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# Shipping

### Portugal

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## Law and Practice

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## 1. Maritime and Shipping Legislation and Regulation

### 1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

The Civil Procedure Code, along with the Commercial Code, are two important sources of local law covering maritime and admiralty issues.

Law No 35/86 of 4 September 1986 was originally intended to create five maritime courts in Portugal. However, only one was created and is currently operational in Lisbon. The Lisbon Maritime Court is the court of the first instance and the Supreme Court hears the appeals.

Law No 62/2013, of 26 August 2013, which describes the organisation of the judiciary system, provides the authorities for which the maritime court is competent, which encompass all the claims related to maritime law. These include shipping matters, given that the Portuguese jurisdiction does not have a specific shipping court. In practice, the most common maritime and shipping claims filed with the maritime court are related to disputes concerning cargo and passenger claims.

### 1.2 Port State Control

The General-Directorate for Natural Resources, Security and Maritime Services (DGRM) is the entity responsible for exercising port state control over all foreign vessels calling in and sailing within Portuguese waters and for ensuring that they meet and comply with the international safety, security and environmental standards, and that their crews have adequate living conditions and proper working conditions. Where irregularities are identified during inspections, the DGRM may apply fines and detain the vessel until these irregularities are cured.

The main domestic applicable statute regarding port state control is Decree-Law No 61/2012, of 14 March 2012, as amended, which transposes Directive No 2009/16/CE, of the European Parliament and of the Council of 23 April 2009, into the Portuguese jurisdiction. This statute provides the framework applicable to inspections that may be conducted by the port State to ensure compliance with the applicable international requirements.

Portugal is a signatory of the United Nations Convention on the Law of the Sea (UNCLOS) and a party to the Paris memorandum of understanding on port state control (Paris MoU).

Decree-Law No 43/2002, of 2 March 2002, created the National Maritime Authority (*Autoridade Marítima Nacional*, NMA), which is the competent authority in all matters related to the maritime sector in the country. The NMA is responsible for

the safety and control of navigation, protection of the environment and the fight against pollution, and protection of human life in maritime activities and rescue operations, among others. Decree-Law No 265/72, of 31 July 1972, provides the framework applicable to port authorities. This statute includes the main attributions of these entities, emphasising their competence to ensure compliance with rules relating to safety and pollution. These powers are, in practice, exercised by the captains of the ports, who are competent to impose penalties and other measures in consequence of the violation of the statutes referred to above and to instruct the competent proceedings, in accordance with Decree-Law No 44/2002 and No 45/2002, both of 2 March 2002, as amended. These penalties may include, among others, the arrest of the vessel, the suspension of its operations, and the imposition of fines.

### 1.3 Domestic Legislation Applicable to Ship Registration

In the Portuguese judicial system, a vessel is considered to be a movable asset subject to registration.

All types of merchant vessels can be found under the Portuguese flag: product and chemical carriers, bulk carriers, container vessels, gas tankers, cruise ships, crude oil, etc (except that MAR does not permit the registration of fishing vessels). To fly the Portuguese flag, a merchant vessel must be registered either with the Conventional Ship Registry or the International Shipping Registry of Madeira (MAR). The Conventional Registry requires registration with both the Harbour Master and the Commercial Registry, whereas registration with the MAR is by way of registration with its Technical Commission as well as the Commercial Registry.

The conventional registration is regulated by Decree-Law No 43/2018, of 18 June 2018, which created the National System of Vessels and Seafarers (*Sistema Nacional de Embarcações e Marítimos*); and Decree-Law No 92/2018, of 13 November 2018, which established a simplified regime for conventional ship registration. This registration is made through an application submitted to the Electronic Counter of the Sea (*Balcão Eletrónico do Mar*), a virtual desk responsible for receiving requests and instructing the procedures related to the registration of vessels and seafarers.

The international ship registry of Madeira is regulated by Decree-Law No 96/89, of 28 March 1989, as amended (the MAR Regulation). The entity responsible for this registration is the MAR, which is a branch of the Commercial Registry Office of the free trade zone of Madeira.

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## 1.4 Requirements for Ownership of Vessels

No nationality requirements are applicable to the ownership of vessels in Portugal. In accordance with Article 6 of Decree-Law No 92/2018, of 13 November 2018, the registration of ships is mandatory, regardless of the nationality of a ship's owner.

The law allows the provisional registration of vessels and mortgages (and other similar encumbrances) over hulls/vessels under construction, as per Article 21.7 of the aforementioned statute.

For ship-owners to register their vessels in MAR they must appoint a local agent with all the necessary powers to ensure their full representation before the State authorities, the Regional authorities and third parties and who must be duly licensed to undertake maritime transport sector or recreational vessel activities in the Madeira Autonomous Region, in accordance with Article 8 and those following of the MAR Regulation.

## 1.5 Temporary Registration of Vessels

Article 16 of Decree-Law No 92/2018, of 13 November 2018, provides that bareboat-chartered vessels may be temporarily registered in the conventional registry. The temporary registration does not grant the applicant ownership of the vessel, and the request must be accompanied by the relevant bareboat-charter agreement, the consent of the owner of the vessel, and an authorisation of the entity with which the vessel is registered.

Article 15 of the MAR Regulation provides that bareboat-chartered vessels may be temporarily registered in the MAR, as long as this is duly authorised by the ship-owner, the entity with which the vessel is permanently registered, and by the mortgagee(s), if any.

Dual registrations are allowed only through the temporary registration mechanism.

## 1.6 Registration of Mortgages

With regard to the conventional registration, the registration of mortgages is maintained by the National System of Vessels and Seafarers and obtained from the virtual desk referred to in **1.3 Domestic Legislation Applicable to Ship Registration**. In order to register a mortgage over a vessel, a document constituting or amending the mortgage with a recognised signature of the owner must be submitted, as per Article 21.3 of Decree-Law No 92/2018, of 13 November 2018.

The MAR maintains the registration of mortgages, which must be created in writing, signed by the title-holder, with the seller's signature authenticated, reference being made to the powers and capacity to undertake the act, whenever applicable, pursuant to Article 14 of the MAR Regulation.

Ownership of the vessel and mortgages must also be registered on the Commercial Registry.

## 1.7 Ship Ownership and Mortgages Registry

The ship ownership and mortgages registry is not available to the public in Portugal. Only parties interested in the registration may request disclosure of this information. The law does not define what an "interest" in the registration means.

The MAR's records are not public. However, the MAR Regulation does not specifically address this matter. Nonetheless, its latest amendment introduced a greater digitalisation of the procedures and records. The full practical effects of these changes have still to be assessed.

# 2. Marine Casualties and Owners' Liability

## 2.1 International Conventions: Pollution and Wreck Removal

The international conventions that may impact upon the liability of owners and interested parties in events of pollution and wreck removal are the following:

- the Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages, Brussels 10 April 1926;
- the Convention upon the Limitation of the Liability of Owners of Sea-Going Ships, Brussels 10 October 1957; and
- the Nairobi International Convention on the Removal of Wrecks of 2007.

As a member of the European Union, Portugal is also subject to the European maritime legislation in force.

Decree-Law No 202/98, of 10 July 1998, provides that the owner, unless proven otherwise, is liable for any damage caused as a consequence of an action or omission of any of the people working on board the vessel.

## 2.2 International Conventions: Collision and Salvage

The following international conventions have been ratified by Portugal:

- the Collision Convention 1910;
- the Collision Convention 1952;
- the Criminal Collision Convention 1952; and
- the COLREGs.

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Portugal also ratified the Convention on the International Regulations for Preventing Collisions at Sea, dated 20 October 1972, on 17 October 1978.

Portugal is also subject to the International Convention on Maritime Search and Rescue, signed in Hamburg on 27 April 1979.

Regarding domestic law, the key statute that may have an impact on liability of owners and interested parties in event salvage is Decree-Law No 15/94, of 22 January 1994, which created the National Maritime Research and Rescue System (*Sistema Nacional para a Busca e Salvamento Marítimo*). There is no specific domestic legislation regarding collision.

Under the Collision Convention 1952, a claim for collision may be brought before the Portuguese courts in the following circumstances:

- Portugal is the only country where the defendant has its habitual domicile or place of business;
- Portugal is the country where arrest of the defendant's vessel has been effected or of any vessel belonging to the defendant which can be lawfully arrested or where arrest could have been effected and security has been provided; or
- the collision occurred within the limits of a Portuguese port or within its inland waters.

When there is a collision between a vessel sailing the Portuguese flag and another vessel sailing under the flag of a non-contracting state to any of the aforementioned conventions and regulations, reference should be made to the Civil Procedure Code, which provides that the claimant must commence an action before the court of the place where:

- the collision occurred (provided it was in Portuguese territorial waters);
- the defendant is domiciled;
- the vessel took refuge; or
- the vessel called for the first time after the collision.

Portugal is not a signatory of the Nairobi WRC 2007. The removal of wrecks is therefore dealt under Decree Law No 64/2005 of 15 March 2005, which, inter alia, lists the entities that hold powers to order the removal of the wreck and the obligations to the owners in respect thereof.

## 2.3 1976 Convention on Limitation of Liability for Maritime Claims

Decree-Law No 18/2017, of 16 June 2017, includes the 1976 Convention on Limitation of Liability for Maritime Claims in the Portuguese jurisdiction.

Further, Portugal is a party to both the 1924 International Convention for the Unification of Certain Rules relating to the Limitation of the Liability of Owners of Sea-Going Vessels and the 1957 International Convention relating to the Limitation of the Liability of Owners of Sea-Going Vessels and its 1979 Protocol (the 1957 Convention). The limitations arising from the Hague Rules and those provided in Decree-Law 352/86 of 21 October 1986 (as amended), which transposed into Portuguese law certain provisions contained in the Visby Protocol, should also be noted.

Reference should also be made to Article 12 of Decree Law 202/98, which provides that, in addition to the limitation of liability provisions included in international conventions ratified by Portugal, the owner can limit its liability to the vessel and to the freight at risk by abandoning the vessel to its creditors and establishing a limitation of liability fund.

## 2.4 Procedure and Requirements for Establishing a Limitation Fund

Decree No 49029, of 26 May 1969, provides the procedure and requirements for establishing a limitation fund.

The owner of the ship and the entities referred to in Article 6 of the Convention upon the Limitation of the Liability of Owners of Sea-Going Ships (Brussels, 10 October 1957) may request from the competent court that the limitation fund be created. The request must be accompanied by the following information:

- the fact from which damages arose;
- the amount of the limitation fund, calculated in accordance with Article 3 of the aforementioned Convention;
- the way in which the fund is to be created;
- if applicable, the amount to reserve pursuant to Articles 3 and 4 of the Convention.

The request must be accompanied by the following documents:

- a list of the known creditors entitled to participate in the fund, including a reference to their residence/headquarters and amount of credit;
- elements to justify the calculation of the amount of the limitation fund.

As a way of limiting liability, a vessel's owner may abandon the vessel to its creditor(s) through the constitution of a limited liability fund.

The creditors are entitled to apply for the judicial sale of the vessel in order to be paid out of the sales proceeds. The judicial sale in this case is undertaken under the rules which apply to anticipated sales in enforcement proceedings. After the sale is

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made, the next steps will be governed by the rules applying to sales in enforcement proceedings.

The enforcement rules will also be applied with the necessary adaptations to any judicial sale which may occur within the scope of the incorporation of a limited liability fund provided for by one of the many international conventions on limitation of liability.

## 3. Cargo Claims

### 3.1 Bills of Lading

The Hague Rules, created by the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, are applicable in Portugal. The Hague Rules apply mandatorily where the bill of lading was issued in the territory of a contracting state.

Although Portugal has signed the International United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules), this instrument was not ratified and, therefore, these rules have not entered into force in this jurisdiction.

Decree-Law No 352/86, of 21 October 1986 (as amended), updated the applicable framework, but makes an express reference to the international conventions to which Portugal is subject.

Although Portugal has not signed or ratified the Visby Protocol, some of its provisions (in particular, those relating to package and unit calculations) were transposed into domestic law by Decree Law 352/86. Decree-Law No 352/86 applies on a subsidiary basis to the Hague Rules, also covering a number of issues that fall outside the scope of these Rules, for example, the pre-loading and post-discharge responsibilities and liabilities, calculation of package and units limitation. Decree-Law No 352/86 has also transposed into Portuguese law the limitation period of two years arising from the Hamburg Rules.

### 3.2 Title to Sue on a Bill of Lading

In general, any party to a contract of carriage that holds an interest over the cargo and is able to show that it has suffered loss or damage arising from the carrier's actions or omissions is entitled to bring a claim. Accordingly, the title to sue on a bill of lading includes the rightful holder of the bill of lading. It should be further noted that in respect of:

- a simple bill of lading, the right to bring a claim remains with the named consignee;
- an order bill of lading, only the latest endorsee can sue; and

- a bill of lading to bearer, this means that the rightful holder at any given moment may sue.

Further and subject to certain requirements, rights under a bill of lading may also be validly assigned to third parties or subrogated (for example when insurers indemnify cargo interests and then seek reimbursement from the carrier).

### 3.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

Decree-Law No 202/98, of 10 July 1998, equates the liability of the carrier to that of the ship-owner. If third parties file claims against a ship-owner which is not the carrier, that ship-owner may not argue against the claimants that it is not the carrier, but may require a reimbursement from the carrier, pursuant to Article 6 of the aforementioned statute. The ship-owner may limit its liability through the creation of a limitation fund.

### 3.4 Misdeclaration of Cargo

A carrier may establish a claim against the shipper for misdeclaration of cargo under Article 4.2 of Decree-Law No 352/86, of 21 October 1986. It should be noted that, under Portuguese law, court decisions are not binding but persuasive, ie, unlike common-law jurisdictions where case law is binding.

### 3.5 Time Bar for Filing Claims for Damaged or Lost Cargo

Article 27.2 of Decree-Law No 352/86, of 21 October 1986, provides that the claims arising from damage to cargo must be filed within two years, counted from the claimant knowing of the damage. The law provides no scenario in which this timeframe may be extended or sustained.

## 4. Maritime Liens and Ship Arrests

### 4.1 Ship Arrests

Portugal is subject to the Convention Relating to the Arrest of Sea-Going Ships, signed in Brussels on 10 May 1952. These matters are further regulated by Decree-Law No 201/98, of 10 July 1998, which provides the legal definition of vessel and the Civil Procedure Code, approved by Law No 41/2013, of 26 June 2013, which provides the requirements applicable to the arrest and the corresponding procedure.

### 4.2 Maritime Liens

Portugal acceded in 1931 to the Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages, Brussels, 10 April 1926. However, in 2010 Portugal revoked its accession to this Convention with effect from 2012. The domestic Portuguese rules on the priority of maritime claims are contained in Articles 574–583 of the Commercial Code (sec-



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tion I – Maritime Liens, of Chapter VIII – Maritime Liens and Mortgages).

This framework divides maritime liens in relation to the type of asset in question.

Thus, there are three types of maritime liens, each one having a list which establishes their ranking:

- liens on the vessel;
- liens on the unpaid freight; and
- liens on the cargo.

The liens included in these lists take priority over maritime claims.

The recognised list of liens against a vessel are the following:

- judicial costs and expenses borne in the common interest of the creditors;
- salvage and assistance salaries;
- mortgages and pledges over the vessel;
- expenses in respect of pilotage and towage in entering the port;
- port taxes, including (but not limited to) tonnage, light-house, anchorage and public health;
- expenses for the custody of the vessel and the storage of her equipment;
- Master and crew salaries;
- vessel's repair costs (including her equipment);
- reimbursement of the cargo which the Master needed to sell;
- insurance premiums;
- any part of the outstanding purchase price in debt since the last acquisition of the vessel;
- expenses relating to vessel repairs (including her equipment) in the three years prior to the voyage and counting from the date the repair was concluded;
- debts arising from the vessel's construction contracts;
- insurance premiums covering the vessel, if she was all insured, or over part of the vessel's accessories that are not included in the tenth point above;
- compensation due to the shippers for lack of delivery or of damage to the cargo.

Note, however, that the wording of Article 578 of the Commercial Code suggests that the liens set out in the first ten points above, with the exception of the third point, are only those incurred during and for the purposes of carrying out the vessel's last voyage.

The above liens may be actioned against the vessel; all other claims are maritime claims and require the establishment of a debt/pecuniary amount due.

## 4.3 Liability in Personam for Owners or Demise Charterers

If the owner is liable (even if only partially) in personam, any vessel it owns may be arrested. However, an arrest may be obtained over a specific vessel for maritime liens, regardless of its owner's personal liability.

## 4.4 Unpaid Bunkers

A bunker supplier could obtain the arrest of a vessel in connection to unpaid bunkers supplied to that vessel. The type of claim has no impact on the possibility of the vessel being arrested. Only the amount owed is relevant.

## 4.5 Arresting a Vessel

The arrest is an injunction procedure aimed at ensuring that the debtor does not dissipate the means to pay its debts. Therefore, it is a temporary solution. Under Portuguese law, only the courts have the capacity to determine that a vessel be arrested. The interested party in the arrest must present the facts that demonstrate the existence of the claim and that justify the fear that any such credit will not be satisfied. The arrest is first ordered on a provisional basis without a hearing. However, an inter partes hearing will be held before the final arrest order is made. A power of attorney and evidence will be required (simple copies and not originals). Important documents should be translated, but can be presented subsequently. The arresting party is not required to provide security.

## 4.6 Arresting Bunkers and Freight

It is possible to arrest bunkers and freight. Article 580 of the Portuguese Commercial Code provide the following maritime liens over cargo:

- legal costs incurred in the common interests of all claimants to preserve the cargo;
- salvage;
- official charges levied at the port of discharge;
- debts in respect of carriage, demurrage and discharge;
- warehousing charges;
- general average contributions;
- insurance premiums.

This statute further provides a list of maritime liens over freight, which are the following:

- legal costs incurred to protect the common interests of all claimants;
- crew wages;

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- general average;
- insurance premiums;
- damages due to shippers.

## 4.7 Sister-Ship Arrest

In a case where the owner of a ship is personally liable for the claim upon which the request for the arrest is based, any ship which that debtor owns may be arrested. If this is not the case, a maritime lien over a vessel may not be enforced through the arrest of another vessel.

## 4.8 Other Ways of Obtaining Attachment Orders

Under Portuguese law, there are no other forms of attachment other than the arrest.

The only exception is the newly introduced amendment to the MAR Regulation, which provides that, in the event that the parties have expressly included this mechanism in the mortgage created over the vessel, the mortgagee may, in a case of default, take possession of the vessel without the need to resort to a judicial court. This mechanism grants the mortgagee the powers to seize, navigate and sell the vessel, in accordance with the terms provided in the agreement, in accordance with Article 14-I of the MAR Regulation.

## 4.9 Releasing an Arrested Vessel

The arrested vessel may be released in the following cases:

- if the underlying debt is settled;
- if the debtor provides adequate security (which is usually a bank guarantee);
- if, in the case that the Portuguese courts are competent to decide on the main claim, that claim is not filed by the creditor which obtained the arrest within 30 days of the arrest being ordered by the court.

## 4.10 Procedure for the Judicial Sale of Arrested Ships

The Portuguese legal system contains no specific legislation governing the judicial sale of vessels which is governed essentially by the Civil Procedure Code and the Commercial Code.

A judicial sale is possible only where certain specific mechanisms are put in place and it may take place in the following circumstances:

- at the conclusion of enforcement proceedings in which the vessel has been arrested;
- during the course of insolvency proceedings relating to her owner where it has been determined that these proceedings will result in the liquidation of assets;

- in the case of irreparable unseaworthiness where the Master applies for her sale without the consent of the owner;
- as the result of an act of abandonment by the owner resulting in the incorporation of a limitation of liability fund for the creditors.

The court may, however, exceptionally order an advance sale prior to that if it considers that the asset is subject to deterioration and depreciation.

The anticipated sale may be requested by the enforcement agent, the applicant for the enforcement, the defendant (vessel's owner) or any other registered creditor. The court will first hear all the interested parties and will decide afterwards, unless urgency is alleged, in which case the court will make a decision immediately.

However, it should be noted that, in practice, vessels are not usually sold during the course of the arrest procedure. A vessel is sold only after all claims against it are determined and a final judgment handed down, following the recognition and ranking of all claims. The judicial sale of arrested ships may take place through one of the following methods:

- sale after tender by sealed bids;
- sale by regulated capital markets;
- direct sale to a person or persons who have a right to acquire the asset;
- sale after a private negotiation;
- sale after an auction made by an auction establishment;
- sale made by public storage facility;
- sale after electronic auction.

The decision on which of the methods is adopted is made by the execution agent (*agente de execução*) after consulting with the claimant, the debtor and any secured creditors.

The port acts, in the case of the arrest of a vessel, as a de facto custodian for the vessel. The costs of maintaining the vessel are usually paid out of the proceeds of sale. Unless a special authorisation is given for the vessel to sail, the legal custody and maintenance of the vessel are the responsibility of the appointed judicial trustee, who has the powers to take all the decisions and to enter into all contracts deemed necessary, at his or her discretion, to assure the custody and maintenance of the vessel.

The ranking of the claims follows the order of the list referred to in **4.2 Maritime Liens** above. Mortgages are ranked third in this list.



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## 4.11 Insolvency Laws Applied by Maritime Courts

There is no direct equivalent of Chapter 11; however, under Portuguese law, insolvency proceedings may be replaced or preceded by a reorganisation of the corporate entity in an effort towards keeping the company functioning in order to pay its debts. This is not, however, a decision of the court, but rather of the corporate entity itself or of its creditors. A Portuguese court can order the arrest and sale of a vessel owned by owners under Chapter 11 but may stay the action if formal evidence of the Chapter 11 proceedings is produced and recognised by the Portuguese court.

If a vessel's owner is declared insolvent, the vessel may be sold during the course of the insolvency proceedings if a decision is taken in these proceedings that the insolvent estate should be liquidated. The sale is undertaken by the insolvency administrator who is required to notify all lien holders of the method he or she proposes for the sale. The lien holders may, within one week from receiving this notification, make a proposal for the purchase of the vessel, either directly or through a third-party buyer. Such a proposal must include a cheque to the order of the insolvency estate in an amount equal to 20% of the offer. The insolvency administrator is allowed to reject this proposal and to pursue the sale through another method, but if this subsequent sale is concluded at a lower price, the insolvency administrator is liable for the difference.

## 4.12 Damages in the Event of Wrongful Arrest of a Vessel

If a defendant demonstrates that an arrest was wrongfully procured by the claimant, it may ask the court to hold the claimant liable for damages pursuant to Articles 542 and following of the Portuguese Civil Procedure Code. Actions of this kind are not common.

## 5. Passenger Claims

### 5.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

Portugal ratified the 2002 Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, dated 13 December 1974. The time limit for filing any such claims is two years. The limitations on liabilities available to the owners in respect of passengers' claims are those provided under Articles 7 and 8 of the aforementioned convention.

Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents also applies.

## 6. Enforcement of Law and Jurisdiction and Arbitration Clauses

### 6.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

Portuguese courts recognise and enforce law and jurisdiction clauses stated in bills of lading, unless these are expressly aimed at excluding Portuguese jurisdiction, in accordance with Article 7 of Decree-Law No 35/86, of 4 September 1986.

### 6.2 Enforcement of Law and Arbitration Clauses Incorporated into a Bill of Lading

See **6.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading.**

### 6.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Portugal has ratified the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which has been in force since 16 January 1995. The Civil Procedure Code provides the procedure of confirmation of foreign decisions.

Enforcement proceedings of both foreign judgments and foreign arbitral awards are subject to advance exequatur proceedings in Portugal, the first under Brussels I and the second under the New York Convention.

### 6.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

As previously referred to, an arrest is always obtained as an ancillary claim vis-à-vis a "main claim." Portuguese courts may order the arrest of vessels in Portuguese waters, regardless of whether they are competent regarding any such main action.

### 6.5 Domestic Arbitration Institutes

The primary domestic source of law for arbitration in Portugal is Law No 63/2011 of 14 December 2011 (the Voluntary Arbitration Law). This is based on the UNCITRAL Model Law, adapted to the Portuguese legal system and practice.

There is, however, no specialist maritime arbitration institute.

### 6.6 Remedies Where Proceedings Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

If proceedings are commenced in breach of a foreign jurisdiction or arbitration clause, the defendant must be acquitted and the proceedings terminated.

## 7. Ship-Owner's Income Tax Relief

### 7.1 Exemptions or Tax Reliefs on the Income of a Ship-Owner's Companies

Owners of vessels registered in Madeira enjoy, under Decree-Law No 92/2018, of 13 November 2018, an exemption from income tax and a partial exemption from social security contributions in respect of qualifying crew members.

Tonnage tax was introduced in Portugal in 2018. Only a corporate income taxpayer with a head office or place of effective management in Portugal who is engaged in shipping activities may opt to benefit from this regime.

## 8. Implications of the Coronavirus Pandemic

### 8.1 COVID-19-Related Restrictions on Maritime Activities

Measures were adopted by the Portuguese government with regard to cruise ships calling at ports in Portugal.

These measures determined a ban on the landing and shore leave of passengers and crew of cruise ships in national ports, due to the worldwide epidemiological situation, the increase in cases of infection in Portugal, with the gradual extension of its geographical reach, the need to contain the possible lines of contagion in order to control the epidemiological situation in Portugal and the fact that international experience shows the high risk arising from the disembarkation of cruise ship passengers and crew.

In concrete terms, the measures established the following:

- banning the landing and shore leave of passengers and crew of cruise ships at Portuguese ports;
- this ban does not apply to national citizens or to the holders of residence permits in Portugal;
- cruise ships are authorised to berth in Portuguese ports for supply and maintenance;
- the ban in point one does not prevent landing in exceptional cases, subject to authorisation from the health authority, in particular for humanitarian or health reasons or for the immediate repatriation without entry into the national territory.

No specific measures were taken regarding commercial loading and discharging operations.

### 8.2 Force Majeure and Frustration in Relation to COVID-19

Portuguese courts recognise the concepts of *force majeure* and frustration. However, given the fact that it has been occurring for almost a year, the likelihood of the pandemic situation being construed as a *force majeure* event or a cause of frustration by Portuguese courts is decreasing.

## 9. Additional Maritime or Shipping Issues

### 9.1 Other Jurisdiction-Specific Shipping and Maritime Issues

Vessels registered in Madeira may be owned and managed by foreign incorporated companies and have full access to EU cabotage.

Recent changes made to the MAR Regulation provide ship-owners with self-remedies which make this registry very dynamic, safe and, therefore, appealing.

# PORTUGAL LAW AND PRACTICE

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**Moraes Leitão, Galvão Teles, Soares da Silva & Associados** is a leading full-service international law firm, with a solid background and great experience. The shipping team provides a full range of legal services and has extensive international experience in advising on complex finance and leasing deals, security structures, ship sales, acquisitions and charter transactions, acting for a diverse range of clients worldwide. The International Ship Register in Madeira (MAR), a white flag Registry, is already established as an efficient and viable alternative to

traditional ship registries, thereby attracting a number of international ship-owning groups and banks now looking to register their vessels in Madeira. ML is one of the few Portuguese law firms with its own offices in Madeira capable of providing a full service to all those interested in the temporary and permanent flagging-in of vessels, mortgage registrations and the incorporation of ship-owning and management companies in Madeira.

## Authors



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