

# Portuguese Legislation

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*Main text*

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## 1. Introduction

The Convention STCW 78, as amended, in its regulation I/10, paragraph 2, as well as, the Directive 2008/106/EC, as amended, in its Annex II, paragraph 5, requires that Administrations establish measures “to ensure that seafarers who present, for recognition, certificates issued under the provisions of regulations II/2, III/2 or III/3, or issued under regulation VII/1 at management level, as defined in the STCW Code, have an appropriate knowledge of the maritime legislation of the Administration relevant to the functions they are permitted to perform”.

To that end, it was necessary to devise a manner to convey relevant information on the Portuguese maritime legislation to those seafarers in a practical and convenient way.

This publication, reviewed and updated as necessary, is sent in an electronic format to seafarers on application for recognition of their Certificates of Competency at management level. Besides, it is also made available to companies operating ships flying the Portuguese flag in the Portuguese maritime administration web pages.

The publication consists of a main text with information on legal requirements and dispositions about various subjects found relevant for the purpose. Additionally, it includes, as annexes, circulars and other documentation issued by the Administration relevant for the compliance of the Portuguese maritime legislation.

## 2. Maritime Administration

The functions related with the implementation of the Portuguese maritime legislation are mostly carried out by the Direção-Geral de Recursos Naturais, Segurança e Serviços Marítimos (DGRM) (<http://www.dgrm.mamaot.pt>).

For that reason, this organization is referred to as “the Administration” for general purposes in what concerns maritime matters.

The Technical Commission (CT) of the International Shipping Register of Madeira (MAR), however, also has functions legally assigned and cooperates with the DGRM in the execution of functions of the Portuguese Maritime Administration.

## 3. Registry of ships

The United Nations Convention on the Law of the Sea (UNCLOS) establishes the principles governing flag States, nationality and registration of ships.

According to UNCLOS (Articles 91 and 92), States must establish requirements for granting of its nationality to ships, for the registration of ships in its territory

and the right to fly its flag. Vessels have the nationality of the State whose flag they are entitled to fly.

Ships shall sail under the flag of one State only and, save in exceptional cases provided for, shall be subject, at sea, to the exclusive jurisdiction of that State. During a trip or at a port of call, a ship may not change its flag, except in the case of transfer of ownership or change of registry.

Portugal has set two types of registers for ships entitled to fly the Portuguese flag and under the same Maritime Administration – the conventional register and the international register.

### **3.1 Conventional Register**

This is the “traditional” Portuguese register of ships. It is carried out by maritime authorities’ offices (Capitanias or Delegações Marítimas) existing in each port in Portugal. The ship’s home port will be the port where is located the office used by the ship to register.

Ships and owners in this register comply with all the Portuguese applicable legislation.

### **3.2 International Register**

Portugal has also established a second shipping register named International Shipping Registry of Madeira (MAR).

The International Shipping Registry of Madeira – MAR was created to reduce the country’s “flagging out” process as well as to attract new ship owners and vessels. This register offers a favorable tax regime, applicable to both vessels and shipping companies licensed within the legal framework of the International Business Centre of Madeira.

At MAR, ships are registered by the MAR Technical Commission (CT-MAR), with office at Funchal, Madeira Island, and their home port is “Madeira”.

However, from the technical point of view ships registered at MAR are subject to the same maritime legislation than the ships of the conventional register.

## **4. Marine Casualties**

Under the United Nations Convention on the Law of the Sea (UNCLOS), SOLAS, MARPOL and other international maritime conventions, flag States are require to to conduct an investigation of any casualty occurring to any of its ships "when it judges that such an investigation may assist in determining what changes in the present regulations might be desirable".

IMO approved a Casualty Investigation Code (CI) and amendments to regulations to make Parts I and II of that Code mandatory.

The European Union also published legislation governing marine casualties and incidents investigation with additional mandatory requirements, which the Portuguese flagged ships are required to comply with.

Portugal has created an Office for the investigation of marine casualties - Office for the Prevention and Investigation of Maritime Accidents (GPIAM).

For information and relevant European and national legislation please refer to the GPIAM webpage at:

<http://www.gpiam.mam.gov.pt>

#### 4.1 Mandatory notification

A very serious marine casualty means a marine casualty involving the total loss of the ship or a death or severe damage to the environment (definition in the CI Code).

All **very serious** maritime casualties should be notified to GPIAM ([gpiam@gpiam.mam.gov.pt](mailto:gpiam@gpiam.mam.gov.pt)) within 6 hours and the remaining casualties or incidents within 48 hours.

More details on the investigation office, legal framework and notification procedures can be accessed in GPIAM webpage.

The master of the ship, as well as the company and the owner, are responsible for these notifications and will be subject to legal sanctions in case of non-compliance.

## 5. Port State Control

Compliance with all applicable regulations is a statutory requirement for ships to attain the required certification in order to be able to sail. However, it is not only at that moment that ships have to demonstrate compliance. The maintenance of the condition between surveys under which ships were certified is a requirement and can be verified, not only the Administration through random flag inspections, but also by port authorities in foreign countries.

In accordance with the maritime conventions, ships are subject to control by the authorities of the country of ports or anchorages they visit. This is known as Port State Control (PSC) and is meant as a second line of defense against non-complying shipping.

Usually, the States organize themselves in regional memorandums to exercise PSC more efficiently. That is the case of Paris Memorandum of Understanding (Paris MoU), Tokyo MoU, Viña del Mar MoU, etc. The United States do not belong to any regional memorandum.

In case of deficiencies uncovered during those PSC inspections ships may be subject to control measures, which can include the detention of the ship until those deficiencies are rectified and sanctioned according to the port State legislation.

## 5.1 Communication requirements

It is a Portuguese statutory requirement that masters and companies report as soon as possible to the Administration when a ship is subject to control measures by PSC authorities.

## 5.2 Investigation of deficiencies

The above communication should be followed, as soon as possible, by the results of the company's investigation to the deficiencies found and details on the corrective action taken, both to rectify the deficiency and to prevent its recurrence as required by the ISM Code.

## 5.3 Appeal

In case of a disagreement with the PSC inspector (PSCO) about deficiencies reported or his decision to delay (detain) the ship, the master should, in a civil manner, present his reasons for the disagreement and ask the inspector for additional information or explanation.

If the disagreement remains the master or the company can appeal to the PSC coordinator in the port or in the respective country's central office.

When a disagreement is not solved while the inspector is on board, the regional PSC memorandums usually have procedures for appeal against a PSCO decision. The respective web pages can be consulted for information on this.

The Administration will support this appeal if believes that there are enough grounds to initiate that procedure based on the relevant factual information presented by the master and the company.

Obviously, the undertaking of the above described appeal procedure does not prevent the company, the owners or other interested party in the ship's business, if they so wish, to pursue any legal action in court against the authority that has delayed a ship supposedly without valid reason.

# 6. Maritime Security (ISPS Code)

## 6.1 Background

The International Ship and Port Facility Security Code (ISPS Code) was adopted by a Resolution of the Conference of the Contracting Governments to the International Convention for the Safety of Life at Sea (SOLAS) 1974, held in London between 9-13 December 2002.

The same Conference adopted another Resolution which included the necessary amendments to Chapters V and XI of SOLAS by which compliance with the Code became mandatory on 1 July 2004. Chapter XI of SOLAS was amended and re-named as Chapter XI-1 and a new chapter XI-2 was adopted on special measures to enhance maritime security.

Part A of the ISPS Code is mandatory for all Portuguese ships as well as those provisions of Part B of the ISPS Code as per Article 3.5 of Regulation (EC) N<sup>o</sup>

725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security.

## **6.2 Aims of the ISPS Code**

Maritime Security aims to provide a standardised, consistent framework for evaluating risk, enabling Governments to offset changes in threat with changes in vulnerability for ships and port facilities through the determination of appropriate security levels and corresponding security measures.

It is noted that the measures to enhance maritime security call for the establishment of appropriate operational measures and procedures to prevent unauthorised access, to prevent the introduction of unauthorised weapons, incendiary devices or explosives, to provide means of raising an alarm, to ensure efficient and effective communications and to enhance awareness and vigilance.

These measures have a protective character and have been developed for the purpose of preventing the occurrence of a security incident.

Suppression, containment and control of a situation in case of breach of security or of a security incident, has been and remains a matter for the police and the security services of each State.

## **6.3 Application**

Regulation SOLAS/XI-2/2.1.1 and the Code section A/3.1.1 indicate that the measures to enhance maritime security apply to the following types of ships engaged in international voyages:

- a) Passenger ships, including high-speed passenger craft;
- b) Cargo ships, including high-speed craft, of 500 gross tonnage and upwards; and
- c) Mobile offshore drilling units.

Moreover, Regulation (EC) N<sup>o</sup> 725/2004, mentioned above, and, consequently, the Portuguese legislation indicates that those measures also apply to the following ships engaged in domestic voyages:

- a) Passenger ships, class A, as defined in EU Directive 98/18/EC;
- b) Cargo ships of 500 gross tonnage and upwards engaged in voyages between mainland Portugal and the Azores and Madeira autonomous regions and between those regions.

The measures to enhance maritime security also apply to ports and to port facilities serving the above vessels.

## **6.4 Competent Authority**

The Direção-Geral de Recursos Naturais, Segurança e Serviços Marítimos (DGRM) is the Competent Authority for the implementation the ISPS Code and the Regulation (EC) N<sup>o</sup> 725/2004 of the European Parliament and of the Council of 31 March 2004 requirements on enhancing ship and port facility security.

## **6.5 Reporting**

All security incidents involving a Portuguese flagged ship shall be reported to the Competent Authority.

## **6.6 Records**

All records required by the ISPS Code, including the ones concerning maritime incidents referred above, shall be kept on board for a period of at least 3 years.

## **6.7 Contacts and additional information**

For contacts in the scope of maritime security related matters and for detailed information on the implementation of maritime security requirements to Portuguese flagged ships, please refer to information available in the web page of the Competent Authority (DGRM) and to relevant documentation that may be in the annex to this document.

# **7. International Maritime Conventions**

The list of international maritime conventions to which Portugal is part can be found in the annex to this document.

# **8. Surveys and statutory certification**

The surveys and the issue of statutory certificates to Portuguese ships registered in the International Shipping Registry of Madeira (MAR) are delegated to Recognised Organisations (RO). The exception are the issue of liability certificates and Safe Manning Documents, which are issued by the Portuguese Administration

## **8.1 List of Recognised Organisations**

The list of RO with whom the Portuguese Government has established agreements to perform functions related to surveys and issue of statutory certificates can also be found in the annex to this document.

## **8.2 Suspension of validity of certificates**

In case that serious defects or non-conformities are found on board a Portuguese ship the RO or the competent authority (DGRM) can suspend the validity of the related statutory certificates.

The master and the company are not allowed to sail a ship which have any statutory certificate validity was suspended.

## **8.3 Flag inspections**

The Portuguese Administration can carry out Flag inspections to Portuguese flagged ships.

These flag inspections can be carried as routine, in the scope of an Administration monitoring programme of the fleet, or whenever there are reasons to believe that a ship may be not in full compliance with the statutory requirements. Examples of circumstances of this may be the case of a ship's detention by PSC or following recurrent reports with deficiencies found on a certain ship or on different ships of the same company.

The master is required to give all the support and cooperation to a flag inspector of the Administration, or appointed by the Administration, to complete his inspection.

#### **8.4 Transfer of flag**

Ships transferring flag to Portugal will be subject to surveys to verify its compliance with Portuguese statutory requirements.

Circular nº 14, included in the annex, has details on the scope of surveys to be completed for the issue of the applicable statutory certificates for ships that will register in the International Shipping Register of Madeira – MAR

### **9. Registration of persons on board passenger ships**

The EU Directive 98/41/EC requires the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community.

The aim is to ensure that the number of persons on board does not exceed the one for which the ship and its safety equipment has been certified, and to facilitate search and rescue activities following a casualty.

All persons on board passenger ships departing from a port located within the European Union (EU) must be counted prior to departure of the ship. The number of passengers must be communicated to the master of the ship and to the company's designated passenger registrar or to a shore-based company system performing the same role. Before a passenger ship departs, its master must ensure that the number of persons on board does not exceed the number the ship is permitted to carry.

Where a passenger ship departs from an EU port to undertake a voyage of more than 20 nautical miles, certain passenger information (surname, first name, sex, age and any information provided concerning the need for special care or assistance) must be collected and communicated to the company's passenger registrar within 30 minutes of the ship's departure.

#### **9.1 System for the registration of passenger information**

Each company responsible for operating a passenger ship must:

- a) Set up a system for the registration of passenger information complying with the requirements of the Directive;
- b) Appoint a passenger registrar responsible for keeping and transmitting the information.



The system must be approved by the EU member States. Therefore, companies should submit their systems for approval.

## **10. Endorsements of seafarers Certificates of Competency**

The Portuguese Administration recognizes seafarers' certificates of Competency (CoC) that wish to embark on Portuguese flagged ships, in accordance with the regulation STCW/I/10.

Knowledge of Portuguese maritime legislation is a requirement for seafarers applying for the recognition of their certificates of competency at management level.

Circular nº 13, also included in the annex, informs on the procedure adopted by the Portuguese Administration to comply with that requirement.

## **11. MLC Convention**

Portugal is not yet a Party to the Maritime Labor Convention, 2006. However, this convention incorporates the requirements of a number of the existing ILO conventions, many of them ratified by Portugal. This means that most of the MLC requirements are applicable, through national legislation, to the Portuguese flagged ships.

On the other hand, the convention is in force in many countries that are entitled to implement a no more favourable treatment to ships flying a flag of a non-Party State. Therefore, ships have a need to comply and demonstrate that they have been inspected as required by the MLC convention.

Portugal, obviously, recommends this to the ships of its fleet and issued instructions on this subject. They can be consulted in the Circular nº 12 and also in Circular nº 14, included in the annex to this document.

## **12. AFS Convention**

Portugal is also not a Party to the International Convention on the Control of Harmful Anti-fouling Systems on Ships (AFS Convention), which prohibits the use of paint with organotin or TBT components which are environmentally harmful.

However, the EU has also transpose the requirements of that IMO convention into Community legislation by Regulation (EC) No 782/2003 on the prohibition of organotin compounds (TBT) on ships.

Through compliance with that Regulation, Portugal requires compliance with the respective requirements to the ships flying Portuguese flag. Therefore, they must be surveyed accordingly and the Statement or Declaration of Compliance, as applicable, be issued in conformity with the Regulation.

## **13. General information**

### **13.1 Sanctions for non-compliance**

The Portuguese maritime legislation, in general, foresees sanctioning regimens to masters, owners or companies who do not comply with mandatory dispositions of that legislation.

# Portuguese Legislation

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## *Annex*

### **List of documents in the Annex:**

<b>Name</b>	<b>Subject</b>	<b>Date approval</b>
	List of Recognised Organisations (RO) with whom the Portuguese Government has established agreements to perform functions related to the surveys and issue of statutory certificates	01-10-2013
Circular nº 12	MLC Convention certification	10-01-2014
Circular nº 13	Knowledge of Portuguese maritime legislation related to the Recognition of Certificates of Competency	07-02-2014
Circular nº 14	Transfer of flag to Portugal and registering in the International Shipping Register of Madeira – MAR	14-02-2014
Circular nº 15	Application for exemptions, waivers and equivalents	14-02-2014