

segunda-feira, 20 de Março de 1995



I SÉRIE — Número 9

BOLETIM OFICIAL

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Law by Decree No. 15/95

Establish the access of port activity.

Law by Decree No. 15/95

20th March

Being necessary to restructure the port sector with more efficiency in the operations of the and consequently to increase competitiveness;

Considering that the involvement in the private sector will proportionate the indispensable dynamic to the satisfaction of the needs and the increasing demand of the market;

Taking into consideration the concession of public service reserved to ENAPOR, it must be based on well-defined principles;

Considering that the port operators will be able to, through competition, give the impulse for the improvement of the quality of the national port service and in the facilitation of the commercial activity;

In the terms of the Law by Decree no. 60/93, from November 2, that approves the rules and regulation of port exploitation

In the use of power given by the a), no. 2, article 216 of the Constitution, the Government declares the following rules:

Chapter I

Preliminaries

Article 1

(Object and Application)

The present legal document establishes the legal scheme for the port operations and the work at port as well the rules of access to the movement and activity of cargo, being applicable in all the ports under the jurisdiction of the National Company of Port Administration, Public Enterprise (ENAPOR).

Article 2

Definitions

For the purpose this legal document:

- a) Port work, is all the work done in the different tasks of movement of cargo, inside the port zone.
- b) Port operation, is the activity of the movement of the cargo, related to the dock work, check, transfer, loading and unloading, formation and decomposition of loads units, reception, transportation, stowage, and delivery of goods, inside the port zone.
- c) Port operator, is a company or another legal person, singular or collective, private or public, properly authorized for the activities referred in the previous paragraph.
- d) Licensing is the act or the effect of a qualified company or any other legal collective authority, private or public to the movement and activity of cargo.
- e) Concession is the act or effect of adjuration by the contract of economic exploration of certain transactions, infrastructures or equipments of the ports to the authorities that have all the required conditions in the present document.
- f) Port Authority is in charge of the administration of ports under its jurisdiction, which is committed to the supervision of all the departments related to the port exploration activity
- g) The instalment of public services of port areas – areas situated in zones of port exploration and installations are implemented under a jurisdiction of the Port

Authority, where movement operations of cargo are made in the regime of public service.

- h) Port Areas for the private service are the areas located in exploration port zones and the installation in there implemented where movement operations of cargo are made under private use.
- i) Port staff is the group of employees properly admitted and registered that dedicates itself to the professional activity and movement of cargo inside the exploration port zone.

Chapter II

Port Operation

Article 3

Modalities of Port Operations

The movement and activity of cargo is considered to be made in public interests and its activity can be made:

- a) By justly licensed operators;
- b) By the Port Authority

Article 4

Licensing

A licence that can cover the generality of the operation or part of it is granted licensing.

Article 5

Requirements for Licensing

The licensing for the movement and activity of cargo depends on the verification of the following requirements:

- a) Completion of at least 60% of the company's capital required;
- b) Demonstration through a proper study about the economic and financial viability of the activity;
- c) The payment that will be fixed by joint ordinance from the ministers of port and economic areas.

Article 6

Documentation

1. Besides the licensing request it is obligatory to join the following documents:
 - a) The company's constitution certificate and registration;
 - b) Copy of the company's statutes
2. The candidate should also present a detailed study on the activities that he/she intend to perform at ports, that study should have all the information related to the organization, dowry and human resources, types of goods that he/she intend to move, the port or ports where he/she intend to perform the activity and everything that can be relevant.

Article 7

Capital

1. The minimum capital requested for the performing of activities by a port operator is the following:
 - a) Porto Grande and Praia's Port – 10.000.000\$00 CVE;
 - b) Pameiras's Port, Porto Novo, e Porto de Vale dos Cavaleiros – 4.000.000 CVE
 - c) Port of Tarrafal, Furna, Sal-Rei e Port Inglês – 3.000.000\$00 CVE
2. If the port operator intends to perform its activities in more than one port, the capital should be the sum of the minimum amount required for each port where it intends to operate

Article 8

The Competent Authority

General Administration of the Navy and Ports gives the licence and should produce a decision in 15 days.

Article 9

Decisions

1. With all the requirements requested by this legal document, the licence will be given within 60 days from the date of the reception of the process, the General Administration of the Navy and Ports should report the matter to the Port authority.
2. In case of a lack of the details or documentation, the General Administration of Navy and Ports can invite the candidate to complete the process within 30 days.
3. If the candidate doesn't execute the power it has in this case, by the previous paragraph, the request will be rejected and the process returned.

Article 10

Licence Revocation

1. The licence can be revoked by the General Administration of the Navy and Ports or under a proposal from the Port Authority in the following cases:
 - a) When the port operator ceases to comply with the conditions requested for the licence;
 - b) When the port operator without any reasons not included in the concept of majeure force, suspends the performance of activity without the authorization of the Port Authority;
 - c) In practice that undermines the normal functioning of the port or ports where the activity is performed;
 - d) When the licensee repetitively violates the law or rules issued by the administration of the port;
2. The licence revocation does not relieve the port operator from the penalties provided by law.

Article 11

Concession of public services

1. The activity's previewed in b) from article 2, should be performed by concession.

2. The concession that is preceded by the application process is made through the contract, which Port Authority will define the rules.

Article 12

Application Process

1. When there is more than two licensed port operators, the Port Authority will promote an application process where it will select the candidate that demonstrate the best conditions for the performance of the same activity.
2. In the case of more than two licensed port operators for the same operation or group of operations it will be adjudicated to the operator that have requirements in the following article.
3. In case of adjudication for any port operation, done by just one operator, the Port Authority can perform the same activity at the same time.

Article 13

Concession Requirements

The concession of the public service of the movement of cargo depends on the fulfilment of the following requirements:

- a) Pay a warranty to the Port Authority to ensure the accomplishment of the contractual obligations, to be fixed under the purpose of the operations to be granted;
- b) Completion of the full amount of minimum capital required;
- c) Provision in technical and human resources specialized to ensure the execution and the technical administration of the operations to be performed;
- d) Execution of the insurance contract, in the conditions fixed by joint ordinance of the Financial and Custody Ministers.

Article 14

Contracts

The contract between the Port Authority and the port operator selected will be commemorated. All the rules related to the performance of the activity will be in the contract.

Article 15

Concession Term

The term of the concession for any port operation, depending on the investments to be made, will fix the concession's term.

Article 16

Warranty Refund

In case of revocation of the concession contract, the Port Authority will return the warranty paid by the port operator; however this does not preclude the possibility of compensation for obligations that any party is possibly linked.

Article 17

The Performance of Activity by the Port authority

The port authority will be, in supplemental form, be perform the loads movements activity in the cases of Impossibility or deficiency of his instalment by dock users or when is required by the public interest.

Article 18

Port operators in the areas of private service

1. The ones who have the private right to use instalments of the public domain can carry out freely in those areas dock operations, since the goods come or are destined to their own establishment and the operations fit the objective of the nominal title.
2. The operations referred to the previous paragraph requests intervention of the regular registered employees.

Chapter III

Port Operator

Article 19

1. The performance of movement and activity of cargo inside the port zone of public service is only installed by port operators.

2. It is not obligatory for the intervention of the port operators in the following operations:
 - a) Movement of fuel or petroleum products;
 - b) Movement of chemical products;
 - c) Loading or unloading and storage of fish, from or for fishing companies, when made in private installations;
 - d) Reception, delivery and storage of goods in warehouses granted when made in the previous time of the loading or after the unloading;
 - e) Supplies of ships and crews.
3. The operations referred to in the previous paragraph don't demand the intervention of the registered port employees.

Article 20

Rights

The port operator has the following rights:

- a) Use of spaces and installations and port equipments in the according terms with the Port Authority;
- b) Whenever it is necessary the Port Authority will intervene with an aim to prevent or eradicate actions that can harm port activity;
- c) Technically manage operations on its cargo as well as the operational personnel affected by it;
- d) And the rest that can be legally recognized.

Article 21

Obligations

The port operator has the following obligations:

- a) Cooperate with the Port Authority, in the accordance and improvement of the rules and regulations of the applicable rules to the operations;
- b) Take care of the fulfilment of the applicable lawful norms;

- c) Providing to the Port Authority, when requested, all statistical and technical details related to the execution of the activity;
- d) Honour insurance contracts in the terms fixed by this document or by the Port Authority;
- e) Comply with all the rules and instructions of work related to the port operations;
- f) Be submitted under the legal terms to the inspection of the competent authorities

Chapter IV

Port Work

Article 22

Registration

The performance of port work can just be done by registered employees on the legal terms.

Article 23

Management of the Labour

In each port, the licensed port operators will be responsible, on terms of the law, for the management of the port labour, and it is possible to create a labour supply entity for that effect.

Chapter V

Infractions and Punishments

Article 24

Penalties

1. The infraction against the present document is submitted to the penalty applications, by the Port Authority, or by the General Administration of Navy and Ports, when the first one is the offender operator.
2. Infractions are punished by a fee, from 50.000\$00 CVE to 500.000\$00 CVE:
 - a) The violations of the obligations referred to in article 21, from this document;
 - b) The performance of the movement and activity of cargo by who is not legally qualified, in legal terms.

- c) The utilization of none registered employees in the performance of the movement and activity of cargo, inside the port zone.
- d) The utilization of equipment or infrastructure for different purposes than those established in the licence or concession contract.

Article 25

Accessory penalties

By judicial decision, the Port Authority will be able to impose to the offender the immediate prohibition of the respective activities to a year, when such action is justified.

Article 26

Fees destination

The amount of fees reverts to the revenues of the state.

Seen and approved by the Council of Ministers.

Carlos Veiga – Helena Semedo – Teófilo Figueiredo Silva – Úlpio Napoleão Fernandes

Promulgated on March 3, 1995.

Published

The President of the Republic, António Manuel Mascarenhas Gomes Monteiro

Ratified on March 3, 1995.

The Prime Minister, Carlos Veiga