

THE MERCHANT SHIPPING (COMPLIANCE WITH FLAG STATE REQUIREMENTS) LAW OF 2012

LAW NO. 48(I) OF 2012¹

A LAW TO PROVIDE FOR THE OBLIGATIONS AND RELATED ACTIVITIES OF THE CYPRUS MARITIME ADMINISTRATION ACTING AS FLAG STATE OF CYPRUS SHIPS, AND FOR MATTERS CONNECTED THEREWITH

Official Journal of E.U.: L131, 28.5.2009, p. 132. For harmonisation purposes with the Community act titled “Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009 on compliance with flag State requirements”.

The House of Representatives enacts as follows:

PART I —INTRODUCTORY PROVISIONS

Short title. 1. This Law shall be cited as the Merchant Shipping (Compliance with Flag State Requirements) Law of 2012.

Interpretation. 2. - (1) In this Law, unless the context otherwise requires –

“certificate” means a certificate issued by the Republic or a recognised organisation on behalf of the Republic pursuant to the provisions of the International Conventions and the relevant legislation in force in the Republic;

“Competent Authority” means the Minister or any other person authorised by him pursuant to section 4;

“Cyprus ship” means a ship registered in the Register of Cyprus Ships and flying the flag of the Republic of Cyprus, pursuant to the provisions of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Laws of 1963 to 2005, but does not include a ship which is registered in parallel, in any foreign register by virtue of sections 23N-23P of the same Laws;

45 of 1963
32 of 1965
82 of 1968
62 of 1973
102 of 1973
42 of 1979
25 of 1980

¹ **Editorial Note:** Law 48(I)/2012 was published in the Greek language in the Official Gazette of the Republic of Cyprus No. 4332, Supplement I(III) dated 18.05.2012. This is an “unofficial” consolidated translation into English prepared by the Department of Merchant Shipping (DMS) and does not intend to replace any translation prepared by the Law Commissioner’s Office.

According to Article 3 of the Constitution of the Republic of Cyprus, the official languages of the Republic of Cyprus are Greek and Turkish and therefore the present translation into English is **not the authentic version. The authentic and therefore legally binding version, is the Greek version of these Laws.**

Disclaimer: This translated document is intended for use as a documentation tool and the Department of Merchant Shipping of the Republic of Cyprus does not assume any liability for its content.

14 of 1982
57 of 1986
64 of 1987
28(I) of 1995
37(I) of 1996
138(I) of 2003
169(I) of 2004
108(I) of 2005.

“European Commission” means the European Union Commission;

“Department of Merchant Shipping” means the Department of Merchant Shipping of the Ministry of Transport, Communications and Works²;

“Directive 2009/21/EC” means the European Union act titled “Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009, on compliance with flag State requirements”;

“Director” means the Director of the Department of Merchant Shipping;

“IMO” means the International Maritime Organization;

“IMO audit” means an audit conducted in accordance with the provisions of Resolution A.974(24) adopted by the IMO Assembly on 1 December 2005 titled “Framework and Procedures for the Voluntary IMO member State Audit Scheme” ;

“International Conventions” means the updated version –

(a) of the International Conventions and of their Protocols, and

(b) of the relevant Codes, Standards, Regulations, Recommendations or Directives,

which are prescribed from time to time by an Order of the Minister published in the Official Gazette of the Republic³;

“Memorandum of Understanding” means the Memorandum of Understanding on Port State Control signed in Paris on 26 January 1982, as it stands in its updated version;

“Minister” means the Minister of Transport, Communications and Works;

“operator of a ship” means the shipowner or any other person, such as the manager or the bareboat charterer, who has assumed responsibility for operating the ship from the shipowner and who, on assuming such responsibility, has agreed to undertake all the duties, responsibilities and commitments that are imposed by this Law and it includes a legal person;

Official Journal of the E.U.: L 131, 28.5.2009, p. 11.

“recognised organisation” means an organisation recognised in accordance with Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey

² Editorial Note: The change of the name of the said Ministry was effected by virtue of *The Renaming of the Ministry of Communications and Works Law of 2015 (Law 43(I)/2015)*, Gazette No.4503, Supplement I(I), dated 9.04.2015.

³ Editorial Note: see relevant ministerial order i.e. *The Merchant Shipping (Compliance with Flag State Requirements) Order of 2012 (Gazette No. 4570, Supplement III(I), dated 25.05.2012, P.I. 190/2012)*.

organisations”;

“Registrar of Cyprus Ships” means the Registrar of Cyprus Ships as it is defined by the provisions of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Laws of 1963 to 2005;

*Official Journal of
the E.U.: L 324,
29.11.2002,p. 1.
L 188,
18.07.2009,p. 14.*

“Regulation (EC) No. 2099/2002” means the European Community act titled “Regulation (EC) No. 2099/2002 of the European Parliament and the Council of 5 November 2002 for the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) and the regulation amendments on safe seas and prevention of pollution from ships” as last amended by Regulation (EC) No. 596/2009 of the European Parliament and the Council of 18 June 2009;

“Republic” means the Republic of Cyprus;

“ship” means a ship or craft which falls within the scope of application of International Conventions and for which a certificate is required;

(2) In this Law and the public instruments issued thereunder, a reference to an act of the European Community and/ or the European Union, shall mean the act as corrected, amended or replaced.

*Scope of
application.*

3. - (1) This Law shall apply to Cyprus ships or to former Cyprus ships.

(2) This Law shall be without prejudice to-

(a) the community maritime legislation, as laid down in Article 2, paragraph 2, of Regulation (EC) No. 2099/2002, and

79(I) of 2003.

(b) the *Merchant Shipping (Organisation of Working Time of Seafarers) Law*.

*Delegation
by the
Competent
Authority.
Exercise of
powers and
execution of
duties by officers
and officials.*

4. - (1) The Minister may delegate in writing to any of the following the exercise of any power, except the power of issuing orders, and the execution of any duty that this Law or the regulations issued by virtue of this Law grant or assign, respectively to the Competent Authority:

(a) the Director;

(b) any other person serving at the Department of Merchant Shipping.

In case of such delegation, the Minister retains the authority to exercise the delegated power and to perform the delegated duty, from and during such delegation.

(2) A person to whom the exercise of power or execution of duty is assigned pursuant to subsection (1) has an obligation to exercise the power and perform the

duty in accordance with any instructions of the Minister.

(3) The Minister has the power to amend and withdraw an assignment done by virtue of subsection (1) by a written notice addressed to the person to whom the assignment was done.

(4) In case where, by virtue of this section, two or more persons simultaneously exercise the same power or execute the same duty, the hierarchically subordinate of said persons takes the appropriate measures so that he will not exercise the power or will not execute the duty in the same real facts with his hierarchically superior, unless the latter so permits and in accordance with the instructions of the latter.

(5) In case where, by virtue of this section, a person exercises a power or executes a duty that this Law or the regulations issued under said Law, respectively provide or assign, to another person, this Law and the regulations issued under said Law, apply as if the said power was explicitly provided to the person exercising the power and had explicitly assigned said duty to the person executing the duty.

PART II- OBLIGATIONS OF THE COMPETENT AUTHORITY, THE OPERATORS OF CYPRUS SHIPS AND THE RECOGNISED ORGANISATIONS

Conditions for allowing a ship to operate upon granting the right to fly the flag of the Republic.

5. - (1) Prior to allowing a ship to operate, which has been granted the right to fly the flag of the Republic, the Competent Authority shall inter alia take the following measures it deems appropriate to ensure that the ship in question complies with the International Conventions:

(a) verify the safety records of the ship and the records for the prevention of pollution caused by the ship by all reasonable means; and

(b) consult, if necessary, with the losing (former) flag State in order to establish whether any outstanding deficiencies or safety issues or prevention of pollution issues identified by the latter remain unresolved.

(2) Whenever another flag State requests information concerning a ship which was formerly a Cyprus ship, the Competent Authority shall promptly provide details of outstanding deficiencies and any other relevant safety-related information to the requesting flag State.

Prohibition of sailing (detention) of a Cyprus ship by a port State.

6. When the Competent Authority is informed that a Cyprus ship has been detained by a port State, it shall, according to the procedures it has established to this effect, oversee the ship being brought into compliance with the relevant International Conventions.

Accompanying measures.

7. - (1) The Competent Authority shall retain the following information concerning each Cyprus ship, in writing and/or electronically and in such a manner that it remains readily accessible for the purposes of this Law:

(a) particulars of the ship (name, IMO number, etc.);

- (b) dates of surveys, including additional and supplementary surveys, if any, and audits;
- (c) identification of the recognised organisations involved in the certification and classification of the ship;
- (d) identification of the competent authorities which have inspected the Cyprus ship under port State control provisions and the dates of the inspections;
- (e) outcome of the port State control inspections (deficiencies: yes or no; detentions: yes or no);
- (f) information on marine casualties;
- (g) any other additional information laid down by the Minister by virtue of a circular.

(2) The Competent Authority shall retain the identification of ships which ceased to be Cyprus ships during the previous twelve months or more in accordance with the applicable provisions of other laws of the Republic; this identification is retained in writing and/ or electronically and in such a manner that it remains readily accessible for the purposes of this Law.

(3) (a) The provisions of subsection (1) does not affect or restrict in any manner the information or data required or kept by the Registrar of Cyprus Ships and/ or by the Department of Merchant Shipping.

(b) The Competent Authority shall keep the information referred to subsection (1) and/or (2) along with any other information or data kept by the Registrar of Cyprus Ships and/ or by the Department of Merchant Shipping.

Relevant obligations of the operators of Cyprus ships.

8. - (1) The operator of a Cyprus ship shall promptly inform the Director in case of:

- (a) any change to the ship's identification, apart from changes made with the approval of the Minister, the Registrar of Cyprus Ships or the Director;
- (b) any change of the recognised organisations' identification issuing certificates to the ship on behalf of the Republic;
- (c) a port State control, irrespective of whether the port State has detained the ship;
- (d) a marine casualty; and
- (e) any other event or information that the Minister may determine for the purposes of this Law by virtue of an Order published in the Official Gazette of the Republic.

(2) In case of detention of a Cyprus ship by a port State following a control by the said competent State, the master, the crewmembers and the operator of the ship, each have an obligation to comply and implement the instructions of the Competent Authority regarding the inspections and surveys to be carried on the ship.

Administrative fine.

9. - (1) In case where the Competent Authority ascertains that a person acts in contravention of or fails to act in accordance with section 8, the Competent Authority may impose upon such person an administrative fine not exceeding eight thousand five hundred Euro (€8.500), depending on the seriousness of the contravention and irrespective of whether or not there is a concurrent case of a criminal or disciplinary liability by virtue of this Law, or any other law or public instrument.

(2) Prior to imposing an administrative fine under subsection (1), the Competent Authority notifies the affected person of the grounds for which it intends to impose the administrative fine, providing him the right to submit an objection within a peremptory time limit of 30 days.

(3) The Competent Authority imposes an administrative fine by virtue of subsection (1) by a written and reasoned decision notified to the person affected—

(a) which lays down the contravention; and

(b) by which the affected person is informed—

(i) of his right to exercise a recourse against the decision—

(A) before the Minister, and

(B) before the Supreme Court in accordance with the provisions of Article 146 of the Constitution, and

(ii) of the time-limits within which the aforementioned rights may be exercised, and

(c) which is rendered enforceable upon communication.

(4) The Minister has a power to prescribe through his instructions the criteria for calculating the height of the administrative fine imposed under subsection (1), without restricting the discretion of the Competent Authority, which is exercised within the limits of the instructions of the Minister, to decide freely on the height of the administrative fine imposed on the basis of the real facts of the case.

(5) (a) The person affected and his representative in the Republic are each entitled to challenge the decision of the Competent Authority to impose an administrative fine, by virtue of an appeal before the Minister, pursuant to this section, which decision relates to said ship.

(b) A recourse before the Minister is filed within a peremptory time-limit of 30 days from the communication of the challenged decision to the person affected.

(c) If the administrative fine is imposed by the Minister as the Competent Authority, this subsection shall apply as if it provided for an objection to the Minister with respect to the decision imposing the administrative fine.

(6) In the event of refusal or failure to pay an administrative fine imposed pursuant to this Law, the Competent Authority shall have the power to initiate court proceedings in order to collect the amount due as a civil debt owed to the Republic.

(7) Administrative fines imposed on a shipowner pursuant to this Law shall constitute a charge on a ship, which is satisfied in priority over other creditors, but follows in order of priority the last mortgage.

(8) If the administrative fine imposed pursuant to this Law has either been successfully challenged before the Minister under this section or before the Supreme Court pursuant to Article 146 of the Constitution, the following apply:

(a) subsections (6) and (7) shall not apply regarding such an administrative fine;

(b) the Competent Authority shall repay any amount paid as administrative fine to the person who had paid it.

Relevant obligations of recognised organisations.

128(I) of 2011.

10. - (1) The recognised organisations authorised to issue certificates to Cyprus ships on behalf of the Republic have an obligation to send to the Department of Merchant Shipping periodically in writing and/ or in electronic form statements regarding the inspections and audits carried out on behalf of the Republic pursuant to the arrangements agreed between the Director and each recognised organisation by virtue of written agreements that the Republic enters into with each recognised organisation pursuant to section 6 of the *Merchant Shipping (Recognition and Authorisation of Organisations) Law*.

(2) Contravention by a recognised organisation of an obligation imposed under subsection (1) may result in the withdrawal or suspension of the authorisation of the recognised organisation, pursuant to section 7 of the *Merchant Shipping (Recognition and Authorisation of Organisations) Law*.

IMO auditing process on the Competent Authority and the Department of Merchant Shipping.

11. - (1) The Competent Authority shall take the necessary measures in order to be subjected, together with the Department of Merchant Shipping, to an IMO audit, at least once every seven years, subject to a positive reply of the IMO to a timely request.

(2) The Competent Authority shall publish the outcome of the audit referred to in subsection (1), subject to the provisions of section 67 of the *Public Service Law*.

1 of 1990
71 of 1991
211 of 1991
27(l) of 1994
83(l) of 1995
60(l) of 1996
69(l) of 2000
156(l) of 2000
4(l) of 2001
94(l) of 2003
128(l) of 2003
183(l) of 2003
31(l) of 2004
218(l) of 2004
68(l) of 2005
79(l) of 2005
105(l) of 2005
96(l) of 2006
107(l) of 2008
137(l) of 2009
194(l) of 2011.

(3) Subsections (1) and (2) cease to apply on -

(a) the 17th June 2017, in any other case to the one provided in paragraph (b) below; or

(b) an earlier date established by the European Commission in accordance with the regulatory procedure referred to in Article 10, subsection 2 of the Directive 2009/21/EC, if a mandatory IMO Member State Audit Scheme has entered into force.

Quality management system and internal evaluation.

12. - (1) By 17 June 2012, the Competent Authority shall develop, implement and maintain a quality management system for the operational parts of the flag State-related activities of the Department of Merchant Shipping. Such quality management system shall be certified in accordance with the applicable international quality standards and the Competent Authority shall maintain the certification of the system.

(2) In case where the Republic appears on the black list or for two consecutive years, on the grey list as published in the most recent annual report of the Memorandum of Understanding, the Competent Authority shall provide the European Commission with a report on the Republic's performance no later than four months after the publication of the annual report. The Competent Authority shall identify and analyse in the report the main reasons for the lack of compliance that led to the detentions and the deficiencies resulting in black or grey status.

PART III – MISCELLANEOUS PROVISIONS

Issuing of Regulations.

13. The Council of Ministers may make regulations to regulate any matter that under this Law requires to be regulated or prescribed.

Issuing of Orders.

14. The Minister may issue any order referred to in subsection (1) of section 2.

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