

DECREE-LAW NR 255/99 OF 7TH JULY

(PUBLISHED ON “ DIARIO DA REPÚBLICA “ NBR 156 – I-A)

CHAPTER I General provisions

Article 1 Scope

1 – This statute applies to the access and carrying on of the forwarding business.

2 – The forwarding business consists in providing services of logistics and operational nature, which include planning, control, co-ordination and management of operations in relation to shipment, receipt, warehousing and circulation of property or goods, being developed in the following spheres of intervention:

- a) Management of flows of property or goods;
- b) Brokerage between consignors and consignees, in particular through carriers with whom the respective shipment contracts are established;
- c) Execution of the procedures or formalities required by law, including where the issue of a unimodal or multimodal transport document is concerned.

CHAPTER II Access to the business

Article 2 Licensing the activity

1 – The forwarding business may only be carried on by companies holding a licence (“alvará”) issued by “Direcção-Geral de Transportes Terrestres” (DGTT).

2 – Licences are untransferable and issued for a term not exceeding five years, renewable on evidence being established that the requisites for access to the business are maintained.

3 – DGTT will register all the companies licensed for carrying on this business, according to the terms of the law in force.

Article 3

Requisites for access to the business

Companies filling requisites of uprightness, technical and professional capacity and financial capacity may have access to the forwarding activity.

Article 4

Uprightness

1 – Uprightness is assessed by the non-existence of legal impediments, in particular conviction for the following wrongful acts performed by board directors, managers or by the technical director of the company:

- a) Legal prohibition to carry on business;
- b) Sentencing, ruled conclusive, for crimes of fraudulent bankruptcy, wilful bankruptcy, favouring of creditors, unlawful appropriation and bad- administration;
- c) Sentencing, ruled conclusive, for the practice of unlawful or unfair competition;
- d) Sentencing, ruled conclusive, to imprisonment for at least six months, for crime against public health or against the national economy;
- e) Sentencing, ruled conclusive, without suspension of sentence, for malicious crime against property, narcotics traffic, money laundering and tax or customs fraud, to at least two years' imprisonment;

- f) Sentencing, ruled conclusive, without suspension of sentence, for crimes of damage against nature or pollution and pollution with common danger, to imprisonment for at least one year;
- g) Sentencing, ruled conclusive, for crime of corruption and traffic in influence;
- h) Sentencing, ruled conclusive, for infringement of occupational safety, hygiene and health legislation, which resulted in death or physical incapacity, total and permanent, of an employee or a third party.

2 – Companies whose board directors, managers or technical directors happen to be in any of the situations indicated in the preceding number will be considered as no longer satisfying the uprightness requisite.

Article 5

Technical and professional capacity

1 – Technical and professional capacity consist in possessing the knowledge required for carrying on the forwarding business, which are assessed through exam or curricular evaluation, on conditions to be defined by Order of the Minister of Equipment, Planning and Administration of the Territory.

2 – The requisite of technical and professional capacity must be filled by a technical director who will ensure the current management of the company and whose office will be held on exclusivity basis.

3 – The technical director must either be part of the management or board of directors of the company, or be given general powers to represent the company, individually or acting in conjunction with somebody.

4 – DGTT will issue a certificate of professional capacity to those who pass the exam referred in no. 1 and to those who, having at least five years' experience in the management of a forwarding company, prove their experience in the manner that will be defined by order of the Minister of Equipment, Planning and Administration of the Territory.

Article 6
Financial capacity

1 – Financial capacity consists in possessing the necessary financial resources to guarantee a good management of the company, on terms to be defined by order of the Minister of Equipment, Planning and Administration of the Territory.

2 – For purposes of the preceding number, the company must have, on starting its business, a share capital of at least 10 million escudos.

Article 7
Obligatory insurance

Forwarding companies must have insurance to guarantee civil liability for damage caused in carrying on their activities, to clients or third parties, for an amount not inferior to 20 million escudos.

Article 8
Requests for licences

1 – Requests for licences to carry on business as referred in article 2 must be addressed to the general director of Land Transports, and must contain:

- a) Identification of the applicant company;
- b) Identification of the board directors, directors or managers of the company;
- c) Identification of the technical director;
- d) Share capital and its payment;

2 – The requests must be supported with the following documents:

- a) Certificate of the deed of incorporation of the company;
- b) Certificate of registration of the company with the Commercial Register Office;
- c) Certificate of the civil liability insurance policy.

3 – The requests must also contain, in respect of the board directors, directors or managers, criminal record certificates.

Article 9 Information duty

1 – The requisites for access to the business are of permanent verification, and the companies must prove, whenever requested, their compliance with such requisites.

2 – Companies have a duty to communicate to DGTT any modifications to the articles of association, in particular changes on the board of directors, administration or management, changes of head-office address, and replacement of the technical director, within 30 days from the date of the respective occurrence.

Article 10

1 - A supervening lack of the requisites for access to the business must be filled within a year from the date of its occurrence.

2 – A supervening lack of the uprightness requisite may be filled if the sentencing for the torts referred in article 4 falls only on the board directors, managers or technical director of the company, through their replacement.

3 – If the lack fails to be filled within the period foreseen in no. 1, the respective business licence will be forfeited.

Article 11 Rates

1 - Rates will be payable for the issue of licences (“alvarás”) and certificates, and for registering for exam or curricular evaluation, in the situations foreseen in this statute.

2 – The rate amounts will be fixed and updated by order of the Ministers of Finance and of Equipment, Planning and Administration of the Territory.

CHAPTER III Market organisation

Article 12 Identification obligation

Forwarding companies are obliged to include in their identification the number of the licence (“alvará”) referred to in article 2, in particular on their premises, in the advertising they may use, in the formal acts where they may intervene, and in all documentation pertaining to their external activities.

Article 13 Intervention in legal commerce

1 – Forwarding companies may practise all acts required or appropriate for the providing of services, and may engage, in their own name or on behalf of the client or consignee of the goods, in any and all lawful means of defence of the corresponding rights.

2 – In accordance with the provisions contained in the preceding number, they may also establish contracts with third parties in their own name, for the consignor or owner of the goods, as well as receive in their own name or on behalf of their client, the goods that are delivered to them by the carrier, and act as *negotiorum gestor*.

3 – The legitimacy of a forwarding agent’s intervention before third parties or public or private entities will be checked through the title or declaration that will be exhibited.

4 – When intervening as a *negotiorum gestor*, the forwarding company will be considered as the owner of the property or goods and will be liable before third parties as such.

Article 14
Right of lien

Save as otherwise expressly stipulated, forwarding companies may exercise a right of lien on goods entrusted to them under the respective contracts, for the credits resulting thereof.

Article 15
Forwarding companies' liability

1 – Forwarding companies are liable before their client for non-fulfilment of their obligations, as well as for the obligations undertaken by third parties they have contracted with, without prejudice to the right of “remedy over”.

2 – Except if a different limit is agreed by the parties, the limits established by law or convention, for the carrier entrusted with the material execution of the transport, will be applicable to the liability resulting from contracts established in the ambit of this statute.

Article 16
Limitation of the right to damages

The right to damages arising from the forwarding agent's liability will lapse in 10 months counting from the date of conclusion of the contracted service.

Article 17
Contractual clauses

The forwarding companies and the party or parties involved in the legal relation for providing of services may contract through a specific negotiable instrument or by adhering to the forwarding companies' general conditions for the providing of services, without prejudice to the provisions contained in legislation regulating the validity and efficacy of general contractual clauses.

CHAPTER IV
Supervision and regime of sanctions

Article 18
Supervision

1 – DGTT is the competent entity to supervise observance of the provisions contained in this statute.

2 – The officers of DGTT with competence in the area of supervision and in their official capacity, provided they are duly accredited, have free access to all the places where operations are carried out in connection with the forwarding business.

3 – In the ambit of its competencies, DGTT may proceed to all investigations and inspections as necessary for the exercise of its supervising duties.

Article 19
Contravention

1 – Infringements of the provisions contained in this statute are contravention punished on the following terms:

- a) The exercise of the forwarding business by a non-licensed entity is punished with a fine of Esc.250,000 to 750,000, where individuals are concerned, and Esc.1,000,000 to 3,000,000 where legal entities are concerned;
- b) The lack of obligatory insurance pursuant to the terms of article 7 is punished with a fine of Esc.750,000 to 2,500,000;
- c) Non-fulfilment of the communication duty foreseen in no. 2 of article 9 is punished with a fine of Esc.50,000 to 150,000;
- d) The lack of identification on the terms defined in article 12 is punished with a fine of Esc.50,000 to 150,000.

2 – Attempt and negligence are punishable.

Article 20
Processing of contravention

1 – DGTT is the competent entity for processing the contravention foreseen in this statute.

2 – Competency for applying fines belongs to the General-Director of Land Transports.

3 – DGTT will organise the register of sanctions applied according to the legislation in force.

Article 21
Accessory sanction

1 – With the application of a fine, an accessory sanction may be decreed to interdict the exercise of the business if the company has committed three infractions of the provisions hereof over a period of one year, counting from the date of the first sentencing, when final and enforceable, or from voluntary payment of the fine.

2 – The interdiction to carry on the business as referred in the preceding number will have a maximum duration of two years.

3 – The application of an accessory sanction implies depositing the licence with DGTT.

Article 22
Proceeds from fines

The proceeds from fines are distributed as follows:

- a) 40% for DGTT, as its own revenue;
- b) 60% for the State.

CHAPTER V
Final and transitory provisions

Article 23
Allocation of revenue

The amounts of rates foreseen in article 11 are revenue of DGTT.

Article 24
Expiration of licences issued under revoked legislation

The licences issued under Decree-Law no. 43/83, of 25 January, will expire in one year counting from the date this statute enters into force, a new title being issued to the companies who meanwhile establish evidence, before DGTT, that they comply with the requisites for access to the business and that they have the obligatory insurance.

Article 25
Transitory regime

1 – A professional capacity certificate will be issued to technical directors in office at the date that this statute enters into force or who have left office less than a year ago.

2 – Until publication of the order referred to in no. 4 of article 5, professional capacity certificates will be issued to those who, having at least five years' practical experience in management with a forwarding company, provide evidence of such experience through a duly supported curriculum.

Article 26
Revocation

The following statutes are revoked:

- a) Decree-Law no. 43/83, of 25 January;
- b) Ministerial Order no. 561/83, of 11 May;
- c) Ministerial Order no. 161/87, of 7 March.