

The Shipping Register of Madeira ("MAR")

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INTRODUCTION

The Island of Madeira, although a Portuguese territory, enjoys extensive autonomy. It is located in the Atlantic Ocean, off the coast of Africa, north of the Canary Islands, and is therefore well placed for blue water sailing.

A wide range of tax and financial incentives are available to shipping companies duly incorporated and licensed to operate within the legal framework of the Madeira Free Trade Zone.

The **International Shipping Registry of Madeira (known as 'MAR')** is the most recent cornerstone of the Madeira International Business Centre (a free trade zone created by Decree Law 500/80, of 20th October, managed and administered by **SDM - Sociedade de Desenvolvimento da Madeira, S.A.**, a privately operated company that has the full support of the Autonomous Region of Madeira). MAR was created by Decree Law 96/89 in 1989, and today the Registry is at the forefront of modern shipping legislation.

MAR's purpose is to register all acts and contracts which relate to commercial ships, fixed or floating platforms/installations, as well as leisure boats. MAR operates a high standard quality registration system with appropriate measures having been provided in order to assure adequate surveillance systems of all vessels registered. Consequently, MAR is not a register that merely awards flags of convenience indiscriminately. It is also responsible for the technical inspection of ships in general and the undertaking of any other acts inherent to registration obligations, such as: ship inspections, sign call attribution, ships certification, registration of the crew, issuing, validation and control of board documents, and many others.

Following a number of initiatives to promote quality shipping and eliminate the competitive distortion caused by the existence of the flag of convenience system, MAR has sought to prevent registration of sub-standard owners/operators looking for a

‘suitable’ flag of convenience. Indeed, the first technical inspection is always conducted by MAR. Only the subsequent annual inspections are delegated to internationally approved Classification Societies.

This is probably the reason why MAR has only registered 162 ships, when it could have easily reached more than 1000 registrations.

Recently, the legal framework that regulates ownership and crew registration has been amended in order to further enhance the advantages of the shipping register of Madeira, whilst adapting it to a new market reality, in which the former requirements that at least 80% of the crew, as well as the captain, must be EU nationals, have proved to be difficult to meet. These amendments will be described below.

IMPORTANT ASPECTS OF THE MADEIRAN REGISTER:

1) Entities able to register:

1.1 Those whose purpose is that of maritime transportation of persons and goods. Applicants may be companies or other forms of partnerships, branches, agencies or legal representatives, licensed or not to operate in the legal framework of Madeira's International Business Centre.

1.2 Owners of yachts.

NB: Fishing vessels are not allowed to register at the Shipping Register of Madeira.

2) How to register:

The information and documentation to be submitted to the Technical Commission of MAR varies depending on whether the registration is temporary or

permanent. If the registration is permanent, the name of the ship will be submitted together with two alternative names, and the original Bill of Sale. If the registration is temporary, a certified copy of the bareboat chartering contract shall be submitted.

The law has established provisional registration for a maximum of 30 days, in order to facilitate permanent registration at the end of that period. The registration process is exempt from any form of taxation.

3) The purchase and sale of ships:

This type of operation is not subject to any prior authorization. The sale becomes effective through a Bill of Sale.

4) Classification Societies:

Annual surveys, carried out to ensure compliance with internationally agreed standards, including safety regulations, are undertaken by MAR surveyors or by surveyors of Classification Societies recognised by the Ministry responsible for Maritime Affairs (the respective certificates are subsequently issued) The following Classification Societies are authorised to undertake surveys:

- * Lloyd's Register of Shipping (LRS);
- * Bureau Veritas (BV);
- * Det Norske Veritas (DNV);
- * Registro Italiano Navale (RINA);
- * American Bureau of Shipping (ABS);
- * Germanischer Lloyd (GL);
- * Rinave Portuguesa (RINAVE);

Other classification societies may in the future be recognized by the Portuguese government.

5) Verification of Crew and their tax liability:

- Any income received by the crew of ships registered at MAR is exempt from any form of taxation (nº 8 Art. 33 – Decree Law 215/89, of 1st July 1989, as amended by Decree Law 198/2001, of 3rd July 2001).
- The objective of the Register's technical commission in assessing crew composition and minimum crew requirements is to guarantee safety and the preservation of the quality of life on board and at sea. However, even though the Decree Law 248/2002 state that the captain and 50% of the crew must be nationals of EU member states or of PALOP countries (Official Portuguese Speaking Countries), exceptions in certain special circumstances may be granted. This last proviso takes into account the shortage of captains and crew from EU member-states, allowing a larger number of non-EU nationals, for instance, citizens of Eastern European countries to become part of these crews.

In fact, applicants may propose the crew composition of their ship, according to the characteristics of the ship and International Conventions.

These crew requirements do not apply to yachts.

- Crew members and their respective employers are not obliged to pay social security taxes levied under the normal Portuguese system and may opt for voluntary or private schemes.

6) Tax Benefits and Exemptions:

All tax benefits and exemptions applicable within the legal framework of the Madeira's International Business Centre ('the Centre' or 'IBC') are extended to ship owners registered at MAR.

Until 2011, no corporation tax is due on profits made by operators of ships flying the Portuguese flag operating in international waters, registered until 31st December 2002.

The same applies to profits made by ships owned by companies licensed to operate under the free trade zone legislation but flying a foreign flag. However, corporation tax is levied on income earned by owners of ships that carry cargo and passengers between national ports, at a rate of 25%.

No capital gains tax is due on profits made on the sale of a ship or by the transfer of the shares of the company which owns the ship, provided that the shares sold are owned by a non-resident entity.

Ship owners will also benefit from an exemption from municipal property taxes until 2011.

Moreover, no withholding tax, corporation or individual income taxes are payable on dividends and interest on shareholder's loans.

Ship owners are also exempt from transfer tax on all transfers of shares or other forms of shareholding of companies operating exclusively in the Centre and on the acquisition of real estate for the purpose of setting up in the Centre.

Exemption from stamp tax and stamp duties on any documents or contracts signed by companies operating in Madeira's IBC may also be granted.

In addition, there are some VAT related advantages for vessels owned by companies licensed to operate under the Free Trade Zone legislation.

Since 1993, a leisure boat cannot remain in European Union waters for more than six months in any one year, unless it can prove that VAT has been paid on the yacht in one member state. A boat purchased by a company licensed to operate under the Free Trade Zone legislation of Madeira would automatically pay VAT so it would not fall foul of the six months rule.

A company licensed to operate under the Free Trade Zone legislation of Madeira pays VAT at a rate of 12% on the purchase of a vessel. The comparable rate in most other European Union jurisdictions is 17,5%.

If the ship is owned by a Madeira company, VAT is only due for the purchase of the vessel, since transportation of goods and passengers within the EU, as well as imports

and transfers of goods to Free Trade Zones, are VAT exempt. In a number of other EU member states and dependent territories, tax-privileged companies which own vessels cannot register for VAT in the EU with resulting disadvantages when it comes to subsequent re-sale or transfer of the vessel within the EU.

Other tax advantages may be available through the implementation of double taxation treaties ratified by Portugal. As the members of the Free Trade Zone of Madeira are Portuguese companies with their head offices and central management in Portugal they are, therefore, subject to the same tax regime advantages applicable to all companies domiciled in Portugal, although they are temporarily exempt from taxation.

7) International Treaties

Portugal has ratified or signed approximately forty international treaties and agreements, not to mention double taxation agreements, including the following:

- Law of the Sea Convention, 1982 (UNCLOS)
- International Convention for the Safety of Life at Sea, 1974 (SOLAS)
- International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL)
- International Convention on Maritime Search and Rescue, 1979 (SAR)
- International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (OPRC)
- Lisbon Agreement: Cooperation Agreement for the Protection of the Coasts and the Northeast Atlantic against Pollution, 1990.

LEGAL REQUIREMENTS

- ACCESS REQUIREMENTS

- 1- All commercial vessels that operate in the marine environment including fixed or floating oil rig platforms.

2- Registration requirements

2.1. Application for permanent registration should be submitted together with the following documents and information:

- Purchase certificate of the vessel;
- Name of the vessel's owner;
- Intended name for the vessel and two alternative names;
- Owner and/or operator's contracts, mortgages or other charges over the vessels;
- Application for the attribution of the call sign, as well as description of communication equipment together with a copy of the last radio station licence issued by the Administration of the previous register;
- Vessel's tonnage measurement in accordance with the International Convention on Tonnage Measurement of Ships, 1969.
- Vessel's characteristics and propulsion system
- Construction shipyard of the vessel and year of construction;
- Name of Classification Society;
- Copies of the vessel's certificates;
- Name of the entity responsible for the payment of radio-communication accounts recognised by the Portuguese Administration;
- Crew's individual employment agreements;
- Ship's manning duly justified;
- Declaration (duly authenticated), issued by the competent authorities of the previous register, certifying that the applicant has asked for cancellation of registration;
- Subsequent immediate presentation of the Cancellation Certificate to MAR;
- General layout of the vessel;
- Safety layout. Fire extinguishing and rescue means;
- Stability Certificate approved by the Classification Society.

2.2. Application for temporary registration should be submitted together with the following documents and information:

- Original or notarised copy of the bareboat chartered contract;
- Operator's name;
- Vessel's name;
- Declaration of the vessel's owner authorizing temporary registration in MAR;
- Declaration of the competent authorities of the country where the vessel's ownership is registered authorizing temporary registration in MAR.
- Licence application containing the abovementioned items

3- The registration of a vessel in MAR may be carried out through companies licensed to operate within the legal framework of Madeira's International Business Centre (IBC) or not, in contrast to the situation in Cyprus or Malta, for example, where the registration of vessels may be carried out through licensed companies only.

- If a ship owner wishes to register a vessel through a company licensed to operate within the legal ambit of Madeira's IBC, a licence application must be presented to the Regional Secretary for Planning and Finance (through this licence, the company will benefit from all the tax incentives granted within the scope of Madeira's IBC. It will pay for application and annual fees).

Shipping companies, duly licensed to operate within the legal framework of Madeira's IBC, will not be subject to some of the usual requirements, such as:

- Minimum Share Capital;
- Citizenship requirements relating to members of the Board of Directors

or Management;

- Head offices in Madeira;
- Any registration or notaries fees in the process of incorporation and

registration.

Furthermore, there are other advantages offered by the Shipping Register of Madeira to entities registering after 1st January 2003, such as the following:

- Reduced Corporate Income Tax Rates of 1% to 3%;
- Double Taxation Agreements;

- No withholding tax on dividends; and
- No capital gains tax on the transfer of ships.

If the company does not have its head offices in Madeira, it must nevertheless have a local branch, delegation, agency or any other appropriate form of representation. Such a branch or other must be able to maintain a legal relationship with the State Authorities and third parties, as well as to receive notifications/summons.

- If a ship owner chooses to register the vessel through a shipping company not licensed to operate within the legal scope of Madeira's IBC and if this company does not have its head offices in Madeira, it must have a permanent representation in Madeira with all necessary powers.

FEES

1- For the initial registration, renewal or transfer of registration of a vessel, the following fees are due:

- a) A fixed fee of € 1,800.
- b) A variable fee according to the following table:

Specification		Value
0 NT	250 NT	€ 225
250 NT	2,500 NT	€ 0.90 x NT
2,500 NT	10,000 NT	€ 0.75 x NT
10,000 NT	20,000 NT	€ 0.60 x NT
20,000 NT	30,000 NT	€ 0.50 x NT
30,000 NT	40,000 NT	€ 0.40 x NT
40,000 NT	50,000 NT	€ 0.30 x NT
50,000 NT	60,000 NT	€ 0.20 x NT
60,000 NT	OVER	€ 0.10 x NT
NT=Net Tons		

2- As regards annual fees, the following amounts are due:

- a) A fixed fee of € 1,400.
- b) A variable fee according to the following table:

Specification		Value
0 NT	250 NT	€ 200
250 NT	2,500 NT	€ 0.80 x NT
2,500 NT	20,000 NT	€ 0.40x NT
20,000 NT	and above	€ 0.25 x NT
NT=Net Tons		

c) Ships falling within the provisions of Article 20, 1, of Decree-Law 96/89, of the 28th of March 1989, and which have been transferred from the General Directorate for Maritime Authority, are exempt from the above fees and the following variable fees will be applied:

Specification		Value
0 NT	250 NT	€ 200
250 NT	2,500 NT	€ 0.40 x NT
2,500 NT	20,000 NT	€ 0.25x NT
20,000 NT	and above	€ 0.15 x NT
NT=Net Tons		

d) This fee is due at the beginning of each 12-month period, on the first day of the month preceding the due date:

- For the establishment of a crew inspection certificate, the amount of € 300 is charged.
- For each inspection, at the ship owner's request or the annual inspection imposed by MAR, the amount of € 100 per hour is charged.

The amounts referred to in the previous clauses, and all other existing fees, must be paid to the concessionaire of the Madeira Free Trade Zone, before the Government of the Autonomous Region of Madeira issues the registration documents. The ship owner must also provide written proof of such payment(s).

CONCLUSION

Although a Portuguese territory and, because it is considered to be a peripheral region of the EU, Madeira was granted the right to establish a special tax system in order to promote certain investments on a commercial, financial services and industrial level.

By creating the Madeira International Business Centre, with the support and approval of the European Union authorities, the Portuguese government did not create a tax haven, as Madeira remains under Portuguese jurisdiction.

It has, nevertheless, created some tax incentives for investments in Madeira in certain sectors of economic activity, subject to certain terms and conditions, which incidentally are more demanding than those enforced in other offshore zones all over the world.

BIBLIOGRAPICH REFERENCES

- The Shipping Register of Madeira: questionnaire.

- The Shipping Register of Madeira
www.sdm.pt

- The International Maritime Organization
www.imo.org

- Financial Privacy Consultants: The Privacy News Letter
http://www1.privacy-consultants.com/nlet/privacy_battle/nlet_05_1997.shtml

- Shipping and Yacht Registration
<http://www.consumoffshore.com/english/offind/ship-yacht.html>

- The Island of Madeira
<http://www.consumoffshore.com/english/countries/madeira.html>

- “MAR”, by XAVIER MARTINS, Gisela, Barros, Sobral, G. Gomes e Associados -
Setembro de 2003
<http://www.bsgg.pt/>

- Tax Time E-Trade Management, Lda.
http://www.ttt-madeira.com/MAR/yacht_registration1.html

- “Ship Management and Maritime Operations”, New Madeira Investment Serviços,
Lda.
<http://www.lowtax.net/lowtax/html/jmdobs.html#ship>

- “Foreign Investment in Portugal: A Garden of Opportunities also for small and
medium size enterprises”, by PINA, Maria Isabel
<http://lawyersworldwide.com/content/999-01-428.pdf>

- “International Shipping Register – MAR”

<http://offshoregate.com/Portugal.htm>

- “The Legal Framework of Madeira’s International Business Centre”, by ABREU, Jorge, from Abreu & Marques, Vinhas e Associados – Sociedade de Advogados, London, October 2, 2003

- “Madeira: Global Solutions for Wise Investments”, International Business Centre of Madeira, September 2003

www.ibc-madeira.com