

INFORMATIVE NOTE

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INSURANCE

INSURANCE OF SHIP OWNERS FOR MARITIME CLAIMS

Decree-Law no. 50/2012, of 2 March is the most recent legislative measure on maritime insurance in Portugal. This legislation, that transposes into the Portuguese legal system from the Directive 2009/20/EC dated 23 April 2009 of the European Parliament and of the Council, regarding the insurance of ship owners for maritime claims (the «Directive»), has entered into force on last 3 March.

The currently published legislation sets forth, in general terms, the obligation for ship owners to have insurance for maritime claims, covering ships with a gross tonnage of 300 or more. Thus, this obligation applies to ships flying the Portuguese flag and/or other flag, entering into a Portuguese port, anchorage or territorial sea.

The maritime claims to be covered by the insurance, as well as the amount of the insurance coverage for every ship, per incident, is referred to in the 1976 Convention on Limitation of Liability for Maritime Claims, adopted by the International Maritime Organisation (IMO) – which was not, however, ratified by Portugal.

The procedures of inspection and supervision of the insurance certificates to be carried by foreign ships on board, is governed by the Regulation for the Inspection of Foreign Ships which was approved by Decree-Law no. 195/98, dated 10 July 1998. It should be noted that Directive 2009/16/EC of the European Parliament and of the Council dated 23 April 2009 on port State control, is yet to be transposed into Portuguese law and will bring important changes in this area.

The Portuguese legislator seems to have exceeded what is literally required under the communitarian guideline with regard to the applicable measures if a ship does not carry on board the required, valid and effective certificate, when establishes that, in such a case, the ship shall be expelled by the harbour master, who, apparently, does not have any discretion in the matter (the Directive seems, by contrast, to consider expulsion as only a possible measure to be taken). With regard to the Directive's mandatory measure of denial of access to ports and anchorages to ships that have been expelled, the Portuguese legislator has also included the possibility of conditional or suspended access to the territorial sea. Access to the port may be, however, allowed in cases of force majeure or where there are overriding safety considerations from the moment that certain requirements are met.

It should be noted that the said Directive 2009/16/EC - which is still to be transposed - provides for the possibility of detention of ships when security is at issue. This possibility of detention is already referred to in Decree-Law 50/2012. As a consequence, the possibility of detention is expected to coexist alongside the possibility of expulsion, once the directive has been transposed into Portuguese law.

Sailing without the abovementioned certificate and non-compliance with expulsion order constitutes administrative offenses sanctioned by fines up to EUR 44,000.00.

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