

DECREE-LAW NR. 149/94 of May 25

Decree-Law nr. 352-A/88, of October 3, foresaw the legal institute of trusts within the legal framework of the Madeira Free Trade Zone, destined only to offshore activities

The acts of incorporation, modification, or cancellation of trusts are, under article 9 of the mentioned diploma, subject to registration.

It is therefore important to create the legal mechanisms to register the existence and development of fiduciary management instruments (trusts), which represent an activity of great legal and economic relevance within the Madeira Free Trade Zone.

The Government of the Autonomous Region of Madeira was consulted.

Thus:

Under paragraph a) of nr. 1 of article 201 of the Portuguese Constitution, the Government decrees the following:

Article 1

The present diploma regulates the registration of fiduciary management instruments (trusts), with fiduciary managers (trustees) operating exclusively within the legal framework of the Madeira Free Trade Zone.

Article 2

- 1- The following events concerning trusts are subject to registration, provided the period of its duration is more than one year:
 - a) The act of incorporation;
 - b) The modification of one or more of the items established in the act of incorporation;
 - c) Extinction.
- 2- The registration of the act of incorporation must be requested within six months as from the date of signature of the incorporation documents.
- 3- The registration of the events foreseen in paragraphs b) and c) of nr. 1 must be requested within 90 days as from the date of execution.

Article 3

The Commercial Registry performing the registration duties pertaining to Madeira's Free Trade Zone shall have competence for the registrations mentioned in the previous article.

Article 4*

- 1- The failure to comply with the registration obligations within the time limitations foreseen in article 2 (2) and (3) is punished by means of a fine from a minimum of €49,88 to a maximum of €498,80.
- 2- The Registrar of the Commercial Registry performing the registration duties pertaining to Madeira's Free Trade Zone shall have competence to conduct the procedure and apply the fines foreseen in the preceding number.

**(Text amended by Decree-law n.º 323/2001, of the 17th of December)*

Article 5

- 1- The settler, the trustee, the fiduciary and the beneficiary, as well as their respective representatives, have the power to request the registrations foreseen in article 2.
- 2- This power is also extended to the remaining individual or corporate entities which are entitled to it according to the law that regulates the trust.

Article 6

- 1- The registration of the incorporation of a trust is carried out by an inscription.
- 2- The following are general items of the inscription:
 - a) The number of order;
 - b) The number and date of submission;
 - c) The nature of the registration, when provisional;
 - d) Express reference to the capacity and signature of the Registrar.
- 3- The inscription extract must also include the following special items:
 - a) The name and identification of the trust;
 - b) The date of incorporation and duration of the trust, when determined;
 - c) The object or type of trust;
 - d) The governing law;
 - e) The assets that form the trust;
 - f) The name and registered office of the trust;
 - g) The powers of disposition and administration of the trustee;
 - h) The rules regarding annual reports and the accumulation of income, as well as their eventual conditions and restrictions.

Article 7

- 1- The inscription may be executed as provisional for doubts, whenever there is an omission of any of the general or special items, as well as in case of failure to comply with any legal provision which does not constitute a reason for refusal of the registration.
- 2- The provisional registration is valid for a period of six months.

Article 8

- 1- The modification of any of the items which are part of the act of incorporation of the trust, as well as the extinction of the trust, is registered by annotation.
- 2- Annotations to the inscriptions must contain the following:
 - a) Number of order;
 - b) Number and date of submission;
 - c) Reference to the number of the incorporation inscription;
 - d) Reference to the events to be included in the annotation.

Article 9

- 1- The events mentioned in article 2 must be published in the 4th series of the Official Journal of the Autonomous Region of Madeira.
- 2- The Registrar shall send, by his own initiative, the extract of the registration to the Official Journal, within five days.

Article 10

Provisions relating to commercial registry which are not contrary to the main principles of the legal institute of trust shall apply, with the necessary adaptations.

Discussed and approved in the Council of Ministers of April 7, 1994 - *Joaquim Fernando Nogueira - Artur Aurélio Teixeira Rodrigues Consolado - Álvaro José Brilhante Laborinho Lúcio.*

Promulgated on May 4, 1994.

The President of the Republic, MÁRIO SOARES.

The Prime-Minister, *Aníbal António Cavaco Silva.*