fee relating to such year shall be reduced to one half.

Article 11

(Authorisation of operation)

- 1- The authorisations referred to in paragraphs b) and c) of the preceding article relate to the use of immovable assets and the execution of operations. Regarding installations within the geographically delimited area in Caniçal, the authorisations shall alternatively take into consideration one of the following factors:
 - a) The area of the bare land, including the infra-structured platform and its surrounding area;
 - b) The exclusive area of the infra-structured platform;
 - c) The exclusive area of the buildings, pavilions or warehouses to be constructed on the infra-structured platform;
 - d) The buildings, pavilions or constructed warehouses and the respective construction cost.
- 2- Fees charged to the users for the supply of services by the concessionaire shall take into account current market costs.

Article 12

(Conditions of installation)

- 1- The concessionaire shall, further to the issue of the installation and operating license, authorise the users to construct the buildings, pavilions or warehouses on the land of the geographically delimited area in Caniçal.
- 2- The concessionaire is empowered to inspect the execution of the construction works referred to in the preceding number, in accordance with the project previously

approved by the latter. The users are bound to comply with the instructions and decisions of the concessionaire.

- 3- * The rights of the users over the immovable assets resulting from the authorisation referred to in number 1 of this article shall be considered, for all legal purposes, as a sub-concession of public domain.
- 4- * Without prejudice to the provisions of this decree and the Free Trade Zone concession agreement, the users may charge, by any means, the sub-concession of public domain in order to secure the financing arrangements contracted exclusively with the purpose of developing their activities within the Industrial Free Trade Zone.

**(Added by Regional Regulatory Decree nr 23/95/M, December 19)*

Article 13 (Reversion of assets)

- 1- On the term of the license, either the term of its initial period or on the term of any extension thereof or due to total and definitive interruption of the activity by the users prior to the referred terms, the users may, within the period of six months, ensure the continuation of their establishment by third parties.
- 2- In the event that a third party continues the activity, the latter must be submitted to the licensing process referred to in articles 17 *et seq.* of these Regulations.
- 3- In case the users do not use the prerogative referred to in number 1 of this article, the immovable assets referred to in the preceding article as well as their immovable installations, will gratuitously revert to the concessionaire, being delivered without any formalities and free from all charges, encumbrances or liabilities, in good working, conservation and safety conditions, and the users shall have no right to invoke any indemnification or retention rights on any grounds whatsoever.

Article 14 (Conditions or periods inserted in the licenses)

- 1- The licenses may be granted subject to conditions or establishing certain periods, in terms different from those requested by the applicants. Namely, the licenses may establish a period for the execution of the licensed acts.
- 2- If the license does not contain any conditions or periods for the execution of the licensed acts, it shall be presumed that such license was granted on the exact terms requested by the applicants. In the latter case, the elements stated therein, in accordance with the provisions of article 17 of these Regulations and the period indicated by the applicants will be the only relevant elements for such purpose.
- 3- Without prejudice to the provisions of number 2, of article 10 of these Regulations, the applicants may, in the event that they do not accept the new conditions or periods established, cancel the application made.

- 4- The Regional Secretary for Planning may, at the request of the licensee, alter any conditions, whenever such is duly evidenced as necessary.
- 5- * The entities licensed to perform international services must begin their activities within six months as from the date of the authorisation decision. In order for the decision and the license to be valid and effective the wording thereof must expressly mention the foregoing legal obligation.

**(Added by Regional Regulatory Decree nr 6/2004/M, March 9)*

Article 15 (Period for execution)

- 1- If the license does not mention the period for the execution of the licensed construction acts and the period is not included in the applicant's request, such period shall be deemed to be of 12 months.
- 2- The period for the execution of the licensed construction acts starts on the date of notification of the license and may only be extended once and for a period not exceeding the initial period.
- 3- The application for extension shall be filed in duplicate to the concessionaire, before the end of the initial period. The concessionaire shall send the original to the Regional Secretary for Planning, through the Free Trade Zone Office.
- 4- Failure to execute the licensed construction acts within the period granted shall cause the license to terminate.
- 5- The Regional Secretary for Planning may, at the applicant's request, submitted prior to the termination of the license, interrupt the period granted whenever the former considers that failure to execute the licensed construction acts within such period occurred due to a justified reason and provided that those acts may still be timely executed.
- 6- Within the scope of the performance of the licensed acts, the applicants shall comply with all requirements relating to location, hygiene, safety, health, convenience, hazard or toxicity generally foreseen for the relevant type of installations, as well as other specific technical regulations and compulsory quality and environmental protection rules.
- 7- The Madeira Free Trade Zone Office shall ensure and supervise compliance with the provisions of the preceding number, and for this purpose may request to other public or private entities such opinions as it may deem necessary for the appraisal of the conduct of the users.

Article 16 (Revocation)

- 1- Licenses may be revoked in the following cases:

- a) Failure in the execution of the acts of construction or failure in the development of the licensed activities on the conditions on which the licenses were granted;
 - b) Confirmed technical inefficiency not remedied by the user, after the latter having been notified to do so;
 - c) Repeated non-compliance with the statutory provisions governing the Free Trade Zone.
- 2- In the case referred to in paragraph a) of the preceding number, should the Regional Secretary for Planning, consider that the failure to execute occurred for a justified reason, the latter may at the request of the applicant alter the terms of the license so as to allow timely execution.

III – Licensing process

Industrial Activities

Article 17 (Form and elements of the request)

- 1- The application for a license for the installation and operation of industrial units shall be filed by way of a request addressed to the Regional Secretary for Planning, together with a descriptive memorandum and statement containing:
 - a) Name or corporate name and address or registered offices of the applicant;
 - b) Industry to which the application relates and nature of the product or products manufactured or to be manufactured;
 - c) Characteristics of the site and specification of the relevant area on which the installation of the industrial unit is intended. A topographic plan, at an appropriate scale, of the construction site, including the construction of the buildings and relevant access roads must be attached;
 - d) Indication of the production capacity of the industrial unit;
 - e) Summarised description of the production technology and list of main production equipment;
 - f) Investment aggregate value and financing sources;
 - g) Period desired for installation and operation and respective legal regime;
 - h) Indication of the number of jobs to be created;
 - i) Information on discharging treatment facilities, whenever necessary.
- 2- The application for the license shall be filed in duplicate with the concessionaire, who shall immediately forward the original to the Madeira Free Trade Zone Office.
- 3- The Madeira Free Trade Office shall forward the application and descriptive memorandum to the entities that should analyse such documents who shall issue their opinion within a period of eight days.
- 4- Upon receipt of the opinions referred to in the preceding number or upon the term of the period within which they should have been issued, the Free Trade Zone Office shall submit the process for hierarchically superior decision, together with the information of the latter and the information of the concessionaire on the merits of the application.

- 5- All of the documents attached to the application must be duly identified and listed in a note.
- 6- The description may also indicate any other elements considered relevant for the evaluation of the economic, financial, technical, social and administrative characteristics of the enterprise.

Commercial and services activities

Article 18 (Form and elements of the request)

- 1- The application for a license for the installation, operation and development of commercial and services activities shall be filed through a request addressed to the Regional Secretary for Planning, together with a justified descriptive memorandum and statement containing:
 - a) Name or corporate name and address or registered office of the applicant;
 - b) Activity to which the application relates;
 - c) Characteristics of the site and specification of the relevant area on which the installation of the establishment is intended;
 - d) Investment aggregate value and financing sources;
 - e) Period desired for installation and operation and respective legal regime;
 - f) Indication of the number of jobs to be created.
- 2- The provisions of numbers 2, 3, 4, 5, and 6 of the preceding article shall apply to this application.

Article 19 (Title to the licenses)

- 1- The license application referred to in the preceding articles may be filed by the applicant in its own name or alternatively on behalf of the company or branch to be established.
- 2- In the case of a successful application, the license is deemed to be granted in favour of the company or branch as soon as the applicant evidences their incorporation or establishment and registration.
- 3- All documents in support of a license application must be duly translated into Portuguese and legalised, whenever the applicant is of a foreign nationality.

Article 20 (Branch)

- 1- In the event of a license application being submitted on behalf of a branch to be established, the application shall include the elements that SDM may request on a case by case basis and the identification of the persons composing the board of

directors or management of the applicant as well as of the persons in charge of the management of the branch and who are empowered to bind the applicant before third parties.

- 2- In the cases referred to in the preceding number, the guarantee bond mentioned in article 30 of these Regulations shall be granted in the name of the parent company.

Article 21 (Relevant address)

Regardless of the person or persons appointed to conduct the operations of the branch referred to in number 1 of article 20 of these Regulations, applicants establishing a branch within the institutional scope of the Free Trade Zone must choose as the relevant registered address for the businesses performed through such branch, that of the establishment of branch, if such establishment exists, or that of an entity duly recognised and accepted by the Regional Secretary for Planning.

IV – Performance of activities

Article 22 (Claims by users)

In order to enable the permanent activity of the users the concessionaire will organise the services connected with the administration of the Free Trade Zone. Nevertheless, the Free Trade Zone Office maintains the right to intervene whenever deemed convenient and whenever such is requested by the users, in accordance with hierarchically superior authorisation, and after the concessionaire having been heard, in order to overcome the causes of possible disputes.

Article 23 (Infrastructures and installations)

- 1- The Madeira Autonomous Region, through the Free Trade Zone Office, shall ensure the existence and suitable operation of the external infrastructures necessary for the operations in the geographically delimited area in Caniçal, namely the relevant access roads, electricity and water supply networks with sufficient capacity to satisfy the requirements of the Zone and of its users.
- 2- The supply of water and electricity to be used in the area referred to in the preceding number and the maintenance of the respective internal networks, are of the responsibility of the concessionaire, the corresponding charges shall be debited to the users, according to their utilization.
- 3- Users are bound to maintain in a permanent state of operation, good conditions and safety the buildings, pavilions, warehouses and their surrounding areas and also their connected equipment allocated to the license granted.

- 4- Regardless of the provisions of number 2 of this article, the users must, in case of confirmed necessity, proceed, at their own expenses, with the installation of an emergency electrical generator.

Article 24 (Harbour infrastructures and equipment)

The harbour infrastructures and equipment in the Free Trade Zone may not be used by the users for purposes other than those foreseen in the license.

Article 25 (Accounting and inspection of goods)

- 1- The users of the Free Trade Zone must prepare and keep their accounts duly organised and are bound to present such accounts whenever requested by duly accredited agents, by the relevant public services or by S.D.M. and to submit their goods existing in the geographically delimited area in Caniçal, under the terms of number 1, of article 6 of Regulatory Decree Nr 53/82, of August 23.
- 2- The users shall provide the concessionaire with all statistical information requested by the latter, relating to their companies, the ships and aircraft used, containers moved and goods referred to in the preceding number that are transported by such users.

Article 26 (Compulsory rules)

In addition to the rules regarding hygiene, safety, health, specific technical regulations, quality and environmental protection, the users shall comply with the concessionaire's instructions relating to the operation of the Free Trade Zone.

Article 27 (Labour and working regime)

- 1- Users may recruit their own employees, locally or outside the Madeira Autonomous Region, at their own responsibility, subject to the provisions of the applicable laws.
- 2- The concessionaire may request from the users information in respect of the relevant employees and working timetable.

Article 28 (Liability insurance)

Users are bound to be insured against personal accidents, in vehicles or equipment, in the goods and regarding accidents and fire.

Article 29

(Basic sewerage and telecommunications)

- 1- The costs of installation, conservation and maintenance of the sewerage drains and tubing of the telecommunications facilities in the public areas of the geographically delimited area in Caniçal are of the responsibility of the concessionaire.
- 2- The costs of installation, conservation and maintenance of the sewerage drains and telephone, telex and facsimile networks on the licensed zones are of the responsibility of the users.

Article 30

(Guarantee bond)

- 1- The users shall provide the concessionaire, upon the issuing of the license, with a guarantee bond in order to secure the good and timely compliance with the obligations undertaken in accordance with the license.
- 2- The Regional Secretary for Planning shall set the value of the guarantee bond, in upon proposal by the concessionaire.
- 3- The concessionaire may enforce the guarantee bond, without any formalities, whenever the users fail to comply with their obligations.
- 4- The guarantee bond shall be granted by way of cash deposit, bank guarantee, or insurance guarantee, as the user may choose.
- 5- The guarantee bond shall be delivered to the concessionaire and may only be cancelled through a declaration of the latter, notified in writing to the guarantor.

V – Record of users

Article 31

(Registration)

- 1- The record of the users operating within the institutional scope of the Free Trade Zone shall be exclusively organised by the concessionaire, on the basis of their registrations.
- 2- The records envisage the registration of the installation and operation of each user.
- 3- For the purposes of the records, the following is to be registered:
 - a) Full identification of the user;
 - b) The installation of the establishment;
 - c) The closing, reopening and transfer of the location of the establishment;
 - d) Alteration of the developed activity.

VI - Inspection

Article 32 (Powers)

The concessionaire shall inspect the correct development of the licensed activities, being vested with powers to issue mandatory instructions and notifications, which may be challenged in accordance with the legal terms.

Artigo 33 (Penalties)

- 1- Default to comply with the obligations undertaken by the users within the scope of the license, whenever a more serious penalty does not apply, will be penalised with a fine in the minimum amount corresponding to 1/12 of the amount of the annual operation fee and a maximum of 12/12 of such amount, according to the seriousness of the infraction, such penalty to be applied by way of a decision of the concessionaire which will be effective upon notification in writing to the users.
- 2- Fines that are not paid voluntarily within thirty days as from the notification date shall be collected through the tax enforcement procedures.
- 3- The payment of the fines shall not release the users from their civil liability.
- 4- The amounts of the fines shall be revenue for the concessionaire.

VII – Final provisions

Article 34 (Disputes)

- 1- All disputes arising from licenses granted shall be settled by an arbitration court, composed of three members, one appointed by the concessionaire, another by the relevant user and the third by agreement between the parties or, in the absence of such agreement, in accordance with the Portuguese law in force.
- 2- The arbitrators may be assisted by the experts deemed necessary.
- 3- The arbitration court shall decide according to the law in force. Whenever the law in force is incomplete or doubtful, the arbitration court shall decide in accordance with judgements of equity, the decisions being susceptible of appeal, in accordance with the legal terms, addressed to the relevant courts.

Article 35 (Applicable rules)

The relations between S.D.M. and the users of the Free Trade Zone are governed by:

- a) These Regulations and the concession agreement referred to in article 1 of these regulations;
- b) The applicable Portuguese law.