

DECREE-LAW NR. 192/2003 of August 22

The Madeira International Shipping Registry, hereinafter referred to as MAR, created by Decree-Law nr. 96/89, of March 28, is an entity operating under the Ministers of Justice and of Public Works, Transports and Housing, responsible for the registration of all acts and contracts relating to ships which are subject to registration and the control of the safety requirements imposed by international conventions.

The Regulation of Pleasure Shipping, approved by Decree-Law nr. 329/95, of December 9, amended by Decree-Law nr. 567/99, of December 23, does not consider MAR as the entity responsible for registering pleasure ships.

However, as MAR already holds the prerogative of registering the said ships, the Autonomous Region of Madeira proposed the approval of new specific rules for such purpose.

Thus, it is necessary to adapt the said Regulation of Pleasure Shipping through the determination of a group of rules applicable to registration with MAR.

The Government of the Autonomous Region of Madeira was heard.

Thus:

Pursuant to Article 198 (1)(a) of the Constitution, the Government decrees the following:

Sole Article

It is hereby approved the regulation applicable to pleasure ships registered or to be registered with the Madeira International Shipping Registry, created by Decree-Law nr. 96/89, of March 28, as amended by Decree-Law nr. 393/93, of November 23, Decree-Law nr. 5/97, of January 9, Decree-Law nr. 331/99, of August 20 and Decree-Law nr. 248/2002, of November 8, annexed to the present diploma and which by reference constitutes part thereof.

Seen and approved by the Council of Ministers on June 18, 2003. – *José Manuel Durão Barroso – Maria Manuela Dias Ferreira Leite – Paulo Sacadura Cabral Portas – António Manuel de Mendonça Martins da Cruz – João Luís Mota de Campos – Carlos Manuel Tavares da Silva – António Pedro de Nobre Carmona Rodrigues.*

Promulgated on August 6, 2003.

To be published.

The President of the Republic, JORGE SAMPAIO.

Subject to referendum on August 8, 2003.

The Prime Minister, *José Manuel Durão Barroso*.

ANNEX

Regulation applicable to pleasure ships registered or to be registered with the Madeira International Shipping Registry

CHAPTER I General provisions

Article 1 (Scope)

Registration and other acts concerning pleasure ships in the Madeira International Shipping Registry, are now subject to the regime set out in Decree-Law nr. 96/89, of March 28, as amended by Decree-Law nr. 393/93, of November 23, Decree-Law nr. 5/97, of January 9, Decree-Law nr. 331/99, of August 20 and Decree-Law nr. 248/2002, of November 8, and to the present regulation.

Article 2 (Definitions)

For purposes of this regulation, the following terms shall have the following meanings:

- a) «Pleasure Ship», also designated as PS, shall mean any ship, of any kind, regardless of its propulsion system, with a hull of no less than 7 metres length, measured in accordance with the harmonized regulations in force, to be used either for leisure or for commercial purposes;
- b) «Leisure-sporting purposes» shall mean the use of the PS by the owner, either an individual or company, or by third parties, at no cost;
- c) «Commercial purposes» shall mean the use of the PS for profitable economic activities, except for cargo transportation, transportation of more than 12 passengers, and non-sportive fishing activities;
- d) A «Recognized Organization», also designated as RO, shall mean an entity recognized in accordance with the content of Decree-Law nr. 115/96, of August 6, as amended by Decree-Law nr. 403/98, of December 18.

CHAPTER II Registrations

Article 3 (Registration)

- 1- The registration of a PS in MAR is definitive, being subject to amendments or deletion, by means of notes, as a result of subsequent circumstances.
- 2- PS may exceptionally be registered provisionally:
 - a) At MAR, according to the subsequent article of this regulation;
 - b) At the Portuguese consulates, under the general terms.

Article 4

(Provisional registration)

- 1- PS may be registered provisionally at MAR, provided the initial application, foreseen in article 5 (1), is accompanied by the information described in article 5 (1) (c) (f) (g) and (i).
- 2- The applicant shall have 90 days as from the date of the provisional registration, to deliver the documentation required pursuant to article 5, at the end of which the registration shall expire.
- 3- The applicant may request, only once and for a period of no longer than 30 days, an extension of the above referred timeframe, provided that evidence is shown that the required documentation could not be submitted on time.
- 4- MAR's Technical Commission may extend the provisional registration for a maximum period of 60 days, whenever considered justified.

Article 5

(Registration procedure)

- 1- The initial registration application is submitted to MAR's Technical Commission, accompanied by the following information regarding the PS and the applicant:
 - a) Name and full address of the applicant;
 - b) Name intended for the PS;
 - c) Written declaration or certificate from the builder, place and date of construction of the PS;
 - d) Two recent photographs of the PS with approximately 6cm x 9cm;
 - e) Radiocommunications station license, if applicable;
 - f) Title or similar document evidencing ownership of the PS, with a notarial certification of the vendor's signature and of the capacity to perform the sale act;
 - g) Registration inspection report;
 - h) Prototype approval certificate, if the ship was manufactured in series;
 - i) Cancellation certificate of the previous registry;
 - j) Certificate issued by the previous registry concerning ownership, liens or any other charges relating to the ship;
 - l) Authorisation granted by the mortgage creditor, when applicable, with notarial certification of the signature, in order to make the registration of the ship effective in MAR.
- 2- For the registration of ships with more than 24 metres and for pleasure-sportive purposes, MAR's Technical Commission may require the submission of more information concerning technical aspects of the ship.
- 3- In case of PS with commercial purposes, the application must be submitted with all the technical and safety items of the ship required in accordance with the relevant national laws and international regulations.

- 4- PS owned by companies licensed to operate in the Madeira International Business Centre (MIBC) must attach to the application a receipt evidencing payment of the fees provided for in paragraph article 17 (1) (c) of Decree-Law nr. 96/89, of March 28, as amended by article 1 of Decree-law nr. 393/93, of November 23.
- 5- The application described in nr. 1 must expressly list all the documents attached to it.

Article 6 (Rejection of the registration)

- 1- The rejection of a PS registration must be technically and legally justified through an opinion issued by MAR's Technical Commission.
- 2- The above-referred opinion is binding.

Article 7 (Amendment of the registration)

- 1- The following events give rise to the amendment of the registration of the PS, which shall give rise a new document being issued:
 - a) Change of a PS name;
 - b) Change of ownership, in whole or in part;
 - c) Change in the main characteristics of the PS;
 - d) Change of the scope of a PS initially registered as being destined to leisure-sporting purposes into one of commercial purposes.
- 2- The amendment of the registration and the issue of a new title are made through a declaration of the owner, which should be submitted within 15 days as from the event giving rise to the amendment.

Article 8 (Amendment due to change of name)

The application for the change of the name of a PS which is subject to mortgages, liens or charges, may only be accepted by MAR with the express consent of the corresponding right's holder, whose signature must be certified by a public notary.

Article 9 (Cancellation of the registration)

- 1- MAR shall cancel the registration of a PS whenever any one of the following events occur:
 - a) At the owner's request, duly justified;
 - b) Non-authorized exercise of commercial activities through the PS;
 - c) Presumption of loss of the PS and loss of notice, in case no report is received for 90 days as from departure of the last harbour;

- d) Non-compliance with the requirements and obligations inherent to the registration with MAR;
 - e) Wreckage;
 - f) Any other reasons, duly justified, determining cancellation of the registration, pursuant to the MAR applicable legislation.
- 2- The cancellation of a PS registration must be notified to the concessionaire of MIBC and to the owner and determines the loss of the right to use the Portuguese flag.
- 3- MAR's Technical Commission shall liaise with the Private Commercial Registry of the Madeira Free Trade Zone in order to make the cancellation effective, whenever any of the circumstances of nr. 1 of this present article occurs.
- 4- After cancellation of the registration at the Private Commercial Registry of the Madeira Free Trade Zone, and once the respective fees have been paid, MAR shall issue the respective cancellation certificate.

CHAPTER III

Inspections

Article 10 **(Inspection)**

- 1- The inspection report referred to in article 5 (1) (g) is aimed at verifying the good condition of the ships, its equipment, the conformity between the inscriptions in the PS and the descriptions in its documents, as well as the compliance with the safety rules defined by law and by the international regulations, namely:
- a) Information on the stability of PS which do not possess a written conformity declaration, on tonnage certificate, and on the maintenance and preservation of the ship's hull and structures, with an indication of the last dry dock inspection;
 - b) Quantities, trademarks, models and main characteristics of machinery and ancillary installations, in what regards the preservation and functioning of the engines, electric generators, sewage system, protection means and indication of all the radio electric equipment installed on board, taking into consideration usual and safety communications;
 - c) Navigation, salvation, and fire extinguishment means;
 - d) Other items regarding safety of the ship required under the terms of article 5 (2) and (3).
- 2- The inspection report mentioned in the previous number shall be performed by an expert of a RO, whenever such duty is delegated by MAR's Technical Commission.

Article 11 **(Maintenance Inspections)**

- 1- All PS registered with MAR are subject to mandatory periodic maintenance inspections.

- 2- PS registered for leisure-sporting purposes must have the first maintenance inspection five years after the registration with MAR. The following inspections shall take place every three years.
- 3- PS registered for commercial purposes are subject to annual maintenance inspections and to hull dry-dock inspections every two years.

Article 12

(Entities which may undertake inspections)

The RO are the entities competent to perform the above-identified inspections, whenever such duty is delegated by MAR's Technical Commission.

Article 13

(Certification-inspection procedure)

MAR's Technical Commission establishes together with the RO the procedures and the information to be provided with regard to the inspection foreseen in article 5 (1) (g) of this regulation.

Article 14

(Subsequent information)

RO undertake, with regard to PS registered with MAR, to immediately inform MAR's Technical Commission, whenever any of the following events takes place:

- a) Accidents with the PS;
- b) Loss of classification of the PS at the RO.

Article 15

(Radio-communications)

- 1- Whenever the ship has radio-communications equipment, the respective radio-station license shall be issued by the *Instituto Portuário e dos Transportes Marítimos* (IPTM).
- 2- The previous radio station license, if existing, must be sent to MAR's Technical Commission as well as a declaration of the entity responsible for the accounting of the radio-station communications.
- 3- In order for the radio-station license to be issued, the radio-communications equipment must be inspected by IPTM or by an equivalent organization, and the respective report sent to MAR.

CHAPTER IV

On board documents and inscriptions in PS

Article 16 (Title of ownership)

- 1- MAR's Technical Commission, after verifying the documents submitted, shall issue the technical booklet and the PS ownership title, subsequently sending the file to the Private Commercial Registry of the Madeira Free Trade Zone for registration purposes.
- 2- PS title of ownership must necessarily have the following information:
 - a) Name of the owner;
 - b) PS name;
 - c) Harbour of registration;
 - d) Identification documents;
 - e) Name of builder;
 - f) Trademark and model;
 - g) Hull number;
 - h) Main dimensions.
- 3- The mortgages, liens or charges to which PS is or will be subject to, must be registered and included in the document mentioned in the previous number.
- 4- If the title of ownership is lost or in a bad condition, the PS owner must request that a second way of the document be issued.
- 5- For the purposes of the previous number, the owner must attach to the application the previous ownership title or the declaration issued by the competent police authorities confirming the report of loss of the previous ownership title.

Article 17 (Identification number)

The identification number to be displayed on the technical booklet and on the ownership title are determined by MAR's Technical Commission and it falls under category R followed by a consecutive number, beginning with R-1, for leisure-sporting ships, and IC-1, followed by a consecutive number, for commercial ships.

Article 18 (Documents on board)

- 1- PS must have the following documents on board duly authenticated by the competent authorities:
 - a) Ownership title;
 - b) Logbook;
 - c) Technical booklet;

- d) Radio station license;
 - e) Policy of the civil liability insurance contract.
- 2- PS with commercial purposes must also have the following on board:
- a) Crew list;
 - b) Boarding list;
 - c) Other documentation internationally required.
- 3- PS must always have on board the certificates of the safety equipment required according to national legislation, according to the respective areas of navigation, tonnage and characteristics of the ship.

Article 19 (Inscriptions)

- 1- PS registered with MAR are required to have the inscriptions defined under the terms of article 10 of the Regulation approved by Order nr. 715/89, of August 23.
- 2- PS auxiliary ships must have, in a visible manner, the name of the main ship followed by the abbreviation «AUX».

CHAPTER V Technical Requirements for sailing of a PS

Article 20 (Capacity)

- 1- PS with commercial purposes are subject to the definition of the safety capacity, as well as the issuing of the respective capacity certificates, established by MAR's Technical Commission on the basis of the proposal submitted by the interested party.
- 2- The decision of MAR's Technical Commission may be appealed to the Minister in charge.

Article 21 (Crew and certification)

- 1- PS may only be governed by persons holding a document proving the minimum requirements to sail or by maritime registered.
- 2- Without prejudice to the previous number, chartering of a PS with a hull of no more than 24 metres and with commercial purposes may be carried out with or without crew.
- 3- MAR's Technical Commission determines the minimum safety crew for PS with hull of more than 24 metres and for PS with hull of less than 24 metres with commercial purposes, in accordance with their characteristics and areas of navigation.

4- The nominal list of all crew members on board the PS registered with MAR is designated as crew list.

Article 22 (Capacity to govern)

- 1- The crew of PS which undertake commercial activities must have documents which prove their professional capacity to govern the PS, in accordance with its characteristics and areas of navigation.
- 2- IPTM establishes the procedures necessary to recognise the certificates of foreign maritime professionals.

CHAPTER VI Final provisions

Article 23 (Insurance contract)

The owners of PS registered with MAR shall enter into an insurance contract covering civil liability, under the terms foreseen in the applicable laws.

Article 24 (Navigation rules)

PS are bound to navigate in compliance with the laws and the international regulations in force in Portugal.

Article 25 (Fees)

The acts foreseen in the present diploma are subject to fees, under the terms and in the amounts established by Order of the Regional Government of Madeira.