

**DECREE-LAW NR. 96/89  
of March 28**

International competition in the commercial maritime sector is extremely strong originating the long and continuous decrease of the maritime freights, causing very low profit margins in the sector.

In this context all cost factors have an enormous impact on the viability of the activity. At an international level, the importance of convenience flags, special registries, or even of other solutions envisaging the overcoming of the existing difficulties, has increased.

Thus, in order to face the current situation of the commercial maritime transport, several European countries have already created their own second registries, namely, the United Kingdom, France, The Netherlands, Denmark and Norway and other countries are presently studying similar solutions.

These second registries created by those countries have allowed one to stop the transferring of the ships from the main registry to convenience registries, as well as to attract some new shipowners and ships to the new registries by offering similar costs conditions as those of the most competitive registries.

The commercial maritime transport has very special characteristics due to its true and totally international character, since the essential part of this activity is normally developed in international waters or in countries different from those of registration.

It is more and more frequent that ships have no contact with their countries of origin, as their inclusion in pools of international transport is often indispensable for their profitability.

Accordingly, due to the international crisis situation in the sector, the low competition and profitability levels, and the special characteristics of the activity, as well as the use by national shipowners of convenience flags, which is now quite frequent in the Portuguese case, it has also become necessary to analyze the interest of creating a second registry in Portugal.

Considering, on the one hand, the conclusion for the advantage of creating a similar registry in order to help solving the problems of national commercial maritime transports and, on the other hand, the existence of a Free Trade Zone in the Madeira Autonomous Region, it was decided to create the Madeira International Shipping Registry – MAR by way of the present decree law.

It is envisaged that this registry rank amongst the top quality international registries, also due to the fact that the ships that will be using the registry shall fly the Portuguese flag, it being herein established that all international conventions signed by the Portuguese State shall also apply to the Madeira International Shipping Registry. In view of securing the quality of the registry, adequate ship inspection systems must also be assured.

Apart from operating as a development element of the national maritime transports and a factor preventing Portuguese ships from being registered in convenience registries, this registry shall also be an important factor of economic growth, both in the Madeira Autonomous Region and in the whole Country, either by creating jobs in this sector, where the Portuguese have historically demonstrated special skills, or by permitting the growth of activities directly or indirectly related to MAR, within the economic area as well as in relation to education and research areas.

Bearing in mind the present conditions, the present decree law is an indispensable tool so as to allow Portugal to comply with its vocation also as a maritime country, reinforcing our activities in this area and strengthening our strategic potentialities in everything that concerns MAR.

The Government of the Madeira Autonomous Region has been heard.

Thus:

In accordance with a) of number 1 of Article 201 of the Constitution, the Government decrees the following:

## **CHAPTER I**

### **Nature, attributions and powers**

#### **Article 1 \***

- 1- The Madeira International Shipping Registry, hereinafter referred to as MAR, operates through the Ministries of Justice and the Sea, having the obligation, in particular, to register all acts and contracts pertaining to the ships that are subject to registration, and to control the safety requirements established by the applicable international conventions.
- 2- The ship registration services, integrated within the private Commercial Registry of the Madeira Free Trade Zone are hierarchically subject to the Ministry of Justice.
- 3- The Ministry of the Sea shall supervise navigation security, safeguard of human lives in the sea, marine environment protection, and, in general terms, the control and inspection of technical aspects relating to the ships registered with MAR.

*\* (Wording given by Decree-Law nr 393/93, November 23)*

#### **Article 2**

*(Revoked by article 2 of Decree-Law nr 393/93, November 23)*

#### **Article 3**

- 1- For the achievement of the objectives and attributions referred in article 1, MAR shall:

- a) Carry out the registration of commercial ships, including construction contracts, and of leisure ships;
  - b) Inspect the technical conditions of the ships, in accordance with the international conventions in force in Portugal or with the internal legislation applicable to the ships not covered by such international conventions;
  - c) Carry out inspections to the ships;
  - d) Grant the dial codes;
  - e) Grant and reserve names and numbers of registration of the ships;
  - f) Issue the certificates of the ships;
  - g) Issue, validate and control the on-board documents;
  - h) \*\* Control the activity of the classification companies with which the Portuguese State has signed agreements in accordance with article 9 of Decree-law nr 321/2003, in articulation with IPTM;
  - i) Stipulate the minimum crew of the ships and issue the relevant certificates;
  - j) Enrol the crews;
  - l) \*Recognize the technical certificates issued by foreign maritime administrations, relating to the commercial and leisure ship activity;
  - m) Carry out the inscription of the legal facts subject to registration relating to registered ships;
  - n) Carry out all other acts connected with registration obligations.
- 2- \*\*\* Whenever the ships registered with MAR are used for national cabotage, Ports Maritime Institute (IMP) shall:
- a) Inspect those ships at the beginning of their use in national cabotage, in view of confirming that the necessary requirements for the maintenance of certification are met, under the terms of the applicable international conventions;
  - b) Promote the inspections regarding the safety requirements of the ships as far as flag State responsibilities are concerned, under the terms of the law and of the applicable international conventions, whenever deemed convenient and during the period of operation in such traffic;
  - c) Perform the duties referred in h), i) and l) of the above number.

\* *(Wording given by Decree-law nr 393/93, November 23)*

\*\* *(Wording given by Decree-law nr 321/2003, December 23)*

\*\*\* *(Wording given by Decree-law nr 331/99, August 20)*

## **Article 4**

- 1- MAR has a technical commission composed of:
- a) Chairman: a representative of the member of the Government responsible for the transports sector;
  - b) a representative of the Madeira Autonomous Region;
  - c) a representative of the General Inspection of Ships.
- 2- \* The technical commission shall issue its opinion on the acts of registration of the ships and shall be vested with the remaining powers mentioned in the preceding article.

- 3- The captain of the port shall assist the commission whenever required by the latter.
- 4- The functional support to the commission and the coverage of the expenses incurred by the same shall be assured by the Madeira Autonomous Region.
- 5- \*\*The technical commission shall co-ordinate with the General Direction of Ports, Navigation and Maritime Transports, the methods of application of the rules and procedures necessary for the development out its duties.

\* *(Wording given by Decree-Law nr 321/2003, December 23)*

\*\* *(Wording given by Decree-law nr 393/93, November 23)*

## **CHAPTER II**

### **Performance of the activity**

#### **Article 5**

For the purposes of the present decree, the following expressions shall mean:

- a) Maritime transport industry - the activity of maritime transportation, in one's name or on behalf of a third party, through own ships or chartered ships;
- b) Title Holder - the holder of the ownership title to the ship;
- c) Shipowner - the person who commercially exploits his own ship or a chartered ship;
- d) Operator - the person who commercially exploits the ship on behalf of a third party;
- e) Ship - any commercial or leisure ship operating at sea, including fixed or floating platforms, auxiliary boats and towing ships.

\* *(Wording given by Decree-law nr 393/93, November 23)*

#### **Article 6 \***

- 1 - For all due purposes, the ships registered with MAR carry out their activity within the scope of the Madeira Free Trade Zone.
- 2 - The ships registered with MAR shall fly the Portuguese flag.

\* *(Wording given by Decree-Law nr 393/93, November 23)*

#### **Article 7**

*(Revoked by b) of article 17 Decree-law nr 321/2003, December 23)*

## **Article 8**

- 1- \*Companies and their forms of representation as well as limited liability individual commercial establishments developing activities related to the industry of maritime transport or operating leisure ships in the Madeira Autonomous Region shall be part of the activity developed within the institutional scope of the free trade zone and as such shall incorporate such zone for all purposes, as long as they have applied and are duly licensed therefor.
- 2- The incorporation and operation of the entities referred to in the preceding number depend on the authorisation of the Madeira Regional Government, subject to the payment of an installation and operation annual fee, in accordance with the terms to be defined by the relevant regional governmental bodies.

*\* (Wording given by Decree-Law nr 393/93, November 23)*

## **Article 9**

- 1- The entities mentioned in number 1 of the preceding article are regulated by the provisions of the Companies' Code and by Decree-Law Nr 248/86, August 25, as long as they are not contrary to the provisions of the present decree law and the registration and operation regime of the companies and other entities licensed within the institutional scope of the Madeira Free Trade Zone.
- 2- Entities referred to in the preceding number shall not be subject to the minimum share capital requirements established in the Companies Code and in Decree-Law Nr 248/86, August 25.

## **Article 10**

*(Revoked by article 2 of Decree-Law nr 393/93, November 23)*

## **Article 11**

- 1- The entities mentioned in article 8 shall not be bound to have their registered offices in the Madeira Autonomous Region.
- 2- Whenever the registered office is located outside the Madeira Autonomous Region, such entities must have a local branch, delegation, agency or any other form of representation with all necessary powers to assure full representation before the State authorities, the Regional authorities and third parties and must choose a special private domicile for such purposes.
- 3- The powers referred to in the preceding number shall include powers to receive service of process.

## Article 12

The members of the management or direction of the entities referred to in article 8 shall not be subject to any requirements of nationality or residence.

## CHAPTER III

### Purchase, sale and registration of ships

#### Article 13

The purchase and sale of ships registered with MAR is not subject to any authorisation.

#### Article 14

- 1- The sale of ships may be performed through a declaration of sale (bill of sale). The signature of the seller must be authenticated in his presence.
- 2- \*The terms of the creation, modification or cancellation of a mortgage or equivalent right, must be written down in a document signed by the title holder, with the signature duly authenticated in his presence.
- 3- \*\*The parties may choose the law applicable to the mortgage or equivalent right, without prejudice to the application of the provisions of the international conventions binding the Portuguese State internationally.
- 4- \*\*In the case mentioned in the preceding number, a copy of such applicable law must be signed by both parties and filed with the application for registration after having been duly translated, except when the registrar dispenses the translation or determines that the same should be performed by an expert chosen by the latter.
- 5- \* The choice of the parties must be registered together with the registration of the mortgage.
- 6- \* In the absence of any agreement by the parties or in the lack of registration of the parties' choice of law, Portuguese law shall rule the mortgage or equivalent right.

\* *(Wording given by Decree-Law nr 393/93, November 23)*

\*\* *(Wording given by Decree-Law nr 5/97, January 9)*

#### Article 15

- 1- Ships that may be registered in MAR must be owned by:
  - a) Licensed *offshore* entities referred to in article 8;
  - b) Entities not included within the institutional scope of the Madeira Free Trade Zone.

- 2- \*Bareboat ships chartered by entities referred to in the preceding number may be temporarily registered with MAR, provided that such is duly authorised by their owners and by the relevant authority of the country in which ownership is registered.
- 3- \*Ships registered with MAR shall have access to passenger or cargo transportation between the mainland ports (continental cabotage) and between ports of mainland and those of the Azores and Madeira Autonomous Regions, between ports of these regions and between ports of each one of those Regions (island cabotage), under the terms of the legislation applicable to national cabotage, provided their owners, or bareboat charterers are:
  - a) Nationals of an E.U. Member-State established in a Member-State in accordance with the law of that State that carry out navigation activities;
  - b) Corporate bodies carrying out navigation activities established according to the law of a Member-State, which main registered office is located in a Member-State, provided that their effective control is carried out in such State;
  - c) Nationals of a Member-State established outside the E.U. or corporate bodies established outside the E.U. and controlled by nationals of a Member-State, provided that their ships are registered with any Member-State and fly the flag of such State, in accordance with the respective legislation.
- 4- \*MAR's Technical Commission must keep IMP informed of the ships registered with MAR that comply with the conditions established for their use in national cabotage, as well as of the starting and ending of their cabotage operations.
- 5- \* Except for leisure ships, the remaining ships registered with MAR may not operate within the area of navigation reserved for local traffic.
- 6- \* Ships registered with MAR may not benefit from any incentives, which are exclusively reserved to the remaining ships flying the national flag.
- 7- \*Ships flying the Portuguese flag that have received incentives for investment may not thereafter transfer their registration to MAR before their obligations towards the Portuguese State having been settled.

*\* (Wording given by Decree-law nr 331/99, August 20)*

## **Article 16**

- 1- The ships mentioned in the preceding article may be provisionally registered with Portuguese consulates.
- 2- The duration of the provisional registration and the requisites necessary for its conversion into definitive registrations shall be established by way of a regulatory decree.

## **Article 17 \***

- 1- Offshore entities applying for registration must produce evidence that the following conditions have been met:
  - a) Licensing in the Madeira Autonomous Region, in accordance with the present decree and remaining applicable legislation;
  - b) Title of ownership of the ship or bareboat charter contract;
  - c) Full payment of the fees mentioned in number 2 of article 8.
  
- 2- The remaining entities referred to in b), number 1 of article 15, shall evidence the following:
  - a) Indication of the name, address or registered offices of the applicant, together with the respective by-laws, in case of a corporate body;
  - b) Full identification, in case of an individual person;
  - c) Title of ownership of the ship or bareboat charter contract.
  
- 3- In case the address or registered offices of the entities mentioned in the preceding number is located outside the Madeira Autonomous Region, and such entities have as object of activity the industry of maritime transportation or the operation of leisure ships, the requisites mentioned in numbers 2 and 3 of article 11 must be met.

*\* (Wording given by Decree-Law nr 393/93, November 23)*

## **Article 18**

MAR may authorise the temporary registration in foreign countries of chartered bareboat ships.

## **Article 19**

The issuing of the certificates of the ships registered with MAR is subject to the standards established by the international conventions in force in the Portuguese legal system.

## **CHAPTER IV** **Crew and capacity**

### **Article 20**

- 1- \*Without prejudice to the provisions of the following numbers, the captain and at least 50% of the crew of the ships registered with MAR must be Portuguese citizens or nationals of other European countries or official Portuguese-speaking countries.
  
- 2- \*In special duly justified cases, whenever it is not possible to recruit crew from the nationalities mentioned in the preceding number, the member of the Government responsible for the maritime transports area may authorize the recruitment of crew



of other nationalities, even if such recruitment exceeds the limit established in the preceding number.

3- \*\*The provisions of this article shall not apply to leisure ships.

*\* (Wording given by Decree-law nr 248/2002, November 8)*

*\*\* (Wording given by Decree-law nr 393/93, November 23)*

## **Article 21**

1- The crew shall satisfy the academic and technical qualifications required for the practice of the respective functions, in accordance with the provisions of the international conventions in force in Portugal regarding such matters.

2- The Regulations on Maritime Inscription, Registration and Capacity shall not be applicable to ships registered with MAR.

3- The disciplinary regime shall be object of specific legislation.

## **Article 22**

Labour contracting and working conditions of crews shall only be subject to the provisions of the international conventions in force in Portugal regarding such matters.

## **Article 23**

The criteria with which the establishment of minimum crew must comply shall be established by specific legislation.

## **CHAPTER V**

### **Tax regime**

## **Article 24**

1- The tax regime applicable to the entities mentioned in article 8 shall be the one foreseen in the legislation pertaining to the Madeira Free Trade Zone.

2- The regime mentioned in the preceding number shall also apply to ships registered with MAR.

## **Article 25**

The crew and the owners of the ships registered with MAR are not bound to make any contributions for Social Security, without prejudice, however, to the assurance of the social security systems provided for in the international conventions in force in Portugal.

## **Article 26**

Commercial registration acts referred to in this decree are exempt from any fees or registration costs.

## **Article 27**

- 1- The registration acts of ships shall be subject to the payment of an application fee, when registration is made and of an annual maintenance fee, which shall cover the expenses related to the registration service, the proceeds of which shall be income of the Madeira Autonomous Region.
- 2- Failure to comply with the provisions of the preceding number shall cause the immediate cancellation of the relevant registration.
- 3- The remaining services rendered by MAR, mentioned in article 3, shall be subject to fees which shall be income of the Madeira Autonomous Region.
- 4- The amount of the fees referred to in the preceding numbers shall be established by the respective regional governmental bodies.

## **Article 28**

- 1- Failure to comply with articles 6, 8 (2), 11 (2), 15 (3), 20 (1), 21 (1) and 25 shall consist of a contravention punished with a fine not exceeding Pte 200.000,00 or Pte 3.000.000,00, depending on whether the entity involved is an individual or a corporate entity.
- 2- Failure to comply with articles 8 (2) and 15 (3) may, furthermore, determine the application of an accessory sanction consisting of the temporary suspension or cancellation of the relevant registration.
- 3- Negligence is punishable.
- 4- The entity appointed by the regional governmental bodies shall be empowered to start the relevant legal procedure and impose fines, and collect the proceeds in connection thereof.

## **CHAPTER VI**

### **Final and transitory provisions**

## **Article 29**

Until legislation complementary to this decree comes into force, the already existing legislation relating to the several matters to be ruled shall be applied with the necessary adaptations.

## **Article 30**

The present decree law shall come into force on the day after its publication.

Seen and approved by the Council of Ministers on January 19, 1989. - *Aníbal António Cavaco Silva - Lino Dias Miguel - Eurico Silva Teixeira de Melo - Miguel José Ribeiro Cadilhe - Joaquim Fernando Nogueira - José Bernardo Veloso Falcão e Cunha.*

Promulgated on March 11, 1989.

To be published.

The President of the Republic, MÁRIO SOARES.

Ratified on March 16, 1989.

The Prime Minister, *Aníbal António Cavaco Silva.*