

## Proinde Circular 20-09-2024: Mandatory personal accident insurance on ships reintroduced

ANTAQ has reinstated compulsory insurance for personal injury caused by ships or their cargo (DPEM), aiming to provide relief to deprived victims of accidents on the Amazon inland waterways

### Liability for personal injury

Under Brazilian law, the carrier is liable for damages caused to persons (and their luggage) while on board the vessel, except for *force majeure*. Any contractual term and condition excluding liability is null and void. This liability cannot be waived by the fault of a third party against whom the carrier or its insurer has the right to seek recovery.

### 'DPEM insurance'

#### Background

The *Seguro Obrigatório de Danos Pessoais Causados por Embarcações ou por suas Cargas* – DPEM (Mandatory Insurance for Personal Injuries Caused by Ships or their Cargo) was established by Law 8,374/1991 to guarantee that compensation is provided for damage caused by vessels or their cargo to any person on board the insured ship, whether a passenger or not, including the owners and crew, their beneficiaries or dependents.

#### Application

The mandatory insurance requirement applies to all Brazilian or foreign-flagged ships chartered to Brazilian shipping companies (EBNs) and registered with the maritime authority. This includes fishing boats, cargo and passenger vessels, and small watercraft such as leisure boats, motorboats and water scooters. However, due to a lack of insurers in the domestic market willing to offer such coverage, the requirement for the so-called 'DPEM insurance' has been suspended since 2016.

#### Reintroduction of the obligation

After tragic accidents involving passenger ships and ferries on the Brazilian northeastern coast and inland waterways, where underprivileged victims and their families did not receive compensation due to uninsured ships, media and public attention prompted the authorities to reconsider the matter. Eventually, the National Waterway Transport Agency (ANTAQ) reviewed the DPEM framework, especially concerning the capitalisation of the guarantee fund and monitoring compliance by eligible ships and watercraft. Since at least one insurer has agreed to underwrite the risk, the obligation was reinstated.

## Entry into force

The Brazilian Navy's Directorate of Ports and Coasts (DPC), responsible for ensuring compliance through the local port captaincies and agencies, amended its maritime authority standards to incorporate the reinstated obligation. The revised standards came into force on 1st July 2024. Effective 1st August 2024, no ship registration will be processed, nor will a vessel inspection report or regularisation certification be issued without owners producing a valid DPEM insurance policy. Non-compliant ships and craft are subject to fines and other administrative sanctions by the maritime authority and ANTAQ.

## Coverage, exclusions and limitations

For a nominal premium set by the Ministry of Finance's National Council of Private Insurance through the federal regulator, Superintendent's Office for Private Insurance (SUSEP), DPEM insurance provides for compensation for death, permanent disability, and medical expenses. Compensation is payable by the insurer directly to the victim, the designated beneficiary or legal dependent, regardless of fault. Claims must be supported by simple documentary proof of the accident and resulting damage and should be processed within fifteen days from notification.

The maximum compensation amounts are BRL 13,500 for death or permanent disability and up to BRL 2,700 for medical and supplementary healthcare expenses. DPEM insurance does not cover material and moral damages, bodily injury resulting from ionising radiation or radioactive contamination, fines and bail imposed on the shipowners, captains and skippers for offences to relevant regulations.

Benefits are not cumulative. If death results from the same accident after permanent disability compensation has been paid, the death benefit due will be reduced by the amount already paid for disability. If medical and supplementary care expenses are refunded, such an amount cannot be deducted from the disability or death compensation under the insurance policy.

## Limit of liability

The carrier's liability for damages during the transport contract is restricted to the compulsory insurance cover limit unless the damage resulted from the carrier's or its servants' fault or willful misconduct. The insurer must pay compensation regardless of fault; however, upon subrogation, it is entitled to seek recovery of the compensation paid from the third party who caused the damage.

## Insurance purchase

To purchase DPEM insurance, the shipowner should contact a private insurance company through a SUSEP-qualified insurance broker. Currently, only one Brazilian insurer offers DPEM insurance to the market. The premium payment and insurance policy issuance processes are handled online via the DPEM internet portal. Each ship must have its own non-transferable DPEM insurance policy, valid for one year.

## Double insurance

If multiple insurance policies cover the same risk, the oldest one will prevail. If there is an incident involving two or more ships, the insurer on which the injured person was being carried will pay the compensation. If the victim was not being transported, or if it is not possible to identify on which vessel the victim was being transported, the compensation will be equally split among the insurers of the involved ships. If there are unidentified and identified vessels, the latter's insurers will be responsible for paying the compensation.

## Penalties

Shipowners or operators of national or foreign vessels who fail to purchase insurance will be subject to a fine equal to twice the annual premium per year or a fraction thereof. Furthermore, vessels without DPEM insurance will not be registered with the maritime authority and, therefore, will not be cleared by ANTAQ to operate. The fines will be applied by the local harbour master's office, as regulated by DPC.

## Impact and objective

The new requirement will primarily impact passenger boats, ferries, small cargo ships and barge convoys operating within the Amazon inland waterways, where most waterborne passengers are concentrated, as river transportation is the prevalent mode available to move around this vast region of northern Brazil. Statistics from the Maritime Tribunal show that about a quarter of all waterborne incidents and casualties and more than half of all fatal accidents in Brazilian waters occur on the Amazon River and its tributaries due to regional navigation hazards. The underlying purpose of this mandatory insurance is to provide comfort to the victims of maritime personal accidents and their families, who are often underprivileged, by offering them financial support.

If no local insurance provider offers coverage to the Brazilian market, as recognised by SUSEP, the requirement to take out DPEM compulsory personal injury insurance will be removed again.

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