



MARITIME LAW

THE MADEIRA INTERNATIONAL SHIP REGISTER (“MAR”)

8TH AMENDMENT TO THE LEGISLATION

The objectives behind the creation of MAR remain relevant today (and are indeed restated in Decree-Law 234/2015 of 30 October): to reverse the process of flagging out, to capture foreign fleet, investment and know-how, and to recover and rebuild a Portuguese merchant Navy.

Decree-Law 234/2015 of 13 October has now been published. This new Decree-Law introduces the eighth amendment to Decree-Law 69/89 of 28 March, the law that established the Madeira International Ship Register (*Registo Internacional de Navios da Madeira*). The register is also known and will be referred to here as “MAR”.

Today, MAR is the second Portuguese ship register alongside what is known as the classic or conventional register. It was created at a time when second ship registers were proliferating in European countries.

The objectives behind the creation of MAR remain relevant today (and are indeed restated in Decree-Law 234/2015 of 30 October): to reverse the process of flagging out, to capture foreign fleet, investment and know-how, and to recover and rebuild a Portuguese merchant Navy.

Among the changes introduced by this new law, we would highlight (i) the simplification of some procedures for taking out, amending and discharging mortgages (including a form of exception to article 721 of the Civil Code) and (ii) less demanding requirements to register ships with MAR and to obtain the respective benefits, notably as regards crews.

A - MORTGAGES OF SHIPS REGISTERED WITH MAR

As stated at the beginning of Decree-234/2015 of 30 October, various foreign credit institutions have been blocking financing for ships registered with MAR on the basis of the rule contained article 721 (b) of the Civil Code. Article 721(b) provides that contained in article “*anyone who has acquired mortgaged assets, has registered the acquisition document and is not personally responsible for compliance with the obligations guaranteed, has the right to have the mortgage discharged (...) declaring that he is prepared to hand over to the creditors, for payment of their credits, up to the amount for which he obtained the assets, or the amount he estimates, when the assets were acquired for no consideration or no price was fixed*”.

In reality, the credit institutions in question have taken the view that the above rule on discharging mortgages “*allows the person who acquires the mortgaged assets to set values for these assets that are lower than the values initially contracted. As that decision by the person who acquires the assets can be upheld by the courts, they consider that the rule creates a lack of legal certainty and security as to the mortgage established and, as a consequence, as to the solidity, sustainability and integrity of their mortgage credit*”.

In response to this concern, Decree-Law 234/2015 of 30 October adds a new number 8 to article 14 of Decree-Law 96/89 of 28 March. The new number 8 provides that, when Portuguese law is applicable¹, any person who acquires the mortgaged assets may only exercise the right of discharge provided for in article 721 of the Civil Code if the mortgage creditor is guaranteed full payment of all the rights and charges arising from the mortgage agreement. Therefore, subsection b) of article 721 does not apply.

This means the new law guarantees that mortgage creditors (specifically, the above-mentioned foreign credit institutions) will not suffer losses because of the application of that rule of the Civil Code. They will continue to benefit from the guarantees – in the event of sales of mortgaged ships – under the precise terms of the applicable mortgage agreement.

Changes have also been made to the formalities to set up, alter or discharge mortgages over ships registered with MAR. The acts in question must still be in writing, but the need for the signature of the ship owner to be witnessed in person has been removed. However, the need for recognition of the capacity and due authorisation for the act remains in place, when applicable².

B - CREWS OF SHIPS REGISTERED WITH MAR

Before Decree-Law 234/2015 of 13 October came into force, at least 50% of crew members of ships registered with MAR had to be “Portuguese nationals or nationals of European countries or countries where Portuguese is the official language”.

The burden of this requirement has been reduced and it is now only necessary for 30% of the crew members to meet the above requirements.

The aim of the changes we have described above is to consolidate the place of MAR as a competitive ship register in Europe, particularly at a time when we are witnessing a reorganisation of the maritime transport industry in Europe with the return to European registers of a significant number of ships that had been registered under flags of convenience.

It is expected that MAR will be able to continue to attract new ship owners, ships and investments and, therefore, consolidate its recent growth.

It is expected that MAR will be able to continue to attract new ship owners, ships and investments and, therefore, consolidate its recent growth.

¹ Decree-Law 96/89 of 28 March allows the parties to choose the law applicable to the mortgage, without prejudice to the rules contained in international conventions that bind the Portuguese State.

² This applies to bills of sale. On this point, see the new article 14 of Decree-Law 96/89 of 28 March.

This Informative Note is intended for general distribution to clients and colleagues and the information contained herein is provided as a general and abstract overview. It should not be used as a basis on which to make decisions and professional legal advice should be sought for specific cases. The contents of this Informative Note may not be reproduced, in whole or in part, without the express consent of the author. If you should require further information on this topic, please contact **Manuel Liberal Jerónimo** (manuel.liberaljeronimo@plmj.pt).

 Portuguese Law Firm of the Year
The Lawyer European Awards, 2015-2012

 Iberian Law Firm of the Year
Who's Who Legal, 2015, 2011-2006
Chambers European Excellence Awards, 2014, 2012, 2009

 Top 5 - Game Changers of the past 10 years
Top 50 - Most Innovative Law Firm in Continental Europe
Financial Times - Innovative Lawyers Awards, 2015-2011