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MARITIME REGISTRATION

**Euromar/Portugal, Germany, Hong Kong, Liberia,
Luxembourg, Marshall Islands, Sweden,
Antigua & Barbuda**

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I. INTRODUCTION

Grounds for Maritime Registration

The principle of freedom of the high seas is one of the most enduring and accepted rules of international law. The principle provides a non-sovereign area through which ships may pass. Yet, freedom from sovereignty over the high seas does not mean that vessels on the high seas are free from legal obligations. Rather, they are subject to the laws and regulations of international law as well as to those of their own sovereign, or flag state. Having a flag state, therefore, is a prerequisite for ensuring a lawful environment on the high seas, and today it is recognized that each vessel must have a flag state.¹ The flag state is that state under whose jurisdiction the ship is solely subject², and in turn, under whose protection the ship sails³.

Maritime registration is the act of authorizing a ship to fly under the flag of a state and placing this authorization in the public records of that state. Registration of a vessel also is a means of protecting the shipowner's title (and thus is different from "documentation", which is simply the entitlement to fly a nation's flag).⁴ Registration, therefore, is an act that has both public and private legal consequences: consequences for the ship owner, the state of registration, and the relations of either with other states and persons.

Consequences of Vessel Registration

For the ship owner(s), registration provides the nationality required for legal protection on the high seas and an assurance that it may receive the benefits of agreements with its flag state from other states. The latter is particularly significant for ensuring access to ports and for undertaking operations such as fishing, which requires the permission of the coastal state, while the former lends all of the benefits of sovereign protection. Moreover, the registration establishes legal proof of ownership of the vessel, which itself is useful for securitization and gaining access to credit, or to insuring the vessel.

For the state of registration (or, flag state), the registration of a ship entails the benefits of tax levied and fees paid, as well as the right to exclusive jurisdiction over the vessel on the high seas. The United Nations Convention on the Law of the Sea (UNCLOS)⁵ sets out that each state may register a vessel to fly its flag, and that any ship is thus subject to that state's jurisdiction on the high seas, "save in exceptional cases expressly provided for in international treaties or in this Convention".⁶

International law does not only give the state the sovereign power to bestow nationality rights on ships. The sovereign right to exercise jurisdiction simultaneously places a duty on the state to subject the vessel to the flag state's laws and regulations and to ensure the vessels comply with any international law

¹ See Richard Coles, ed., *Ship Registration 1* (LLP: London, 2002).

² *Id.*

³ *Id.* at 1-2 (citing inter alia Oppenheim's *International Law*, 6th ed., p. 546: "...a vessel not sailing under the maritime flag of a State enjoys no protection whatever, for the freedom of navigation on the open sea is a freedom for such vessels only as sail under the flag of a State").

⁴ Coles, *Ship Registration* at 4-5.

⁵ See United Nations Convention on the Law of the Sea, Dec. 4, 1982, U.N. Doc A/Conf.62/121, 1833 U.N.T.S. 397 21 I.L.M. 1245 (1982) (entered into force Nov. 16, 1994) (UNCLOS).

⁶ UNCLOS, Art. 92.1.

applicable to the flag state. To ensure the protection of the seas, laws must be enforced, and in the absence of a territorial sovereign on the high seas, the best-placed protector is presumably the flag state. UNCLOS Article 94 thus prescribes that flag states “effectively exercise” their jurisdiction over registered vessels.⁷ UNCLOS Article 217 goes into further detail on the required enforcement duties flag states have, mandating, for example, investigations into any violations of the law.⁸ Among the most important of the applicable international laws that flag states must enforce against the vessels they register are found in the legal frameworks relating to safety (including the Convention for the Safety of Life at Sea, SOLAS), to labor conditions for crews (including the Maritime Labour Convention and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, STCW), to environmental protection (including the International Convention for the Prevention of Pollution from Ships as modified by the two Protocols, MARPOL), and to preventing damage to other vessels (including the International Regulations for Preventing Collisions at Sea, COLREGs).

Finally, other states and persons are legally affected by the registration of a ship by being excluded from exercising control or jurisdiction over them on the high seas (absent other international agreements). Thus, usually no state other than the flag state may seize the ship on the high seas; neither can individuals other than the registered owner claim property rights in the ship.

Conditions of Registration

International law has long recognized the right of flag states to determine the conditions for registration themselves, and UNCLOS states this explicitly in Article 91.1:

“Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag”.

While UNCLOS asserts that the ship’s nationality must rest on a “genuine link” between the ship and the state⁹, there is continued discussion in the literature as to the existence of the “genuine link” requirement. The insufficient support for the United Nations Convention on Conditions for Registration of Ships¹⁰, the text of which aims to establish rules requiring linking registration to nationality, adds further ambiguity to the existence of such a requirement.¹¹

The different nationally determined conditions for registration combined with varying stringency of the national rules applying to the operation (and taxation) of registered vessels leads to a situation in which ship owners face different costs of doing business depending on their flag state. The costs of sailing under the flag of the traditional maritime powers, in particular, became quite high by the 1920s.¹² This led to two developments: one, the rise in “flags of convenience” – the granting of registration of foreign owned- or controlled vessels by countries with low fees and more relaxed regulatory frameworks (which kept costs

⁷ UNCLOS, Art. 94.1.

⁸ UNCLOS, Art. 217.4.

⁹ UNCLOS Art. 91.1.

¹⁰ See United Nations Convention on Conditions for Registration of Ships, adopted by GA Resolution 37/209 (20 December 1982). Text found in UN Doc. [TD/RS/CONF/19/Add.1](https://treaties.un.org/doc/source/docs/TD_RS_CONF_19_Add.1_E.pdf) (available at https://treaties.un.org/doc/source/docs/TD_RS_CONF_19_Add.1_E.pdf; viewed 7 February 2018) and [TD/RS/CONF/19/Add.1/Corr.1](https://treaties.un.org/doc/source/docs/TD_RS_CONF_19_Add.1_Corr.1_E.pdf) (available at https://treaties.un.org/doc/source/docs/TD_RS_CONF_19_Add.1_Corr.1_E.pdf; viewed 7 February 2018).

¹¹ Coles, Ship Registration at 8-13.

¹² Tina Shaughnessy and Ellen Tobin, *FLAGS OF INCONVENIENCE: FREEDOM AND INSECURITY ON THE HIGH SEAS 2* (text available at https://www.law.upenn.edu/journals/jil/jilp/articles/1-1_Shaughnessy_Tina.pdf; accessed 7 February 2018).

of vessel operations low)¹³; and two, the development of international, or “secondary”, registries by flag states with traditionally higher costs, in an effort to remain attractive to foreign vessel owners.

Flags of Convenience, or Open Registries

The term “flag of convenience” is often used disparagingly to refer to the flag of a state with a so-called “open registry” – a registry which has no nationality requirement for the vessel owners. While there is no widely accepted legal definition of either term (and while the terms are clearly not synonymous¹⁴), there has been concentrated attention given to the topic of the registration of ships by unrelated states since at least the early- to mid-1960s.¹⁵ This attention has resulted in descriptive list of elements of such flags, with the UNCTAD Ad Hoc Working Group on the Economic Consequences of the Existence or Lack of a Genuine Link Between Vessel and Flag of Registry¹⁶ setting out four widely agreed upon characteristics for a “genuine link”:

- a. the merchant fleets contributes [*sic*] to the national economy of the country;
- b. revenues and expenditure of shipping, as well as purchases and sales of vessels, are treated in the national balance-of-payments accounts;
- c. the employment of nationals on vessels; and
- d. the beneficial ownership of the vessel.¹⁷

When one or a number of such links are not required for registration, the flag may be considered one of “convenience”. The reasons shipowners may choose an open registry vary significantly. Clearly, some flags of convenience do in fact offer ship owners a great deal of convenience. On-line registration procedures, multiple offices in major ports, quick processing of documents, and competitive fees are all features of the registries of Panama, Liberia, and the Marshall Islands. Yet, as one article notes, other “conveniences” include: “[...] evasion of taxes, avoidance of various governmental regulations, and freedom from restrictions on the use of cash flows”.¹⁸

¹³ See Coles, *Ship Registration* at 15 (quoting Boczek, *Flags of Convenience – An International Legal Study* 2 (Harvard University Press, 1962); see also *id.* at 16-17 (describing common elements of flags of convenience).

¹⁴ Liberia is widely considered to offer “flags of convenience”, but technically it has a closed registry. See below ----.

¹⁵ E.g., G. Johannsen, *Flags of Convenience*, B.T.R. 305 (1961) (looking at the taxation considerations of open registries); Allan I. Mendelsohn, *Flags of Convenience: Maritime and Aviation*, 79 *J. Air L. & Com.* 151 (2014). See also, Awni Behnam and Peter Faust, *Twilight of Flag State Control*, 17 *Ocean Y.B.* 167, 175-177 (2003) (describing the history of efforts in the 20th century to regulate open registries, beginning with an attempt at the ILO in 1933 to address working conditions on open registry vessels).

¹⁶ UNCTAD, TD/B/C.4/177, Annex to the Report (Geneva: United Nations, 1978).

¹⁷ *Id.* The “Rochdale Report” of 1970, commissioned by the United Kingdom, set out a similar set of factors to identify flags of convenience. Author Nigel P Ready points out that many of the Rochdale Report’s factors are in fact present in traditional registries as well, and adopts a similar set of characteristics as the UNCTAD Ad hoc Working Group for his analysis. Nigel P. Ready, *Nationality, Registration, Ownership of Ships in: Malgosia Fitzmaurice, David Joseph Attard, and Ignacio Arroyo, eds., The IMLI Manual on International Maritime Law: Vol. II: Shipping*, 19-38, 33-34 (Oxford Univ. Press, 2016). The International Transport Workers’ Federation (ITW) has its own view of flags of convenience, pointing out low fees and particularly low labor standards. The Federation also lists the flags it considers convenient on its website. See <http://www.itfseafarers.org/defining-focs.cfm>.

¹⁸ Awni Behnam and Peter Faust, *Twilight of Flag State Control*, 17 *Ocean Y.B.* 167, 171 (2003).

While many commentators point out the corruption and criminal activities often associated with flags of convenience, Behnam and Faust argue that the main reason so choose a flag of convenience is the lower cost of a crew:

“Although crew costs represent a comparatively small proportion of the total costs of operating tankers and bulk carriers, these represent the only costs, other things being equal, that can be substantially varied by changing the flag of a vessel”.¹⁹

Where flags of convenience do allow for lower standards of health and safety and the security of shipping, the flag states are arguably violating the duties placed on them by the international community to protect the seas.

Offshore, or “Secondary”, Registries and “Hybrid” Registries

Following the dramatic drop in the tonnage registered by traditional maritime powers that accompanied the rise in the popularity of flags of convenience in the 1950s²⁰, some traditional maritime states²¹ began offering a more commercially attractive alternative to their nationality-based registers. Offshore, or Secondary, registries (as a general description) attempt to maintain the nation’s regulatory standards, and may require nationality of the vessel owners, but often have relaxed nationality requirements for crews (making some of them considered flags of convenience by the International Transport Workers’ Federation²²). They may also offer tax benefits to owners²³ while removing the vessels from eligibility for subsidies and other nationally-based incentives.²⁴

Hybrid registries, as their label implies, mix the requirements of closed and open registries to offer ship owners lower costs and greater flexibility, but still may maintain the requirement of a link between the state and the vessel owner.²⁵

This Study

Given the absence of internationally harmonized rules on maritime registration, a comparative review of registration requirements is an essentially national-law based exercise. The following study sets forth the registration (and de-licensing) requirements as well as the supervisory obligations of the flag state and the taxation and fees system of EUROMAR/Portugal, Germany, Hong Kong, Liberia, Luxembourg, the Marshall Islands, and Sweden. The report on Antigua and Barbuda proved difficult to complete due to a lack of

¹⁹ Awni Behnam and Peter Faust, *Twilight of Flag State Control*, 17 *Ocean Y.B.* 167, 171 (2003) (They also state what many intuit about flags of convenience, that some owners “undoubtedly use these flags with the specific aim of concealing their identities and escaping the responsibilities and law enforcement procedures relating to maritime safety, pollution prevention, and so forth, that apply under normal flags”).

²⁰ Ready, at 33.

²¹ According to Ready, the United Kingdom (with the Isle of Man registry), Denmark, France, Germany, Italy, Norway, and Portugal (with the Madeira registry) have international registries in addition to their national registries. Ready at 35.

²² Coles, *Ship Registration* at 17. See also list of Flag of Convenience (FOC) countries on the website of the International Transport Workers’ Federation, <http://www.itfglobal.org/en/transport-sectors/seafarers/in-focus/flags-of-convenience-campaign/> (accessed 7 February 2018).

²³ Ready at 35-36.

²⁴ Basic 2 Tech, *Types of Ship Registries*, <https://basic2tech.wordpress.com/2016/02/18/types-of-ship-registries/> (viewed 27 March 2018).

²⁵ Basic 2 Tech, *Types of Ship Registries*, <https://basic2tech.wordpress.com/2016/02/18/types-of-ship-registries/> (viewed 27 March 2018).

accessible information and limited cooperation by the local authorities. The review is therefore attached at the end of the full reports.

The questions posed were the following:

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. Registrierungsbedingungen für sämtliche Kategorien international verkehrender kommerzieller Hochseeschiffe (keine Yachten, Binnenschiffe oder Küstenboote), wobei eine unterschiedliche Handhabung unterschiedlicher Schiffstypen (z. B. Passagierschiffe, Tankschiffe, Frachtschiffe) ebenfalls aufgezeigt werden sollte. 2. Voraussetzungen für den Flaggenentzug (Bewilligungsentzug). 3. Aufsichtsbestimmungen über die Reederei, den Schiffseigentümer und die Rekrutierungsdienstleister für Seeleute (<i>Seafarer Recruitment and Placement Service/SRPS</i>). 4. Besteuerungsart der Schiffseigner(-Gesellschaften) und der Reedereien (Tonnage-Tax, Gewinnsteuer o.a.). 5. Gebührenregelung der Flaggenstaatbehörde. | <ol style="list-style-type: none"> 1. What are the conditions on registration for the various categories of internationally active commercial high seas ships? This should include a differentiation among different types of ships (e.g., passenger ships, tankers, cargo ships) 2. What are the requirements regarding the revocation of a license/flag? 3. What are the supervisory obligations toward fleets, ship owners, and seafarer recruitment and placement services (SRPS)? 4. To what types of taxes are shipowners and fleetowners subject? 5. What is the fee system used by the officials? |
|--|--|

We precede our answers to these questions with a brief description of the significance of maritime shipping in the jurisdiction's economy. Each report also attempts to highlight any elements of the registration system which is potentially helpful for understanding its particular approach to registration.

A. EUROMAR/PORTUGAL

1. Introduction

1.1. Background on role of shipping in local economy

Portugal has a long history of sea shipping, reaching back to the 15th Century²⁶. Historically at the vanguard of European overseas exploration, [Portuguese](#) sailors discovered numerous territories and maritime routes. They also mapped the coasts of Africa, Canada, Asia and Brazil, in what became known as the “[Age of Discovery](#)”. Today, Portugal continues to rely heavily on seaborne trade, with (about) two thirds of the imported and half of the exported goods being transported by sea²⁷.

1.2. Portugal’s two maritime registers

1. The Portuguese “Conventional register” is the **regular domestic register** of ships. It is managed by the maritime authorities’ offices (*Capitanias* or *Delegações Marítimas*) existing in each Portuguese port. The ship’s homeport is the port where the office that registered the ship is located. Ships and owners in this register must comply with all the Portuguese applicable legislation (see cf. b).
2. The second Portuguese register is the focus of this study. The *Registo Internacional de Navios da Madeira* (MAR), is an **international ship register**. In this register, ships are entered with the *Registo Internacional de Navios da Madeira* (MAR), located at Funchal, Madeira. The home port of MAR-registered vessels is therefore Madeira. Yet, from the technical point of view, ships registered at MAR are subject to the same maritime legislation applied to the ships registered in the Conventional register²⁸. The vessels registered in the MAR fly the Portuguese flag and are subject to Portuguese law (including the international conventions of which Portugal is signatory), except when the parties have used the option to subject a mortgage to a foreign law.

Following the creation of the MAR in 1989 both the Conventional and the MAR registers cohabitate in Portugal.

Regarding the MAR, the first piece of important **legislation** is Decreto-Lei 96/89²⁹ (“the Decree”). The Preamble of this Decree explains the reasons for the instauration of a second Portuguese ships register in the region of Madeira.

²⁶ For a background on the situation of maritime transport in Portugal, see the interesting article: P. Moreira, The Role of Seaports for Portuguese Economic Recovery: The Port of Sines, 19. August 2015, available at https://www.researchgate.net/publication/281283729_The_Role_of_Seaports_for_Portuguese_Economic_Recovery_The_Port_of_Sines (12.02.18); also The Maritime Heritage Project, available at <http://maritimeheritage.org/ports/portugal.html> (12.02.18).

²⁷ J. Arnold, Boosting Export Performance in Portugal Economics Department, OECD working paper no. 1257, p. 21, 2015, available at : [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=ECO/WKP\(2015\)75&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=ECO/WKP(2015)75&docLanguage=En) (12.02.18).

²⁸ Euromar, Portuguese Maritime Legislation, available at <http://www.eu-registry.com/linksdownload> (12.02.18).

²⁹ Decreto-Lei n.º 96/89, de 28 de Março, Cria o Registo Internacional de Navios da Madeira (MAR). JusNet 3115/1989. JusNet is a private database.

According to the mentioned Preamble, the **international competition in the commercial shipping sector** is becoming more and more intense. This fact is having a decisive impact in the economic viability of commercial shipping. One of the consequences of the mentioned increase of competition has been a sharp **reduction of the costs of maritime freight**, leaving to operators **smaller margins** of profitability.

For this reason, different solutions are being explored, inter alia, the development of the so-called “flags of convenience”, and the creation of special ship registers. In this line, several European states, (the Preamble of the Decree refers to the United Kingdom, France, Holland, Denmark and Norway), have created their own “second registers”.

According to the Preamble of the Decree, the creation of a second register in Portugal, proposing lower tariffs and offering conditions similar to the ones obtainable in the most competitive jurisdictions, allows both:

- a. that ships registered in the main domestic ships register may **switch** their register to the second register, and
- b. that new ship-owners may be **attracted** to the second register³⁰.

The Decree’s Preamble further highlights that naval commerce has special characteristics, especially the fact that the activity is normally developed in international waters, or in jurisdictions other than the one of the State of registration. For example, ships that participate in international transport pools – an important activity for attaining profitability - may keep only tiny contacts with their jurisdictions of origin.

Thus, the Decree concludes, in view of :

- the difficulties caused by the high competition,
- the lower levels of profitability,
- the special characteristics of the commercial naval activity, and,
- the recourse by some Portuguese ship-owners to flags of convenience,

it became necessary to constitute a second ships register in Portugal, Madeira.

The Decree maintains that the new second Portuguese register in Madeira must characterize by its **high quality standards**. For so doing, it must stand on line with the standards of those registers internationally recognized as being quality registers³¹. Therefore, one of the pivotal axes of the new Portuguese register must be the adoption of **effective systems for monitoring** the ships.

The region of Madeira was chosen for the establishment of the second Portuguese ships register, having regard to the existence of a **free zone**³². Madeira’s status as a free zone region started to develop in the

³⁰ M. Barrocas, Flag and Registration of Vessels and Mortgages of Vessels, Part II, updated to May 2017, Ch. 1.4, available at <https://www.kluwerlawonline.com/document.php?id=MLH20150378> (27.02.18).

³¹ Sociedade de Desenvolvimento da Madeira: “The International Shipping Register of Madeira – MAR is Portugal’s international shipping register and is among the international registers of the highest quality, having guaranteed adequate measures to ensure an efficient surveillance of all vessels registered”, <https://www.ibc-madeira.com/en/ship-registration/ship-register-and-shipping-companies.html> (12.02.18).

³² Estatuto Político-Administrativo da Região Autónoma da Madeira, Lei nº 130/99 de 21 de Agosto disponível sous <http://www.alam.pt/images/stories/II.LEGISLATIVA/ESTATUTO.POLI.ADMIN/Estatuto.Politico.administrativo.Republicacao.pdf> (12.02.18).

1980s (see cf. 4). This free zone does not only cover the **shipping** branch, but also the **banking** sector and other **industrial** and **commercial** activities, including an **air transport** register³³.

Vessels registered with MAR may be owned by a company set up and registered in the Madeira offshore zone, or set up or registered somewhere else (such as Portuguese mainland or even abroad, see cf. 1.2.1.)³⁴.

From the organic point of view, the MAR is a dependence of the Portuguese Ministries of justice and of public works, transport and housing. It is competent to register all acts and contracts involving ships subjects to it, and to control the requirements of security, as dictated by the international treaties.

In what concerns the contributions that the MAR expects to bring to Madeira, the Decree states that the new Register will be an **important factor of economic dynamism for the region and the country**. It will **create jobs** in a sector for which the Portuguese have historically revealed special skills. Additionally, it will allow the **growth of activities directly and indirectly related to the sea**, both in the **economic field** and in the areas of **education and research**³⁵.

The advantages offered by registering in the MAR system are enumerated by the *Sociedade de Desenvolvimento da Madeira*³⁶ in the following terms:

- Full access to European continental and island cabotage as a result of MAR's status as a E.U. Register³⁷;
- High quality Register, with full application of all international ILO and IMO Conventions on safety, security and quality of life on board, including MLC 2006;
- A very competitive social security regime that exempts shipping companies with vessels registered in MAR and their respective non-Portuguese crew, from contributing to the

³³ Global Tax Alert, Portugal approves new Madeira tax benefits' regime through 2027, 5 July 2015, available at [http://www.ey.com/Publication/vwLUAssets/Portugal_approves_new_Madeira_tax_benefits_regime_through_2027/\\$FILE/2015G_CM5578_PT%20approves%20new%20Madeira%20tax%20benefits%20regime%20through%202027.pdf](http://www.ey.com/Publication/vwLUAssets/Portugal_approves_new_Madeira_tax_benefits_regime_through_2027/$FILE/2015G_CM5578_PT%20approves%20new%20Madeira%20tax%20benefits%20regime%20through%202027.pdf) (12.02.18): "The International Business Center of Madeira (IBCM) comprises an industrial free zone, an international services center and an international shipping register and, as from 2015, an air transport register. The IBCM was created with the main goal of attracting foreign direct investment in order to diversify and modernize the island's economy. It has been conceived as a program of regional development and it is a regime of State Aid fully approved and supported by Portugal and, by extension, is part of the EU, which included application of EU directives.

³⁴ M. Barrocas, op. cit., Ch. 28.

³⁵ Global Tax Alert, op. cit., "The wide scope of activities which may be carried out, ranging from manufacturing and trading or commercial activities to shipping and e-business activities, and the various synergies which can be found among them, demonstrate that the MIBC has been carefully structured to serve investors with a global package. Such fact, coupled with the MIBC's full integration in the Portuguese and EU legal systems, has made the MIBC not only an efficient investment location, but also a well-regulated business center recently regarded by the Organisation for Economic Co-operation and Development (OECD) as a model to follow".

³⁶ The *Sociedade de Desenvolvimento da Madeira* is a mixed capital company appointed by the Regional Government of Madeira, aiming at promoting and administering the International Business Centre of Madeira, including the International Shipping Register MAR.

³⁷ One author underlines that vessels registered with MAR are not authorized, in principle, to carry passengers and cargo between Madeira and Portugal mainland and do not benefit from any facilities granted to Portuguese vessels registered outside MAR concerning exclusivity or protection in general to operate between national ports or providing services to State companies": M. Barrocas, op. cit., Part II – 36.

Portuguese social security regime (see cf. 4). Notwithstanding, some form of insurance must be guaranteed and the crew may choose the Portuguese voluntary social security regime or any other type of protection scheme;

- The wages of the crew of commercial vessels and yachts registered in MAR are exempt from personal income tax, according to the tax regime of Madeira (see cf. 4);
- A flexible and competitive mortgage system applies, allowing the mortgagor and the mortgagee to choose, by written agreement, the legal system of a particular country that shall govern the terms of the mortgage. In the lack of an agreement, the Portuguese mortgage law shall be applicable”³⁸.

The creation of the MAR, underlines the Decree’s Preamble, is indispensable for Portugal to crystalize its **vocation** as a **maritime country**, reinforcing its activities in this area and **strengthening its strategic capabilities** in all **what relates to the sea**.

Finally, it is submitted that the establishment of the MAR aims at **reducing the cases of “flagging out”**³⁹.

1.3. Background on ship registration (who is responsible; where are the laws/ordinances found; how often are they adjusted)

MAR has a Technical Commission that is responsible for managing the vessels registration process and validate the composition of crews (Art. 4. 1 of the Decree)⁴⁰. MAR’s Technical Commission is composed by a member of the government responsible for the area of transports (who presides the commission), one representative of Madeira’s Autonomous Region, and one representative of the General Inspection of Vessels.

From the point of view of the relevant legislation, ships registration is primarily regulated by the Decree. The Decree was amended several times, namely by Decree-Law 393/93, of November 23, 1993, by Decree-Law 5/97, of January 9, 1997, by Decree-Law 331/99, of August 20, 1999, and by Decree-Law 248/2002, of November 8, 2002.

Other pieces of legislation relevant to registration are :

- Order 715/89, of August 23, 1989, regulating the Decree,
- Decree-Law 192/2003, of August 22, 2003, adapting the Regulation of Pleasure Shipping to the rules of registration under the MAR⁴¹,
- Order 134/92, of May 20, 1992, establishing the fees for registration. This Order was amended by Order 14/97, of March 5, 1997, by Order 180/99, of October 5, 1999, by Order 227/99, of December 29, 1999, by Order 123/2013, of December 30, 2013, and by Order 115/2015, of July 13, 2015.

³⁸ The International Business Centre of Madeira – Sociedade de Desenvolvimento da Madeira, available at : <https://www.ibc-madeira.com/en/welcome/29-news-category/media-bank/123-the-industrial-park-of-madeira-s-free-trade-zone.html> (12.02.2018).

³⁹ Euromar, Portuguese Maritime Legislation, op. cit., cf. 3.2.

⁴⁰ International Business Centre of Madeira, Investment Guide, Ship Registration in Madeira, p. 2, available at <https://www.ibc-madeira.com/images/eBrochures/Guide-Ship-Registration-en/> (12.02.18).

⁴¹ Regulation of Pleasure Shipping, approved by Decree-Law 329/95, of December 9, 1995, and amended by Decree-Law 567/99, of December 23, 1999.

The Laws and Orders related to ship registration in Madeira can be consulted in the site of the International Business Centre of Madeira – Sociedade de Desenvolvimento da Madeira⁴². Some of them also appear in the subscription database JUSNET⁴³.

1.4. Any current discussions as to registration requirements

We have been informed by EUROPEAN MAR, that Portugal is about to introduce a new tonnage tax law, but the details have not been published yet. There is also some articles in the same sense:

“The [Portuguese] government intends to adopt a number of legislative measures [...] There are rumours that a number of legislative initiatives are being prepared, including [...] the creation of a tonnage tax fiscal regime [...]”⁴⁴.

2. Questions

2.1. What are the conditions on registration for the various categories of internationally active commercial high seas ships? This should include a differentiation among different types of ships (e.g., passenger ships, tankers, cargo ships)

2.1.1. Types of vessels that subject to registration

Only **merchant vessels** are eligible for registration with MAR. The definition of merchant vessels is limited to ships that are suitable for commercial seagoing or for inland transport of people and cargo⁴⁵. There are no special requirements to take into account for classifying the different categories of merchant vessels which are capable of registration⁴⁶.

Besides vessels in the strict sense, the MAR also provides for the registration of oilrig platforms⁴⁷, and commercial and pleasure yachts⁴⁸. Non-merchant vessels must be registered with the Harbour Master, unless they are small fishing vessels, auxiliary vessels already kept on board a registrable vessel or small

⁴² The International Business Centre of Madeira – Sociedade de Desenvolvimento da Madeira, available at <https://www.ibc-madeira.com/en/ibc-legislation.html> (12.02.18).

⁴³ Jusnet is a legal database requiring subscription. It is available at <http://jusnet.wolterskluwer.pt/Content/Home.aspx> (12.02.18).

⁴⁴ J. Fialho, Portugal, in The Shipping Law Review - Edition 4, 6.7.2017, available at <https://thelawreviews.co.uk/chapter/1144097/portugal> (28.03.18).

⁴⁵ M. Barrocas, op. cit. cf. 2.2.

⁴⁶ M. Barrocas, op. cit., cf. 2.4.1.

⁴⁷ Floating devices, such as dumb-barges, pile laying barges, crane barges, floating docks and similar, are not subject to registration.

⁴⁸ All yachts registered in MAR fly the Portuguese flag and benefit from the services of the Private Commercial Register and Notary of Madeira. Being an E.U. Register, MAR allows full access to European waters without restrictions to both commercial and private yachts, which also benefit from MAR's international status as a high quality Register: <https://www.ibc-madeira.com/en/ship-registration/yacht-registration-yacht-owning-companies.html> (12.02.2018).

vessels which are not self-propelled for sporting use or based on beaches for leisure activities and the like⁴⁹. Certain types of new vessels and vessels under construction are also subject to registration, namely:

- a. newly built vessels which were built in Portugal;
- b. newly built vessels built abroad or second-hand vessels previously

registered abroad which the owner decides to register in Portugal;

- c. vessels under construction or to be built in Portugal.

There are no direct restrictions concerning the age of the vessels that may be registered. However, for ships exceeding 15 years of age, an additional pre-survey might be requested -depending on the ships' Port State Control and Classification records⁵⁰.

In general, all the ships registered with MAR must have their statutory certificates issued by one of the classification societies authorized as a Portuguese recognized organization⁵¹.

2. 1.2. Entities that can enter vessels to the register

Any entity engaged in maritime transport of goods and persons (companies, branches, agencies, legal representations licensed or not to operate in Madeira) may register ships with the MAR. There is no nationality requirement for the owners of vessels registered with the MAR.

2.1.2.1. Companies based abroad: Vessels registered in Madeira may be owned and managed by companies based abroad. In other words, it is not mandatory to incorporate a company in Madeira in order to proceed with the registration of a ship. In this case, a legal representative in Madeira must be nominated with sufficient powers to assure full representation before the State and the Regional authorities⁵².

2.1.2.2. New companies constituted in Madeira: no minimum share capital requirements apply to new shipping companies constituted in Madeira. The incorporation procedures are similar to those applicable to any other Portuguese company. Shipping companies operating within the legal framework of Madeira are not obliged to keep their main offices in Madeira, although some form of legal representation must be there⁵³.

2.1.3. Conditions and formalities for registering

Besides the requirements of qualification as merchant vessels of the ships to be registered, applicants to MAR must comply with a series of formalities towards registration, namely:

1. Original Power of Attorney from the owner to local legal representative

⁴⁹ M. Barrosa, op. cit., cf. 2.4.1.

⁵⁰ Euromar, available at <http://www.eu-registry.com/vesselregistrationfaq> (12.02.18).

⁵¹ Euromar, op. cit.

⁵² The International Business Centre of Madeira – Sociedade de Desenvolvimento da Madeira, available at : <https://www.ibc-madeira.com/en/welcome/29-news-category/media-bank/123-the-industrial-park-of-madeira-s-free-trade-zone.html> (12.02.2018).

⁵³ Sociedade de Desenvolvimento da Madeira, op. cit., available at <https://www.ibc-madeira.com/en/ship-registration/ship-register-and-shipping-companies.html> (12.02.18).

- *Powers granted must include receiving Court or extra-Court summons and notices, in accordance with art. 110, nr. 3 of DL 96/89, of March 28*
 - *If a mortgage is to be registered, powers granted shall include signing the mortgage deed and filing the respective registration with the competent authorities*
 - *To be signed before a Notary (or an entity with equivalent powers) who shall certify/confirm the authority of the signatory to bind the company/Owner*
 - *Apostille*
 - *Certified translation into Portuguese to be conducted by Euromar.*
2. Original Bill of Sale
- *Shall include confirmation that the vessel is clear from any encumbrances, mortgages and maritime liens of whatsoever nature*
 - *Signature of the Seller to be certified/confirmed before a Notary (or an entity with equivalent powers). The certification must refer to the binding powers of the signer*
 - *Apostille*
 - *Certified translation into Portuguese to be conducted by Euromar.*
3. Original Commercial Certificate of the Owner
- *Can be: extract from the commercial register, Certificate of Good Standing, Certificate of Incumbency (or other - depending on the jurisdiction).*
 - *Document must be dated no more than 6 months.*
 - *Apostille*
 - *Certified translation into Portuguese to be conducted by Euromar.*
4. Original Deletion Certificate
- *Shall include:*
 - *Identification of the vessel and registration number with the relevant Shipping Registry;*
 - *Identification of the Owner;*
 - *Confirmation that the vessel is free & clear from any encumbrances, mortgages and maritime liens of whatsoever nature.*
 - *The registration shall be completed based on a copy of the Deletion Certificate to be sent directly by the ceasing Shipping Registry, by e- mail, to mar@madeira.gov.pt, comercial.zonafranca-funchal@dgrn.mj.pt and registration@eu-registry.com*
 - *Original official stamped version to be delivered to the Registrar within 5 working days.*
5. Copy Application for Registration of Vessel
6. Copy Application for Minimum Safe Manning Document
7. Copy ISM Declaration Form on owner's letterhead
8. Copy EPIRB Registration Form
9. Copy Annex to the Ship Station License
10. Copy Previous flag's Ship Station License
11. Copy LRIT- CTR, issued by the or on behalf of previous flag
12. Copy Letter of Guarantee of Radio Accounting Authority (RAA)
13. Copy Class Certificate with annexes for hull and machinery previous flag
14. Copy International Tonnage Certificate (1969)
15. Copy Crewlist

16. Copy Exemption request re. citizen requirements (if applicable)
17. Copy Minimum Safe Manning Certificate of previous flag
18. Mortgage Deed (if applicable)
19. Management Agreement (2 originals)
20. CLC Blue Card - if applicable
21. Bunker CLC Blue Card - if applicable
22. **Certificate on the Insurance of Shipowners for Maritime Claims (in accordance with Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009)**
23. WRC Blue Card - if applicable
24. Initial Survey Report (at registration)
The Initial Survey Report must be sent directly by the Surveyor to MAR – technical.mar@madeira.gov.pt, to the Class Society and its representative in Lisbon, and to Euromar – registration@eu-registry.com.
25. Class Surveyor Details
26. Payment of Fees⁵⁴.

The process of provisional registration of vessels in MAR may also be initiated on-line⁵⁵.

2.2. What are the requirements regarding the revocation of a licence/flag?

According to articles 30 and 31 of the Decree, respectively, either a shipowner or MAR may cancel a ship's registration. The following focuses on the revocation by MAR.

2.1. Cancellation of register by MAR

MAR may cancel a registration and, for such purpose, it may carry out all necessary acts whenever the circumstances so justify, namely in case of:

- a) Changes in the **ownership** of the ship (see cf. 2.1.);
- b) **Failure to comply with the requirements** to operate within the Madeira's Free Trade Zone by the owner or operator;
- c) The ship suffering **serious deficiencies** as regards to the International Conventions on Safety at Sea, Marine Pollution Prevention and Seafarers Welfare on Board Ships⁵⁶.

According to Decree-law 250/97⁵⁷, cancellation of a ship's register needs to be duly published. Such publication is important in order to ensure "greater accuracy, coherence and legal security in the

⁵⁴ Document "Checklist – Initial Ownership Registration" received from EUROMAR.

⁵⁵ Sociedade de Desenvolvimento da Madeira, available at : <https://www.abc-madeira.com/en/ship-registration/ship-register-and-shipping-companies.html> (12.02.19).

⁵⁶ Article 30 of Order 715/89, of August 23, 1989: "MAR may proceed with the cancellation of a registration and, for such purpose, may carry out all necessary acts whenever the circumstances so justify, namely in case of:

- a) Changes in the ownership of the ship;
- b) Failure to comply with the requirements to operate within the Madeira's Free Trade Zone by the owner or operator;
- c) The ship suffering serious deficiencies in accordance with International Conventions on Safety at Sea, Marine Pollution Prevention and Seafarers Welfare on Board Ships".

⁵⁷ Decree-law 250/97 of September 23, 1997, following the cancellation of the license, "advertising must be ensured not only through the registration of the cancellation at the Private Commercial Registry of the Madeira Free Trade Zone, but

performance of the activities within the scope of the Madeira Free Trade Zone”. Thus, publication of the cancellation will be assured both in the registration books, and also through the publication in the Official Journal of the Autonomous Region of Madeira (for the fee system applied to register cancellation see cf. 5).

2.3. What are the supervisory obligations toward fleets, ship owners, and seafarer recruitment and placement services (SRPS)?

Besides the managing of the vessels registration, Article 3 of the Decree enumerates the competences of MAR related to supervision, namely:

- a. to **control the technical conditions** of ships in light of the International Conventions ratified by Portugal,
- b. to **inspect** the vessels,
- c. to produce, validate and control the **documents on board**,
- d. to control the activities of the **classification companies**,
- e. to list the **crews**,
- f. to **recognize the foreign academic and technical titles** concerning the ships activities,
- g. in general, to execute **all the necessary acts** inherent to the obligations of register⁵⁸.

The supervisory obligations of shipowners mostly follow the relevant international conventions, like SOLAS, ISM, ISPS or STCW and others that were ratified by Portugal.

With respect to workers’ recruitment, shipowners may present lists proposing workers to the Technical Commission for approval. Alongside the duly justified manning proposal, the application must include information on the ship’s technical characteristics, the equipment, the areas of operation, the general arrangements and safety plans, and the stability book. At least 30% of the safe crew of the ship must be

also through the respective publication in the Official Journal of the Autonomous Region of Madeira. For the above same reasons, ships registered in the Madeira International Shipping Register must be subject to the same regime”, available at https://www.ibc-madeira.com/images/pdf/en-02-DL_250_97.pdf (12.02.18).

⁵⁸

Art. 3 of the Decree: “Artigo 3.º O MAR tem as seguintes competências:

- a) Efectuar o registo de navios;
- b) Fiscalizar as condições técnicas dos navios, de acordo com as convenções internacionais vigentes na ordem jurídica portuguesa ou a legislação nacional aplicável aos navios não abrangidos por aquelas;
- c) Efectuar inspecções aos navios;
- d) Proceder à atribuição de indicativos de chamada;
- e) Proceder à atribuição e reserva dos nomes e números de registo dos navios;
- f) Emitir os certificados dos navios;
- g) Emitir, validar e controlar os papéis de bordo;
- h) Fiscalizar a actividade das sociedades de classificação devidamente credenciadas;
- i) Fixar as lotações mínimas dos navios e emitir os respectivos certificados;
- j) Fazer a matrícula das tripulações;
- l) Reconhecer os certificados académicos e técnicos estrangeiros referentes à actividade da marinha de comércio;
- m) Realizar os demais actos inerentes às obrigações do registo”.

European (of both EU and non-EU countries), or citizens of Portuguese-speaking countries. However, this last requirement may be removed whenever it is duly justified.

All vessels are required to have a manning certificate issued in order to ensure that seafarers serving on board are qualified, fit and sufficient in number for performing their duties. The certificates of seafarers shall be issued according to the provisions of the Standards of Training Certification and Watch Keeping for Seafarers Convention of 1978 (STCW)⁵⁹, as amended in 1995. According to regulation I/10 of the referred Convention, the process of recognition of certificates to foreign seafarers is subject to the existence of a Protocol between the Maritime Administrations involved. In Portugal, the DGRM – *Direcção Geral de Recursos Naturais, Segurança e Serviços Marítimos* is the entity in charge of the compliance of the arrangements determined on STCW 78/95 Convention. The DGRM may recognize certificates of competency of seafarers from European Union countries and countries with whom Portugal has an agreement for recognition of certificates.

The work contracts must be signed between the seamen or unions and employer. They must state the identification of the parties, the name of the vessel, the nature and duration of the intended voyage or engagement, the period that each seaman is to be on board, the title and function to be undertaken by each seamen, the wages and the agreement as to the payment of wages and the termination of the contract.

2.4. To what types of taxes are shipowners and fleetowners subject?

Currently, there is no tonnage tax for MAR flagged vessels. Instead, **vessels** taxation depends on the location of the owner's effective management (i.e.; if a German vessel's owner is technically and commercially managed from Germany, German tax law applies notwithstanding the Portuguese flag).⁶⁰ As noted above, however, this system is reported to be in flux, with rumours that a tonnage may be foreseen (see cf. I c).

Law 64/2015, of 1.07.2015⁶¹, approved the new tax regime applicable to the entities operating out of the free zone of Madeira. Depending on the entity or person subjected to the tax, taxation conditions are as follows:

2.4.1. Shipping companies registered in Madeira benefit from full application of the tax regime of that free zone until the end of 2027⁶².

⁵⁹ International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), available at <http://www.saturatore.it/Diritto/STCW95.pdf> (12.02.18).

⁶⁰ Information received from EUROPEAN MAR GmbH.

⁶¹ Lei n.º 64/2015, de 1 de julho, Aprova o novo regime especial aplicável às entidades licenciadas na Zona Franca da Madeira a partir de 1 de janeiro de 2015, e altera o Estatuto dos Benefícios Fiscais, aprovado pelo Decreto-Lei n.º 215/89, de 1 de julho, available at <https://dre.pt/home/-/dre/67647961/details/maximized?serie=I%2Fen&dreId=67647959> (12.02.18); also at The International Business Centre of Madeira – Sociedade de Desenvolvimento da Madeira, https://www.ibc-madeira.com/images/pdf/en-03-Art_33_34_Tax_Incent.pdf (12.02.18). A partial English translation can be consulted at https://www.ibc-madeira.com/images/pdf/en-03-Art_33_34_Tax_Incent.pdf (12.02.18).

⁶² The International Business Centre of Madeira – Sociedade de Desenvolvimento da Madeira, available at : <https://www.ibc-madeira.com/en/tax-benefits.html> ; <https://www.ibc-madeira.com/en/welcome/29-news-category/media-bank/123-the-industrial-park-of-madeira-s-free-trade-zone.html> (12.02.2018).

- 2.4.2. Non-resident single and corporate shareholders** of Madeira companies, benefit from a full exemption from withholding tax on dividend remittances from the Madeira companies, provided that they are not resident in jurisdictions included in Portugal's "black list".
- 2.4.3 Portuguese corporate shareholders** are also tax exempted, if holding a participation of at least 10% for 12 consecutive months. Additionally, they benefit of an exemption on capital gains payments to shareholders not resident in black listed jurisdictions and of no withholding tax on the worldwide payment of interest, royalties and services⁶³.
- 2.4.4 Crew members** are exempt from personal income tax. In addition, non-Portuguese crew members aboard commercial vessels and yachts registered with MAR are not obliged to contribute to the Portuguese social security regime, provided some form of public or private insurance is guaranteed. Portuguese nationals or residents in Portuguese territory shall be mandatorily covered by the general Portuguese social security regime. In this case, a total contribution rate of 2,7% will be applicable, of which 2,0% shall be borne by the employing entity and 0,7% by the employee.
- 2.4.5. Capital duty and other local taxes:** documents, contracts and other operations requiring public registration carried out by Madeira companies benefit from an 80% exemption on stamp (capital) duty, provided that other parties involved are not resident in Portuguese territory or are also companies operating within the legal framework of Madeira.
- 2.4.6. Companies licensed in Madeira** also benefit from an exemption of 80% applicable to municipal property tax and property transfer tax, regional and municipal surtax as well as any other local taxes⁶⁴. To qualify for the tax reductions, **companies incorporated in Madeira** have to comply with one of the following pre-established requirements:
- Creation of one to five jobs in the first 6 months of operation and undertake a minimum investment of €75.000 in the acquisition of fixed assets, tangible or intangible, in the first two years of operation;
 - Creation of six or more jobs in the first 6 months of operation.

On the other hand, the reduced corporate tax rates are applicable up to a ceiling placed upon the annual taxable income, which varies according to the number of employees, as follows:

⁶³ The International Business Centre of Madeira – Sociedade de Desenvolvimento da Madeira, available at: <https://www.ibc-madeira.com/en/tax-benefits.html> (12.02.18) under « tax benefits for shareholders ».

⁶⁴ The International Business Centre of Madeira – Sociedade de Desenvolvimento da Madeira, available at: <https://www.ibc-madeira.com/en/tax-benefits.html> (12.02.18) under “Other tax benefits and exceptions”

Number of Jobs	Minimum Investment	Ceiling
1 - 2	€75,000	€2,730,000
3 to 5	€75,000	€3,550,000
6 to 30	-	€21,870,000
31 to 50	-	€35,540,000
51 to 100	-	€54,680,000
More than 100	-	€205,500,000

Additionally, companies are subject to one of the following maximum annual limits applicable to the tax benefits of the present regime:

- a. 20,1% of the annual Gross Value Added, or
- b. 30,1% of the annual incurred labor costs, or
- c. 15,1% of the annual turnover.

All companies licensed to operate in MAR may also benefit from the *network of international treaties* to avoid double taxation ratified by Portugal⁶⁵.

2.5. What is the fee system used by the officials?

The fees applicable by MAR are the following:

- a. For the initial registration or renewal of the registration of a ship:

a.1) Upon registration, vessels will be subject to a fixed fee in the amount of 1,800 euros plus a variable fee calculated according to the net tonnage:

Scale	Fee per Scale
Up to 250 NT	225 Euros
From 250 NT up to 2.500 NT	0.90 euros per NT
From 2,500 NT up to 10.000 NT	0.70 euros per NT
From 10,000 NT up to 20.000 NT	0.50 euros per NT
From 20,000 NT up to 30.000 NT	0.30 euros per NT

⁶⁵ The Double Taxation Treaties ratified by Portugal are available at: <https://www.ibc-madeira.com/images/eBrochures/TDT-en/> (12.02.18).

Scale	Fee per Scale
Above 30,000 NT	0.10 euros per NT

NT = Net tonnage

The annual fee comprises a fixed fee of 1,400 euros plus a variable fee calculated according to the following scale:

Scale	Fee per Scale
Up to 250 NT	200 Euros
From 250 NT up to 2.500 NT	0.80 euros per NT
From 2,500 NT up to 20.000 NT	0.40 euros per NT
Above 20.000 NT	0.25 euros per NT

NT = Net tonnage

Other fees are applicable on the issue, recognition or renewal by the Technical Commission of MAR of various documents, declarations and certificates, as well as for the carrying out of inspections aboard vessels registered in MAR⁶⁶.

Shipping companies incorporated in Madeira are subject to a license and annual operating fees of, respectively, 1,000 euros and 1,800 euros.

The following fees apply for deleting a register

Deletion Fee	650,00 Euro
Replacement/Provisional Ownership Certificate	132,50 Euro
Deletion Certificate	132,50 Euro
CSR	132,50 Euro
(additional) free and clear CoE / Transcript or Registry 132,50 Euro (upon request only)	

The site of the *Sociedade de Desenvolvimento da Madeira* offers an online fee calculator⁶⁷ that looks as the following example:

⁶⁶ Sociedade de Desenvolvimento da Madeira, available at <https://www.ibc-madeira.com/en/ship-registration/ship-register-and-shipping-companies.html> (12.02.18).

⁶⁷ Sociedade de Desenvolvimento da Madeira, available at <https://www.ibc-madeira.com/en/ship-registration/ship-register-and-shipping-companies.html> (12.02.18), under « Vessel fees calculator ».

MAR Fees Calculator

x

Please insert the vessel's Net Tonnage:

40000

This vessel would pay a registration fee of:

18300 €

and an annual fee of:

15400 €

RESET

B. DEUTSCHLAND

1. Einleitung

1.1. Hintergrundinformationen zur Rolle der Schifffahrt in der nationalen Wirtschaft

Im internationalen Seeverkehr ist für Deutschland eine **starke Handelsflotte** von grosser Bedeutung. Dies liegt vor allem an der Vielzahl der **Exportgüter**. Über ein Fünftel der weltweit agierenden Containerschiffe gehören zur deutschen Handelsflotte.⁶⁸ Der Seehandel nimmt zudem immer weiter zu. In Deutschland hat sich die Zahl an grossen Handelsschiffen⁶⁹ innerhalb von 20 Jahren⁷⁰ mehr als verdoppelt.⁷¹ Dementsprechend hat Deutschland nicht nur ein allgemeines Interesse an dem stetigen Ausbau der Handelsrouten, sondern auch an der allgemeinen Sicherheit des Seeverkehrs.

Die nationale Bedeutung der Seefahrt hat in Deutschland Tradition und ist auch im Grundgesetz verankert. **Artikel 27 Grundgesetz** schreibt eine **einheitliche Handelsflotte für alle deutschen Kauffahrteischiffe vor**. Der Begriff wird heute kaum mehr verwendet und **umfasst alle Schiffe, die zum Erwerb durch Seefahrt dienen**.⁷² Dies sind vor allem Handels-, oder Passagierschiffe, aber auch Fischerei-, Lotsen- oder Bergungsschiffe fallen unter diesen Begriff.⁷³ Binnenschiffe und staatliche Schiffe mit hoheitlicher Funktion sind hingegen keine Kauffahrteischiffe.⁷⁴ Artikel 27 Grundgesetz hat seinen Ursprung in der Verfassung des Norddeutschen Bundes.⁷⁵ Die Regelung wurde in ähnlicher Form später sowohl in der Verfassung des deutschen Reichs von 1871 als auch in der Weimarer Reichsverfassung übernommen.⁷⁶ Mit der Vorschrift wurde die Handelsflotten der damals noch bestehenden einzelnen Gliedstaaten unter einer Flagge zusammengeführt, was nach aussen die Verbundenheit des Staates verdeutlichen sollte.⁷⁷

1.2. Hintergrundinformationen zur Schiffsregistrierung

1.2.1. Unterschiedliche Seeschiffsregister

Die Registrierung von Schiffen richtet sich in Deutschland nach der **Schiffsregisterordnung** und dem **Flaggenrechtsgesetz**. Für die Einflaggung bedarf es der **Eintragung in das Schiffsregister**. Bei den Schiffsregistern wird zwischen Binnen- und Seeschiffsregistern unterschieden, welche getrennt

⁶⁸ Verband Deutscher Reeder, Daten und Fakten, verfügbar unter <http://www.reederverband.de/daten-und-fakten/infopool.html> (12.03.2018).

⁶⁹ Schiffe mit mehr als 1'000 BRZ.

⁷⁰ 1989 – 2009.

⁷¹ Verband Deutscher Reeder, Daten und Fakten, verfügbar unter <http://www.reederverband.de/daten-und-fakten/infopool.html> (12.03.2016).

⁷² P. Ehlers, Flaggenrechtsgesetz, 3. Aufl., Baden-Baden 2014, Einleitung, Rn. 6.

⁷³ M. Herdegen, in M. Herdegen *et al.* (Hrsg.), Maunz/Dürig Grundgesetz, 81. EL September 2017, Art. 27 GG, Rn. 18.

⁷⁴ H. v. Heinegg, in V. Epping & Ch. Hillgruber (Hrsg.), BeckOK Grundgesetz, 35. Ed., München 2015, Art. 27 GG, Rn. 1.

⁷⁵ M. Herdegen, in M. Herdegen *et al.* (Hrsg.), Maunz/Dürig Grundgesetz, 81. EL September 2017, Art. 27 GG, Rn. 7.

⁷⁶ P. Ehlers, Flaggenrechtsgesetz, 3. Aufl., Baden-Baden 2014, Einleitung, Rn. 6.

⁷⁷ P. Ehlers, Flaggenrechtsgesetz, 3. Aufl., Baden-Baden 2014, Einleitung, Rn. 6.

voneinander geführt werden.⁷⁸ In das Binnenschiffsregister werden die zur Schifffahrt auf Flüssen und sonstigen Binnengewässern bestimmten Schiffe (Binnenschiffe) eingetragen,⁷⁹ in das **Seeschiffsregister** hingegen werden **Seeschiffe, das heisst Kauffahrteischiffe und andere zur Seefahrt bestimmte Schiffe** eingetragen, die nach dem Flaggenrechtsgesetz die Bundesflagge zu führen haben oder die diese führen dürfen.⁸⁰ Das Schiff ist in der Regel in das Schiffsregister seines Heimathafens oder seines Heimortes einzutragen.⁸¹

Im Rahmen der **Seeschiffsregister** wird zwischen dem nationalen **Seeschiffsregister, das von den Amtsgerichten**⁸² geführt wird und auch als „**Erstregister**“ bezeichnet wird, und dem **Internationalen Seeschiffsregister** unterschieden, welches auch „**Zweitregister**“ genannt wird. Die **Eintragung in das Erstregister ist Pflicht**, die Eintragung in das **Internationale Seeschiffsregister** dagegen **freiwillig**.⁸³

Das **freiwillige Internationale Seeschiffsregister** wird nicht von den Amtsgerichten geführt, sondern vom **Bundesamt für Schifffahrt und Hydrographie als Flaggenbehörde**.⁸⁴ In das Register können Kauffahrteischiffe eingetragen werden, die zur Führung der Bundesflagge berechtigt sind und die im internationalen Verkehr betrieben werden.⁸⁵ Voraussetzung für die Eintragung ist ein Antrag des Eigentümers.⁸⁶ Mit dem Internationalen Seeschiffsregister wird versucht, Reedern Anreize für eine Ausflagung zu nehmen, zum Beispiel indem mit der Eintragung der Abschluss von Arbeitsverträgen mit ausländischen Seeleuten erleichtert wird. So können diese dann gemäss den Regelungen ihrer jeweiligen Herkunftsländer entlohnt werden.⁸⁷

1.2.2. Einflaggung

Unter dem umgangssprachlich verwendeten Begriff der „**Einflaggung**“⁸⁸ versteht man in erster Linie die **erstmalige Verleihung oder den Wechsel der Flagge von einer ausländischen zur deutschen**. Die Einflaggung umfasst dabei unter anderem die Eintragung in das Schiffsregister, die Schiffsbesichtigung sowie die Ausstellung der Schiffsicherheitszeugnisse und der seeleutebezogenen Dokumente.⁸⁹

⁷⁸ § 3 Abs. 1 Schiffsregisterordnung (SchRegO).

⁷⁹ § 3 Abs. 2 Schiffsregisterordnung (SchRegO).

⁸⁰ Vgl. §§ 1 *et seq.* Flaggenrechtsgesetz (FIRG).

⁸¹ § 4 Abs. 1 Flaggenrechtsgesetz (FIRG).

⁸² Seeschiffsregister werden bei folgenden Amtsgerichten (AG) geführt: AG Charlottenburg, AG Brake, AG Bremen, AG Cuxhaven, AG Duisburg-Ruhrort, AG Emden, AG Hamburg, AG Kiel, AG Mannheim, AG Regensburg, AG Saarbrücken, AG Stade, AG St. Goar, AG Wiesbaden, AG Wilhelmshaven und AG Würzburg.

⁸³ Bundesministerium für Verkehr und digitale Infrastruktur, Schiffsregistrierung, verfügbar unter <https://www.deutsche-flagge.de/de/flagge/schiffsregistrierung> (12.03.2018).

⁸⁴ P. Ehlers, Recht des Seeverkehrs, Handkommentar, 1. Aufl., Baden-Baden 2017, § 12 FIRG, Rn. 2.

⁸⁵ Vgl. zu dem Begriff: § 5a Abs. 2 Einkommenssteuergesetz (EStG).

⁸⁶ § 12 Abs. 1 Flaggenrechtsgesetz (FIRG).

⁸⁷ P. Ehlers, Recht des Seeverkehrs, Handkommentar, 1. Aufl., Baden-Baden 2017, § 12 FIRG, Rn. 3.

⁸⁸ Siehe beispielsweise auf der Website des Bundesministeriums für Verkehr und digitale Infrastruktur, Einflaggung, verfügbar unter <https://www.deutsche-flagge.de/de/flagge/einflaggung> (26.02.2018).

⁸⁹ Bundesministerium für Verkehr und digitale Infrastruktur, Einflaggung, verfügbar unter <https://www.deutsche-flagge.de/de/flagge/einflaggung> (12.03.2018).

1.2.3. Ausflaggung

Demgegenüber meint der Begriff der **Ausflaggung**, dass das Schiff in einem **deutschen Schiffsregister eingetragen** bleibt, es aber die **Genehmigung**⁹⁰ erhält, für eine **gewisse Zeit eine ausländische Flagge zu führen**.⁹¹ Der wichtigste Grund für eine solche Ausflaggung ist in der Regel die Reduzierung von laufenden Kosten. Nach dem Gesetz über das Flaggenrecht der Seeschiffe und die Flaggenführung der Binnenschiffe (**Flaggenrechtsgesetz**) ist es Reedereien unter bestimmten Voraussetzungen erlaubt, ihre Schiffe zeitweise auszuflaggen. In der deutschen Schifffahrtspraxis ist das zeitweise Ausflaggen keine Ausnahme mehr. So fuhren, mit abnehmender Tendenz, im Jahr 2017 zwischen 320 und 340 Handelsschiffe unter der Deutschen Bundesflagge, während etwa 2'000 bis 2'200 Handelsschiffe zeitweise unter fremde Flagge fuhren.⁹² Der Grund für das häufige Ausflaggen liegt auch in der internationalen Wettbewerbssituation, die einen wirtschaftlichen Betrieb unter deutscher Flagge wegen der erheblich höheren Kosten⁹³ beinahe unmöglich macht.⁹⁴

Die insbesondere in ertragreichen Zeiten günstige **Tonnagesteuer** knüpft nicht an die Flagge, sondern an die **Eintragung im Schiffsregister** an.⁹⁵ Da die Eintragung bestehen bleibt, profitieren auch ausgeflaggte Schiffe von der Tonnagesteuer. Voraussetzung ist allerdings, dass die **kaufmännische Betriebsführung fast ausschliesslich im Inland vorgenommen** wird.⁹⁶ Die Ausflaggung stellt somit ein wichtiges schifffahrtspolitisches Steuerungselement⁹⁷ für Reedereien und Schiffseigentümer dar.

Voraussetzung für die Genehmigungserteilung zur Ausflaggung ist zunächst die Genehmigungsfähigkeit. Das Schiff muss also im deutschen Schiffsregister eingetragen sein.⁹⁸ Des Weiteren müssen der Reeder oder der Ausrüster des Schiffes einen Antrag stellen.⁹⁹ Ebenso erforderlich ist, dass das Führen einer anderen Nationalflagge nach dem geltenden ausländischen Recht erlaubt ist.¹⁰⁰ Dies ist in der Regel dann der Fall, wenn der Ausrüster Staatsangehöriger des jeweiligen Staates ist oder dort seinen Sitz hat. Zwingende Voraussetzung für eine Ausflaggungsgenehmigung ist der Nachweis des Antragstellers, dass er die **durch den Flaggenwechsel hervorgerufenen Nachteile für den Schiffsstandort ausgeglichen** hat. Die Nachteile für den Schiffsstandort bestehen insbesondere darin, dass das Schiff in der Zeit der Ausflaggung der deutschen Rechtsordnung entzogen ist. Hierdurch wird der Ausgleich der verschiedenen an der Seeschifffahrt beteiligten Interessen gestört.¹⁰¹ Der Reeder kann, da das jeweilige Schiff im Register trotz Ausflaggung eingetragen bleibt, die wirtschaftlichen und steuerlichen Vorteile wie die günstige

⁹⁰ Ausflaggungsgenehmigung gem. § 7 Abs. 1 Nr. 2 Flaggenrechtsgesetz (FIRG).

⁹¹ Bundesministerium für Verkehr und digitale Infrastruktur, Ausflaggung, verfügbar unter <https://www.deutsche-flagge.de/de/flagge/ausflaggung> (12.03.2018).

⁹² Bundesamt für Schifffahrt und Hydrographie, Statistik 2017/2018, verfügbar unter http://www.bsh.de/de/Schifffahrt/Berufsschifffahrt/Deutsche_Handelsflotte/Statistik_Fort.pdf (12.03.2018).

⁹³ Bis zu 700'000 EUR jährlich, P. Ehlers, Flaggenrechtsgesetz (FIRG), Kommentar, 3. Aufl., Baden-Baden 2014, § 7 Rn. 2.

⁹⁴ P. Ehlers, Flaggenrechtsgesetz, 3. Aufl., Baden-Baden 2014, § 7, Rn. 2.

⁹⁵ § 5a Einkommensteuergesetz (EStG).

⁹⁶ Finanzgericht (FG) Schleswig-Holstein, Urteil vom 22.04.2012 – 3 K 66/08.

⁹⁷ P. Ehlers, Flaggenrechtsgesetz, 3. Aufl., Baden-Baden 2014, § 7, Rn. 2.

⁹⁸ P. Ehlers, Flaggenrechtsgesetz, 3. Aufl., Baden-Baden 2014, § 7, Rn. 6.

⁹⁹ P. Ehlers, Flaggenrechtsgesetz, 3. Aufl., Baden-Baden 2014, § 7, Rn. 7.

¹⁰⁰ P. Ehlers, Flaggenrechtsgesetz, 3. Aufl., Baden-Baden 2014, § 7, Rn. 8.

¹⁰¹ § 7 Abs. 1 S. 2 Flaggenrechtsgesetz (FIRG).

Tonnagesteuer¹⁰² in Anspruch nehmen, obwohl das Schiff nicht mehr die an die Flagge anknüpfenden Anforderungen der deutschen Rechtsordnung erfüllen muss.¹⁰³ Diese Disparität soll durch einen nachgewiesenen Ausgleich seitens des Reeders kompensiert werden.

Der Ausgleich gilt als unwiderleglich vermutet, wenn sich der **Antragsteller zur Ausbildung von Seeleuten verpflichtet**.¹⁰⁴ Sofern eine solche Verpflichtungserklärung nicht vorliegt kann ersatzweise ein Ablösebetrag gezahlt werden, der die seefahrtbezogene Ausbildung fördert.¹⁰⁵ Die Höhe des Ablösebetrages wird von der „Stiftung Schifffahrtsstandort Deutschland“¹⁰⁶ festgesetzt, hängt jedoch von der Besatzungsstärke und der Grösse des Schiffes ab und orientiert sich an den durchschnittlichen Ausbildungskosten.¹⁰⁷

Die Ausflaggung ist zeitlich befristet. Unter dem Vorbehalt des Widerrufs kann sie für **höchstens zwei Jahre** gestattet werden.¹⁰⁸ Es besteht grundsätzlich **kein Anspruch auf Genehmigung**, sondern nur auf ermessensfehlerfreie Entscheidung.¹⁰⁹

1.3. Werbung für die Deutschen Flagge

Das **Bundesministerium für Verkehr und digitale Infrastruktur** preist verschiedene Vorteile für Reedereien und Seeleute durch die deutsche Flagge an. So komme es unter deutscher Flagge aufgrund der **hochwertigen Ausbildung** von Seeleuten und des allgemein **hohen Schiffsicherheitsniveaus** nur zu geringen Ausfallzeiten im Schiffsbetrieb, was sich für den Reeder finanziell rentiere.¹¹⁰ Zudem belege die deutsche Flagge in den *Rankings*¹¹¹ der Flaggenstaaten regelmässig einen Spitzenplatz und geniesse international hohes Ansehen. Es handele sich um eine sogenannte Qualitätsflagge.¹¹² Da sich Schiffe unter deutscher Flagge insbesondere dadurch auszeichneten, wenige Mängel zu haben und es selten zu einem Festhalten der Schiffe komme, führe dies zu weniger Hafenkontrollen, was wiederum den Reeder entlaste.¹¹³

Auch sollen die Reeder von **Zuschüssen zur Senkung von Lohnnebenkosten** profitieren. Durch den Bund werden Mittel an denjenigen ausgezahlt, der die Kosten der Arbeitgeberanteile zur gesetzlichen Sozialversicherung für die Seeleute auf dem Schiff trägt. Ebenfalls gibt es **Zuschüsse des Bundes zum**

¹⁰² § 5a Einkommensteuergesetz (EStG).

¹⁰³ P. Ehlers, Flaggenrechtsgesetz, 3. Aufl., Baden-Baden 2014, § 7, Rn. 89.

¹⁰⁴ § 7 Abs. 2 Flaggenrechtsgesetz (FIRG).

¹⁰⁵ § 7 Abs. 3 Flaggenrechtsgesetz (FIRG).

¹⁰⁶ <http://www.stiftung-schifffahrtsstandort.de/> (14.03.2018).

¹⁰⁷ § 7 Abs. 5 Flaggenrechtsgesetz (FIRG).

¹⁰⁸ § 7 Abs. 1 S. 1 Flaggenrechtsgesetz (FIRG).

¹⁰⁹ P. Ehlers, Flaggenrechtsgesetz, 3. Aufl., Baden-Baden 2014, § 7, Rn. 14.

¹¹⁰ Bundesministerium für Verkehr und digitale Infrastruktur, Pluspunkte der Deutschen Flagge, verfügbar unter <https://www.deutsche-flagge.de/de/flagge/pluspunkte> (12.03.2018).

¹¹¹ Vgl. z.B. International Chamber of Shipping, Shipping Industry Flag State Performance Table, verfügbar unter <https://www.deutsche-flagge.de/de/redaktion/dokumente/dokumente-sonstige/flag-state-performance-table> (14.03.2018).

Bundesministerium für Verkehr und digitale Infrastruktur, Pluspunkte der Deutschen Flagge, verfügbar unter <https://www.deutsche-flagge.de/de/flagge/pluspunkte> (12.03.2018).

Bundesministerium für Verkehr und digitale Infrastruktur, verfügbar unter <https://www.deutsche-flagge.de/de/flagge/pluspunkte> (12.03.2018).

Bereitstellen und Schaffen von Ausbildungsplätzen an Bord von Schiffen. Die Förderung muss von den Reedern schriftlich beim Bundesamt für Seeschifffahrt und Hydrographie beantragt werden.¹¹⁴

Zudem werden den Reedern **Steuervorteile** gewährt. Der Arbeitgeber von Seeleuten braucht in Deutschland **keine Lohnsteuer** an das Finanzamt abzuführen, sofern seine Schiffe unter deutscher Flagge fahren.¹¹⁵ Somit darf er die Lohnsteuer von der Heuer abziehen und für sich behalten, ohne dass sich dafür Nachteile für die Seeleute ergäben. Mit dieser Regelung sollen die deutschen Reeder ausländischen Schifffahrtsunternehmen gleichgestellt werden, die oftmals keine Lohnsteuer für ihre Seeleute zahlen müssen.¹¹⁶

Geworben wird im Übrigen auch mit den **deutschen gesetzlichen Sozialversicherungen**, die zwar den Reeder in der Regel mehr als die private Absicherung kosten, sich aber letztlich für die Seeleute positiv niederschlagen. So gibt es mit der **Seemannskasse** eine zusätzliche Absicherung für ältere Seeleute, die Überbrückungsgelder und eine Leistung nach Erreichen der Regelaltersgrenze gewährt und der besonderen Belastung durch die Schifffahrt Rechnung trägt. Überbrückungsgelder werden dann gewährt, wenn Berufsseeleute bereits vor Erreichen der Regelaltersgrenze aus dem Beruf ausscheiden. Die Lücke zwischen dem Zeitpunkt der Aufgabe der Tätigkeit und der regulären Altersgrenze soll so durch die Seemannskasse geschlossen werden. Die Kasse finanziert sich über Beiträge, die von den bei ihr versicherten Seeleuten und den Unternehmen gezahlt werden.¹¹⁷

1.4. Aktuelle Diskussion zu Registrierungsbedingungen

Debatten hinsichtlich einer Novellierung von Registrierungsbedingungen werden momentan nicht geführt. Allerdings wurde das **Flaggenrechtsgesetz** am im Dezember 2012 **geändert**.¹¹⁸ Neu sind die unter Punkt 1.3. erwähnten Regelungen, wonach die Ausflaggung nur dann genehmigt werden kann, wenn ein Ausgleich durch den begünstigten Reeder erfolgt. Dies soll in erster Linie Ausbildungsplätze auf einem ausgeflaggten Schiff aufrechterhalten.¹¹⁹ Diese durch den Reeder zu zahlende, zweckgebundene Kompensation zur Aufrechterhaltung von Ausbildungsplätzen soll in der Regel an die vom Verband Deutscher Reeder errichtete Stiftung Schifffahrtstandort Deutschland¹²⁰ gezahlt werden.

¹¹⁴ Bundesministerium für Verkehr und digitale Infrastruktur, Finanzen, verfügbar unter <https://www.deutsche-flagge.de/de/finanzen/ausbildungsplaetze> (12.03.2018).

¹¹⁵ § 41a Abs. 4 S.1 Einkommensteuergesetz (EStG).

¹¹⁶ Bundesministerium für Verkehr und digitale Infrastruktur, Finanzen, verfügbar unter <https://www.deutsche-flagge.de/de/finanzen/lohnsteuereinbehalt> (12.03.2018).

¹¹⁷ Bundesministerium für Verkehr und digitale Infrastruktur, Sozialversicherung, verfügbar unter <https://www.deutsche-flagge.de/de/sozialversicherung/seemannskasse> (12.03.2018).

¹¹⁸ Gesetz zur Änderung des Flaggenrechtsgesetzes und der Schiffsregisterordnung (v. 20.12.2012, BGBl. I S. 2792)

¹¹⁹ Deutscher Bundestag, Flaggenrechtsgesetz wird geändert, Aktuelle Meldung des Ausschusses für Verkehr, Bau und Stadtentwicklung vom 24.10.2012, verfügbar unter https://web.archive.org/web/20121102161716/http://www.bundestag.de/presse/hib/2012_10/2012_467_01.html (05.03.2018).

¹²⁰ <http://www.stiftung-schifffahrtsstandort.de/> (14.03.2018).

2. Fragen

2.1. Registrierungsbedingungen, Schiffszertifikate, Schiffsbesetzung

Der folgende Abschnitt befasst sich mit der Pflicht beziehungsweise dem Recht auf Flaggenführung und der damit verbundenen Eintragung in das nationale Seeschiffsregister. Zudem wird auf die wichtigsten Ausweise eingegangen. Sofern ein Recht zur Flaggenführung vorliegt, wird grundsätzlich ein Ausweis erteilt. Diese haben jedoch eher formellen als konstitutiven Charakter. Schliesslich wird die Verantwortung des Reeders bezüglich der Besetzung dargestellt.

2.1.1. Pflicht zur Flaggenführung

Der Eigentümer eines Seeschiffs ist **verpflichtet**, das Schiff in das **nationale Seeschiffsregister**¹²¹ **einzutragen**, wenn es gemäss § 1 Flaggenrechtsgesetz die Bundesflagge zu führen hat.¹²² Eine **Ausnahme** hiervon gilt für **Schiffe, deren Rumpflänge 15 Meter nicht übersteigt**.¹²³ § 1 des Flaggenrechtsgesetzes regelt unter missverständlicher Überschrift¹²⁴ die Pflicht zur Flaggenführung.¹²⁵ In diesem Zusammenhang wird von einem „zur Verpflichtung verdichtete[n] Recht“ gesprochen.¹²⁶ Die Pflicht zur Flaggenführung trifft alle **Seeschiffe**, deren **Eigentümer Deutsche** sind **und ihren Wohnsitz im Geltungsbereich des Grundgesetzes** haben.¹²⁷

Seeschiffe sind nach der Legaldefinition in § 1 Absatz 1 Flaggenrechtsgesetz alle **Kauffahrteischiffe** und **sonstige zur Seefahrt bestimmten Schiffe**. Insoweit fallen hierunter nicht nur Handelsschiffe im Sinne des Artikel 27 Grundgesetz. Als sonstige zur Seefahrt bestimmte Schiffe kommen Schiffe des öffentlichen Dienstes, Traditionsschiffe und Sportfahrzeuge in Betracht.¹²⁸ Die Abgrenzung zum Binnenbereich erfolgt durch die Flaggenrechtsverordnung, die unter anderem die Grenzen der Seefahrt bestimmt.¹²⁹ Seeschiffen gleichgestellt sind Binnenschiffe, die seewärts der Grenze des deutschen Küstenmeeres und damit ausserhalb der Hoheitsgewässer fahren.¹³⁰

Voraussetzung für die Pflicht zur Flaggenführung ist neben dem Umstand, dass es sich um ein Seeschiff handeln muss, dass das Schiff im **Eigentum eines Deutschen** steht, der seinen **Wohnsitz im Geltungsbereich des Grundgesetzes** hat.¹³¹ Für Offene Handelsgesellschaften (OHG), Kommanditgesellschaften (KG) oder juristische Personen, die ihren Sitz in Deutschland haben, ist erforderlich, dass der **deutsche Einfluss innerhalb der Gesellschaft überwiegt**.¹³² Zwar ist nicht erforderlich, dass alle Gesellschafter Deutsche sind, jedoch müssen die persönlich haftenden und die zur Geschäftsführung und Vertretung

¹²¹ Gemeint ist im Folgenden nur das sogenannte „Erstregister“, welches bei dem jeweiligen Amtsgericht geführt wird.

¹²² § 10 Abs. 1 S.1 Schiffsregisterordnung (SchRegO).

¹²³ § 10 Abs. 1 S.2 Schiffsregisterordnung (SchRegO).

¹²⁴ „Recht zur Führung der Bundesflagge“.

¹²⁵ P. Ehlers, Flaggenrechtsgesetz, 3. Aufl., Baden-Baden 2014, Vorbemerkung, Rn. 11.

¹²⁶ P. Ehlers, Flaggenrechtsgesetz, 3. Aufl., Baden-Baden 2014, § 1, Rn. 6.

¹²⁷ § 1 Abs. 1 Flaggenrechtsgesetz (FIRG).

¹²⁸ P. Ehlers, Flaggenrechtsgesetz, 3. Aufl., Baden-Baden 2014, Vorbemerkung, Rn. 11.

¹²⁹ Vgl. § 1 Flaggenrechtsverordnung (FIRV), Rechtsgrundlage hierfür ist §§ 22 Abs. 1 Nr.1 Flaggenrechtsgesetz (FIRG).

¹³⁰ § 1 Abs. 3 Flaggenrechtsgesetz (FIRG).

¹³¹ § 1 Abs. 1 Flaggenrechtsgesetz (FIRG), vgl. zur Begründung und Aufhebung des Wohnsitzes § 7 Bürgerliches Gesetzbuch (BGB).

¹³² § 1 Abs. 2 Flaggenrechtsgesetz (FIRG), P. Ehlers, Flaggenrechtsgesetz, 3. Aufl., Baden-Baden 2014, § 1, Rn. 7.

berechtigten Gesellschafter in der Mehrheit sein beziehungsweise die Mehrheit der Stimmen haben. Bei juristischen Personen muss neben dem deutschen Sitz die Mehrheit des Vorstandes oder der Geschäftsführung über die deutsche Staatsbürgerschaft verfügen. In der Praxis ist es häufig so, dass deutsche Schiffe im Eigentum einer Kommanditgesellschaft stehen, deren Komplementär eine Gesellschaft mit beschränkter Haftung (GmbH) ist.¹³³

2.1.2. Recht zur Flaggenführung

§ 2 des Flaggenrechtsgesetzes regelt hingegen die Fälle, in denen zwar auf Grund der Eigentumsverhältnisse auch eine andere Flagge als die deutsche in Betracht kommt, jedoch eine derartige **Bindung zum deutschen Staat** besteht, dass ein **optionales Nutzungsrecht** besteht.¹³⁴ So besteht bei folgenden **Fallgruppen** das Recht die Bundesflagge zu führen:

- Erbengemeinschaften¹³⁵
- Staatsangehörige nach dem Recht eines Mitgliedstaates der Europäischen Union (EU)¹³⁶
- Gesellschaften nach dem Recht eines EU-Mitgliedstaates¹³⁷

¹³³ P. Ehlers, Flaggenrechtsgesetz, 3. Aufl., Baden-Baden 2014, § 1, Rn. 7.

¹³⁴ P. Ehlers, Flaggenrechtsgesetz, 3. Aufl., Baden-Baden 2014, § 1, Rn. 1.

¹³⁵ § 2032 Bürgerliches Gesetzbuch (BGB). Bei Erbengemeinschaften besteht keine Pflicht zur Flaggenführung, es sei denn die Gemeinschaft besteht ausschliesslich aus deutschen Erben. Bei Erbengemeinschaften, die aus deutschen und ausländischen Eigentümern besteht, darf die ausländische Flagge geführt werden. Voraussetzung hierfür ist, dass Deutsche zu mehr als der Hälfte des Nachlasses beteiligt sind (§ 2 Abs. 1 Nr. 1 FIRG). Auch zur Vertretung der Erbengemeinschaft dürfen nur Deutsche mit inländischem Wohnsitz bevollmächtigt werden (P. Ehlers, Flaggenrechtsgesetz, 3. Aufl. Baden-Baden 2014, § 2, Rn. 2.)

¹³⁶ Vor dem Hintergrund der europäischen Niederlassungsfreiheit sind auch Staatsangehörige der EU zur Flaggenführung berechtigt, sofern im Übrigen die Voraussetzungen des § 1 Flaggenrechtsgesetz vorliegen (§ 2 Abs. 1 Nr. 2 FIRG). Sofern dies der Fall ist, werden sie Deutschen gleichgestellt.

¹³⁷ Das Recht der Flaggenführung besteht ebenfalls für Schiffe, deren Eigentümer Gesellschaften sind, die nach europäischen Rechtsvorschriften gegründet wurden (§ 2 Abs. 1 Nr. 3 FIRG). Hintergrund ist auch hier die Niederlassungsfreiheit. Die Regelung gilt sowohl für Personen- als auch für Kapitalgesellschaften (P. Ehlers, Flaggenrechtsgesetz, 3. Aufl., Baden-Baden 2014, § 2, Rn. 4.). Die Gesellschaft muss ihre Hauptniederlassung in einem EU-Mitgliedstaat haben (§ 2 Abs. 1 Nr. 3 FIRG). Nicht mehr erforderlich ist hingegen, dass der juristische Sitz der Gesellschaft in einem EU-Mitgliedstaat begründet sein muss.

Bei den genannten Gesellschaften ist zudem erforderlich, dass mindestens eine Person ständig beauftragt ist, das Einhalten der einschlägigen (§ 2 Abs. 1 Nr. 3 *lit. a*) FIRG spricht von technischen, sozialen und verwaltungsmässigen Angelegenheiten) deutschen Rechtsvorschriften zu überwachen. Bei Schiffen zum Fischfang ist der Beauftragte zusätzlich für die Einsatzleitung, die Durchführung und die Überwachung der Schiffe verantwortlich (§ 2 Abs. 1 Nr. 3 *lit. b*) FIRG). Die Person muss weder die deutsche Staatsangehörigkeit noch die eines EU-Mitgliedstaates besitzen. Nach der Rechtsprechung des Europäischen Gerichtshof (EuGH, Urteil vom 14.10.2004 – C-299/02) reicht es für das Recht der Flaggenführung aus, wenn der Betrieb eines Schiffes durch eine vertretungsberechtigte Person erfolgt. Der Eigentümer des Seeschiffes muss gegenüber der Flaggenbehörde nachweisen, dass die Anforderungen erfüllt sind (§ 5a FIRG). Er hat eine Verpflichtungserklärung der beauftragten Person vorzulegen, in der diese sich zweifelsfrei verpflichtet, für das Einhalten der deutschen Rechtsvorschriften einzustehen (§ 5a Nr. 1 FIRG). Darüber hinaus hat der Eigentümer die Zuverlässigkeit und die finanzielle Leistungsfähigkeit der beauftragten Person glaubhaft darzulegen (§ 5a Nr. 2 FIRG). Sind diese Nachweise erbracht, so stellt die Flaggenbehörde eine entsprechende Bescheinigung aus (§ 5b FIRG). Sie übersendet die Bescheinigung auch der Bescheinigung auch der Berufsgenossenschaft Verkehr, welche die Schiffssicherheitsaufgaben des Bundes ausführt (§ 5b Abs. 2 FIRV in Verbindung mit § 6 SeeaufgG).

- Personen und Gesellschaften aus Drittstaaten¹³⁸.

Nicht berechtigt die Bundesflagge zu führen sind dagegen Schiffe, die im Eigentum eines Deutschen oder eines Staatsangehörigen eines anderen EU-Mitgliedstaates stehen, **ohne dass ein Wohnsitz im Inland besteht**. Da Seeschiffe jedoch in der Regel im Eigentum einer juristischen Person stehen, hat dies für die Praxis kaum Bedeutung.¹³⁹

Sofern sich seitens des Eigentümers **Änderungen der Voraussetzungen des Flaggenführungsrechts**¹⁴⁰ ergeben, ist er verpflichtet, dies unverzüglich der Flaggenbehörde **anzuzeigen**.¹⁴¹ Bei einem Wegfall der zugrundeliegenden Tatsachen widerruft die Flaggenbehörde die Bescheinigung. Sofern es sich um eine Gesellschaft handelt, wird die Berufsgenossenschaft Verkehrswirtschaft Post-Logistik Telekommunikation (im Folgenden „Berufsgenossenschaft Verkehr“) ermächtigt, die Weiterfahrt im deutschen Hoheitsgebiet zu verbieten. Auch kann durch Auflagen und Bedingungen sichergestellt werden, dass die Hoheitsgewalt und Kontrolle des Flaggenstaats über das Schiff wirksam ausgeübt wird.¹⁴²

2.1.3. Sonstige Möglichkeiten der Verleihung der Bundesflagge

Im Übrigen kann die Bundesflagge durch das **Bundesministerium für Verkehr und digitale Infrastruktur** die Befugnis zur Führung der Bundesflagge für die **erste Überführungsreise**¹⁴³ **in einen anderen Hafen verleihen**. Dies ist beispielsweise relevant, wenn ein Schiff in einer deutschen Werft für einen ausländischen Besteller gebaut wird und im Ausland unter einer fremden Flagge betrieben werden soll.¹⁴⁴

Ebenfalls möglich ist die Verleihung durch das Bundesministerium an ausländische Eigentümer aufgrund **internationalen Vereinbarungen**.¹⁴⁵ Bisher sind jedoch weder entsprechende bilaterale Vereinbarungen noch Regelungen auf EU-Ebene getroffen worden.¹⁴⁶

2.1.4. Schiffszertifikat

Das **Recht zum Führen der Bundesflagge** muss urkundlich nachgewiesen werden. Je nach Kategorie des Schiffes sind hierfür **unterschiedliche Ausweise** vorgesehen, die jedoch lediglich formelle Befugnisvoraussetzungen darstellen und **keine konstitutive Wirkung** entfalten. Das Flaggenführungsrecht besteht also unabhängig davon, ob ein Ausweis vorliegt oder nicht.¹⁴⁷ Allerdings **darf vor Ausstellung des Ausweises die Bundesflagge nicht aktiv geführt** werden, das heisst die Schiffe dürfen, sofern kein Ausweis ausgestellt

¹³⁸ Ebenfalls gleichgestellt werden natürliche Personen und Gesellschaften aus Drittstaaten, sofern für diese auf Grundlage eines bilateralen oder europäischen Abkommens die Niederlassungsfreiheit gilt. Eine ausdrückliche Gleichstellung besteht für Staatsangehörige eines Vertragsstaates des Abkommens über den Europäischen Wirtschaftsraum (§ 23 FIRG). Auch für Gesellschaften aus Drittstaaten gilt, dass das Einhalten der Anforderungen gegenüber der Flaggenbehörde nachzuweisen ist (P. Ehlers, Flaggenrechtsgesetz, 3. Aufl., Baden-Baden 2014, § 2, Rn. 5, 7).

¹³⁹ P. Ehlers, Flaggenrechtsgesetz, 3. Aufl., Baden-Baden 2014, § 2, Rn. 6.

¹⁴⁰ § 2 Abs. 1, 2 Flaggenrechtsgesetz (FIRG).

¹⁴¹ § 2 Abs. 3 Flaggenrechtsgesetz (FIRG), § 5b Abs. 3 Flaggenrechtsverordnung (FIRV).

¹⁴² § 5c Flaggenrechtsverordnung (FIRV), P. Ehlers, Flaggenrechtsgesetz, 3. Aufl. 2014, § 2, Rn. 8.

¹⁴³ § 10 Flaggenrechtsgesetz (FIRG).

¹⁴⁴ P. Ehlers, Flaggenrechtsgesetz, 3. Aufl., Baden-Baden 2014, § 10, Rn. 1.

¹⁴⁵ § 11 Flaggenrechtsgesetz (FIRG).

¹⁴⁶ P. Ehlers, Flaggenrechtsgesetz, Recht des Seeverkehrs, 1. Aufl., Baden-Baden 2017, § 11, Rn. 2f.

¹⁴⁷ P. Ehlers, Flaggenrechtsgesetz, 3. Aufl., Baden-Baden 2014, Vorbemerkung, Rn. 9.

worden ist, nicht eingesetzt werden.¹⁴⁸ Ausweise oder beglaubigte Auszüge sind an Bord mitzuführen, es sei denn, es handelt sich um kleine Schiffe, die nicht im Schiffsregister eingetragen werden müssen.¹⁴⁹ Als Ausweise kommen das **Schiffszertifikat**, der **Flaggenschein**, die **Flaggenbescheinigung** und das **Flaggenzertifikat** in Betracht, wobei das Schiffszertifikat die grösste Rolle spielt und am häufigsten erteilt wird. Es handelt sich um eine Urkunde, die vom Registergericht ausgestellt wird.¹⁵⁰

Voraussetzung für die Ausstellung eines Schiffszertifikats ist die Eintragung in das Seeschiffsregister des Heimathafens¹⁵¹.¹⁵² Verfügt das Schiff über keinen oder keinen inländischen Heimathafen, so kann der Eigentümer frei wählen, in welches deutsche Seeschiffsregister er sein Schiff einträgt.¹⁵³ Bei der Anmeldung eines Seeschiffs muss der Eigentümer diejenigen Tatsachen nachweisen, die das Recht begründen, die Bundesflagge zu führen.¹⁵⁴ Das Registergericht stellt bei der Eintragung fest, nach welcher Bestimmung des Flaggenrechtsgesetzes das Schiff zum Führen der Bundesflagge berechtigt ist.¹⁵⁵

Der **Flaggenschein** wird in der Regel bei in Deutschland¹⁵⁶ erbauten Schiffen für eine **Überführungsreise** in einen anderen Hafen erteilt. Zuständig ist das Bundesministerium für Verkehr und digitale Infrastruktur.¹⁵⁷ Die **Flaggenbescheinigung** betrifft hingegen eher **Seeschiffe der öffentlichen Hand**. Da diese nicht in das Schiffsregister eingetragen werden müssen, kann die Flaggenbescheinigung alternativ zum Schiffszertifikat ausgestellt werden.¹⁵⁸

2.1.5. Schiffsbesetzung

Der **Reeder ist für die Schiffsbesetzung verantwortlich**. Er hat das Schiff nach Anzahl, Befähigung und Eignung der Besatzungsmitglieder so zu besetzen, dass

- die Schiffssicherheit,
- der Wachdienst,
- das Einhalten der Vorschriften des Arbeitsschutzes, des Gesundheitsschutzes, der medizinischen Betreuung an Bord und des maritimen Umweltschutzes,
- das Einhalten der öffentlichen Ordnung und Sicherheit an Bord und
- die sprachliche Verständigung der Besatzungsmitglieder untereinander

¹⁴⁸ § 4 Abs. 1 Flaggenrechtsgesetz (FIRG), P. Ehlers, Flaggenrechtsgesetz, 3. Aufl., Baden-Baden 2014, Vorbemerkung, Rn. 9.

¹⁴⁹ § 4 Abs. 2 Flaggenrechtsgesetz (FIRG), P. Ehlers, Flaggenrechtsgesetz, 3. Aufl., Baden-Baden 2014, § 4, Rn. 1.

¹⁵⁰ § 60 Abs. 1 Schiffsregisterordnung (SchRegO).

¹⁵¹ § 4 Abs. 1 Schiffsregisterordnung (SchRegO).

¹⁵² P. Ehlers, Flaggenrechtsgesetz, 3. Aufl., Baden-Baden 2014, § 3, Rn. 1.

¹⁵³ § 4 Abs. 2 Schiffsregisterordnung (SchRegO).

¹⁵⁴ § 13 Abs. 2 Schiffsregisterordnung (SchRegO).

¹⁵⁵ § 16 Abs. 2 Schiffsregisterordnung (SchRegO).

¹⁵⁶ § 10 Flaggenrechtsgesetz (FIRG) spricht vom Geltungsbereich des Grundgesetzes.

¹⁵⁷ § 10 Flaggenrechtsgesetz (FIRG).

¹⁵⁸ P. Ehlers, Flaggenrechtsgesetz, 3. Aufl., Baden-Baden 2014, § 3, Rn. 3.

gewährleistet sind.¹⁵⁹ Bei der Besetzung sind die Eigenarten des Schiffes, der Fracht und der Fahrtroute ausreichend zu berücksichtigen. Hierbei können **Schiffstypen, Ausrüstung** und **Einsatzzweck**, aber auch die **Hafenfolge** eine Rolle spielen.¹⁶⁰

Allerdings gibt es keine festgeschriebene Mindest- oder Regelbesetzung, die sich beispielsweise an der Grösse des Schiffes orientieren würde.¹⁶¹ Dementsprechend gibt es keine Vorschriften, wie viele Seeleute sich an Bord eines Schiffes befinden müssen. In der Praxis setzt zunächst der **Reeder** nach eigenem Ermessen die Schiffsbesetzung fest. Die **Berufsgenossenschaft Verkehr**¹⁶² ist im Anschluss dafür zuständig, die Entscheidung des Reeders zu prüfen.¹⁶³

Bei dem **Kapitän** des Schiffes muss es sich um einen **Unionsbürger** handeln.¹⁶⁴ Auf Schiffen mit einer Bruttoreaumzahl von über 500 gilt diese Voraussetzung auch für mindestens einen der Offiziere des nautischen oder technischen Seedienstes. Ab einer Bruttoreumzahl von über 8'000 muss zudem mindestens ein weiterer Schiffsoffizier Unionsbürger sein.¹⁶⁵

Jedes **Besatzungsmitglied**¹⁶⁶ muss für den Dienst auf einem Seeschiff **seediensttauglich** sein. Ist dies nicht der Fall, so darf der Reeder das Besatzungsmitglied nicht beschäftigen.¹⁶⁷ Die Tauglichkeit für den Seedienst hängt vor allem vom **Gesundheitszustand** ab. Der Seemann muss für die Arbeit auf einem Seeschiff **körperlich und geistig robust** sein.¹⁶⁸

Für den **Reeder** ergeben sich hinsichtlich der Seediensttauglichkeit seiner Besatzungsmitglieder **zwei Verpflichtungen**: Zum einen muss er sich vor der Beschäftigung eines Seemannes an Bord eines Handelsschiffes unter deutscher Flagge vergewissern, dass der Seemann über ein **gültiges Seediensttauglichkeitszeugnis** verfügt.¹⁶⁹ Zum anderen muss er **bei konkreten Anhaltspunkten** für eine mögliche, inzwischen eingetretene **Untauglichkeit präventiv eingreifen** und die Berufsgenossenschaft Verkehr kontaktieren, damit sich der Seemann untersuchen lässt.¹⁷⁰ Sofern der Reeder vorsätzlich oder fahrlässig Besatzungsmitglieder **ohne** ein gültiges **Seediensttauglichkeitszeugnis** beschäftigt, liegt eine **Ordnungswidrigkeit** vor, die mit einer **Geldbusse von bis zu 50'000 EUR** geahndet werden kann.¹⁷¹ Bei **beharrlich wiederholenden Verstössen** liegt eine **Straftat**¹⁷² vor, die mit einer **Freiheitsstrafe von bis zu einem Jahr** bestraft werden kann.

Zudem sind die Reeder verpflichtet, **Dienstbescheinigungen** für ihre Seeleute **auszustellen**.¹⁷³ In den Dienstbescheinigungen werden neben den **persönlichen Daten** des Besatzungsmitgliedes unter anderem

¹⁵⁹ § 2 Abs. 1 S. 1 Nr. 1 – 5 Schiffsbesetzungsverordnung (SchBesV).

¹⁶⁰ § 2 Abs. 1 S. 2 Schiffsbesetzungsverordnung (SchBesV).

¹⁶¹ Bundesministerium für Verkehr und digitale Infrastruktur, Besatzung, verfügbar unter <https://www.deutsche-flagge.de/de/besatzung/schiffsbesetzung> (13.03.2018).

¹⁶² Bundesministerium für Verkehr und digitale Infrastruktur, BG-Verkehr, verfügbar unter <https://www.deutsche-flagge.de/de/flagge/flaggenstaat/bg-verkehr/bg-verkehr#DS> (13.03.2018).

¹⁶³ Bundesministerium für Verkehr und digitale Infrastruktur, Besatzung, verfügbar unter <https://www.deutsche-flagge.de/de/besatzung/schiffsbesetzung> (13.03.2018).

¹⁶⁴ § 4 Schiffsbesetzungsverordnung (SchBesV).

¹⁶⁵ § 5 Abs. 1 Schiffsbesetzungsverordnung (SchBesV).

¹⁶⁶ Vgl. § 3 Seearbeitsgesetz (SeeArbG).

¹⁶⁷ § 11 S. 1, 3 Seearbeitsgesetz (SeeArbG).

¹⁶⁸ Das Gesetz spricht von Widerstandsfähigkeit, vgl. § 11 S. 2 Seearbeitsgesetz (SeeArbG).

¹⁶⁹ § 12 Abs. 1 S. 2 Seearbeitsgesetz (SeeArbG).

¹⁷⁰ C. Bubenzer *et al.*, Seearbeitsgesetz, 1. Online-Aufl., 2016, § 11, Rn. 4.

¹⁷¹ § 145 Abs. 1 Nr. 2 Seearbeitsgesetz (SeeArbG).

¹⁷² § 146 Abs. 3 Nr. 1 Seearbeitsgesetz (SeeArbG).

¹⁷³ § 33 Abs. 1 S. 1 Seearbeitsgesetz (SeeArbG).

der Name des Schiffs, der Schiffstyp, die Vermessung, die Maschinenleistung das Fahrtgebiet sowie die Art und Dauer der vom Besatzungsmitglied geleisteten Dienste eingetragen.¹⁷⁴

Der in der Regel zehn Jahre gültige **Seeleute-Ausweis** ist dagegen **keine Voraussetzung für den Dienst** auf Kauffahrteischiffen. Er ist freiwillig und kann von den Seeleuten beim Bundesamt für Seeschifffahrt und Hydrographie) beantragt werden.¹⁷⁵ Auch ein Visum für Seeleute aus Nicht-EU-Staaten ist für die Tätigkeit auf Seeschiffen unter deutscher Flagge nicht mehr erforderlich, es sei denn ein ausländischer Seemann reist nach Deutschland oder in einen anderen EU-Mitgliedstaat ein oder hält sich dort länger auf.¹⁷⁶

2.2. Bewilligungsentzug (angeordnete Entlassung aus der Flagge)

Eine angeordnete Entlassung aus der Flagge ist in Deutschland nicht vorgesehen. Möglich sind jedoch unter bestimmten Voraussetzungen die Löschung aus dem Schiffsregister sowie Sanktionen und Ordnungswidrigkeiten.

2.2.1. Löschung der Eintragung

Die Eintragung des Schiffs im Schiffsregister kann unter bestimmten Voraussetzungen gelöscht werden.¹⁷⁷ Dies ist unter anderem dann der Fall, wenn das Schiff **ausbesserungsfähig** ist, **untergeht**, es als **endgültig verloren** anzusehen ist **oder wenn es das Recht zur Führung der Bundesflagge verliert**.¹⁷⁸ Liegen solche Veränderungen eingetragener Tatsachen vor, muss dies unverzüglich dem Schiffsregister gemeldet werden. Verliert ein Seeschiff das Recht zur Führung der Bundesflagge, so darf eine Löschung jedoch nur dann geschehen, wenn die Schiffshypothekengläubiger und, falls eine Schiffshypothek nach dem Inhalt des Schiffsregisters mit dem Recht eines Dritten belastet ist, auch dieser die Löschung bewilligen.¹⁷⁹

Eine **Löschung von Amts** wegen erfolgt, wenn das **Schiff eingetragen** wurde, **obwohl** eine **Eintragung** wegen Fehlens einer wesentlichen Voraussetzung **unzulässig** war oder eine vorgeschriebene Anmeldung bestimmter Tatsachen¹⁸⁰ nicht herbeigeführt werden kann.¹⁸¹ Ist seit 30 Jahren keine Eintragung im Schiffsregister erfolgt und ist nach Anhörung der zuständigen Schifffahrtsbehörde, bei Seeschiffen auch der Seerberufgenossenschaft, anzunehmen, dass das Schiff nicht mehr vorhanden oder nicht mehr zu Schifffahrtswegen verwendbar ist, so löscht das Registergericht die Eintragung ebenfalls von Amts wegen.¹⁸² Dies gilt nicht, wenn eine Schiffshypothek oder ein Niessbrauch an dem Schiff eingetragen ist.

¹⁷⁴ Vgl. § 33 Abs. 2 Nr. 1 – 5 Seearbeitsgesetz (SeeArbG)

¹⁷⁵ Bundesministerium für Verkehr und digitale Infrastruktur, Dienstbescheinigung, verfügbar unter <https://www.deutsche-flagge.de/de/besatzung/dienstbescheinigung/seeleute-ausweis> (13.03.2018).

¹⁷⁶ Bundesministerium für Verkehr und digitale Infrastruktur, Besatzung, verfügbar unter <https://www.deutsche-flagge.de/de/besatzung/dienstbescheinigung/visa> (13.03.2018).

¹⁷⁷ Vgl. 20 Schiffsregisterordnung (SchRegO).

¹⁷⁸ § 17 Abs. 4 Schiffsregisterordnung (SchRegO).

¹⁷⁹ § 20 Abs. 3 S. 1 Schiffsregisterordnung (SchRegO).

¹⁸⁰ § 17 Abs. 4 Schiffsregisterordnung (SchRegO).

¹⁸¹ § 21 Abs. 1 S. 1 Schiffsregisterordnung (SchRegO).

¹⁸² § 22 Schiffsregisterordnung (SchRegO).

2.2.2. Sanktionen bei verbotswidrigem Führen einer (anderen) Nationalflagge

Seeschiffe, welche die Bundesflagge zu führen haben¹⁸³, dürfen keine anderen Nationalflaggen führen.¹⁸⁴ Gleiches gilt für Seeschiffe, die die Bundesflagge führen dürfen¹⁸⁵ und für die ein Schiffszertifikat, Schiffsvorzertifikat, Flaggenzertifikat oder ein Flaggenschein erteilt ist.¹⁸⁶

Wer als **Verantwortlicher eines Seeschiffes** diesen Regelungen **vorsätzlich oder fahrlässig** zuwiderhandelt, wird mit **Freiheitsstrafe bis zu sechs Monaten** oder mit **Geldstrafe in Höhe von bis zu 180 Tagessätzen** bestraft.¹⁸⁷

In gleichem Masse wird auch derjenige bestraft, der die **Bundesflagge unbefugt führt**.

¹⁸⁸

2.2.3. Ordnungswidrigkeiten

Zudem können eine Reihe von Verstößen gegen das Flaggenrechtsgesetz als Ordnungswidrigkeit geahndet werden.¹⁸⁹ So kann beispielsweise ein **Bussgeld bis zu einer Höhe von 5'000 EUR¹⁹⁰** verhängt werden, wenn der **Ausweis über das Recht zum Führen der Bundesflagge nicht an Bord mitgeführt** wird.¹⁹¹ Eine Ordnungswidrigkeit liegt auch vor, wenn die **Bundesflagge** beim Ein- oder Auslaufen eines Hafens **nicht gezeigt** wird.¹⁹²

2.3. Aufsichtsbestimmungen

2.3.1. Reedereien und Schiffseigentümer

Die **Aufsichtsbestimmungen über die Reedereien oder Schiffseigentümer** sowie über die **Rekrutierungsdienstleister** für Seeleute sind **nicht einheitlich geregelt**, sondern in unterschiedlichen Gesetzen, teilweise unübersichtlich und wenig systematisch. Grundsätzlich obliegt es der **deutschen Flaggenstaatverwaltung**, die Seeschifffahrt zu kontrollieren und zu überwachen.

Zur deutschen Flaggenstaatverwaltung gehören:

- die Berufsgenossenschaft Verkehr, insbesondere deren Dienststelle Schiffssicherheit,
- das Bundesamt für Seeschifffahrt und Hydrographie,
- die Bundesnetzagentur und
- das Seeschiffsregister.¹⁹³

¹⁸³ Vgl. § 1 Flaggenrechtsgesetz (FIRG).

¹⁸⁴ § 6 Abs. 1 S. 1 Flaggenrechtsgesetz (FIRG).

¹⁸⁵ § 2 Flaggenrechtsgesetz (FIRG).

¹⁸⁶ § 6 Abs. 1 S. 2 *lit. a), b)* in Verbindung mit §§ 10 *et seq.* Flaggenrechtsgesetz (FIRG).

¹⁸⁷ § 15 Abs. 1 Flaggenrechtsgesetz (FIRG).

¹⁸⁸ § 15 Abs. 2 Flaggenrechtsgesetz (FIRG).

¹⁸⁹ Vgl. § 16 Flaggenrechtsgesetz (FIRG).

¹⁹⁰ § 16 Abs. 3 Flaggenrechtsgesetz (FIRG).

¹⁹¹ § 16 Abs. 1 Nr. 1, 4, § 4 Abs. 2, § 13 Abs. 2 S. 2 Flaggenrechtsgesetz (FIRG).

¹⁹² § 16 Abs. 1 Nr. 2 Flaggenrechtsgesetz (FIRG).

¹⁹³ Bundesministerium für Verkehr und digitale Infrastruktur, Flaggenstaat, verfügbar unter <https://www.deutsche-flagge.de/de/flagge/flaggenstaat> (12.03.2018).

Das **Bundesamt für Seeschifffahrt und Hydrographie** ist unter anderem für Belange des **Umweltschutzes und der Gefahrenabwehr** zuständig sowie für **die nautische und funktechnische Schiffsausrüstung**.¹⁹⁴ Es stellt ausserdem **Flaggenscheine und Befähigungsnachweise** für Seeleute aus.¹⁹⁵

Die **Berufsgenossenschaft Verkehr** ist für die **Hafenstaatkontrolle**¹⁹⁶ zuständig.¹⁹⁷ Diese hat nach der **Pariser Vereinbarung** über die Hafenstaatkontrolle¹⁹⁸ in den mittlerweile 27 teilnehmenden Staaten nach einheitlichen Vorgaben zu erfolgen.¹⁹⁹ Im Rahmen der Hafenstaatkontrolle überprüft die Berufsgenossenschaft auch die **seearbeitsrechtlichen Vorschriften** sowie die **Lebensbedingungen** der Besatzungsmitglieder.²⁰⁰ In Bezug auf das Seearbeitsgesetz ist der Reeder für das Einhalten der Rechte und Pflichten verantwortlich.²⁰¹ Reeder ist diesbezüglich der Eigentümer des Schiffes²⁰² oder diejenige Organisation oder Person, die vom Eigentümer des Schiffes die Verantwortung für den Betrieb des Schiffes übernommen hat.²⁰³ Wird bei einer Überprüfung festgestellt, dass diese Anforderungen nicht hinreichend erfüllt werden, kann die Berufsgenossenschaft das Auslaufen oder die Weiterfahrt des betroffenen Schiffes untersagen, bis die erforderlichen Massnahmen getroffen wurden oder bis der Verstoss beseitigt wurde.²⁰⁴

Daneben obliegt der Berufsgenossenschaft, neben den oben²⁰⁵ bereits erwähnten Aufgaben der **Schiffsbesetzung**²⁰⁶, die Aufsicht über **technische Schiffssicherheitsaspekte**²⁰⁷ und die **Überwachung über gesetzlich vorgeschriebene Versicherungs- und Haftungspapiere**. Hierbei kontrolliert die Berufsgenossenschaft, ob der Schiffseigentümer seiner Verpflichtung nachgekommen ist, die Versicherungsbescheinigungen²⁰⁸, Wrackbeseitigungshaftungsbescheinigung²⁰⁹ oder die Personenhaftungsbescheinigung²¹⁰ an Bord zu haben.²¹¹ Werden die Papiere nicht an Bord mitgeführt oder können diese auf Verlangen nicht vorgelegt werden, so kann das Schiff festgehalten werden, bis die jeweilige Bescheinigung vorgelegt ist.²¹² Die Pflicht zum Mitführen von Versicherungsbescheinigungen gilt auch für Versicherungsbescheinigungen nach dem Ölschadensgesetz.²¹³

¹⁹⁴ Vgl. § 5 Abs. 1 S. 2 Nr. 1 Seeaufgabengesetz (SeeAufgG).

¹⁹⁵ Bundesministerium für Verkehr und digitale Infrastruktur, Flaggenstaat, verfügbar unter <https://www.deutsche-flagge.de/de/flagge/flaggenstaat/bsh-1> (12.03.2018).

¹⁹⁶ Engl.: *Port State Control (PSC)*.

¹⁹⁷ § 12 Abs. 1 S. 1 Schiffssicherheitsverordnung (SchSV).

¹⁹⁸ *Paris Memorandum of Understanding on Port State Control (Paris MoU)*, verfügbar unter <https://www.parismou.org/> (05.03.2018).

Bundesministerium für Verkehr und digitale Infrastruktur, Hafenstaatkontrolle, verfügbar unter <https://www.deutsche-flagge.de/de/psc> (13.03.2018).

²⁰⁰ § 137 Abs. 1, § 138 Abs. 1, 3 Seearbeitsgesetz (SeeArbG).

²⁰¹ § 4 Abs. 2 S. 1 Seearbeitsgesetz (SeeArbG).

²⁰² § 4 Abs. 1 Nr. 1 Seearbeitsgesetz (SeeArbG).

²⁰³ § 4 Abs. 1 Nr. 2 Seearbeitsgesetz (SeeArbG).

²⁰⁴ § 143 Abs. 3 S. 1 Seearbeitsgesetz (SeeArbG).

²⁰⁵ Siehe hierzu unter Punkt 2.1.6. in diesem Gutachten zum deutschen Recht.

²⁰⁶ § 1 Nr. 6 *lit. b*) Seeaufgabengesetz (SeeAufgG).

²⁰⁷ §§ 6 Abs. 1 S. 1 in Verbindung mit § 1 Nr. 4 Seeaufgabengesetz (SeeAufgG).

²⁰⁸ §§ 3 Abs. 3, 2 Abs. 2 S. 1 Seeversicherungsnachweisgesetz (SeeVersNachwG).

²⁰⁹ § 5 Seeversicherungsnachweisgesetz (SeeVersNachwG).

²¹⁰ § 6 Seeversicherungsnachweisgesetz (SeeVersNachwG).

²¹¹ § 8 Abs. 3 S. 1 Seeversicherungsnachweisgesetz (SeeVersNachwG).

²¹² § 7 Abs. 1 Seeversicherungsnachweisgesetz (SeeVersNachwG).

²¹³ § 2 Abs. 1 Ölschadensgesetz (ÖISG).

Die Berufsgenossenschaft Verkehr untersteht der **Fachaufsicht des Bundesministeriums für Verkehr und digitale Infrastruktur**, welches sich mit dem Bundesministerium für Arbeit und Soziales abstimmt.²¹⁴ Die Fachaufsicht erfolgt in der Regel durch Weisungen oder in Form von Verwaltungsvorschriften.²¹⁵

Daneben kann sich die Berufsgenossenschaft auch sogenannter **Klassifikationsgesellschaften**, also **privater Unternehmen** bedienen, die im Schifffahrtsbereiche als **technische Gutachter** für die Sicherheit von Schiffen tätig werden.²¹⁶ Auf Schiffen unter deutscher Flagge haben die anerkannten Klassifikationsgesellschaften häufig die Aufgabe, Schiffe nicht nur im Inland, sondern vor allem auch im Ausland zu besichtigen und vorläufige Schiffssicherheitszeugnisse auszustellen.²¹⁷ Im Übrigen können sie aber auch in den Bereichen der **Schiffssicherheit und des Meeresumweltschutzes**, der **Gefahrenabwehr**, der **Funk- und Navigationsausrüstung** und des **Seearbeitsrechts** tätig sein.²¹⁸ Die Klassifikationsgesellschaften American Bureau of Shipping (**ABS**), Bureau Veritas (**BV**), **DNV GL**, Lloyd's Register of Shipping (**LR**) und Registro Italiano Navale (**RINA**) dürfen in allen vier genannten Bereichen für die deutsche Flagge tätig sein, Nippon Kaiji Kyokai (**Class NK**) in drei Bereichen (Schiffssicherheit und Umweltschutz, Gefahrenabwehr, Seearbeitsrecht), Korean Register (**KR**) in zwei Bereichen (Schiffssicherheit und Umweltschutz, Gefahrenabwehr) und Russian Maritime Register of Shipping (**RS**) ebenfalls in zwei Bereichen (Schiffssicherheit und Umweltschutz, Seearbeitsrecht).²¹⁹ Zusätzlich zu diesen Klassifikationsgesellschaften dürfen im Bereich der Funk- und Navigationsausrüstung noch andere Gesellschaften²²⁰ tätig werden.

2.3.2. Rekrutierungsdienstleister

Das Zulassungsverfahren für **private Arbeitsvermittlungsdienste** mit Sitz in Deutschland für Seeleute richtet sich nach dem Seearbeitsgesetz (SeeArbG). Dabei meint private Arbeitsvermittlung die

²¹⁴ § 6 Abs. 4 Seeaufgabengesetz (SeeAufgG).

²¹⁵ P. Ehlers, Seeaufgabengesetz, 1. Aufl., Baden-Baden 2017, § 6 SeeAufgG, Rn. 9.

²¹⁶ Vgl. § 6 Abs. 2 Seeaufgabengesetz (SeeAufgG), § 9 Abs. 2, 3 Schiffssicherheitsverordnung (SchSV) in Verbindung mit Anlage des Schiffssicherheitsgesetzes, Abschnitt D Nr. 7.

²¹⁷ Bundesministerium für Verkehr und digitale Infrastruktur, Klassifikationsgesellschaften, verfügbar unter <https://www.deutsche-flagge.de/de/flagge/flaggenstaat/klassifikationsgesellschaften> (13.03.2018).

²¹⁸ Bundesministerium für Verkehr und digitale Infrastruktur, Klassifikationsgesellschaften, verfügbar unter <https://www.deutsche-flagge.de/de/flagge/flaggenstaat/klassifikationsgesellschaften> (12.03.2018).

²¹⁹ Bundesministerium für Verkehr und digitale Infrastruktur, Übersicht: Welche Klasse darf was für die deutsche Flagge?, verfügbar unter <https://www.deutsche-flagge.de/de/flagge/flaggenstaat/klassifikationsgesellschaften#uebersicht> (05.03.2018).

²²⁰ Alphonat Marine Deutschland GmbH (Pinneberg), Cassens & Plath (Bremerhaven), COMPASS-Fichtner (Hamburg), Diedrichs Schiffstechnik (Bad Zwischenahn), Funkelektronik Dieter Pundsack GmbH (Bremerhaven), Funkservice Dieter Blömer (Cuxhaven), HANÖ Lübecker Ingenieurbüro (Lübeck), HANSE SURVEY (Emden), Ingenieurbüro Horn (Husum), Jentson Nachrichtentechnik (Oldenburg), LAMMERS Schiffelektronik GmbH (Leer), W. Ludolph GmbH & Co. KG (Bremerhaven), Mallorca Marine Surveyors S. L. U. (Mallorca/Spain), NavCom Inspection & Consultancy B.V. (Ijmuiden/Niederlande), NSSL Global GmbH (Barsbüttel), Pro Nautas B.V. GmbH (Leer), Radio Holland Germany GmbH (Hamburg), Raytheon Anschütz GmbH (Kiel), SAM ELECTRONICS GmbH (Hamburg), SEE-NAUTIC-Emden (Emden), Steger jr. Kiel (Kiel), Strela Nautik (Stralsund), Thitronik GmbH (Kiel), TREDE Schiffs- und Industrieelektronik (Hattstedt); Bundesministerium für Verkehr und digitale Infrastruktur, Prüfung von Navigations- und Funkausrüstung; Liste verfügbar unter <https://www.deutsche-flagge.de/de/bau-und-ausruestung/schiffsbesichtigungen/anerkannte-einrichtungen-zur-pruefung-von-navigations-und-funkausruestung> (05.03.2018).

gewerbsmässige Besetzung offener Stellenangebote durch Privatunternehmen.²²¹ Hierfür bedarf es einer Zulassungsbescheinigung der Dienststelle Schiffssicherheit. Sofern ein Vermittler ohne eine solche Bescheinigung tätig wird, droht ihm eine Geldbusse von bis zu 10'000 EUR.²²²

Reeder dürfen einen privaten Seeleute-Arbeitsvermittlungsdienst mit Sitz in Deutschland für die Vermittlung nur in Anspruch nehmen, wenn ihnen **vom Vermittler die schriftliche Bescheinigung der Berufsgenossenschaft Verkehrs vorgelegt** wurde, dass der Vermittler bestimmte Anforderungen erfüllt.²²³ Mit der Bescheinigung²²⁴ wird sichergestellt, dass die im Seearbeitsrechtsgesetz²²⁵ aufgeführten und einzuhaltenden Standards erfüllt werden. Insoweit ist bei der Vermittlung nicht nur der Arbeitsvermittler, sondern auch der Reeder für den Schutz der Seeleute verantwortlich.²²⁶

Sofern sich ein Reeder eines **ausländischen Vermittlungsdienstes** bedient, der seinen **Sitz in einem Staat** hat, der das Seearbeitsübereinkommen²²⁷ der Internationalen Arbeitsorganisation nicht ratifiziert hat, muss der ausländische Vermittler dem Reeder **schriftlich die Einhaltung der Vorschriften des Seearbeitsübereinkommens zur Arbeitsvermittlung versichern.**²²⁸

Ein Vermittler darf Personen, die an Bord eines Schiffes tätig werden sollen, nur vermitteln, wenn er bestimmte Anforderungen²²⁹ erfüllt. Es dürfen beispielsweise **keine Mittel, Verfahren oder Listen verwendet werden, die Seeleute an einer künftigen Tätigkeit an Bord eines Schiffes hindern.**²³⁰ Mit der Regelung sollen sogenannte **Schwarze Listen**²³¹ verhindert werden, die Vermittler in der Vergangenheit immer wieder über Seeleute geführt haben, die ihre Rechte einforderten oder den Kontakt mit Gewerkschaften gesucht haben.²³² Auch dürfen Arbeitsvermittler von Seeleuten **weder unmittelbar noch mittelbar eine Vergütung für die Vermittlung** verlangen.²³³

Im Rahmen von Hafenstaatkontrollen wird regelmässig überprüft, ob die in Anspruch genommenen Arbeitsvermittler eine **staatliche Zulassung** haben. Sofern eine solche **nicht vorhanden** ist, stellt dies einen Mangel dar, der zum **Festhalten eines Schiffes führen** kann. Eine Zulassungsbescheinigung des Vermittlers ist auch dann erforderlich, wenn es sich nicht um ein Schiff handelt, das unter deutscher Flagge fährt,

²²¹ K. Schreiber, Öffentliche Info-Mail auf der Website des Bundesministeriums für Verkehr und digitale Infrastruktur, verfügbar unter https://www.deutsche-flagge.de/de/redaktion/dokumente/dokumente-dienststelle/mlcinfomail_08_2013.pdf (12.03.2018).

²²² K. Schreiber, Öffentliche Info-Mail auf der Website des Bundesministeriums für Verkehr und digitale Infrastruktur, Pluspunkte der Deutschen Flagge, verfügbar unter https://www.deutsche-flagge.de/de/redaktion/dokumente/dokumente-dienststelle/mlcinfomail_08_2013.pdf (12.03.2018).

²²³ § 24 Abs. 1 Seearbeitsgesetz (SeeArbG).

²²⁴ § 26 Seearbeitsgesetz (SeeArbG).

²²⁵ § 25 Seearbeitsgesetz (SeeArbG).

²²⁶ C. Bubenzer *et al.*, Seearbeitsgesetz, 1. Online-Aufl., 2016, § 24, Rn. 4.

²²⁷ *Maritime Labour Convention*, verfügbar unter http://www.ilo.org/global/standards/maritime-labour-convention/text/WCMS_554767/lang--en/index.htm (05.03.2018).

²²⁸ C. Bubenzer *et al.*, Seearbeitsgesetz, 1. Online-Aufl., 2016, § 24, Rn.7.

²²⁹ Im Einzelnen: § 25 Abs. 1 Nr. 1 – 8 Seearbeitsgesetz (SeeArbG).

²³⁰ § 25 Abs. 1 Nr. 1 Seearbeitsgesetz (SeeArbG).

²³¹ Engl.: *black lists*

²³² C. Bubenzer *et al.*, Seearbeitsgesetz, 1. Online-Aufl., 2016, § 24, Rn.5.

²³³ § 25 Abs. 1 Nr. 2 Seearbeitsgesetz (SeeArbG).

solange der Arbeitsvermittler seinen Sitz in Deutschland hat. Ob der Arbeitsvermittler zugelassen ist, kann auf der Internetseite der Berufsgenossenschaft Verkehr eingesehen werden.²³⁴

2.4. Besteuerungsarten

Der deutsche Gesetzgeber trägt der **besonderen Wettbewerbssituation der Seeschifffahrt** mit steuerlichen Regelungen Rechnung. Insbesondere unterfällt die Seeschifffahrt dem steuerlichen Regime der **Tonnagesteuer**. Nach dem Einkommenssteuergesetz dürfen Gewerbebetriebe mit Geschäftsleitung im Inland auf Antrag die Gewinne aus dem Betrieb von Handelsschiffen im internationalen Verkehr pauschal nach der Tonnage der Schiffe ermitteln.²³⁵ Danach beträgt der im Wirtschaftsjahr erzielte Gewinn pro Tag des Betriebs für jedes im internationalen Verkehr betriebene Handelsschiff für jeweils volle 100 Nettotonnen (Nettoraumzahl)

- 0.92 EUR bei einer Tonnage bis zu 1'000 Nettotonnen,
- 0.69 EUR für die 1'000 Nettotonnen übersteigende Tonnage bis zu 10'000 Nettotonnen,
- 0.46 EUR für die 10'000 Nettotonnen übersteigende Tonnage bis zu 25'000 Nettotonnen,
- 0.23 Euro für die 25'000 Nettotonnen übersteigende Tonnage.²³⁶

2.5. Gebührenregelungen

Die **Gebührenverordnung für Amtshandlungen des Bundesamtes für Seeschifffahrt und Hydrographie**²³⁷ regelt Gebühren, die für individuell zurechenbare öffentliche Leistungen²³⁸ beim Bundesamt anfallen. Dies betrifft in erster Linie Leistungen auf Grundlage des **Seeaufgabengesetzes** sowie des **Flaggenrechtsgesetzes**.

Im Hinblick auf die in diesem Gutachten relevanten **Leistungen durch das Bundesamt für Seeschifffahrt und Hydrographie** enthält die genannte Verordnung unter anderem die folgenden **Gebühren**.²³⁹

Gebührentatbestand	Gebühr in EUR
Ausstellung von Flaggenscheinen und -zertifikaten	75
Ausstellung von Bescheinigungen für beauftragte Personen	60

²³⁴ K. Schreiber, Öffentliche Info-Mail auf der Website des Bundesministeriums für Verkehr und digitale Infrastruktur, verfügbar unter https://www.deutsche-flagge.de/de/redaktion/dokumente/dokumente-dienststelle/mlcinfomail_08_2013.pdf/view (09.03.2018).

²³⁵ F. Hofmeister, in B. Heuermann & P. Brandis (Hrsg.), Blümich – Einkommensteuergesetz Körperschaftssteuergesetz Gewerbesteuergesetz: Kommentar, 139. Aufl., München 2018, § 5a EStG, Rn. 1.
²³⁶ § 5a Einkommensteuergesetz.

²³⁷ Gebührenverordnung für Amtshandlungen des Bundesamtes für Seeschifffahrt und Hydrographie (BSHGebV), verfügbar unter <http://www.gesetze-im-internet.de/bshgebv/index.html> (05.03.2018).

²³⁸ Ehemals „Amtshandlungen“, vgl. Art. 2 Abs. 163, 173 Gesetz zur Strukturreform des Gebührenrechts des Bundes (GStrGebR).

²³⁹ Anlage (zu § 2 Abs. 1) Gebührenverordnung für Amtshandlungen des Bundesamtes für Seeschifffahrt und Hydrographie (BSHGebV).

Genehmigung zur Führung einer anderen Nationalflagge	
...bis einschliesslich 10'000 BRZ/BRT und für mehr als ein Jahr	1'665
...mehr als 10'000 BRZ/BRT und für mehr als ein Jahr	12'225
...bis einschliesslich 10'000 BRZ/BRT und für höchstens ein Jahr	925
...mehr als 10'000 BRZ/BRT und für höchstens ein Jahr	6'225
Änderung der Genehmigung zur Führung einer anderen Nationalflagge ohne gleichzeitige Eintragung in das Internationale Seeschiffregister	75
Eintragung in das Internationale Seeschiffregister	90

BRZ = Bruttoreaumzahl; BRT = Bruttoregistertonnen

Die **Kosten für die Eintragung eines Schiffes im Schiffsregister** hängen von der **Gebührenordnung des jeweiligen Amtsgerichtes** ab. Während beispielsweise das Amtsgericht Hamburg auf eine online anscheinend nicht zugängliche Kostenordnung verweist,²⁴⁰ nimmt das Amtsgericht Bremen auf das **Gerichts- und Notarkostengesetz** Bezug.²⁴¹ Darin sind die **Gebühren** wie folgt festgelegt:²⁴²

Gebührentatbestand	Gebühr in EUR oder Gebührensatz
Eintragung eines Schiffs	Einfach Gebühr gem. § 34 GNotKG, Tabelle B
Löschung der Eintragung eines Schiffs, dessen Anmeldung dem Eigentümer freisteht, auf Antrag des Eigentümers	50
Eintragung eines neuen Eigentümers	Einfach Gebühr gem. § 34 GNotKG, Tabelle B

Gemäss Tabelle B in § 34 des Gerichts- und Notarkostengesetzes beträgt die Gebühr grundsätzlich **15 EUR und erhöht sich je nach Geschäftswert**. Bei einem Geschäftswert bis zu 2'000 EUR erhöht sie sich beispielsweise um 4 EUR, bei einem Wert bis zu 500'000 EUR um 50 EUR, bei einem Wert über 30 Millionen EUR um 280 EUR.²⁴³

²⁴⁰ Justiz-Portal Hamburg, Schiffsregister, verfügbar unter <http://justiz.hamburg.de/amtsgerecht/1406674/schiffsregister/> (05.03.2018).

²⁴¹ Freie Hansestadt Bremen, Kosten für Schiffsregistereinträge, verfügbar unter <https://www.amtsgericht.bremen.de/abteilungen/registergericht/schiffsregister-2261#kosten> (05.03.2018).

²⁴² Anlage 1 (zu § 3 Abs. 2) Gerichts- und Notarkostengesetz (GNotKG), dort unter Teil 1: Gerichtsgebühren, Hauptabschnitt 4, Abschnitt 2, Unterabschnitt 1.

²⁴³ § 34 Abs. 2 Tabelle B Gerichts- und Notarkostengesetz (GNotKG).

C. HONG KONG

1. Introduction

‘Hong Kong flag’ registration is said to be different from closed registration, flag of convenience and what is known as the ‘second registry system’. The requirements on ownership, management and manning of ships to be registered in Hong Kong fall somewhere between the closed and open registry regimes. It has been described as a system not as strict as closed registration, but at the same time, maintaining a higher quality of management compared with open registration.²⁴⁴

1.1. Background on the role of shipping

With a sheltered natural harbour, Hong Kong is strategically located on the Far East trade routes, and at the geographical centre of the fast-developing Asia-Pacific Basin. The port of Hong Kong has long been central to the development and prosperity of Hong Kong itself.²⁴⁵

The port serves two main types of maritime transport: ocean-going vessels from all parts of the world, and river-trade vessels from the Pearl River. During 2016, nearly 380,000 vessels arrived in and departed from Hong Kong.²⁴⁶ In terms of tonnage of shipping using its facilities, cargo handled and the number of passengers carried, Hong Kong is one of the major ports of the world.²⁴⁷ In 2016, **Hong Kong handled nearly 20 million Twenty-foot Equivalent Units (“TEUs”) and almost 25 million passengers** passed through its terminals, providing ferry services to Macao and the Mainland ports. Its government’s fleet has more than 800 vessels serving 14 government departments, such as the Hong Kong Police Force, the Customs and Excise Department and the Fire Services Department.²⁴⁸

Hong Kong does not have a port authority, but the **Marine Department** of the Government of the Hong Kong Special Administrative Region is responsible for the day-to-day administration of the port.²⁴⁹

1.2. Background on ship registration

The Hong Kong Shipping Register (the “Register”) is an autonomous register. Promotional material issued by the Hong Kong Maritime and Port Board, an agency of the Hong Kong Special Administrative Region (“HKSAR”) Government with responsibility for supporting and promoting Hong Kong’s maritime

²⁴⁴ Zhang Liying, *A Comparative Study of ‘Hong Kong Flag’ Ship Registration*, Asia Pacific Law Review, 2010, Vol. 18, no. 2, pp. 197-211 at p. 199.

²⁴⁵ The Government of the Hong Kong Special Administrative Region web pages, *Hong Kong: The Facts – The Port*, April 2017, available at <https://www.gov.hk/en/about/abouthk/factsheets/docs/port.pdf> (25.01.2018).

²⁴⁶ *Ibid.*

²⁴⁷ The Government of the Hong Kong Special Administrative Region – Marine Department, *The Port and Harbour*, last revision date: 27 March 2017, available at <http://www.mardep.gov.hk/en/aboutus/port.html> (25.01.2018).

²⁴⁸ The Government of the Hong Kong Special Administrative Region web pages, *Hong Kong: The Facts – The Port*, *op. cit.*

²⁴⁹ The Government of the Hong Kong Special Administrative Region – Marine Department, *The Port and Harbour*, *op. cit.*

community, states that the Register is ranked the fourth largest in the world in the World Fleet ranking, with 2,544 vessels as at the end of September 2017.²⁵⁰ It claims that the Register provides one-stop registration services round the clock, with simple registration procedures capable of being completed within two hours. Other claimed benefits, discussed in more detail in the sections of this country report below, include:

- An efficient and effective Flag State Quality Control regime²⁵¹ with Port State Control detention rates of only 0.81% in 2016 (compared to the global average of 3.13%);
- A “quality ship incentive scheme”, according to which a ship with a clean Port State Control detention record for two consecutive years will benefit from a 50% reduction of annual tonnage charges for the third year;
- A “Qualship 21 Status” with the US Coast Guard, meaning Hong Kong flag ships are less likely to be targeted for port state control inspections in the US;
- Other advantages including: a concessionary tonnage charge for provisional registration set at 1/12th of the annual tonnage charge, no miscellaneous fees for issuance of a marking note, reservation of ship name before registration;
- Hong-Kong-registered ships enjoy preferential port dues at ports in mainland China with an almost 30% reduction in tariffs;
- Hong-Kong-registered ships also enjoy Chinese consular assistance around the world.²⁵²

As a prominent trading port in the Far East, Hong Kong has a long history of ship registration, dating back to the earliest years of its existence as a colony of the British Empire. Until the 1990s, ships were registered on the United Kingdom Ship Register under the British system and the statutory provisions regarding registry were contained in the UK Merchant Shipping Acts.

Preparation of the Hong Kong Register started once its general principles had been confirmed by the Sino-British Joint Liaison Group in 1986. The Sino-British Joint Declaration (setting out the terms on which China would resume exercise of its sovereignty over Hong Kong from 1st July 1997) provided for the continuance of a shipping registry, to be administered by the HKSAR Government. A new register, established in December 1990, ensured that ships on the existing Colonial Register could continue their operations under the HKSAR Government. Between 1990 and 1997, Hong-Kong-registered ships were considered as British ships until the 1997 handover.

The autonomy of the Hong Kong Shipping Register is enshrined in the *Basic Law*,²⁵³ the constitutional document of the HKSAR delineating the rights and obligations of the residents of Hong Kong. It provides the constitutional rights and legal basis for Hong Kong to continue to maintain a shipping register and to issue related certificates under its own legislation under the name, “Hong Kong, China”.²⁵⁴ Legislative enactments in Hong Kong are known as ordinances. The *Merchant Shipping (Registration) Ordinance* (the

²⁵⁰ Hong Kong Maritime and Port Board, *Hong Kong Maritime and Port Industry 2017-2018*, available at https://www.hkmpb.gov.hk/docs/P_201711.pdf (02.02.2018), p. 5.

²⁵¹ See section 2.3.1. of this country report, below.

²⁵² Hong Kong Maritime and Port Board, *Hong Kong Maritime and Port Industry 2017-2018*, *op. cit.*, p. 5.

²⁵³ *The Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China*, available at http://www.basiclaw.gov.hk/en/basiclawtext/images/basiclaw_full_text_en.pdf (25.01.2018).

²⁵⁴ *Ibid*, Articles 124 and 125.

“Ordinance”),²⁵⁵ which also came into effect on 3rd December 1990, governs vessel registration. This is accompanied by three sets of subsidiary legislation in the form of Regulations: the *Merchant Shipping (Registration)(Fees and Charges) Regulations*,²⁵⁶ the *Merchant Shipping (Registration)(Ships’ Names) Regulations*²⁵⁷ and the *Merchant Shipping (Registration)(Tonnage) Regulations*.²⁵⁸

The **Marine Department of the HKSAR Government** has run the Register since 1990.²⁵⁹ It is separate from the Chinese Register but ships listed on the Register established by the Ordinance are to fly the flag of the People’s Republic of China above the flag of the HKSAR except when calling at a port in Taiwan.

In order to address concerns about falling Gross Registered Tonnage (“GRT”) of vessels on the Register, the Marine Department re-engineered the Hong Kong Shipping Register in 1999, in consultation with the local shipping industry.²⁶⁰ Revisions included the reduction of fees, the streamlining of procedures for ship registration, seafarers’ licensing and employment, and an easing of rules on the discharge of seafarers. A flag-state quality control system was also introduced to ensure safety standards and compliance with international conventions by all Hong Kong registered ships.²⁶¹

The *Hong Kong Shipping Register User’s Handbook* (the “Handbook”),²⁶² setting out in one document the ship registration procedures and requirements of Hong-Kong-registered ships, was also issued by the Marine Department at this time. This is described as having been updated “several times” in order to reflect latest changes, including the latest Annual Tonnage Charges (“ATC”).²⁶³ The latest edition dates from 2006.

1.3. Current discussions around registration requirements

There are no known current discussions around registration requirements.

²⁵⁵ *Merchant Shipping (Registration) Ordinance*, Cap. 415, 3rd December 1990, available at <https://www.elegislation.gov.hk/hk/cap415!en> (25.01.2018).

²⁵⁶ *Merchant Shipping (Registration)(Fees and Charges) Regulations*, Cap. 415, 3rd December 1990, available at <https://www.elegislation.gov.hk/hk/cap415A> (30.01.2018).

²⁵⁷ *Merchant Shipping (Registration)(Ships’ Names) Regulations*, Cap. 415, 3rd December 1990, available at <https://www.elegislation.gov.hk/hk/cap415B> (30.01.2018).

²⁵⁸ *Merchant Shipping (Registration)(Tonnage) Regulations*, available at <https://www.elegislation.gov.hk/hk/cap415C> (30.01.2018).

²⁵⁹ Marine Department website, available at <http://www.mardep.gov.hk/en/home.html> (25.01.2018).

²⁶⁰ This was designed to make it more competitive and user-friendly. As a result, the number of ocean-going ships on the Register rose from 174 in 1999 to 547 in 2003. GRT had risen by more than 15.6 times by September 2015.

²⁶¹ See section 2.3. of this country report, below.

²⁶² Marine Department website, *Hong Kong Shipping Register User’s Handbook*, 2006 edition, available at http://www.mardep.gov.hk/en/pub_services/handbook.html (25.01.2018).

²⁶³ See *ibid*, Preamble.

2. Questions

2.1. Conditions on registration

A number of requirements apply in order for a ship to be registrable in Hong Kong. First, insofar as ownership is concerned, one or more “qualified persons” must own a majority interest in the ship, or, alternatively, the ship must be operated by a “qualified person” under a demise charter (a bareboat charter).²⁶⁴ A “qualified person” is:

- an individual who is a resident of Hong Kong and holds a valid Hong Kong identity card;
- a company incorporated in Hong Kong;
- a company incorporated outside Hong Kong, but which has an established place of business in Hong Kong and has registered under the Companies Ordinance in Hong Kong as “a non-Hong Kong company” with a place of business in Hong Kong.²⁶⁵

Secondly, the ship must not have been registered elsewhere.²⁶⁶

Thirdly, a representative person must be appointed in relation to the ship.²⁶⁷ Such person may be the owner or part owner of the ship, provided such person is a qualified person, or they may alternatively be a ship manager or the ship’s agent (incorporated in Hong Kong) who has previously been approved by the Registrar to act in this capacity. This person will represent the owner in its dealings with the Registrar.

Fourthly, the vessel must not fall into the category of excluded vessels. These are:

- (i) a non self-propelled barge carrying petroleum products or dangerous goods or any substance which falls within the purview of the International Convention of Pollution from ships (Annexes I, II or III);
- (ii) an accommodation barge;
- (iii) a fishing vessel;
- (iv) a ship engaged in processing living resources of the sea, including whale and fish factories and aqua farming vessels;
- (v) specialised ships engaged in research, expeditions or surveys;
- (vi) non-convention ships serving exclusively within the domestic waters of a country (other than Hong Kong and Mainland waters) and not proceeding to sea;
- (vii) a ship propelled by nuclear energy;
- (viii) a mobile offshore drilling unit.²⁶⁸

²⁶⁴ The Handbook, para. 1.5. A “demise charter” or “bareboat charter” refers to an arrangement for the chartering or hiring of a ship or boat in circumstances where no crew or technical maintenance is included as part of the agreement; the person who rents the vessel instead takes legal and financial responsibility for it.

²⁶⁵ The Handbook, para. 1.6.

²⁶⁶ The Handbook, para. 1.5.

²⁶⁷ The Handbook, paras. 1.5. and 1.7.

²⁶⁸ The Handbook, para. 1.5.

For the purposes of the Ordinance, a “ship” includes all vessels capable of being navigated in water (including any ship, boat or craft and an air-cushion vehicle), other than ships propelled by oars.²⁶⁹ Registration may be full, provisional or demise²⁷⁰ charter registration. No differentiation is made for registration procedures according to the type of ship, although differing quality and safety standards may be applicable.²⁷¹

A Pre-Registration Quality Control System (“PRQC”), applied since 2004, requires applicants for Hong Kong registration to meet all safety and pollution prevention standards promulgated by the International Maritime Organisation (“IMO”) at the time of entry. The Marine Department assesses the ship’s condition upon receiving an application for registration to see if it warrants a PRQC inspection.²⁷² All critical deficiencies detected during the inspection must be rectified before a certificate of registration can be issued. Where the condition of the ship is unacceptable, registration would be refused under the power vested in the Director of Marine, as stipulated in the Ordinance.²⁷³

Particulars of the ship, including the name, are recorded in the Register. The name by which it is proposed to register a ship must be approved by the Registrar before registration. It must have a name in English alphabetic characters or, alternatively, may have a name in English and Chinese.²⁷⁴

A registration fee and an annual tonnage fee apply to ships on the Register.²⁷⁵

2.2. Requirements for revocation of flag/licence

The Registrar has the power to end the registration of any ship (known as “closing” the registration) for various reasons, including the non-payment of fees, the failure of the owner or the representative person to comply with the requirements of the Ordinance or if it appears to the Registrar that the ship may have ceased to be registrable.²⁷⁶

Where the registration of a ship is to be closed mandatorily after having received a notice concerning the registrability of the ship, the Registrar is required to give 30 days’ notice to the registered mortgagees (if there are any), and also to the owner of the ship (where the registrability notice was not received from the owner) before closing the registration of the ship.²⁷⁷

Where the registration of a ship is to be closed due to a failure to pay fees or charges, the Registrar may, 30 days after having issued a notice specifying the fees or charges which remain unpaid. The Registrar may then close the ship’s registration unless the fee or charge has been paid, or he is satisfied by any representations made that it would be inappropriate to close the ship’s registration.²⁷⁸

²⁶⁹ The Ordinance, section 2.

²⁷⁰ “Demise charter” refers to an arrangement for the chartering or hiring of a ship or boat where no crew or provisions are included as part of the arrangement, and the hirers of the vessel are instead responsible.

²⁷¹ See section 2.3. of this country report, below.

²⁷² See Handbook, section 8.2.

²⁷³ The Ordinance, section 22(4). See Marine Department, *Quality Assurance Systems*, last revision date: 27th July 2016, available at http://www.mardep.gov.hk/en/pub_services/qas.html (02.02.2018).

²⁷⁴ The Handbook, para. 1.13.

²⁷⁵ See section 2.5. of this country report, below.

²⁷⁶ See part VII of the Ordinance and section 7 of the Handbook.

²⁷⁷ Ordinance, section 60.

²⁷⁸ Ordinance, section 62.

The Registrar also has general powers to close registration of a ship for reasons of safety, risk of pollution, or on grounds of protecting health or welfare.²⁷⁹ In these circumstances, the Registrar must give 90 days' notice, stating that he intends to close registration of the ship unless he is satisfied that it would be inappropriate to do so following any representations made.²⁸⁰

2.3. Supervisory obligations

2.3.1. Ship safety

Since 1999, Hong Kong has operated a Flag State Quality Control ("FSQC") system to monitor and maintain the quality of ships on the Register. This replaced the previous initial registration inspections and five yearly safety equipment surveys carried out by surveyors from the Marine Department. The FSQC system consists of the following:

- Quality assessment;
- Quality assurance inspections;
- Monitoring the performance of organisations ("Recognised Organisations") formally recognised to undertake surveys and certification work.²⁸¹

With regard to quality assessments, the quality of every Hong Kong registered cargo ship is assessed twice a year by a computerised FSQC management information system which takes into account a variety of factors, including age, ship type, accident and incident records and the performance of the management company. Ships for which quality is considered doubtful, less satisfactory or showing signs of deterioration are short-listed for a FSQC inspection.²⁸²

Quality assurance inspections (or, FSQC inspections) verify the condition of shortlisted ships to identify the underlying causes of their deterioration in standards. In general, all FSQC inspections and company audits are free of charge initially, but the company will be charged on subsequent occasions if the condition of the ship warrants a re-inspection.

Almost all certification duties have been delegated to nine classification societies recognised by the Marine Department.²⁸³ These "Recognised Organisations" are authorised to carry out surveys and certification for Hong Kong registered cargo ships. The Marine Department reports that it continuously monitors the

²⁷⁹ Ordinance, section 22(3) refers to a refusal to register a ship if the Director of the Marine Department is satisfied that, having regard "*(a) to the condition of the ship so far as relevant to its safety or to any risk of pollution; or (b) to the safety, health and welfare of person employed or engaged in any capacity on board the ship,*" it would be inappropriate for the ship to be registered. Section 22(4) provides other reasons for it to be deemed inappropriate to register a ship, namely, "*the use nature, condition of that ship or that class or type of ship; and to the difficulty of providing adequate supervision and control of that ship or that class or type of ship in Hong Kong.*"

²⁸⁰ Ordinance, section 64.

²⁸¹ Handbook, section 8.1.

²⁸² Marine Department, *Quality Assurance Systems*, *op. cit.*

²⁸³ These are: American Bureau of Shipping, Bureau Veritas, China Classification Society, Det Norske Veritas, Germanischer Lloyd, Korean Register of Shipping, Lloyd's Register, Nippon Kaiji Kyokai, Registro Italiano Navale, Russian Maritime Register of Shipping.

performance of Recognised Organisations through careful vetting of all survey and audit reports. Their performance is published annually on the Marine Department website.²⁸⁴

For passenger ships, all surveys and certification is undertaken by the Passenger Ship Safety Section of the Marine Department.²⁸⁵

2.3.2. Safety equipment and marine pollution

Hong Kong is an Associate Member of the International Maritime Organisation (“IMO”) and has accepted various international conventions relating to safety and protection of the marine environment.²⁸⁶ These conventions are implemented in Hong Kong through regulations made under the *Hong Kong Merchant Shipping (Safety) Ordinance*²⁸⁷ and the *Merchant Shipping (Prevention and Control of Pollution) Ordinance*.²⁸⁸ These conform to standards required by international conventions, and ships complying with the conventions will therefore be deemed to have met Hong Kong standards.

Although the Hong Kong regulations prescribe performance standards and specifications for material and equipment used on board Hong Kong ships, the Marine Department accepts material and equipment complying with the test procedures, standards and performance specifications published by the IMO. Such material and equipment manufactured in a convention country to IMO performance specifications which have been approved and/or certified by the respective maritime authorities for use on its registered ships are also acceptable for Hong Kong ships.²⁸⁹

2.3.3. Safe manning and certification

Hong Kong ships are required to comply fully with the requirements of International Labour Organisation (“ILO”) Conventions ratified by Hong Kong with respect to the health and welfare of the crew.²⁹⁰

The *Merchant Shipping (Seafarers) Ordinance* and its thirty-one sets of subsidiary regulations govern the employment, registration, health and safety, discipline and qualification of seafarers on Hong Kong ships.²⁹¹ These provide rules in respect of minimum wages, vacation, social security and insurance etc., and serve to implement and give effect to the provisions of relevant international conventions.

There are no nationality or residence requirements for officers or crew employed on Hong Kong ships. Crew size depends on the size and type of ship, and is set out in the Minimum Safe Manning Certificate required by the *International Convention for the Safety of Life at Sea* (the “SOLAS” Convention).²⁹² Officers

²⁸⁴ *Ibid.*

²⁸⁵ Handbook, section 8.4.

²⁸⁶ See Watson, Farley & Williams, *Hong Kong Maritime Briefing*, July 2014, available at <http://www.wfw.com/wp-content/uploads/2014/09/WFW-HongKong-Maritime-GuideToTheShippingRegister.pdf> (01.02.2018), p. 6.

²⁸⁷ *Hong Kong Merchant Shipping (Safety) Ordinance*, L.N. 366 of 1981, Cap. 369, available at <https://www.elegislation.gov.hk/hk/cap369!en> (01.02.2018).

²⁸⁸ *Merchant Shipping (Prevention and Control of Pollution) Ordinance*, L.N. 14 of 1991, Cap. 413, available at https://www.elegislation.gov.hk/hk/cap413@2014-03-03T00:00:00?INDEX_CS=N (01.02.2018).

²⁸⁹ Watson, Farley & Williams, *Hong Kong Maritime Briefing*, *op. cit.*, p. 7.

²⁹⁰ Handbook, section 8.3.

²⁹¹ Dean Young, *Hong Kong – Part II. Flag and Registration of Vessels and Mortgages of Vessels*, Mayer Brown JSM, Updated to September 2015 in Dr. Christian Breitzke, Jonathan Lux, Philomene Verlaan (eds.), *Maritime Law Handbook*, Kluwer Law Online, para 8.2.

²⁹² Handbook, section 9.1.

as listed in the Minimum Safe Manning Certificate are required to hold respective classes of certificates of competency issued by other maritime authorities in accordance with 1995 revision of the *Convention on Standards of Training, Certification and Watchkeeping for Seafarers* ("STCW 95" Convention).

The Mercantile Marine Office²⁹³ registers local seafarers, regulates their employment, and terms and conditions, on board ships of all flags and supervises the employment and discharge of seafarers on Hong Kong ships.²⁹⁴

2.4. Taxes

An annual fee is levied on Hong-Kong registered ships, based on net tonnage (see table and section 2.5. below), up to a maximum fee of HK\$ 77,500 (approximately CHF 9,340).

Annual Tonnage Fee (Based on NT)	
Net Tonnage of Ship	Annual Tonnage Fee (HK\$)
1,000 or below	1,500
5,000	15,500
10,000	33,000
15,000	50,500
20,000	65,500
24,000 and upwards	77,500

Income derived from the international operation of Hong-Kong-registered ships is exempt from profits tax in Hong Kong. Moreover, the HKSAR has entered into bilateral double taxation relief agreements with over 40 countries.²⁹⁵

It may also be noted that Hong Kong-registered ships are deemed by Chinese authorities to have been registered overseas and so, like other foreign shipping companies, are exempt from the business taxes which apply to ships registered on the Chinese Mainland.²⁹⁶

²⁹³ See Marine Department, *Mercantile Marine Office supporting services*, available at http://www.mardep.gov.hk/en/pub_services/mmo.html (20.02.2018).

²⁹⁴ Marine Department, *Hong Kong: The Facts – The Port*, April 2017, available at http://www.mardep.gov.hk/en/aboutus/pdf/thefacts_e.pdf (02.02.2018).

²⁹⁵ Hong Kong Marine Department, *Merchant Shipping Information Note - Double Taxation*, 11/2015, 24th February 2015, available at <http://www.mardep.gov.hk/en/msnote/pdf/msin1511.pdf> (02.02.2018)

²⁹⁶ See Zhang Liying, *A Comparative Study of 'Hong Kong Flag' Ship Registration*, Asia Pacific Law Review, *op. cit.*, p.201.

2.5. Fee system

The fee system is established pursuant to section 90 of the Ordinance, in accordance with the *Merchant Shipping (Registration) (Fees and Charges) Regulations*.²⁹⁷

The registration fee for a ship is determined in accordance with its gross tonnage. An annual tonnage fee is levied according to net tonnage.²⁹⁸ A fee schedule is set out in Appendix 1 to the Handbook.²⁹⁹ Other miscellaneous fees (such as for the provisional registration of a ship) are set out in Appendix 2 of the Handbook.³⁰⁰

A fee also applies to the issue of a Hong Kong licence or temporary licence for officers on Hong Kong registered ships.³⁰¹ This, too, is set out in Appendix 1 to the Handbook.

Certain inspections and passenger ship surveys by a government surveyor are also subject to a fee. These charges are set out in subsidiary legislation, known as the *Merchant Shipping (Registration) (Fees and Charges) Regulations*.³⁰²

2.6. Other charges

Finally, it may be noted that Hong Kong-registered ships also enjoy preferential port dues in Chinese ports, with an almost 30% reduction in tariffs.³⁰³

It is reported that under Regulations of the People's Republic of China on Import and Export Duties, imported ships under the Mainland or 'Five-star flag' registration will be levied 27.53% import duties and value-added tax of the ship's price. However, Hong Kong-registered ships do not bear these high tax rates.

²⁹⁷ *Merchant Shipping (Registration) (Fees and Charges) Regulations, op. cit.*

²⁹⁸ The Handbook, section 11.1. See section 2.4. of this country report, above.

²⁹⁹ The Handbook, *Appendix 1 – Registry Fees*, last updated 10th June 2016, available at https://www.mardep.gov.hk/en/pub_services/app1.html (05.03.2018).

³⁰⁰ The Handbook, *Appendix 2 – Miscellaneous Registry Fees*, last updated 10th June 2016, available at https://www.mardep.gov.hk/en/pub_services/app2.html (05.03.2018).

³⁰¹ The Handbook, section 11.2.

³⁰² The Handbook, section 11.3. *Merchant Shipping (Registration)(Fees and Charges) Regulations, op. cit.*

³⁰³ Hong Kong Maritime and Port Board, *Hong Kong Maritime and Port Industry 2017-2018, op. cit.*, p. 5.

D. LIBERIA

1. Introduction

Although much has been written about Liberia and the international shipping industry, most of the accessible literature is either formulated in journalistic terms or as publicity directed to potential clients. The relatively few normative details to be found in the literature are extremely difficult to verify, as access to the sources of Liberian law (and to general information directly from Liberia) is quite limited. At the same time, it is particularly important to understand the legal, administrative, economic and political context of “the Liberian Registry”, which has a relatively long and particularly complex history.

1.1. Background on role of shipping in local economy

Although Liberia’s international shipping registry is the world’s second or third largest, in terms of gross tonnage of registered vessels,³⁰⁴ shipping activities (beyond registration) play a very small role in the Liberian economy. Monrovia is the “home port” of every Liberian-registered vessel,³⁰⁵ but inspections and other official port services are in fact available to Liberian-registered ships at some 20 major port cities around the globe,³⁰⁶ so there is no need for them to visit Monrovia. During the civil wars which largely destroyed Liberia in the quarter century before 2004, such visits were indeed strongly inadvisable.³⁰⁷ It was hoped that the international maritime industry would at least constitute a major source of employment for Liberian workers, but the relevant Liberian training facility could not operate during the civil wars and has only recently recommenced operations, currently limited to training the lowest level of maritime personnel.³⁰⁸

On the other hand, Liberia’s international shipping registry has played an extremely important role in Liberian politics since 1948, because payments received from the registry’s operator constitute a substantial part of total government revenue. Registry revenue of US\$ 16.5 million constituted 13.2% of total revenue in 1975 and in 1981, the all-time record, US\$ 20.1 million constituted 9% of total revenue.³⁰⁹ During the years of civil war, those payments apparently constituted up to 90% of the revenue officially collected by the various governments installed in Monrovia,³¹⁰ which were according dependent upon the

³⁰⁴ Refer to “Liberia International Shipping Registry Remains Second Largest”, article dated 27 March 2017 and freely accessible on the website of *Front Page Africa*: <https://www.frontpageafricaonline.com/index.php/business/3706-liberia-international-shipping-registry-remains-second-largest> (last consulted on 28.02.2018).

³⁰⁵ By virtue of § 50 of the Maritime Law.

³⁰⁶ Refer to the “About”-page on the LISCR website: <http://www.liscr.com/about-liberian-registry> (last consulted on 22.02.2018).

³⁰⁷ Refer below, to point 5.1.2.5. of the present study.

³⁰⁸ Refer below, to point 5.1.2.7. of the present study. According to statements recently made in the Liberian Legislature, the number of Liberians employed in the maritime industry actually dropped between 2012 and 2018; refer to A.O. Jallah, “Liberia: House to Probe Maritime Authority”, article published on the AllAfrica website on 15 February 2018 and freely accessible at <http://allafrica.com/stories/201802150856.html> (last consulted on 05.03.2018).

³⁰⁹ Refer to H.D. Nelson (ed), *Liberia: a country study*, 3rd ed, Washington, D.C: United States Government, Department of the Army, 1984, p. 188.

³¹⁰ G. Turner *et al*, “Liberia : America’s outpost of financial secrecy”, freely accessible in electronic form on the website of Finance Uncovered: <http://www.financeuncovered.org/investigations/liberia-americas->

registry. According to published national budget documentation³¹¹ for fiscal year 2016/2017, the maritime registry contributed some US\$ 10 million³¹² (an increase of about US\$ 1.5 million over the previous fiscal year) to total government revenue of US\$ 466 million, equivalent to a little more than 2% of the total. It should be noted that these figures certainly include not only revenue derived from the registration of ships, but also revenue derived from the registration of the companies and other legal entities which own those ships.³¹³

A former Auditor-General of Liberia has been quoted³¹⁴ as saying that the contribution to government revenue does not justify the reputational risk associated with the fact that the Liberian Registry is effectively an important tool for the global offshore finance and investment industry. Political demands have nevertheless been made in recent years for the Liberian Legislature to press the registry's operator to pay a larger proportion of total registry revenue to the Liberian government.³¹⁵

1.2. Background on ship registration (who is responsible; where are the laws/ordinances found; how often are they adjusted)

1.2.1. Political and Commercial Origins of the Liberian Registry

Like the Marshall Islands, Liberia has strong connections to the United States of America. Liberia was indeed originally founded upon colonies³¹⁶ established by US-Americans, with the aim of providing an infrastructure within which former slaves, who had been freed in the USA, could "return to Africa". Particularly social and economic relations with the USA remained strong more than a century after the country attained independence in 1847. Thus, in the early 1980s, the Firestone Plantations Company (a subsidiary of the Firestone Tire and Rubber Company of Akron, Ohio) was still the largest single enterprise

outpost-financial-secrecy/ (last consulted on 05.03.2018), citing Benoni Urey, who had been Liberia's Commissioner of Maritime Affairs during the presidency of Charles Taylor.

³¹¹ Ministry of Finance and Development Planning, The Republic of Liberia, National Budget Fiscal Year 2017-2018, Monrovia, 2017, in particular the "Summary of FY 2017/18 Resource Envelop" on p. xix, as well as Ministry of Finance and Development Planning, *State Owned Enterprises Annex to FY2016/2017 National Budget*, Monrovia, 2016, p. 11, both freely accessible on the website of the Ministry: <https://www.mfdp.gov.lr/index.php/the-budget> (last consulted on 22.02.2018).

³¹² The Liberia Maritime Authority received about US\$ 19 million, presumably almost entirely from the LISCR (refer below, to point 5.1.2.7. of the present study), but spent some US\$ 8 million to cover its operating expenses and to construct a headquarters.

³¹³ Refer below, to point 5.1.2.4. of the present study.

³¹⁴ John Morlu, quoted in Turner, "Liberia : America's outpost of financial secrecy", *idem*.

³¹⁵ Refer to O. Johnson, "Liberia: Maritime Boss - Liberia's Revenue Generation Will Drop Significantly If ...", article published on the AllAfrica website on 23 March 2015 and accessible to subscribers only at <http://allafrica.com/stories/201503231026.html> (last consulted on 05.03.2018) and compare below, point 5.1.2.6. of the present study.

³¹⁶ These were "colonies" in the original sense of settlements established by foreign immigrants. They were never owned by the USA. As a matter of domestic law, they were controlled by the American Colonization Society and several associations established pursuant to charters issued by the legislatures of individual US-States. Following the example of the USA itself, Liberia subsequently became an independent State through a declaration of the independence of a federation of these colonies. As a matter of public international law, the colonies were clearly protected by the USA, which prevented France and the United Kingdom, the neighbouring colonial powers, from seizing the territory.

operating in Liberia.³¹⁷ US Dollar notes constituted the legal currency of Liberia until the middle of the 1980s.³¹⁸

Until after the First World War, the ship registry of each country registered only vessels owned by nationals of that State. The concept of an “open registry”, in which foreign ship owners could register their ships to sail under the registering country’s “flag of convenience”, was pioneered by Panama in legislation enacted in 1925. It reportedly resulted from a combination of two main factors. First, Panama had a political claim to derive benefits from the international shipping industry, which until then had only burdened Panama, in the form of the Panama Canal Zone placed under US sovereignty. Secondly, the major shipping enterprises owned by US investors wished to avoid US regulation of their ships, which involved relatively high operating costs resulting from the unionisation of shipping works in the USA. In a similar vein, Honduras inaugurated an open registry in 1928, at the instigation of the United Fruit Company, which shipped bananas to the USA and underpinned an important part of the Honduran economy.³¹⁹

In the first year of the Second World War, the United States federal government encouraged the reregistration in Panama of a considerable number of US-owned freighters. The government strongly supported the United Kingdom in its war against Germany, but wished to maintain formal neutrality in that war. The government therefore wished war supplies to be shipped to the United Kingdom in vessels which did not fly the flag of the USA.³²⁰

Liberia’s international maritime registry was established shortly after the end of the Second World War with the aim of offering an “open registry” which belonged to a country other than the USA, but was effectively controlled by the USA. The argument that vessels registered in Liberia are effectively “American controlled” was employed by ship-owners in later years when they successfully resisted efforts to enact US federal legislation which would have required oil imported into the USA to be carried on ships registered in the US registry. The argument was more specifically that, in the event of war, Liberian registered ships owned by US-American enterprises can be quickly recalled to service supporting the American war effort.³²¹

³¹⁷ Refer to Nelson, *Liberia: a country study*, *op. cit.*, especially chapters 1 and 3.

³¹⁸ Refer to J. Kifner, “Liberia: A Phantom Maritime Power Whose Fleet Is Steered By Big Business”, article originally published in *The New York Times* of 14.02.1977, p. 14 and available in electronic form on the website of The New York Times Company <http://www.nytimes.com/1977/02/14/archives/liberia-a-phantom-maritime-power-whose-fleet-is-steered-by-big.html> (last consulted on 27.02.2018). For a large part of the first half of the twentieth century, however, Liberia used the British West African Pound.

³¹⁹ Refer to: Kifner, “Liberia: A Phantom Maritime Power Whose Fleet Is Steered By Big Business”, *ibid*; J. Shaw, “Flag of Convenience – or Flag of Necessity?”, article published on 01.09.2016 in electronic form on the website of the *Pacific Maritime Magazine* and freely accessible on the internet at <http://www.pacmar.com/story/2016/09/01/features/flag-of-convenience-or-flag-of-necessity/455.html> (last consulted on 26.02.2018).

³²⁰ *Idem*.

³²¹ Refer to: Kifner, “Liberia: A Phantom Maritime Power Whose Fleet Is Steered By Big Business”, *op. cit*; K. Sharife, “Liberia, flags of convenience and corporate capitalism”, article published in electronic form on the website of *Pambazuka News* and freely accessible on the internet at <https://www.pambazuka.org/global-south/liberia-flags-convenience-and-corporate-capitalism> (last consulted on 27.02.2018). The latter author cites the New York attorney who was principally responsible for drafting the Liberian Maritime Code of 1948 as saying that US ship-owners had become “fed up to the backteeth” with continually expanding demands made by Panama, where most of their ships were registered.

Edward R. Stettinius Jr. was US Secretary of State at the end of the Second World War and US ambassador to the United Nations in the first half of 1946. On his way from the Yalta Conference back to the USA, he reportedly visited Liberia, formed a personal friendship with then Liberian President William Tubman and became convinced that Liberia could continue to serve as a bulwark against the expansion of communism in Africa. After his resignation from the State Department in 1946, he associated with a group of mining and shipping entrepreneurs to plan the establishment of a Liberian international shipping registry, *inter alia* in order to provide an ongoing source of funding to the Liberian government, which did not take the form of US federal government spending. This group formed a Delaware corporation named Stettinius Associates – Liberia, Inc.³²²

In 1948, Stettinius Associates – Liberia, Inc. mandated two New York attorneys to draft a maritime law and a company law for Liberia, as well as a charter for the International Trust Company of Liberia. The draft maritime law was largely copied from the US Maritime Code and the draft company law was based upon the Delaware General Corporation Law.³²³ Those drafts were “read, amended and approved”³²⁴ by a director and a corporate attorney of one of the Standard Oil Companies.³²⁵ They were subsequently transmitted to President Tubman in the framework of a “Statement of Understanding” with Stettinius Associates – Liberia, Inc.³²⁶ and enacted by the Liberian legislature in December 1948 as the Liberian Corporation Law, the Liberian Maritime Law and the charter of incorporation of the International Trust Company of Liberia.³²⁷

³²² Refer to: R. Carlisle, “The ‘American Century’ Implemented: Stettinius and the Liberian Flag of Convenience”, in (1980) 54 *Business History Review* 175 ; Kifner, “Liberia: A Phantom Maritime Power Whose Fleet Is Steered By Big Business”, *op. cit.*; K. Sharife, “Liberia, flags of convenience and corporate capitalism”, *op. cit.*; K. Sharife, “Flying a Questionable Flag: Liberia’s Lucrative Shipping Industry”, article published in electronic form on the website of *Project MUSE* and freely accessible on the internet at <https://muse.jhu.edu/article/426108> (last consulted on 28.02.2018).

³²³ Refer to Sharife, “Flying a Questionable Flag: Liberia’s Lucrative Shipping Industry”, *ibid.*

³²⁴ This quote appears in Sharife, “Liberia, flags of convenience and corporate capitalism”, *op. cit.* and in Sharife, “Flying a Questionable Flag: Liberia’s Lucrative Shipping Industry”, *op. cit.*, although the author does not state who (or which document) is quoted. These articles appear to be based in part upon Carlisle, “The ‘American Century’ Implemented: Stettinius and the Liberian Flag of Convenience”, *op. cit.*, which cites a large number of letters, memoranda and reports included in the Edward R. Stettinius Manuscript Collection held by the Alderman Library of the University of Virginia. On p. 182, *ibid.*, Carlisle states that the secretary-treasurer of Stettinius Associates – Liberia, Inc. “hesitated to send the draft to Liberia until it had been read, amended and approved by officials of Standard Oil”.

³²⁵ Presumably the Standard Oil Company (New Jersey), which had been incorporated as a holding company in 1899, after the Standard Oil Trust had been dissolved in 1892 by order of the Supreme Court of Ohio, and changed its name to Exxon Corporation in 1972 ; refer to *The New Encyclopaedia Britannica*, 15th ed, Chicago: Encyclopaedia Britannica Inc, 1981, Macropaedia Vol. 18, p. 976, where the point is considered important enough to be mentioned under the heading, “V. The transformation of U.S. society, 1865-1900”, in the article concerning “United States, History of the”.

³²⁶ Refer to fn. 3 to C.W. Brumskine, “Forming a Business Corporation: issues to consider”, article published in electronic form on the website of the law firm of Brumskine & Associates and freely accessible on the internet at http://brumskineassociates.com/pdf/Forming_Corporations_in_Liberia.pdf (last consulted on 27.02.2018).

³²⁷ Refer to: Kifner, “Liberia: A Phantom Maritime Power Whose Fleet Is Steered By Big Business”, *op. cit.*, quoting from “[a] commemorative history of Liberia’s emergence as a maritime nation [...]”; “Company Profile” presented on the website of the First International Bank Liberia Limited (<http://www.waba-abao.org/First%20International%20Bank%20Liberia%20Limited.html> - last consulted on 22.02.2018), which until 2000 had been the banking department of the International Trust Company of Liberia. We do not have access to the charter or to the original texts of the Laws enacted in 1948.

1.2.2. Operation of the Registry 1949 - 2000

From 1949, the International Trust Company of Liberia effectively operated the Liberian international maritime registry.³²⁸ The Liberian Maritime Law actually provided for the registry to operate under the direction of the Commissioner of Maritime Affairs, who headed the Bureau of Maritime Affairs, an executive agency of the Liberian government. The Commissioner was empowered to appoint Deputy Commissioners of Maritime Affairs who would act as agents of the Bureau “in foreign ports”.³²⁹ In New York, the registry was in fact maintained by Liberia Services, Inc, a subsidiary of the International Trust Company of Liberia incorporated under the laws of the State of New York.³³⁰ The International Trust Company of Liberia itself was always owned by US investors. The majority of its shares were acquired in 1954 by the International Bank of Washington, a holding company headquartered diagonally across the street from the White House on Pennsylvania Avenue in Washington D.C. which represented the commercial interests of the US Navy.³³¹

The original financial arrangement made between Stettinius and Tubman was that 65% of profits would be retained by the International Trust Company of Liberia, 25% would be handed over to the Liberian government as general revenue and the remaining 10% would fund the Liberia Foundation, a non-profit organisation intended to promote education, health and welfare projects in Liberia.³³² This was a framework arrangement, however and a special agreement was subsequently reached with the Liberian government by George Schaeffer, first President of the International Trust Company of Liberia, for that company to retain, free of taxation, 32.5 cents of the US\$1.20 payable per of each ship newly entered into the Liberian international registry.³³³ The company’s fee was reduced³³⁴ to 24 cents per ton in 1976. The company allegedly³³⁵ took in revenue of “over \$2 million in 1977”, but this presumably did not derive solely from the shipping registry.³³⁶

Probably the most enlightening illustration of the working of this structure is provided by Fred T. Lininger and Frank Wiswall. Lininger was the personal secretary of Edward Stettinius as US Secretary of State. After the Second World War, Stettinius appointed Lininger as a Vice President of the International Trust Company of Liberia. After the death of Stettinius and the acquisition of the International Trust Company of Liberia by the International Bank of Washington, Lininger became the Senior Vice President of the

³²⁸ That was still the case in 1984; refer to Nelson, *Liberia: a country study*, *op. cit.*, pp. 187-188. In fact, that company directly administered the registry of offshore companies which owned the ships, while the shipping registry was administered by Liberia Services, Inc; refer below, to the last paragraph under point 5.1.2.4. of the present study.

³²⁹ Liberian Maritime Law, §12.

³³⁰ Refer to Kifner, “Liberia: A Phantom Maritime Power Whose Fleet Is Steered By Big Business”, *op. cit.*, and to the article on the “Liberian Ship Registry” published by GlobalSecurity.org, a research and publication enterprise – <https://www.globalsecurity.org/military/world/liberia/registry.htm> (last consulted on 22.02.2018).

³³¹ Refer to the last paragraph of Kifner, “Liberia: A Phantom Maritime Power Whose Fleet Is Steered By Big Business”, *op. cit.* and to Sharife, “Flying a Questionable Flag: Liberia’s Lucrative Shipping Industry”, *op. cit.*

³³² Refer to Shaw, “Flag of Convenience – or Flag of Necessity?”, *op. cit.*, presumably based upon Carlisle, “The ‘American Century’ Implemented: Stettinius and the Liberian Flag of Convenience”, *op. cit.*, p. 177, before Fn. 3.

³³³ Refer to Carlisle, “The ‘American Century’ Implemented: Stettinius and the Liberian Flag of Convenience”, *op. cit.*, p. 187, before Fn. 28.

³³⁴ *Idem*, the content of Fn. 28.

³³⁵ *Idem*, p. 188, without citing the source of this information.

³³⁶ The International Trust Company of Liberia also maintained a corporate registry and a banking department; refer below, to the last paragraph under point 5.1.2.4. of the present study.

International Bank of Washington, the President of Liberian Services, Inc. and Liberia's Senior Deputy Commissioner of Maritime Affairs. In 1974, he became Chairman of the Board and Chief Executive Officer of Liberian Services, Inc. and ceded his post as President to Frank Wiswall. Having practiced as a admiralty attorney in a New York law firm specialised in maritime cases, Wiswall was also General Counsel to Liberian Services, Inc. and the chief legal advisor of Liberia's Bureau of Maritime Affairs. At meetings of the International Maritime Organisation below governmental level ("technical committees and sub-committees"), Liberia was represented by Lininger, Wiswall and Guy E.C. Maitland, Executive Director of the Liberian Shipowners' Council Ltd, a corporation created under the laws of the State of New York to advance the interests of US enterprises which had registered ships in the Liberian international maritime registry.³³⁷

It is also interesting to note that the first attorney of Liberian Services, Inc. was Allen W. Dulles,³³⁸ who later became the Director of the United States Central Intelligence Agency and that the company, having established offices (or subsidiaries) in the Cayman Islands, Hong Kong, Luxemburg and the Netherlands, described itself in 1974 as "the worldwide maritime consulting firm".³³⁹

1.2.3. Former Liberian Maritime Authorities

The role played by the Bureau of Maritime Affairs in this arrangement was to manage the Liberian local shipping registry, to draft and promulgate regulations and standards under the Maritime Law and to represent Liberia at inter-governmental level within the framework of the International Maritime Organisation. According to the Law, the Commissioner who headed the Bureau was empowered to appoint the Deputy Commissioners of Maritime Affairs, but it appears that the Deputy Commissioners were in fact selected by Liberian Services, Inc. and their subsequent appointment was a mere formality. It is not clear whether Liberia's share of the revenue generated by the arrangement was received and managed by the Bureau of Maritime Affairs, or transferred directly from Liberian Services, Inc. to the Liberian Treasury. In any case, the Bureau received no information about the contents of the Liberian international shipping register; when the management of the registry was withdrawn from Liberian Services, Inc. in 1999, the Bureau did not know the exact number and classes of ships entered onto the register.³⁴⁰

³³⁷ Refer to: "Liberian Services – Consulting Firm Elects Wiswall Pres", in the *Maritime Reporter* of 15.02.1974, freely accessible in electronic format at

<https://magazines.marinelink.com/Magazines/MaritimeReporter/19740215/content/liberian-services-consulting-211138> (last consulted on 28.02.2018); Kifner, "Liberia: A Phantom Maritime Power Whose Fleet Is Steered By Big Business", *op. cit.*; "Fred T. Lininger Dies", an announcement published in electronic form on 01.10.2007 and freely accessible at (last consulted on 22.02.2018); the page "About the Council" on the website of the Liberian Shipowners' Council (<http://www.liberianshipowners.com/PageDetails.aspx?ModuleID=2> - last consulted on 28.02.2018).

³³⁸ According to the "History" page (<https://www.register-iri.com/index.cfm?action=page&page=158> - last consulted on 28.02.2018) of the website of International Registries Inc, the successor of Liberian Services, Inc; refer below, to the last paragraph under point 5.1.2.5. of the present study.

³³⁹ In "Liberian Services – Consulting Firm Elects Wiswall Pres", *op. cit.*, an announcement of the replacement of Fred Lininger as the company's president.

³⁴⁰ Refer to: "Liberian Ship Registry", *op. cit.*; C.L. Gray, "Opinion: Liberia Maritime Industry Is Liberia's Engine For Growth & Employment", in *West African Journal Magazine* of 18.01.2018, freely accessible in electronic form on the internet site of that publication: <https://westafricanjournalmagazine.com/2018/01/18/opinion-liberia-maritime-industry-is-liberias-engine-for-growth-employment/> (last consulted on 28.02.2018).

1.2.4. Relevance of the Corporate Registry for the Maritime Registry

It is important to note that, in point of legal principle, the Liberian international shipping registry is *not* an “open registry”. On the contrary, §51 (1) to (3) of the Maritime Law specify that only a vessel “owned by a citizen or national of Liberia” may be registered under the laws of the Republic of Liberia. The Law specifies³⁴¹ that “corporations, partnerships and associations of individuals” may qualify as “citizens” or “nationals”. The effect of these provisions has always been that foreign ship owners need to incorporate Liberian legal entities before they can register their ships in the Liberian shipping registry.³⁴² It was for this reason that the Liberian Corporation Law (later renamed the Business Corporation Act) was enacted at the same time as the Maritime Law.³⁴³ The legislation specifies³⁴⁴ that each “domestic corporation” must designate and maintain a “registered agent in Liberia” and distinguishes between “resident” and “non-resident” domestic corporations. In the case of a “non-resident domestic corporation”, its resident agent must be a bank or trust company specifically authorised by Liberian law to act in that capacity. For decades, the International Trust Company of Liberia was the only such authorised registered agent. This meant that, in addition to shipping fees, company incorporation fees, annual company registry fees and the contractual registered agency fees were collected from ship owners.

The Maritime Law attributes to both the Commissioner and the Deputy Commissioners of Maritime Affairs the power to waive the requirement of national ownership “in exceptional cases” in which “[i]t has been satisfactorily demonstrated that there is an absolute and genuine need for such a waiver”.³⁴⁵ Waivers are in fact granted as a matter of routine (but still need to be expressly applied for³⁴⁶). The Maritime Law indeed states that a waiver can be granted (only) if:

“[t]he owner of the vessel ... secures ... registration in the Republic of Liberia as a foreign maritime entity and either maintains at all times an operating office in the Republic or appoints a qualified registered agent in the manner prescribed by law”.³⁴⁷

Chapter 13 of the Business Corporations Act makes detailed provision for the registration and operation as a “foreign maritime entity” of any foreign partnership, trust or legal entity having the power to own and operate ships. Foreign Maritime Entities are obliged³⁴⁸ to pay initial registration fees and annual registry fees and to maintain mandates to the authorised resident agent in Liberia. Their powers under Liberian law are limited³⁴⁹ to the ownership and registration of ships registered in the Liberian international registry and to acts incidental thereto.

By way of implementation, it seems that, while the maritime registry was maintained by Liberian Services, Inc. in New York, the corporate registry was maintained by the International Trust Company of Liberia at

³⁴¹ In § 51(8).

³⁴² The LISCR Trust Company informs potential clients that they must apply for the Liberian registration of their companies at least three working days before applying for the registration of their ships; follow the link to “Registration of an FME” from the page on the LISCR Trust Company’s website which is dedicated to the use of foreign maritime entities: <http://liberiancorporations.com/corporate-entities/foreign-maritime-entity/forms/> (last consulted on 28.02.2018).

³⁴³ Refer above, to the last paragraph under point 5.1.2.1. of the present study.

³⁴⁴ § 3.1.1. of the Business Corporations Act.

³⁴⁵ § 51(6)(b) of the Maritime Law.

³⁴⁶ Refer to point B.2. of the “List of Requirements – Flag Transfer” published by the LISCR on its website: <http://www.liscr.com/vessel-forms-and-procedures/flag-transfer> (last consulted on 22.02.2018).

³⁴⁷ § 51(6)(c) of the Maritime Law.

³⁴⁸ Respectively by § 13.5. and § 3.1.1. of the Business Corporations Act.

³⁴⁹ By § 13.2. of the Business Corporations Act.

its headquarters located at 80 Broad Street, Monrovia. While Liberian Services, Inc. acted as its agent for the incorporation of the companies of ship owners, the International Trust Company of Liberia marketed Liberian business corporations as offshore vehicles to a wider market and additional types of legal entity (limited liability companies, limited partnerships, registered business companies³⁵⁰ and private foundations) were introduced into Liberian legislation for that purpose. The product was so successful that the International Trust Company of Liberia opened a commercial banking department in Monrovia in 1960, to provide registry customers with loan, transfer and letter of credit services.³⁵¹

1.2.5. Difficult Transition from the Former to the Current Registry

The arrangement described above is generally considered to have worked satisfactorily from the viewpoints of the Liberian and US governments, the International Trust Company of Liberia and in particular US-based owners of ships registered in the international register. It was practically indispensable between 1979 and 2004, when Liberia was wracked by violence, begin with riots and ending with two civil wars. Travel to Liberia was not feasible during most of that period, at least from the point of view of personal security. Government institutions functioned only sporadically and when they did function, telecommunications were usually interrupted.³⁵² The Bureau of Maritime Affairs was not closed, but seems to have functioned primarily as a conduit enabling revenue generated by the registry to reach whoever held power in Monrovia.³⁵³ The international business community therefore came to recognise the Liberian Registry, operated from 99 Park Avenue in New York City, “as the face of Liberia”.³⁵⁴

In the course of the increasingly despotic presidency of Master Sargent (later Major General) Samuel Doe, the US owners and managers of the companies operating the registry apparently decided that it was time for them to become completely independent of Liberia. They accordingly formed International Registries, Inc. in 1990, as a holding company owning Liberian Services, Inc. and the companies that had been formed in various countries to limit the potential liability of its representative offices.³⁵⁵ International Registries, Inc. signed an “extension contract” with the interim Liberian government of Amos Sawyer and thus took

³⁵⁰ Provision, similar to that made by the UK Companies Act 1929, for the incorporation of registered business companies was removed from the Liberian Associations Law by an Act of the Liberian Legislature of 5 May 2016 (apparently unnumbered, freely accessible in electronic form of the website of the LISCR Trust Company (<http://liberiancorporations.com/resources/liberian-law/> - last consulted on 28.02.2018)) on the basis of “the non-usage of such provisions”.

³⁵¹ Refer to the website of the First International Bank Liberia Limited, *op. cit.*, which replaced the banking department of the International Trust Company of Liberia in 2000.

³⁵² Refer to *The New Encyclopaedia Britannica*, *op. cit.*, article on “Liberia”, updated in electronic form and freely accessible on the internet at <https://www.britannica.com/place/Liberia/Government-and-society#ref272393> (last consulted on 28.02.2018), under the heading, “Decades of strife”.

³⁵³ According to Gray, “Opinion: Liberia Maritime Industry Is Liberia’s Engine For Growth & Employment”, *op. cit.*, Liberia did not pay its membership contributions to the International Maritime Organisation during the 1990s. The Commissioner of Maritime Affairs appointed by Charles Taylor directly asked the Liberian Shipowners’ Council for additional funding to repay the accumulated debt to the IMO, ensure that future membership contributions could be paid and allow Liberian government representatives to participate actively in IMO activities. The Council agreed that its members would pay additional registration fees for this purpose. A fund of about US\$27 million had accumulated by mid-1999. At the insistence of the Commissioner, the money was transferred to the Bureau of Maritime Affairs. At the beginning of 2000, the debt to the IMO remained unpaid, the fund had been completely disbursed and the Commissioner refused to reveal what had become of the money.

³⁵⁴ “Liberian Ship Registry”, *op. cit.*

³⁵⁵ Refer to “Liberian Ship Registry”, *op. cit.* and to the “History” page of the website of International Registries Inc, *op. cit.* and compare above, the last paragraph under point 5.1.2.2. of the present study.

over the operation of the registry.³⁵⁶ The status of International Registries, Inc. reportedly³⁵⁷ changed in 1993, but it is not clear how. According to the Clerk's Information System of the State Corporation Commission of Virginia,³⁵⁸ International Registries, Inc. is currently a corporation registered under the law of the State of Virginia and the corporation's website states³⁵⁹ that it is "headquartered in Reston, Virginia, USA". According to Clay Maitland,³⁶⁰ the corporation is owned by three men (including himself), who are also the "Managing Partners" of the enterprise. International Registries, Inc. quickly agreed with the government of the Marshall Islands to establish a new "international registry" similar to the existing model of the Liberian registry.³⁶¹ When Charles Taylor came to power in Liberia in 1997, he decided to sue International Registries, Inc. in that respect, alleging that that company had wrongfully transferred Liberian registered ships to the Marshall Islands Registry, convinced owners of new ships to seek entry into the Marshall Islands Registry rather than the Liberian Registry and converted Liberian intellectual and physical property to the use of the Marshall Islands Registry. The Republic of Liberia commenced an action against International Registries, Inc. in the US federal courts in 1998, claiming damages of more than US\$70 million.³⁶²

While that litigation was pending, Taylor purported to terminate the agency contract with International Registries, Inc. and reached an agreement with the newly formed Liberian International Ship and Corporate Registry, LLC ("LISCR") to take over the Liberian Registry.³⁶³ LISCR was incorporated as a limited liability company under the laws of the State of Delaware, but states³⁶⁴ that it is "headquartered in Vienna, Virginia", USA and that its New York office is located at 99 Park Avenue, from where the Liberian Registry has always operated.³⁶⁵ Lester S. Hyman, the first chairman of LISCR,³⁶⁶ had allegedly served as one of Taylor's attorneys in 1984-85, when Taylor had been arrested and tried in Massachusetts on charges of fraud and embezzlement while director of the General Services Agency of Liberia, before escaping from

³⁵⁶ Refer to Gray, "Opinion: Liberia Maritime Industry Is Liberia's Engine For Growth & Employment", *op. cit.*

³⁵⁷ According to "Liberian Ship Registry", *op. cit.* and to the "History" page of the website of International Registries Inc, *op. cit.*

³⁵⁸ Freely accessible in electronic form at https://cisiweb.scc.virginia.gov/z_container.aspx (last consulted on 28.02.2018).

³⁵⁹ <https://www.register-iri.com/index.cfm?action=about> (last consulted on 28.02.2018).

³⁶⁰ Refer to J. O'Connell, "Clay Maitland, Managing Partner, International Registries, Inc.", in *The Maritime Executive*, Jan/Feb 2018 (freely accessible in electronic form at <https://www.maritime-executive.com/magazine/clay-maitland-managing-partner-international-registries-inc> - last consulted on 28.02.2018), under the heading, "Are you the sole owner?".

³⁶¹ Refer to "Liberian Ship Registry", *op. cit.*

³⁶² *Republic of Liberia v. The International Registries, Inc.*, case no. 99-359A in the United States District Court for the Eastern District of Virginia; refer also to Gray, "Opinion: Liberia Maritime Industry Is Liberia's Engine For Growth & Employment", *op. cit.*

³⁶³ Refer to "Liberian Ship Registry", *op. cit.* and to Gray, "Opinion: Liberia Maritime Industry Is Liberia's Engine For Growth & Employment", *op. cit.*

³⁶⁴ On the "About" page of its website, freely accessible at <http://www.liscr.com/about-liberian-registry> (last consulted on 28.02.2018).

³⁶⁵ Refer above, to the last paragraph under point 5.1.2.4. of the present study.

³⁶⁶ Refer to: D.J. Blendz, "Diamond smuggling link to Al-Qaeda ...", blog article dated 9 February 2013 and freely available at <https://blendz72.wordpress.com/2013/02/10/diamond-smuggling-link-to-al-qaeda> (last consulted on 28.02.2018); C. Felsenthal, "Favorite DC escort of advice columnist Ann Landers back in the news", article dated 16 October 2013 and freely accessible on the website of *The Hill* (<http://thehill.com/blogs/pundits-blog/celebrity-news/328887-favorite-dc-escort-of-advice-columnist-ann-landers-back-in-the-news> - last consulted on 09.03.2018).

prison and returning to fight in Liberia.³⁶⁷ Hyman was formally appointed as the Republic of Liberia's general counsel in the USA³⁶⁸ between 1997 and 1999. It is reported³⁶⁹ that "the core executives of the new company were mostly persons" who had once been employed by International Registries, Inc, but left that employment due to conflicts with members of the senior management of International Registries, Inc.

This move motivated the commencement of counter-litigation by International Registries, Inc. against LISCR. In a suit commenced in the courts of the State of New York on 7 January 1999, International Registries, Inc. claimed US\$10 million in damages resulting from LISCR having taken the content of the Liberian international ship register and failed to pay amounts due to International Registries, Inc. in that respect.³⁷⁰ At the same time, the International Trust Company of Liberia lodged a claim against the Republic of Liberia in the framework of the Convention on the Settlement of Investment Disputes between States and Nationals of other States. An ICSID Tribunal chaired by Albert van den Berg was constituted on 11 February 1999, although the claim appeared on its face to fall outside the scope of the Convention, the claimant's nationality being listed as "Liberian".³⁷¹ It is not clear what relief was claimed.

All of the proceedings described above were settled before any judgment or award was handed down.³⁷² It has been reported³⁷³ that the settlement agreement involved the transfer of some "vital operational and other assets" from International Registries, Inc. to LISCR, the re-employment by LISCR of some experts who had previously worked for International Registries, Inc. and "a substantial payment" by LISCR to International Registries, Inc.

1.2.6. Operation of the Registry 2000 - present

The first agency agreement between the Republic of Liberia and the LISCR was formally ratified by an act of the Liberian Legislature passed on 5 March 1999, signed by Taylor and his Commissioner of Maritime Affairs on 31 December 1999 and entered into effect on 1 January 2000. The Liberian statute apparently³⁷⁴

³⁶⁷ Refer to Blendz, "Diamond smuggling link to Al-Qaeda ...", *idem* and to L. Hyman, *United States Policy Towards Liberia 1822 to 2003*, Cherry Hill, New Jersey: Africana Homestead Legacy Publishers, 2003.

³⁶⁸ Refer to Felsenthal, "Favorite DC escort of advice columnist Ann Landers back in the news", *op. cit.* and to M. Gold & A. Crites, "Controversial Liberian shipping registry a top donor to McAuliffe gubernatorial campaign", in *The Washington Post* of 12 October 2013, freely accessible in electronic form at https://www.washingtonpost.com/local/virginia-politics/controversial-liberian-shipping-registry-a-top-donor-to-mcauliffe-gubernatorial-campaign/2013/10/12/f9645a62-31e7-11e3-89ae-16e186e117d8_story.html?utm_term=.4b279941b171 (last consulted on 09.03.2018). Hyman was also the British Virgin Islands' general counsel in the USA, between 1992 and at least 2010; refer to J. Everitt, "Lester S Hyman", article dated 23 August 2010 and freely accessible on the website of *Builders of Tortola* (<http://www.hillmanweb.com/everitt/builders/hyman.html> - last consulted on 09.03.2018).

³⁶⁹ In Gray, "Opinion: Liberia Maritime Industry Is Liberia's Engine For Growth & Employment", *op. cit.*

³⁷⁰ Refer to Gray, "Opinion: Liberia Maritime Industry Is Liberia's Engine For Growth & Employment", *op. cit.* and to "Liberia International Shipping Registry Remains Second Largest", *op. cit.*

³⁷¹ Refer to the relevant "Case Details" published on the website of the World Bank at <https://icsid.worldbank.org/en/Pages/cases/casedetail.aspx?CaseNo=ARB/98/3> (last consulted on 22.02.2018).

³⁷² The ICSID proceedings were technically discontinued by the arbitral tribunal "for lack of payment of advances"; refer *ibid*, under the heading, "Outcome of Proceeding".

³⁷³ In Gray, "Opinion: Liberia Maritime Industry Is Liberia's Engine For Growth & Employment", *op. cit.*, citing "Lloyd's List 4.05.99.1".

³⁷⁴ The Institute does not have access to the text of this statute.

states that only US nationals may invest in the LISCR and the company warranted in the agency agreement “that all of its existing legal and beneficial owners are United States nationals”.³⁷⁵

It is reported³⁷⁶ that the financial arrangement made with the LISCR is more favourable to Liberia than that which it had with Liberian Services, Inc.³⁷⁷ from the gross revenue it receives in respect of ships and companies registered according to Liberian law, LISCR pays its operating expenses and other charges incurred, deducts 20% of the net revenue as its agency fee and remits the rest to the Liberian Ministry of Finance.

In summary, the Liberian international shipping registry continues to be operated, at present, by a US owned and managed enterprise under a contract concluded with Charles Taylor, a convicted war criminal who is currently imprisoned in the United Kingdom.³⁷⁸ The only benefit derived by Liberia from the world’s second largest shipping registry is the annual contribution of the LISCR to the national budget.³⁷⁹

Since the restoration of democracy in 2004, the Liberian government has been effectively trying to recuperate its international corporate and maritime registries, without breaching its contractual obligations to LISCR.

1.2.7. Current Liberian Maritime Authorities

Given that the Liberian maritime registry is open only to vessels owned by Liberian (resident or non-resident) entities, in practice, referring to Liberia’s “maritime authorities” requires including both the Liberian Maritime Authority and the Liberian Business Registry.

The Bureau of Maritime Affairs was replaced in 2010 by the Liberia Maritime Authority. According to the Authority’s website, the long-term goal of the Liberia Maritime Authority Act of 2010 is to “harness the full potential of Liberia’s Maritime Sector and ensure that the national economy is the ultimate beneficiary of its programs and activities”.³⁸⁰ The Authority is a state owned enterprise with statutory responsibilities. It is overseen by a board of directors, of which the Liberian ministers of finance, justice and transport are *ex officio* members. It is operationally directed by the Commissioner of the Liberia Maritime Authority. As well as the continued operation of Liberia’s local shipping registry and representation of Liberia at the International Maritime Organisation, the Authority is responsible for the transposition of the technical, safety and environmental protection standards set out in IMO conventions and other norms, for the enforcement of those norms in respect of all vessels flying the Liberian flag, for the response to maritime emergencies in Liberian waters and for the protection of the Liberian marine environment.³⁸¹ The

³⁷⁵ Refer to “Liberian Ship Registry”, *op. cit.* and to Blendz, “Diamond smuggling link to Al-Qaeda ...”, *op. cit.* The latter author claims to have had access to “Liberian government documents”.

³⁷⁶ By Gray, “Opinion: Liberia Maritime Industry Is Liberia’s Engine For Growth & Employment”, *op. cit.*

³⁷⁷ Compare above, point 5.1.2.2. of the present study.

³⁷⁸ Refer to “Liberian Charles Taylor moved to British prison to serve war crimes conviction”, in The Telegraph of 15 October 2013, freely accessible in electronic form on the newspaper’s website at <https://www.telegraph.co.uk/news/worldnews/africaandindianocean/liberia/10380401/Liberian-Charles-Taylor-moved-to-British-prison-to-serve-war-crimes-conviction.html> (last consulted on 01.03.2018).

³⁷⁹ Refer to T. Teh, “The Last Journey of the Liberian Maritime Program”, in *The Perspective*, November 2001 edition, published in electronic form and freely accessible on the newsletter’s website at <http://www.theperspective.org/lastjourney.html> (last consulted on 01.03.2018), to “Liberia International Shipping Registry Remains Second Largest”, *op. cit.* and above, to point 5.1.1. of the present study.

³⁸⁰ <http://maritimeliberia.com/?about/history.html> (last consulted on 28.02.2018)

³⁸¹ Refer to the Annual Report of the Authority for 2013, freely accessible in electronic form on the Authority’s website:

Authority's website refers to the LISCR only under the heading, "Maritime Services", as the agent it has appointed.³⁸² Its annual report for 2013 does not mention the LISCR at all, but makes it implicitly clear that the contribution of over US\$ 19 million made by the Authority to Liberian national government revenue in 2013 derived almost entirely from the international shipping registry.³⁸³ The underlying "corporate strategy" of the Authority is stated³⁸⁴ to be the development of an equivalent infrastructure in Liberia and the promotion of international awareness of the Liberia Maritime Authority as a brand. That the Authority faces considerable practical hurdles in the implementation of this strategy is shown by the fact that its website has not been updated since 2014 and that its 2013 annual report is the most recent one accessible on the internet.

In the hope that the international shipping industry will become a major source of employment for Liberians, the Liberia Marine Training Institute has been created for the initial purpose of training young seamen to the standard required by the International Maritime Organisation for the award of General Purpose Rating Certificates.³⁸⁵ This Institute has replaced the Liberian Merchant Marine Academy,³⁸⁶ which had the high calling of training merchant marine officers, but ceased to operate in 1992.

The Liberia Business Registry was established in 2010 in order to maintain a register of Liberian legal persons in Liberia. The Registry is an inter-ministerial agency of the Liberian government,³⁸⁷ responsible for the registration of all types of legal entities, including partnerships and trusts, regardless of whether or not they are owned by Liberians.³⁸⁸ The relationship between the Registry and the LISCR is not clear; the Registry maintains the register of companies, but the LISCR is not the agent of the Registry, which apparently does not register Foreign Maritime Entities.³⁸⁹

It should be noted here that the Swiss Institute of Comparative Law is responsible, within the Swiss federal administration, for the issuance of various certifications foreseen by the Handelsregisterverordnung³⁹⁰. In the last ten years, the Institute has on several occasions certified the capacity of particular Liberian corporations to adapt to the requirements of Swiss law and has certified the conditions under which Liberian law permitted those corporations to re-domicile in Switzerland. In that context, the Institute

<http://maritimeliberia.com/public/downloads/Annual%20Report%202013%20June%2020%202014%20.pdf> (last consulted on 01.03.2018).

³⁸² Refer to <http://maritimeliberia.com/?services/international.html> (last consulted on 01.03.2018).

³⁸³ Refer to p. 23 of the annual report, *op. cit.*, under the heading, "The Registry: Domestic and International".

³⁸⁴ Under the heading, "Corporate Strategy and Industry Development", on the page devoted to its "Organizational Structure", freely accessible at <http://maritimeliberia.com/?about/structure.html> (last consulted on 01.03.2018): "... establish a national maritime infrastructure and promote the Liberia Maritime Authority Brand Awareness".

³⁸⁵ Refer to "LMTI in Colors: Hosts First Post-War Graduation amidst Stormy Weather", news item posted on the website of the Liberia Maritime Authority and freely accessible in electronic form at <http://maritimeliberia.com/?news/2013/05/19/lmti-in-colors-hosts-first-post-war-graduation-amidst-stormy-weather.html> (last consulted on 01.03.2018).

³⁸⁶ Refer to the last paragraph of "Liberian Ship Registry", *op. cit.*

³⁸⁷ In accordance with the "Inter-Ministerial Regulation Number 1 on the Inter-Ministerial and Inter-Agency Cooperation for Operationalization of the Liberia Business Registry", freely accessible in electronic form on the website of the Liberia Business Registry: http://www.lbr.gov.lr/wp-content/uploads/2010/11/INTER-MINISTERIAL_REGULATIONS.pdf (last consulted on 22.02.2012).

³⁸⁸ This clearly appears from the "Liberia Business Registry, Fee Schedule for New Enterprise Registrations" published on the website of the Liberian Ministry of Commerce and Industry at http://www.moci.gov.lr/doc/LBR_Fee_Schedule.pdf and last consulted on 01.03.2018.

³⁸⁹ Refer above, to point 5.1.2.4. of the present study.

³⁹⁰ Point 221.411 of the Systematic Collection of Federal Laws.

recognises the Liberian Business Registry (not the LISCR) as the Liberian government authority responsible for the registration and de-registration of juridical persons according to Liberian law.

The Liberia Business Registry has thus far been no more successful than the Liberia Maritime Authority in establishing a clear presence in international markets. The Registry's website,³⁹¹ initially created with the financial assistance of the Norwegian government, has been completely inaccessible for at least the past two years. While the LISCR continues to market a "Liberian Corporate Registry" internationally,³⁹² the Liberia Business Registry is effectively confined to the registration of commercial entities active in Liberia.³⁹³

1.2.8. Limited Presence of the Liberian Registry in Liberia

The International Trust Company of Liberia apparently continues to exist, but on paper only. In the context of the transfer of the Liberian international shipping registry from International Registries, Inc. to the LISCR,³⁹⁴ the Central Bank of Liberia required the International Trust Company of Liberia's banking department to become an independent bank. The International Bank (Liberia) Limited was thus awarded the first banking licence³⁹⁵ to be issued under the Financial Institutions Act of 1999. The LISCR proposes the services of an LISCR Trust Company and states that It is not clear when that company was incorporated however, or even whether it is in fact a separate legal person, incorporated in Liberia or in a US State, rather than a department of the LISCR, LLC having the right to use the name, "International Trust Company of Liberia". The latter possibility is reinforced by the statement of the International Bank (Liberia) Limited that, following its "de-merger" from the International Trust Company of Liberia, "[a]ll contracts and documents bearing the name International Trust Company of Liberia remained in full force and effect".³⁹⁶ Company documents delivered to the Swiss Institute of Comparative Law as recently as 2011 still list the International Trust Company of Liberia as the company's registered agent.

In its capacity as the sole authorised registered agent of non-resident legal entities, the LISCR states³⁹⁷ its address in Liberia as being 80 Broad Street, Monrovia, which has been the official address of the International Trust Company of Liberia since 1948. According to an article³⁹⁸ published by investigative journalists who visited Monrovia in 2016, that address does not physically exist and postal items addressed

³⁹¹ <http://www.lbr.gov.lr>

³⁹² Refer to the website (<http://liberiancorporations.com/about-the-registry/homepage/> - last consulted on 01.03.2018) of the Liberian Corporate Registry / LISCR Trust Company.

³⁹³ Refer to pp. 8-9 of United States Department of State, *Doing Business in Liberia: 2016 Country Commercial Guide for U.S. Companies*, freely accessible in electronic form at https://photos.state.gov/libraries/liberia/328671/pdfs/2016_country_commercial_guide.pdf (last consulted on 01.03.2018). The relevant passages are reproduced on p. 9 of the expanded *Doing Business in Liberia: 2017 Country Commercial Guide for U.S. Companies*, which is freely accessible on the website of the US embassy in Liberia: <https://lr.usembassy.gov/wp-content/uploads/sites/53/2017-Liberia-CCG-2017.pdf> (last consulted on 01.03.2018).

³⁹⁴ Refer above, to point 5.1.2.5. of the present study.

³⁹⁵ Banking Licence 00-01 issued by the Central Bank of Liberia on 10 August 2000 ; refer to the website of the First International Bank Liberia Limited (<http://www.waba-abao.org/First%20International%20Bank%20Liberia%20Limited.html> - last consulted on 22.02.2018), under the heading, "Company Profile".

³⁹⁶ Website of the First International Bank Liberia Limited (<http://www.waba-abao.org/First%20International%20Bank%20Liberia%20Limited.html> - last consulted on 22.02.2018), second paragraph under the heading, "Company Profile".

³⁹⁷ <http://liberiancorporations.com/about-the-registry/contact-us/> (last consulted on 05.03.2018).

³⁹⁸ Turner, "Liberia : America's outpost of financial secrecy", *op. cit.*

to it are in fact delivered to the LISCR building,³⁹⁹ inaugurated in 2012, located on 5th Street in the Sinkor District of Monrovia. The postal items delivered there are reportedly scanned and sent by e-mail to “LISCR Headquarters” in Dulles, Virginia, USA. According to the Liberia Maritime Authority,⁴⁰⁰ the Liberian offices of the LISCR are located at the corner of Randall and Ashmun Streets, only one block north of Broad Street in central Monrovia, but it also lists a post office box number.

1.3. Any current discussions as to registration requirements

We are not aware of any current discussions of proposals to modify Liberian registration requirements. This is due to the difficulty of obtaining any kind of information from Liberia.⁴⁰¹

2. Questions

2.1. What are the conditions on registration for the various categories of internationally active commercial high seas ships? This should include a differentiation among different types of ships (e.g., passenger ships, tankers, cargo ships)

When accepting vessels for registration, the LISCR⁴⁰² does not distinguish between different categories. It accepts any vessel which has been surveyed and positively certified by one of the recognised Maritime Classification Societies.⁴⁰³ The author of the present national contribution understands that these societies basically do not deal with passenger ships, except for ferries that carry both cargo (especially motor vehicles) and passengers. The Maritime Law also provides⁴⁰⁴ for the registration of pleasure yachts weighing at least 100 tonnes net, but the LISCR website makes no mention of this possibility.

Vessels presented for initial entry into the Liberian international shipping registry must in principle be less than 20 years old and weigh at least 500 tonnes, but those limitations may be waived by the LISCR upon presentation of the appropriate certificates.⁴⁰⁵

³⁹⁹ Photos of what appears to be the same building appear in Turner, “Liberia : America’s outpost of financial secrecy”, *op. cit.* and on the LISCR’s “Liberian Corporate Registry” website, on the page dedicated to the LISCR Trust Company acting as registered agent: <http://liberiancorporations.com/about-the-registry/registered-agent-2/> (last consulted on 05.03.2018).

⁴⁰⁰ On the page of the Authority’s website which is dedicated to its own “contact” details: <http://maritimeliberia.com/?contact.html> (last consulted on 05.03.2018).

⁴⁰¹ Compare above, point 5.1. of the present study.

⁴⁰² Refer above, to point 5.1.2.6. of the present study.

⁴⁰³ Refer for example to the “Vessel Registration in Liberia – Flowchart” and to point A.4. of the list of requirements for “Transfer from another flag” published by the LISCR at <http://www.liscr.com/sites/default/files/Vessel%20Registration%20in%20Liberia%20FLOWCHART%20Rev.%202016-08.pdf> and http://www.liscr.com/sites/default/files/vessel_registration_documents/RLM-101A-TRANSFER%20List_of_requirements-Flag%20Transfer%204-11-17.pdf respectively and last consulted on 05.03.2018.

⁴⁰⁴ In § 51(3).

⁴⁰⁵ Refer to § 51(2), (4), (5) and (7) and to point B.3. of the list of requirements for “Transfer from another flag” published by the LISCR at <http://www.liscr.com/sites/default/files/Vessel%20Registration%20in%20Liberia%20FLOWCHART%20Rev.>

2.2. What are the requirements regarding the revocation of a licence/flag?

While § 18 of the Liberian Maritime Law notes that “The Commissioner [...] shall have power to suspend or to revoke any licenses, certificates, permits or documents issued under the provisions of this Title”, there is no further reference to the revocation of a permanent Certificate of Registry. Neither, as far as we have been able to determine, has the LISCR published any information about its requirements for the deregistration of a vessel. Even the detailed forms to be completed and submitted in respect of the bareboat charter of a foreign registered vessel under the Liberian flag make no express reference to the termination of the charter.⁴⁰⁶

2.3. What are the supervisory obligations toward fleets, ship owners, and seafarer recruitment and placement services (SRPS)?

The LISCR⁴⁰⁷ maintains a team of some 400 inspectors in some 20 major port cities around the globe to carry out Flag State Audits and Inspections. An annual safety audit and inspection of each registered vessel must be carried out by these inspectors in any one of these ports.⁴⁰⁸

As far as we have been able to determine, Liberian law requires no supervision of ship owners.

In relation to seafarers, Liberia is a State Party to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW). As far as we have been able to determine, Liberian law does not impose seafarer supervision requirements going beyond those imposed by that convention. The role played by the LISCR in this respect is to manage the seafarer records and certificates so as to ensure STCW compliance “in the most economical manner” for the benefit of registered vessel owners.⁴⁰⁹

2.4. To what types of taxes are ship-owners and fleet-owners subject?

No formal distinction is made between owners of individual ships and owners of fleets of ships; each ship is registered individually and separately.

The beneficial owner of each registered vessel must pay an annual fee to the LISCR⁴¹⁰, composed of a tax formally due to the Liberian government⁴¹¹ and certain fees formally relevant to services and duties performed by the LISCR or the Liberia Maritime Authority⁴¹². In addition, each beneficial owner must initial and annual registration fees in respect of the Liberian legal entity or Foreign Maritime Entity which legally

%202016-08.pdf and http://www.liscr.com/sites/default/files/vessel_registration_documents/RLM-101A-TRANSFER%20List_of_requirements-Flag%20Transfer%204-11-17.pdf (last consulted on 05.03.2018).

⁴⁰⁶ Refer to the page devoted to “Bareboat In” on the LISCR’s website: <http://www.liscr.com/vessel-forms-and-procedures/bareboat-in> (last consulted on 05.03.2018).

⁴⁰⁷ Refer above, to point 5.1.2.6. of the present study.

⁴⁰⁸ Refer to the page devoted to “Schedule Inspection” on the LISCR’s website: <http://www.liscr.com/maritime/schedule-inspection> (last consulted on 05.03.2018).

⁴⁰⁹ Refer to the page devoted to “Seafarer’s Certification & Documentation Department” on the LISCR’s website: <http://www.liscr.com/seafarer-certification> (last consulted on 05.03.2018).

⁴¹⁰ Refer above, to point 5.1.2.6. of the present study.

⁴¹¹ In respect of the real distribution of registry revenues between the LISCR and the Liberian government, refer above, to the second paragraph under point 5.1.2.6. of the present study.

⁴¹² Refer above, to the first paragraph under point 5.1.2.7. of the present study.

owns the ship, as well as the annual fees of the LISCR Trust Company acting as authorised registered agent of the entity.⁴¹³ These fees are very modest⁴¹⁴ and the normal practice is therefore to establish a separate legal entity for each vessel registered. This has the advantage, from the point of view of the beneficial owner, that any liability incurred in respect of a vessel will effectively be limited to the value of that vessel, being the only asset of the legal entity which owns it.

2.5. What is the fee system used by the officials?

The LISCR⁴¹⁵ does not publish a schedule of fees. Instead, an “Annual Fee Calculator” is available on its website.⁴¹⁶ This page resembles the website of a discount reseller, more than that of maritime registration authority. It states that the initial registration fee and numerous other fees are either “waived” or “not required” and that a potential registrant therefore “saves” money. The fee to be paid each year in respect of each registered vessel is stated to be comprised of:

- a “tonnage tax”;
- “inspection fees”;
- and a charge for “Miips”⁴¹⁷.

Potential registrants are invited to enter a figure into the Annual Fee Calculator which corresponds to the “net tonnage” of the vessel to be registered. In the preparation of this national contribution to the present report, the author entered a net tonnage of 2’500. The Calculator responded by indicating “Total Annual Fees” of US\$ 3’770.-. The page concludes with an invitation to contact one of the LISCR’s offices and implies that the fees payable are open to negotiation.

The LISCR Trust Company⁴¹⁸ does not publish a schedule of fees for the establishment and maintenance of Liberian legal entities owning registered vessels. Figures can be found on its website however, in respect of individual types of legal entity. Taking the example of the limited liability company,⁴¹⁹ a potential registrant has to pay US\$ 300.- *per annum* to the authorised registered agent and US\$ 150.- *per annum* to the Liberian government as an “annual registration tax”. An additional amount of US\$ 263.50 is initially payable as a registration fee. This is much less than the US\$ 900.- charged⁴²⁰ by the Liberian Business Registry⁴²¹ as the initial registration charge for a new limited liability company (presumably not including the annual tax and registered agent’s charge for the first year).

⁴¹³ Refer above, to point 5.1.2.4. of the present study.

⁴¹⁴ Refer below, to the last two paragraphs under point 5.2.5. of the present study.

⁴¹⁵ Refer above, to point 5.1.2.6. of the present study.

⁴¹⁶ <http://www.liscr.com:8080/eLIS/TonnageTax/toncalc.html> (last consulted on 05.03.2018).

⁴¹⁷ Apparently a contribution to the costs of “Marine Investigation and International Participation” conducted by the Liberia Maritime Authority; compare above, the first paragraph under point 5.1.2.7. of the present study.

⁴¹⁸ Refer above, to point 5.1.2.8. of the present study.

⁴¹⁹ Refer to the instructions given by the LISCR Trust Company for the “Formation and Registration of an LLC”, freely accessible in electronic form at <http://liberiancorporations.com/corporate-entities/llc/forms/> (last consulted on 05.03.2018).

⁴²⁰ According to point 2 of the “Liberia Business Registry, Fee Schedule for New Enterprise Registrations”, *op. cit.*

⁴²¹ Refer above, to the last three paragraphs under point 5.1.2.7. of the present study.

If the vessel's owner wishes to register an existing, non-Liberian legal entity as a Foreign Maritime Entity,⁴²² an annual fee of US\$ 500.- will be payable to the LISCR Trust Company, including both the registry fee and the service fee of the authorised registered agent. It appears that there is no initial registration fee.

⁴²² Refer above, to point 5.1.2.4. of the present study.

E. LUXEMBOURG

1. Introduction

Le Grand-Duché de Luxembourg est un Etat indépendant depuis 1890. Avec une surface de 2.586 km² et une population d'environ 570.000 habitants, il est un des pays les plus petits de l'Union européenne. Il n'en reste pas moins un acteur historique de premier ordre puisqu'il est un des Etats fondateurs de l'actuelle Union européenne. De plus, sa position centrale en Europe et son régime fiscal favorable en font un centre d'affaires de premier ordre.

1.1. Background on the role of shipping

En dépit de son absence d'accès direct à la mer, le Luxembourg possède une flotte de navires non négligeable. Avant 1990, cette dernière était néanmoins essentiellement composée de navires se déplaçant sur les voies navigables intérieures⁴²³. Dès 1990, le gouvernement luxembourgeois a adopté une stratégie visant à ouvrir la flotte à des navires de haute mer, ce qui a provoqué l'augmentation du nombre de navires battant pavillon luxembourgeois. Un registre maritime luxembourgeois a ainsi été mis en place (voir ci-après, sections 1.2 et 2.1).

En 2009, la flotte immatriculée au Luxembourg comptait 188 navires pour un tonnage brut de 1'249'022 tonnes⁴²⁴. En date du 21 février 2018, la flotte comptait un total de **210 navires**, pour un tonnage brut de 1'667'438 tonnes. Parmi ces navires, 180 sont soumis à une immatriculation pleine (cf. ci-dessous 2.1) et 30 affrétés/immatriculés coque-nue (« *Bareboat-In/-Out Registration* »)⁴²⁵. De plus, parmi ces 210 navires, 31 sont décrits comme étant des navires de croisière commerciale (« *commercial cruise ship* »).

Le registre maritime luxembourgeois accueille l'immatriculation de navires effectuant des **opérations lucratives de navigation**, qu'il s'agisse du transport de personnes ou de choses. Il ne fait ainsi par exemple pas de différence entre les pétroliers, les navires de croisière commerciale transportant des passagers, les remorqueurs et navires d'approvisionnement, les transporteurs de vrac et les navires à containers⁴²⁶.

À noter que **les yachts** ne sont pas repris dans le registre maritime luxembourgeois mais sont réglementés par une loi spécifique⁴²⁷, laquelle a créé un registre des bâtiments de plaisance battant pavillon luxembourgeois. Le registre public des bâtiments de plaisance battant pavillon luxembourgeois compte trois catégories de bâtiments de plaisance : (i) la menue embarcation de plaisance : il s'agit d'une embarcation de plaisance équipée d'une voile ou d'un moteur de maximum 7,35 kW et d'une longueur inférieure à 7 mètres et qui ne dispose pas d'une cabine habitable. La menue embarcation peut faire l'objet d'une identification ; (ii) le bateau de plaisance : embarcation destinée à la navigation de plaisance en eaux

⁴²³ R. Coles & E. Watt, *Ship registration: law and practice*, 2^{ème} éd., LLP London 2009, p. 199.

⁴²⁴ R. Coles & E. Watt, *Ship registration: law and practice*, op. cit., p. 199.

⁴²⁵ Une liste actualisée peut être consultée sous : <http://www.maritime.lu/luxembourg-merchant-fleet> (21.02.2018).

⁴²⁶ Voir la colonne « type » dans la liste ci-dessus, sous note 425. Voir ci-après, section 2.1.3.

⁴²⁷ Loi du 23 septembre 1997 portant réglementation de la navigation de plaisance et portant modification de certaines autres dispositions légales, disponible sous : <http://legilux.public.lu/eli/etat/leg/loi/1997/09/23/n1/jo> (26.02.2018). L'art. 1 de ladite loi définit la navigation de plaisance comme étant « toute forme de navigation d'un bâtiment de plaisance à des fins sportives, récréatives et de loisirs ».

intérieures et qui a une longueur supérieure à 7 mètres, ou dispose d'un moteur d'une puissance supérieure à 7,35 kW, ou dispose d'une cabine habitable ; enfin, (iii) le navire de plaisance : embarcation destinée à la navigation de plaisance dans les eaux maritimes et qui ont une longueur supérieure à 7 mètres, ou dispose d'un moteur d'une puissance supérieure à 7,35 kW, ou dispose d'une cabine habitable.

1.2. Background on ship registration

Compte tenu du développement de la flotte de navires de haute mer, le gouvernement a adopté **la Loi du 9 novembre 1990 ayant pour objet la création d'un registre public maritime luxembourgeois** (ci-après : la Loi de 1990)⁴²⁸.

Cette loi a également institué un **Commissariat aux affaires maritimes**⁴²⁹, dirigé par un Commissaire et placé sous l'autorité du Ministre de l'Economie, qui a pour compétence, en plus de l'instruction des demandes d'immatriculation, d'assurer la coordination de l'exécution de la loi et des règlements qui en découlent, de suivre l'évolution du droit international, notamment au sein de l'Union européenne et de veiller au maintien et à l'accroissement de l'attrait du Registre luxembourgeois⁴³⁰.

Il convient de mentionner également l'existence du **Maritime Cluster luxembourgeois**. Fondé en 2008 sous forme d'organisation à but non-lucratif, cette entité a pour but la promotion de l'économie maritime du Grand-Duché. D'après les informations reprises sur le site du *Maritime Cluster* luxembourgeois, les entreprises de renommée ont choisi le Luxembourg pour leurs activités maritimes pour les 6 raisons suivantes : (i) l'importance des activités locales de propriété de navires et de gestion de navires de mer ; (ii) la renommée des services financiers, des services légaux et d'autres services commerciaux spécialisés ; (iii) infrastructure de pointe au cœur de l'Europe ; (iv) recherche et développement (R&D), innovation, enseignement international et maîtrise des langues ; (v) climat favorable au développement des affaires commerciales, accès facilité aux décideurs ; et (vi) forte communauté « business ».⁴³¹

Dans le prolongement de la loi de 1990, on relève encore l'existence d'un **Code disciplinaire et pénal pour la marine**, adopté en 1992⁴³².

1.3. Current discussions around registration requirements

Nos recherches n'ont pas permis de relever des discussions actuelles sur les conditions d'immatriculation des navires dans le registre maritime luxembourgeois.

⁴²⁸ Le texte de loi est disponible sous: <http://legilux.public.lu/eli/etat/leg/loi/1990/11/09/n1/jo> (22.02.2018). Cette loi a été modifiée à différentes reprises, notamment par la Loi du 17 juin 1994 modifiant et complétant la Loi du 9 novembre 1990 ayant pour objet la création d'un registre public maritime luxembourgeois, laquelle a refondu l'entier de la partie relative à l'immatriculation des navires, disponible sous : <http://legilux.public.lu/eli/etat/leg/loi/1990/11/09/n1/jo> (26.02.2018). Dans la suite du présent avis, les dispositions ainsi modifiées seront suivies de la mention « Loi modifiée (1994) ».

⁴²⁹ La page web du Commissariat est disponible sous : <http://cam.gouvernement.lu/fr/service.html> (en français) et de manière plus détaillée en anglais sous : <http://www.maritime.lu/> (26.02.2018)

⁴³⁰ Art. 2 de la Loi de 1990.

⁴³¹ Voir le site internet du Cluster Maritime luxembourgeois pour d'avantages de détails sur son rôle et ses activités, disponible sous : <http://cluster-maritime.lu/> (26.02.2018)

⁴³² Loi du 14 avril 1992 instituant un code disciplinaire et pénal pour la marine.

2. Questions

2.1. Conditions on registration

2.1.1. Navires

L'immatriculation au registre maritime du Luxembourg concerne certains navires seulement, soit tous les **bâtiments d'au moins 25 tonnes et de moins de 15 ans d'âge** à compter de la pose de la quille, qui font ou sont destinés à faire habituellement en mer le transport des personnes ou des choses, la pêche, le remorquage ou tout autre **opération lucrative de navigation**.⁴³³

Il convient de relever que le Commissariat aux affaires maritimes peut déroger à la limite d'âge susmentionnée si le navire a fait l'objet de travaux de transformation importants à condition que le navire soit conforme aux standards applicables aux navires neufs prévus par les conventions internationales auxquelles le Luxembourg est partie.⁴³⁴

En outre, ne peuvent être immatriculés au registre maritime du Luxembourg que les navires qui appartiennent **pour plus de la moitié en propriété à des ressortissants de l'Union européenne ou des sociétés commerciales ayant leur siège social dans un Etat membre de l'Union européenne**, les navires affrétés coque nue et les navires exploités par ces personnes, **à condition que tout ou du moins une partie significative de la gestion dudit navire soit effectués à partir du Luxembourg**.⁴³⁵

De plus, tout navire sollicitant une immatriculation sous pavillon luxembourgeois doit être soumis à une **inspection** ; celle-ci est réalisée par l'administration maritime d'un Etat membre de l'Union européenne ou par une société de classification agréée par le Commissariat aux affaires maritimes⁴³⁶. Le certificat d'immatriculation ne pourra être obtenu qu'après la communication des résultats de l'inspection au Commissaires aux affaires maritimes et ne sera valable que pour **deux années au plus**.

2.1.2. Entreprise maritime

Au Luxembourg, les activités lucratives maritimes sont exercées par le biais d'une **entreprise maritime** au sens de la Loi modifiée (1994) devant être agréée à cette fin. L'agrément ne peut être délivré qu'à des entreprises ayant pour objet l'achat, la vente, l'affrètement, le frètement et la gestion de navires de mer, ainsi que les opérations financières et commerciales s'y rattachant directement ou indirectement. L'entreprise maritime ayant un siège au Luxembourg adresse une demande d'agrément au Ministre des affaires économiques en joignant une série de documents dont les statuts de la société, l'identité et coordonnées des administrateurs et des personnes chargées de la direction de l'entreprise, les pouvoirs conférés au dirigeant de l'entreprise et les coordonnées du réviseur d'entreprise.

Ces entreprises sont chargées de désigner un **dirigeant d'entreprise maritime**, qui devra lui aussi être agréé. La demande d'agrément est adressée au Ministre des affaires économiques. Pour être agréé dans la fonction de dirigeant d'entreprise maritime, la personne concernée doit avoir sa résidence au Luxembourg, justifier de garanties d'honorabilité et d'expérience professionnelle.

⁴³³ Art. 4 Loi modifiée (1994) ; Art. 61, al. 2 Loi de 1990.

⁴³⁴ Art. 19 Loi modifiée (1994).

⁴³⁵ Art. 5 Loi modifiée (1994).

⁴³⁶ Les sociétés de classification autorisées sont les suivantes : American Bureau of Shipping, Bureau Veritas Marine & Offshore SAS, DNV-GL, Korean Registry, Lloyd's Register, NKK, RINA.

2.1.3. Equipage

Le **commandement d'un navire** battant pavillon luxembourgeois, et donc immatriculé au Luxembourg, doit être attribué à une personne ayant la nationalité d'un Etat membre de l'Union européenne et qui est titulaire d'un diplôme reconnu au Luxembourg d'une école de navigation. Il peut être dérogé à la condition de nationalité en vertu d'une autorisation ministérielle particulière notamment si les besoins du commerce ou de la navigation le justifient ou bien compte tenu de l'origine des navires sollicitant l'immatriculation au registre.⁴³⁷

En outre, Il convient de démontrer que **les membres de l'équipage** engagés sur le navire bénéficient d'une couverture de sécurité sociale (luxembourgeoise, du pays d'origine de la personne concernée ou d'une couverture privée) et disposent d'une attestation médicale favorable ainsi que d'un certificat de compétence luxembourgeois ou accepté comme tel par les autorités luxembourgeoises.

2.1.4. Demande d'immatriculation

Etant donné que la Loi de 1990 concerne tous types de navires effectuant ou destinés à effectuer des opérations lucratives maritimes, il n'y a **pas de catégories d'immatriculation distinctes en fonction du type de navire concerné**. Cependant, le registre connaît l'immatriculation pleine, l'immatriculation d'un navire affrété coque nue et l'immatriculation d'un navire frété coque nue.

Un navire peut faire l'objet d'une **pleine immatriculation**, lorsque les droits de propriété du navire et des droits réels le grevant sont inscrits au registre maritime luxembourgeois et que le navire est autorisé à battre pavillon luxembourgeois.⁴³⁸

Dans ce cas, la demande d'immatriculation est formulée, selon un formulaire distinct, auprès du Commissariat aux affaires maritimes par le propriétaire du navire⁴³⁹. La demande d'immatriculation indique :

- a) le nom actuel du navire et le nom proposé pour l'immatriculation du navire à Luxembourg;
- b) le numéro O.M.I. du navire;
- c) éventuellement les données relatives à l'immatriculation précédente, respectivement une attestation de radiation délivrée par l'autorité compétente du pays où le navire était immatriculé;
- d) les noms et adresses des personnes ayant des droits sur le navire, la nature et la quotité des droits;
- e) les noms et adresses de l'exploitant du navire et le lieu d'où l'exploitation du navire est dirigée;
- f) les noms et adresse du déclarant autorisé à immatriculer le navire.

La demande sera complétée par les documents suivants:

- a) la preuve de la nationalité des déclarants;
- b) l'acte constitutif, translatif ou déclaratif des droits de propriété ou d'usufruit si cet acte est sous seing privé ou d'une expédition s'il s'agit d'un acte authentique. Un double de l'acte sous seing privé ou une copie certifiée conforme de l'acte authentique restera déposée au bureau du conservateur des hypothèques;

⁴³⁷ Art. 20 Loi modifiée (1994).

⁴³⁸ Art. 4 Loi modifiée (1994).

⁴³⁹ Art. 6 Loi modifiée (1994).

- c) le consentement des propriétaires relatif à l'immatriculation du navire au registre maritime luxembourgeois certifié par acte public.

Tant que cette dernière attestation fait défaut, l'immatriculation au registre maritime luxembourgeois portera une mention indiquant que les effets des inscriptions sont subordonnés à la condition que l'immatriculation antérieurement prise soit radiée et un certificat d'immatriculation provisoire pourra seulement être délivré.^{440 441}

⁴⁴⁰ Art. 10 Loi modifiée (1994).

⁴⁴¹ Un navire peut également être **immatriculé coque nue** lorsqu'il a obtenu l'autorisation de battre pavillon luxembourgeois sur la base d'une charte-partie d'affrètement coque nue, alors que les droits de propriété et les droits réels le grevant sont inscrits dans le registre d'un autre Etat et que la législation de cet Etat permet en pareille hypothèse l'abandon du pavillon national. Dans ce cas, la demande d'immatriculation est formulée, selon un formulaire distinct, auprès du Commissariat aux affaires maritimes par l'affréteur du navire. Pour ce type d'immatriculation, outre les informations et documents nécessaires en cas de pleine immatriculation, la demande d'immatriculation précisera les noms et adresse des affréteurs du navire et sera complétée par les documents suivants: a) la preuve de la nationalité de chacune des personnes et les statuts de chacune des sociétés commerciales qui ont affrété le navire ; b) une copie certifiée conforme par un notaire de la charte-partie sous coque nue y compris toutes les annexes, ainsi que d'éventuelles chartes-parties de sous-affrètement; c) le consentement des créanciers hypothécaires relatif à l'immatriculation du navire au registre maritime luxembourgeois certifié par acte public; d) un certificat délivré par l'Etat de pavillon étranger constatant la propriété du navire et toute charge financière qui le grève le cas échéant; e) le cas échéant l'autorisation des autorités étrangères pour fréter le navire coque nue, respectivement une déclaration qu'une telle autorisation n'est pas requise et que la législation de cet Etat autorise le frètement coque nue; f) un engagement exprès de l'affréteur que: (i) le navire battra exclusivement pavillon luxembourgeois et affichera «Luxembourg» comme port d'attache aussi longtemps que le navire sera exploité sous affrètement coque nue; (ii) l'affréteur informera le Commissariat aux affaires maritimes et le bureau de la conservation des hypothèques lorsque l'affrètement coque nue a pris fin pour quelque raison que ce soit ou lorsqu'un Etat de pavillon tiers a accordé le droit de battre son pavillon au navire; (iii) la remise de tous les certificats délivrés par les autorités luxembourgeoises se fera endéans les trente jours à partir du moment où la charte-partie d'affrètement viendra à terme respectivement à partir de la radiation de l'immatriculation au Grand-Duché de Luxembourg. Le certificat d'immatriculation d'un navire affrété coque nue sera valable pour deux années au plus sans pouvoir dépasser le terme fixé par la charte-partie d'affrètement coque nue. Le certificat d'immatriculation mentionnera que le navire est affrété coque nue et indiquera le numéro d'immatriculation du registre matricule étranger dont émane le navire. La remise du certificat d'immatriculation vaut autorisation de battre pavillon luxembourgeois.

Le registre connaît également le **frètement coque nue**, pour les navires immatriculés en pleine propriété au registre maritime luxembourgeois qui, sur la base d'une charte-partie de frètement coque nue, sont immatriculés dans un registre étranger avec le maintien au registre maritime luxembourgeois des inscriptions relatives aux droits de propriété du navire et des autres droits réels les grevant. Dans ce cas, la demande d'immatriculation est formulée, selon un formulaire distinct, auprès du Commissariat aux affaires maritimes par l'exploitant du navire au nom de qui le navire sera immatriculé. La demande indique: a) le nom du navire; b) le numéro d'immatriculation du navire; c) les noms et adresse du déclarant; d) les noms et adresse de l'affréteur; e) les coordonnées du registre étranger où sera inscrit le navire. Elle est accompagnée des documents suivants: a) une copie certifiée conforme par un notaire de la charte-partie coque nue, y compris toutes les annexes ainsi que d'éventuelles chartes-parties de sous-affrètement; b) un extrait du registre matricule délivré par le conservateur des hypothèques maritimes constatant la propriété du navire et les hypothèques inscrites; c) une copie certifiée conforme par un notaire du consentement du propriétaire et des créanciers hypothécaires éventuels à l'immatriculation du navire coque nue dans un Etat de pavillon étranger; d) un engagement formel du propriétaire: (i) de remettre au Commissaire aux affaires maritimes endéans les trente jours de l'autorisation de frètement, respectivement endéans trente jours après le commencement de ce frètement, tout certificat

2.2. Requirements for revocation of flag/licence

En vertu de l'article 15 de la loi modifiée (1994), en cas de **retrait de l'autorisation ministérielle à la base du certificat d'immatriculation** ou en cas de **non-respect des conditions relatives aux personnes physiques ou morales à qui appartiennent les navires** immatriculés au registre, le navire perd la nationalité luxembourgeoise. Cette perte de nationalité intervient également en cas de démolition ou perte par naufrage ou en cas de non renouvellement du certificat d'immatriculation à l'expiration de celui-ci. La perte de la nationalité luxembourgeoise entraîne la **radiation de l'immatriculation du registre** et la perte du droit d'arborer le pavillon luxembourgeois. Le Commissaire aux affaires maritimes est compétent pour la radiation de navires du registre maritime luxembourgeois.

2.3. Supervisory obligations

Le **Commissariat aux affaires maritimes** est chargé, en vertu de la Loi de 1990⁴⁴², de veiller à l'application des dispositions de la Loi de 1990 et de ses modifications ultérieures, ainsi que des règlements pris en application de cette loi, et ce, sans préjudice des attributions des autres administrations. Il exerce ainsi un **pouvoir de contrôle** dans le domaine maritime. Ce pouvoir intervient essentiellement à plusieurs niveaux.

2.3.1. Conditions de sécurité des navires

La loi de 1990 prévoit qu'aucun navire luxembourgeois ne peut prendre la mer, ni au départ d'un port fluvial, ni dans aucun port maritime, s'il ne répond pas aux **conditions de sécurité** prévues dans les conventions internationales en vigueur, dûment ratifiées par le Luxembourg ou requises par la présente loi et des règlements pris en son exécution.

délivré par ou sous l'autorité du Luxembourg, ainsi qu'une copie certifiée conforme du certificat d'immatriculation délivré par l'Etat étranger; (ii) d'informer le Commissariat aux affaires maritimes, qui transmettra au conservateur que la charte-partie de frètement coque nue est venue à terme, pour quelque raison que ce soit et que le propriétaire a repris le navire en charge;

e) une convention écrite entre le propriétaire et l'affrètement, stipulant expressément: (i) la renonciation à battre pavillon luxembourgeois et à afficher « Luxembourg » comme port d'attache pendant toute la durée que le navire se trouvera en frètement coque nue; (ii) le maintien le plus strict de toutes les normes de sécurité technique imposées par la législation maritime luxembourgeoise, ou par les conventions internationales auxquelles le Luxembourg est partie pendant toute la durée du frètement ainsi que le maintien des standards sociaux luxembourgeois si le navire est frété avec équipage; (iii) la suspension temporaire de tous les endossements pour homologation des certificats de bord, estampillés sous l'autorité du Luxembourg; (iv) que s'il se produit en cours du frètement coque nue un accident majeur, résultant en la perte du navire, en de sérieux dégâts à des biens ou à l'environnement, le propriétaire et l'affrètement garantissent pleine coopération pour faciliter aux experts désignés par le Commissaire aux affaires maritimes les enquêtes et les interrogatoires du capitaine et de l'équipage s'avérant nécessaires; (v) que tous modifications ou ajouts ultérieurs à la convention initiale entre parties ainsi que tout sous-affrètement subséquent devront être notifiés au Commissariat aux affaires maritimes avec indication quant à leur incidence sur la teneur de la convention de base. Ces modifications et/ou ajouts seront également sujets au consentement par écrit de la part des créanciers privilégiés ou hypothécaires dont les intérêts sont en cause ;

f) Une déclaration de principe des autorités étrangères que le navire peut être immatriculé en coque nue ainsi qu'une attestation que rien ne s'oppose à ce que les inscriptions relatives à la propriété du navire et les droits réels le grevant restent inscrits au registre maritime luxembourgeois.

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Art. 2 Loi de 1990.

Les conditions de sécurité en cause sont celles visées par les **conventions internationales** en vigueur et dûment ratifiées par le Luxembourg⁴⁴³ ; en outre, la loi prévoit que, pour autant que les conventions internationales ratifiées par le Luxembourg n'y pourvoient pas, des conditions de sécurité peuvent également être ordonnées **par voie de règlement grand-ducal** dans plusieurs domaines, notamment en ce qui concerne la construction et l'état d'entretien de la coque; les engins de sauvetage; les agrès et appareils, aux objets d'armement, y compris les moyens contre l'incendie et les pièces de rechange; les instruments nautiques, appareils de propulsion, appareils mécaniques et électriques, appareils de signalisation, la radiotélégraphie et téléphonie; les aptitudes physiques, brevets, licences et autres attestations similaires qui peuvent être exigés du capitaine et de l'équipage, ainsi que le nombre des membres d'équipage; le nombre des passagers par catégorie qui peuvent être transportés; l'habitabilité des aménagements, l'hygiène et la salubrité; les échelles de tirant d'eau et aux marques de franc-bord; la stabilité, l'arrimage et lestage; les engins de levage.

Les compétences de contrôle sont par principe exercées par le **Commissariat aux affaires maritimes** mais peuvent être déléguées le cas échéant - et le sont régulièrement - à une personne physique ou une personne morale mandatée à cette fin, justifiant d'une expérience reconnue dans le domaine maritime, afin d'effectuer ponctuellement des contrôles, des inspections ou des enquêtes sur des navires battant pavillon luxembourgeois.⁴⁴⁴

En outre, la loi prévoit que **l'équipage** peut, en tout temps, s'adresser par requête motivée au Commissaire aux affaires maritimes, s'il estime que le navire ou le bâtiment n'offre pas toutes les garanties de sécurité voulues. Le commissaire aux affaires maritimes désignera un délégué pour entendre l'équipage avant de prendre les mesures requises par les circonstances.

2.3.2. Droit du travail applicable aux gens de mer

Le Luxembourg a ratifié plusieurs **conventions internationales** relatives aux conditions de travail des gens de mer, dont en particulier la **Convention du travail maritime** de l'Organisation internationale du travail

⁴⁴³ Il s'agit notamment : Convention internationale de 1974 pour la sauvegarde de la vie humaine en mer telle que modifiée (Solas 1974) et Protocole de 1978 y relatif, tel que modifié (Solas Prot 1978) et Protocole de 1988 y relatif (Solas Prot 1988) ; Convention sur le Règlement international de 1972 pour prévenir les abordages en mer, telle que modifiée (Colreg 1972) ; Convention internationale de 1973 pour la prévention de la pollution par les navires (Marpol 1973) et Protocole de 1978 relatif à la Convention internationale de 1973 pour la prévention de la pollution par les navires, tel que modifié (Marpol Prot 1978) ; Convention internationale de 1966 sur les lignes de charge telle que modifiée (LL 1966) et Protocole de 1988 relatif à la Convention internationale de 1966 sur les lignes de charge (LL Prot 1988) ; Convention internationale de 1969 sur le jaugeage des navires (Tonnage 1969) ; Convention internationale sur la responsabilité civile pour les dommages dus à la pollution par les hydrocarbures (CLC 1969) et Protocole y relatif de 1976 (CLC Prot 1976) et Protocole y relatif de 1984 (CLC Prot 1984) ; Convention internationale de 1978 sur les normes de formation des gens de mer, de délivrance des brevets et de veille (STCW 1978) ; Convention internationale de 1979 sur la recherche et le sauvetage maritimes (SAR 1979) ; Convention sur la prévention de la pollution des mers résultant de l'immersion de déchets, 1972, telle que modifiée (LDC 1972).

⁴⁴⁴ Art. 68 Loi de 1990. Une liste des personnes morales mandatées ainsi que des personnes physiques de contact auprès de ces personnes morales, est disponible ici : http://www.maritime.lu/sites/maritime.lu/files/files/pdf/legislation/reg_circulaires/007%20Liste%20insp ecteurs_04122017.pdf (27.02.2018).

adoptée en 2006 et approuvée par le Luxembourg en application de la loi du 10 juillet 2011 portant approbation de la Convention du travail maritime⁴⁴⁵.

Dans le cadre de la mise en œuvre des dispositions de la Convention du travail maritime, un règlement grand-ducal de 2015 règle l'exercice de certaines responsabilités en ce qui concerne les navires battant pavillon luxembourgeois. Le règlement prévoit essentiellement les mesures qui doivent être observées par l'Etat luxembourgeois visant à garantir qu'il s'acquitte de manière efficace des obligations qui lui incombent en tant qu'Etat du pavillon en ce qui concerne la mise en œuvre des passages pertinents de la Convention du travail maritime de 2006. A ce titre, afin de garantir que les conditions de vie, de travail et d'emploi à bord des navires sont remplies au jour de leur immatriculation et sont maintenues par la suite, le **Commissariat aux affaires maritimes** met en place un **système efficace d'inspections et de certification sociale des navires** décrit dans le règlement.⁴⁴⁶

2.3.3. Agrément des entreprises maritimes

Le Commissariat aux affaires maritimes est chargé de veiller au respect des obligations incombant aux **entreprises maritimes**. Celui-ci doit être informé sans délai de toute modification dans le fonctionnement de l'entreprise maritime⁴⁴⁷.

2.4. Taxes

Les entreprises maritimes établies au Luxembourg sont taxées selon les **dispositions générales applicables en matière d'imposition des sociétés commerciales**. Contrairement à d'autres Etats, le Luxembourg n'applique ainsi **pas un système d'imposition basé sur le tonnage**. Les entreprises maritimes sont taxées sur leur revenus mondiaux à un taux allant de 20% à 22% selon le niveau de revenu, auquel il convient d'ajouter une surcharge de 4% payable au fond pour le chômage, de telle sorte que le taux effectif s'élève à **22,88%**. La taxation est basée sur les revenus annuels tels que mentionnés sur les comptes annuels de la société. Toutes les dépenses réalisées par la société pour les besoins de son activité lucrative sont en principe déductibles. De plus, le Luxembourg prévoit plusieurs outils fiscaux avantageux, en particulier un double système de dépréciation de la valeur des navires, ainsi que des crédits d'impôts pour investissement.

Les navires luxembourgeois sont **exemptés de la taxe sur la valeur ajoutée**, conformément à l'art. 43 de la Loi sur la TVA⁴⁴⁸.

⁴⁴⁵ Loi du 10 juillet 2011 portant approbation de la Convention du travail maritime, Mémorial A 2011, N° 147, p. 2070.

⁴⁴⁶ Règlement grand-ducal du 31 mai 2015 relatif à certaines responsabilités de l'Etat du pavillon en ce qui concerne le respect et la mise en application de la Convention du travail maritime de 2006, Mémorial A 2015, N° 95, p. 1580.

⁴⁴⁷ Art. 137 Loi modifiée (1994).

⁴⁴⁸ Loi modifiée du 12 février 1979 concernant la taxe sur la valeur ajoutée (état au 1^{er} janvier 2018), disponible sous : <http://www.aed.public.lu/tva/loi/Loi-TVA-2018.pdf> (27.02.2018).

2.5. Fee system

Le Commissariat aux affaires maritimes a publié une **liste des émoluments** applicables en ce qui concerne l'immatriculation des navires luxembourgeois. Cette liste est disponible sous : <http://www.maritime.lu/administrative-fees>.

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F. MARSHALL ISLANDS

1. Introduction

The Republic of the Marshall Islands (RMI) is one of the states of Micronesia, composed of a group of over 1000 islands and islets that have a combined surface area of just under 182 km². With a GDP of \$202 million, RMI is ahead only of Tuvalu in the World Bank's ranking according to the economic figures, although its per capita gross national income of \$4630 (Atlas method, current dollars) places the state in the upper-middle income countries according to the World Bank's classification system. The RMI's small population, currently approximately 53,000 people, is shrinking as its inhabitants emigrate to escape the threats posed by climate change to life on islands.⁴⁴⁹

Relatively new as an independent governmental entity, the RMI became a state in 1979.⁴⁵⁰ It joined the United Nations in 1991 and the International Labour Organization in 2007. The Compact of Free Association⁴⁵¹ gives the United States the duty to defend the Republic in case of military need to do so.⁴⁵²

As an island nation with limited natural resources, the RMI economy has long been dominated by small-scale agriculture, handicraft industries, and fishing. Low business taxes (3%) are in place, but unemployment remains at approximately 30%. Annual payments by the United States significantly augment the country's modest economy, but are scheduled to end in 2023.⁴⁵³

1.1. Background on role of shipping in local economy

From its earliest history, the population of the Marshall Islands has been sailing the oceans. Yet RMI's significance in international shipping began in 1990, with the passage of the Maritime Act and its creation of an RMI maritime register. An open registry (and considered a flag of convenience by the ITF), it is now second in the world as per tonnage: a July 2017 article reports that there are 3000 vessels registered under the RMI flag, equaling more than 102 million gross registered tonnage (GRT).⁴⁵⁴

⁴⁴⁹ The Guardian reported a 20% decline in population between 1999 and 2011, most of the citizens moving to the United States.

⁴⁵⁰ The history of the island since the coming of the Europeans has witnessed Spanish, British, German, and Japanese rule prior to the Islands' becoming a Trust Territory under the authority of the United States after World War II.

⁴⁵¹ Compact of Free Association Act of 1985, 48 USC 1681 note. 59 Stat. 1031 and amended Dec. 17, 2003 by House Jt. Res. 63; U.S. Pub. Law 108-188.

⁴⁵² The interesting case of the Iranian seizure of the RMI-flagged MV Maersk Tigris in 2014 tested the United States Defense Department's willingness to come to the aid of an RMI-flagged, but non-RMI national-owned ship. While the United States did send a ship to observe the situation, the Department of Defense did not commit itself to having been obliged by their Compact to do so. See Ankit Panda, What Really Happened in the Persian Gulf on April 28, 2015, *The Diplomat*, 29 April 2015 (<https://thediplomat.com/2015/04/what-really-happened-in-the-persian-gulf-on-april-28-2015/>; viewed 22 February 2018).

⁴⁵³ The US extended the Compact's financial assistance for 20 years in an agreement with the RMI. See Department of the Interior, The Marshall Islands (<https://www.doi.gov/oia/islands/marshallislands>; viewed 22 February 2018).

⁴⁵⁴ Lawrence Rutkowski, Marshall Islands, *The Shipping Law Review*, ed. 4 (July 2017) (available at <https://thelawreviews.co.uk/edition/the-shipping-law-review-edition-4/1144034/marshall-islands>; viewed 21 February 2018).

The administration of the RMI fleet is shared by the RMI Maritime Administrator with International Registries, Inc. (IRI), a company headquartered in Reston, Virginia (USA)⁴⁵⁵, by means of a joint venture. Significantly, IRI also administers RMI's corporate registration.⁴⁵⁶ With physical IRI offices available not only in Virginia, but also in New York, London, Zurich, Piraeus, Hong Kong, Singapore, Dalian, Hamburg, Seoul, Istanbul, Mumbai, Roosendaal, Shanghai, Reston, Tokyo, Baltimore, Geneva, Fort Lauderdale, Dubai, Houston, Taipei, Long Beach and Rio de Janeiro and with many forms allowed to be submitted on-line, ship owners do not have to travel far to avail themselves of IRI services. These services, moreover, include the possibility of incorporation of companies as non-resident RMI entities as well as a registry for mortgages on vessels.

Registration is possible for any type of vessel engaged in "foreign trade", including commercial fishing boats, passenger ships, private and commercial yachts (which have their own registry and in fact compose 12% of RMI registrations) and bareboat charters. There are no nationality requirements for vessel registration regarding owner or crew, foreign entities are exempt from income or sales taxes in RMI, and mortgages against the ship are accorded high priority. Together, these various elements make the flag of the RMI easy to access and clearly attractive to ship owners.

1.2. Background on ship registration (who is responsible; where are the laws/ordinances found; how often are they adjusted)

The Republic of the Marshall Islands Maritime Act 1990, as amended (October 2016 version) is the main legislative instrument governing the registration and operation of vessels flying the RMI flag.⁴⁵⁷ It includes chapters (inter alia) on the relevant administrative structures, vessel safety, liability, environmental protection, and maritime worker protection as well as the regulations relating to offering an RMI flag to a vessel.

Together with the relevant Maritime Regulations, the Maritime Act Chapter 2 (Documentation and identification of vessels), Part I (Vessel Registration) sets forth most of the information upon which the following assessment is based. For certain issues, Parts III (Bareboat Charter RMI Registration), IV (Bareboat Charter Foreign Registration), and VI (Fishing Vessels) were also examined.⁴⁵⁸

According to the Maritime Act, the authority responsible for maritime registration is the Maritime Administrator. The Maritime Administrator is appointed by the Cabinet and given powers delegated to him/her by the Minister of Transport and Communications.⁴⁵⁹ These delegated powers include the power to enforce requirements as to seaworthiness and the conditions of manning of vessels.⁴⁶⁰

⁴⁵⁵ See the description contained in the Liberia national report regarding the establishment of International Registries, Inc. *Supra*, 5.1.2.5.

⁴⁵⁶ See Rutkowski, Marshall Islands.

⁴⁵⁷ Republic of the Marshall Islands Maritime Act, (available at: <http://www.register-iri.com/forms/upload/MI-107.pdf>; viewed 5 January 2018). The Act applies to both vessels sailing in internationally as well as vessels that remain in domestic waters. See §102.2-102.3.

⁴⁵⁸ All of the relevant legal instruments on RMI maritime law are located on the IRI website. In fact, the official page of the Maritime Administrator refers the reader to the IRI site for the most current versions of the laws and regulations.

⁴⁵⁹ Maritime Act § 103.

⁴⁶⁰ Maritime Act § 103.

The Marine Administrator is, in turn, to appoint and delegate powers to a Commissioner and a Deputy Commissioner of Maritime Affairs to assist in the tasks given by the Act and the Minister.⁴⁶¹ Any (or all) of these office holders may additionally appoint “Special Agents”.⁴⁶²

The Maritime Administrator has designated Marshall Islands Maritime and Corporate Administrators, Inc., of Reston, Virginia (IRI) to be its designee. It appears from external reports that official inquiries directed to the Maritime Administer are regularly referred to the IRI.⁴⁶³

Should disputes arise under the Maritime Act, primary jurisdiction rests with the High Court of the Marshall Islands, sitting in Admiralty. The decisions may be appealed to the Supreme Court of the Marshall Islands. Jurisdiction for Maritime Act causes of action, however, is not limited to the High Court with the exception of an enumerated list of claims set out in the Admiralty Jurisdiction Act of 1986.⁴⁶⁴ Any court may hear claims of mortgage foreclosures, shareholder derivative suits, and other commercial matters, as RMI courts usually recognize contractual choice of forum/law clauses.⁴⁶⁵ Arbitration may also occur for commercial disputes, but reportedly rarely takes place between non-resident RMI entities.⁴⁶⁶

Given the historical ties RMI has with the United States, there is also a provision in the Maritime Act to incorporate US common law on maritime issues.⁴⁶⁷

International law

The Republic of the Marshall Islands is a member of the United Nations and both the International Maritime Organization and the International Labour Organization. RMI acceded to the UNCLOS in 1991 and has ratified most of the major maritime safety and labour conventions.⁴⁶⁸ In addition, RMI ratified the Agreement for the implementation of the provisions of the Convention relating to the conservation and management of straddling fish stocks and highly migratory fish stocks as well as a number of other environmental and human rights conventions. It is not, however, a signatory to the United Nations Convention on Conditions for Registration of Ships.⁴⁶⁹ For 2017, the Paris Memorandum of Understanding on Port State Control places Marshall Islands on its White List, at place 8 (Switzerland is on the Grey List at place 47).⁴⁷⁰

⁴⁶¹ Maritime Act §§ 104-105.

⁴⁶² Maritime Act, § 106: “The Maritime Administrator, the Commissioner or any Deputy Commissioner may from time to time appoint one or more special agents (hereinafter sometimes referred to as “the Special Agents”) to act on its or his behalf in connection with the registration and documentation of vessels, the formation and maintenance of corporations or other entities and the recordation of instruments in relation thereto. The signature of the Special Agents will have the same status as a notarial act or acknowledgement. The Special Agents acknowledgment shall be admissible as evidence in the High Court of the Republic.”

⁴⁶³ E.g., OECD ---.

⁴⁶⁴ See Rutkowski.

⁴⁶⁵ Rutkowski.

⁴⁶⁶ Rutkowski.

⁴⁶⁷ Maritime Act § 113: “Insofar as it does not conflict with any other provisions of this Title or any other law of the Republic, the non-statutory general maritime law of the United States of America is hereby declared to be and is hereby adopted as the general maritime law of the Republic”.

⁴⁶⁸ See, e.g., https://en.wikipedia.org/wiki/Category:Treaties_of_the_Marshall_Islands.

⁴⁶⁹ The United Nations Convention on Conditions for Registration of Ships is not in force. Nevertheless, there are 14 signatories and 15 Parties – the Marshall Islands are not among either group. https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XII-7&chapter=12&clang=_en

⁴⁷⁰ <https://www.parismou.org/system/files/2016%20WGB-RO%20Lists.pdf> (viewed 22 February 2018).

1.3. Any current discussions as to registration requirements

Beyond the recent tightening of rules in the Association Act to combat harmful tax avoidance, I have located no other significant changes being discussed in the RMI regarding the requirements for the registration of ships. However, the IRI blog as well as its updating of the legal texts it publishes on the website indicate regular activity on various aspects of maritime law, whether through amendment of the law or the issuance of regulations or guidelines.

2. Questions

2.1. What are the conditions on registration for the various categories of internationally active commercial high seas ships?

The RMI registers most types of commercial vessels. The webpage notes that the “[t]ypes of vessels that may be registered under the RMI flag include: tankers, cargo ships, containerships, passenger vessels, MODUs, tugs, yachts, fishing vessels and other ocean-going vessels”. In the Maritime Act (MI-107) and the Maritime Regulations, however, there are rules only for more general categories of vessels. MI107 § 203 sets forth four types of boat as “Vessels eligible to be documented and re-documented”:

- (a) “sea-going vessel engaged in foreign trade”
- (b) “decked commercial fishing vessel”
- (c) “commercial yachts”
- (d) “private yacht”

Vessels under construction are also eligible for registration prior to completion.⁴⁷¹

The Maritime Act §§260-264 permit bareboat charter registration.⁴⁷² The requirements for private yachts and bareboat charters will not be covered here, as according to the terms of our assignment.⁴⁷³ It may be interesting to note, however, that there are over 500 yachts (private and commercial) on the RMI registry, each of which pays a registry fee (approximately \$1350-1800, depending on type of yacht and choice of fee program) and annual fees (ranging from approximately \$1000 to over \$4000). The IRI website has a special section devoted to the Yacht Registry and notes that registration can be accomplished within 24 hours, thanks to numerous offices.

The requirements for registration on each type of vessel include general requirements and vessel-type specific requirements. Importantly, the Maritime Act vests the Maritime Administrator or its agent with the authority not only to deny registration despite fulfilling the required criteria (“if after due consideration it would be detrimental to the interests of the Republic or of international shipping for the vessel to be

⁴⁷¹ Maritime Act §203(f).

⁴⁷² The IRI website explains bareboat charter registration as follows:

“Bareboat charter registration in essence temporarily permits a vessel to fly the flag of another country while ownership continues to be registered in the owner’s State. It provides a welcome element of flexibility in a number of commercial situations. While registered pursuant to a bareboat charter, a vessel is allowed, with the consent of its owner’s State of registry, to fly the flag of its bareboat charterer’s State for a period determined by that State’s law or, if for a shorter time, by the term fixed in the bareboat charterparty.”

<https://www.register-iri.com/index.cfm?action=page&page=117>; viewed 22 February 2018.

⁴⁷³ Vessels which only sail in internal waters or engage in domestic trade only are documented under different provisions, and do not need to be registered. MI-107 § 204.

documented”)⁴⁷⁴, but also with the authority to temporarily waive or modify any of the requirements for registry “for good cause shown, including but not limited to cases of international, civil, political or military crisis”.⁴⁷⁵ This level of discretion is noteworthy, but the extent to which it is exercised is unclear.

2.1.1. Generally applicable requirements

Procedure: Registration for an RMI flag is handled by International Registries, Inc., with headquarters in the United States and offices around the world. The application process requires the completion of the requisite “Application for Registration” form, the submission of documents (only some of which need authentication), the submission of an oath, and payment of fees.⁴⁷⁶ Applications for registration may be made either in RMI or at a “regional office”. If made at a regional office, applications must be notified two days in advance.

Application for a provisional registration may be made at a number of ports around the world, but requires a one-week prior notification.

The IRI website boasts of “quick turn-around time” for registration processing, and notes that facimiles of documents are accepted.

Nationality of Owner: RMI administers an “open registry”. The Maritime Act §203 states the ownership requirements of a vessel applying to be flagged in the Marshall Islands: “a citizen or national of the Republic, or a foreign marine entity qualified by the Republic”. This means that an individual citizen or national of the Marshall Islands, a group of individuals (such as a partnership, a limited partnership, a limited liability company, or an association) who are citizens or nationals of the Marshall Islands, or a corporation established in the Marshall Islands may be the owner of a registered vessel. Non-resident corporations are those RMI corporations that are established under the rules of the Business Corporation Act, which permits them to avoid various taxes on their income and foreign crew wages.⁴⁷⁷

In addition, the RMI allows non-nationals to own flagged vessels. Thus, a non-resident Foreign Marine Entity can be the owner as long as it is registered with the RMI. Such an entity can be a partnership, corporation or trust established in another state but registered as a Foreign Marine Entity in the Marshall Islands with either a business office or an agent located in the country.⁴⁷⁸ If the foreign entity has no local office, the agent will be the Trust Company of the Marshall Islands.⁴⁷⁹

The Act and Regulations do not specify many further requirements on the corporate ownership of a vessel. While a corporate owner must designate a secretary, this may be a corporation⁴⁸⁰; the corporation may have any number of shareholders over one⁴⁸¹; and any number of directors over one⁴⁸². Moreover, there

⁴⁷⁴ Maritime Act § 204(2).

⁴⁷⁵ Maritime Act §203(h).

⁴⁷⁶ See generally MRI Maritime Administrator, Vessel Registration and Mortgage Recording Procedures, MI-100, Chapter I, Section 3 (March 2017).

⁴⁷⁷ MRI Maritime Administrator, Vessel Registration and Mortgage Recording Procedures, MI-100, Chapter II, Section 1 (March 2017).

⁴⁷⁸ Coles, 224.

⁴⁷⁹ Coles, 224.

⁴⁸⁰ Coles, 225.

⁴⁸¹ Coles, 224.

⁴⁸² Coles, 224.

are neither residency nor nationality requirements on the directors, and corporate directors are permissible.⁴⁸³

The possibility of allowing a corporation with bearer shares be registered has led the OECD to criticize RMI as “Non-Compliant” in its 2016 report from the Global Forum on Transparency and Exchange of Information for Tax Purposes, pointing out the potential for such shares to disguise the beneficial owner and the non-responsiveness of the RMI authorities to take decisive action when requested to respond to information requests.⁴⁸⁴ In response, the RMI amended its Associations Law 1990 to require owners to submit or promptly provide such information.⁴⁸⁵

Finally, non-resident Marshall Island corporations are not subject to Marshall Island taxes or exchange controls⁴⁸⁶ and non-resident corporations do not need to have an auditor or keep books and accounts⁴⁸⁷.

Classification statement: An important general limitation on the Marshall Islands’ registration of a vessel is that the vessel must be classified by an RMI-recognized Classification Society.⁴⁸⁸ This Society must also submit statements to:

⁴⁸³ Coles, 224.

⁴⁸⁴ OECD, Global Forum on Transparency and Exchange of Information for Tax Purposes: Phase II, Implementation of the Standard in Practice (July 2016) (available at: https://books.google.ch/books?id=5qxwDQAAQBAJ&pg=PA7&lpg=PA7&dq=Marshall+Islands+identity+of+ship+owner&source=bl&ots=PA7Pc5hRC5&sig=z32F1lr_poUXlr2KIWC15mEISU&hl=de&sa=X&ved=0ahUKEwjo_MjXvrnZAhVCyqQKHZgfCngQ6AEIVTAH#v=onepage&q=Marshall%20Islands%20identity%20of%20ship%20owner&f=false; viewed 22 Feb. 2018).

⁴⁸⁵ See RMI Associations Law 1990, as amended November 2017 ([http://www.register-iri.com/userfiles/files/Associations%20Law%20-%20courtesy%20copy%20published%20by%20the%20RMI%20Registrar%20of%20Corporations%20\(November%202017\).pdf](http://www.register-iri.com/userfiles/files/Associations%20Law%20-%20courtesy%20copy%20published%20by%20the%20RMI%20Registrar%20of%20Corporations%20(November%202017).pdf); viewed 22 February 2018). See also IRI blog, “Fall 2017 Update to the RMI Associations Law” (<http://blog.register-iri.com/fall-2017-update-to-the-rmi-associations-law/>; viewed 22 February 2018).

⁴⁸⁶ Coles, 224.

⁴⁸⁷ Coles, 225.

⁴⁸⁸ According to Maritime Guideline No. 2-11-15 (Jan. 2018), the RMI recognizes the following Classification Societies:

1. **American Bureau of Shipping (ABS)**
2. **Bureau Veritas Marine & Offshore (BV)**
3. **China Classification Society (CCS)**
4. **ClassNK (NK)**
5. **Croatian Register of Shipping (CRS)**
6. **DNV GL AS**
7. **Hellenic Register of Shipping (HRS)**
8. **Indian Register of Shipping (IRS)**
9. **Korean Register (KR)**
10. **Lloyd's Register (LR)**
11. **Polski Rejestr Statków (PRS)**
12. **Rina Services S.P.A. (RINA)**
13. **Russian Maritime Register of Shipping (RS)**

These offices are also recognized as Recognized Organizations (RO) for purposes of authorizing verifications of compliance with the International Safety Management (ISM) Code and issuing ISM Code Documents of Compliance and Safety Management Certificates. They are also (with the exception of the Hellenic Register

- Confirm that the vessel satisfies all of the conditions of classification and/or has dealt with any problems (or, in the alternative, the society is to list any recommendations or deficiencies that remain);
- Confirm which statutory certificates it is “prepared to issue on behalf of the Republic of the Marshall Islands (RMI) upon completion of all relevant statutory surveys”;
- Give the status of any classification and survey with the dates they will be completed; and
- If the vessel will not be seaworthy before completion of recommendations, the reasons why this is so.⁴⁸⁹

Age/Seaworthiness: Another requirement is that the vessel be seaworthy. The general maximum age of 20 years is subject to the possibility of exceptions being made for ships that are in good condition and still being used.⁴⁹⁰ Any ship that is 15 years old or older on the date of application, however, must submit additional documents (“surveys”) to prove its viability.⁴⁹¹ Specific requirements relate to older tank vessels and bulk carriers, and will be recounted below.

Crew: There are no nationality requirements on crews for RMI flagged ships. Other requirements regarding the crew do exist, however.

Chapter 8 of the Maritime Act (known as the “Merchant Seafarers Act”), as detailed in the Maritime Regulations and Notices, contains the basic provisions on crews, or seafarers. Section 804 specifies that a RMI flagged vessel be manned sufficiently for “safe navigation”. Thus, for registration the owner must submit a proposal for safe manning. The proposal must comply with the International Maritime Organization’s Resolution on Principles of Safe Manning. The Administrator will issue a certificate based on the specific size and operations of the particular vessel.⁴⁹²

A RMI flag also requires that the vessel adhere to the standards of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW). This Convention requires a doctor to issue a medical certificate for every crewmember prior to (or, in exceptional cases, soon after) beginning work, and to ensure regular medical tests continue to be performed throughout the term of employment.⁴⁹³

Under the Maritime Act § 820, it is the responsibility of the Master of the vessel to ensure that each crewmember has shipping articles prior to sailing from a port. Failure to have such articles can result in

of Shipping) Recognized Security Organizations (RSO) for checking on compliance with the International Ship and Port Facility Security (ISPS) Code. Maritime Guideline No. 2-11-15, pp. 3-4 and footnote 1.

⁴⁸⁹ See <https://www.register-iri.com/index.cfm?action=page&page=55> (viewed 5 January 2018).

⁴⁹⁰ MI-107 §203(e)

⁴⁹¹ The official website lists these additional documents as follows:

Classification Special Survey, Hull;
 Classification Special Survey, Machinery and Electrical Equipment;
 Classification Drydocking Survey or Underwater Examination in lieu of Drydocking;
 Load Line Survey;
 Safety Construction Survey;
 Safety Radio Survey; and
 Safety Equipment Survey
 International Oil Pollution Prevention (IOPP) Survey

The documents to be submitted are those which are copies of the most recent surveys of each type listed.

⁴⁹² See list at <https://www.register-iri.com/index.cfm?action=page&page=56> (viewed 5 January 2018).

⁴⁹³ See RMI Marine Administrator, Marine Guideline 7-47-1, Rev. 8/13 (available

the vessel being fined.⁴⁹⁴ The health and safety of the crew, also, are the responsibility of the Master.⁴⁹⁵ Maritime Administrator who is responsible for ensuring compliance with the Maritime Act provisions.

Finances: Ships wishing to be registered must also be free from lien or other debts.

Other: Found in the Maritime Act, there are a number of further requirements that any vessel must fulfil in order for the Administrator to register it.

- i. Flagged vessels must agree to undergo periodic safety inspections
- ii. Once flagged, a vessel owner must also apply for a ship radio station license within 90 days.

2.1.2. Specific Requirements

In addition to the general requirements, there are certain specific conditions for registration for some types of vessels.

Operational criteria: Commercial fishing vessels must be “engaged in foreign trade” to qualify for documentation. Fishing vessels must be operated by a resident of RMI and land their catch “solely in RMI waters”.⁴⁹⁶

Size: The Regulations specify that decked commercial fishing vessels that engaged in foreign trade and commercial yachts that are at least 24 meters long may be registered.

Age/seaworthiness: In addition to the general age restriction of 20 years, further limitations are set out under MI-100 to be considered for registration⁴⁹⁷:

Single Hull Tank Vessels (defined as a single hull, double bottom and double sided tank vessels not meeting the double hull requirements of the International Convention for the Prevention of Pollution from Ships (MARPOL), Annex I, regulations)

Any age

- Must either have and maintain a current CAS Statement of Compliance; or
- May only transport liquid cargoes that are not regulated by MARPOL Annex I; or
- Is used to support offshore exploration and production.

15 years of age or older

- Must have a current Condition Assessment Program (CAP) 1 certification or equivalent or a Condition Assessment Scheme (CAS) Statement of Compliance with supporting documentation from the previous flag state and the Classification Society.
- Must be inspected before a request for registration can be accepted, must have a “comprehensive” inspection and at least one more inspection in the first year following registration. The Classification Society must also certify that any conditions of class are completed

⁴⁹⁴ Maritime Act § 822.

⁴⁹⁵ Maritime Act §§ 811(d), (k)

⁴⁹⁶ MRI Maritime Administrator, Vessel Registration and Mortgage Recording Procedures, MI-100, Chapter 1, Section 2E (March 2017).

⁴⁹⁷ MRI Maritime Administrator, Vessel Registration and Mortgage Recording Procedures, MI-100, Chapter 1, Section 2B (March 2017).

within the first year and verify the statutory survey deficiency recommendations prior to issuance of a permanent certificate of registry.

Older than 20 years of age

- Must be inspected before a request for registration can be accepted, must have a “comprehensive” inspection and at least one more inspection in the first year following registration. The Classification Society must also certify that any conditions of class are completed within the first year and verify the statutory survey deficiency recommendations prior to issuance of a permanent certificate of registry.

Bulk carriers:

15 years of age or older

- Must be inspected before a request for registration can be accepted, must have a “comprehensive” inspection and at least one more inspection in the first year following registration. The Classification Society must also certify that any conditions of class are completed within the first year and verify the statutory survey deficiency recommendations prior to issuance of a permanent certificate of registry.

Over 20 years of age

- Must have a pre-registration inspection, the results of which are to be taken into account along with the CAP Certification ratings, Ship Inspection Report Program (SIRE) Reports, Chemical Distribution Institute (CDI) Inspection Reports, RightShip Risk Rating or similar vetting scheme results before granting any Waiver of Age.

Tank vessels:

Over 20 years of age

- Must have a pre-registration inspection, the results of which are to be taken into account along with the CAP Certification ratings, Ship Inspection Report Program (SIRE) Reports, Chemical Distribution Institute (CDI) Inspection Reports, RightShip Risk Rating or similar vetting scheme results before granting any Waiver of Age.

Bareboat charter registration

Discretion: Under the Maritime Act §203(h), the Maritime Administrator is given the authority to suspend, ignore, or alter the registration requirements “for good cause shown”. However, the commentary for vessel owners notes:

“Any vessel granted a Waiver of Age shall be subject to a comprehensive initial inspection and at least one (1) additional follow-up inspection during the first year in the registry. No exceptions or dispensations to RMI minimum safe manning requirements shall be permitted. All conditions of class requirements and statutory survey deficiency recommendations shall be satisfied during the course of the first year in the registry and verified by the vessel’s classification society”.⁴⁹⁸

⁴⁹⁸

MRI Maritime Administrator, Vessel Registration and Mortgage Recording Procedures, MI-100, Chapter 1, Section 2B.5 (March 2017).

2.2. What are the requirements regarding the revocation of a licence/flag?

Under the Maritime Act, the Maritime Administrator may refuse to register a vessel that otherwise fulfils the requirements for registration if (s)he considers that granting the request would be against the interests of the country or the industry. MI-107 §204(2) states that "Notwithstanding [any entitlements to be documented, the responsible official] may refuse registration to a vessel if satisfied after due consideration it would be detrimental to the interests of the Republic or of international shipping for the vessel to be documented".

Where the vessel has already been registered, the Administrator retains the right to revoke the registration as well. The Maritime Regulations provide a non-exclusive list of instances in which revocation may take place. These include the general consideration of the interests of the state or international shipping and failure to pay penalties (after three months) or taxes (after one year); violations of officially mandated limits on the vessel's movements or operations, violations of reporting requirements relating to designated persons responsible for safety; failure to undergo required inspections; failure to cooperate with investigations into maritime events; and "material" violations of international safety, labor, or environmental standards.⁴⁹⁹

2.3. What are the supervisory obligations toward fleets, ship owners, and seafarer recruitment and placement services (SRPS)?

Marshall Islands Maritime Regulations 1.01 establishes that The Trust Company of the Marshall Islands, Inc. will be the Maritime Administrator. The Maritime Administrator is given the supervisory power over the registration and operation of vessels flying under the flag of the Marshall Islands. Thus, any national and international regulations are to be monitored and enforced by the Administrator⁵⁰⁰ (or any officials to whom the Administrator delegates this authority) and any maritime "events" caused/suspected to be caused by an RMI registered ship is to be investigated by the Administrator.

It is the owners and Masters that are given the responsibility to ensure the compliance of their vessels and crews with international legal requirements⁵⁰¹, so violations of safety or labor regulations may result in the cancellation of the registration certificate, as would the refusal to cooperate with an Administrator-ordered investigation.

As a signatory of the ILO's Maritime Labour Convention, RMI as the state party is internationally responsible for ensuring every flagged ship is protecting its workers adequately. Nationally, ensuring compliance with the Maritime Labour Convention provisions primarily rests with vessel owners and Masters/operators. There is no apparent difference between crews hired directly or those placed by means of a seafarer and recruitment service (SRPS). Neither is there a prohibition on the use of SRPS from territories what do not adhere to the MLC.

However, a Maritime Notice from 2009 emphasizes the ship-owner or -operator's obligation and then sets forth guidelines of what the owners or Masters that use an SRPS from a non-MLC jurisdiction need to look

⁴⁹⁹ See generally, RMI Maritime Administrator, Maritime Regulations, MI-108, 2.11.3 (October 2017).

⁵⁰⁰ RMI Maritime Administrator, Maritime Regulations, MI-108, 2.11.3 (October 2017).

⁵⁰¹ RMI Maritime Administrator, Maritime Regulations, MI-108, 2.11.3 (October 2017).

for.⁵⁰² The list includes requirements to ensure the SRPS does not recruit or place persons into positions for which they are too young, not adequately trained, not adequately protected (physically, legally, or financially), or where they will be exploited.⁵⁰³ It also places a responsibility on the owner/Master to see to it that the SRPS maintains a secure database of their placement information and has a mechanism for taking complaints and relaying them to the Maritime Administrator.

2.4. To what types of taxes are shipowners and fleetowners subject?

All registered vessels must pay a tonnage tax upon registration and annually thereafter. As per the Maritime Act, the Maritime Administrator is responsible for establishing the tonnage tax (MI-107, §206) in the Regulations (§206). The current Regulations contain the provision for the annual tax in Maritime Regulations 1.09. These provide the annual payment of the tonnage tax for all types of vessels with the exception of private yachts.⁵⁰⁴ The annual payment may, at the owner's choice, be paid prior to 1 January of the year covered or paid in two installments (50% prior to 1 January; 50% prior to 1 July).⁵⁰⁵ A waiver of taxes due can be granted to vessel owners when the vessel is in layup.

The Maritime Regulations also stipulate that any fees or taxes owed constitute a lien on the vessel. Moreover, besides the incurrence of late charges, fees unpaid for more than three months or tonnage taxes unpaid for more than one year can result in the termination of the registration.⁵⁰⁶

2.5. What is the fee system used by the officials?

See schedule of fees found at <http://www.register-iri.com/index.cfm?action=page&page=281>.⁵⁰⁷

⁵⁰² RMI Maritime Administrator, Maritime Notice 7-045-1 (12/09).

⁵⁰³ Id. at Appendix 1.

⁵⁰⁴ Maritime Regulations, 1.09.1. Private yachts, as per Maritime Regulation 1.09.1d, may choose to pay the tax for three years at once. Commercial yachts, passenger yachts, private yachts limited charter, and yachts engaged in trade, however, are not afforded this choice.

⁵⁰⁵ MI-107 § 238.

⁵⁰⁶ MI-107 §§ 280 (for fishing vessels).

⁵⁰⁷ List current as of 22 Februar 2018 included as an annex.

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From: IRI, Fee Schedule (<http://www.register-iri.com/index.cfm?action=page&page=281>; downloaded 22 February 2018)

For vessels coming into the registry, two (2) fee option schedules (A & B) are available. Schedule A fees are the standard fees payable for the registration of a vessel in the RMI provided the owner chooses to register the vessel based on this schedule. Schedule B fees are based on a sliding scale for various tonnage categories and also provides a fleet discount structure. Schedule B is not available for yacht registrations. There is a [Tonnage Tax Calculator](#) available on the website to assist owners in determining which option is better for their particular situation.

1.0 Initial Registration Fees – Schedule A

1.1	Initial Registration Fee per vessel	US\$2,500
1.2	Bareboat Charter Registration Fee per vessel	US\$2,500
1.3	Vessels Under Construction	US\$2,500

This amount will be credited toward the registration fee if, upon delivery of the vessel to the owner or party making application for registration, the vessel is issued a Provisional Certificate of Registry under the RMI flag.

2.0 Initial Registration Fees – Schedule B**2.1 Initial Registration Fee per vessel (excluding yachts):**

.1	For vessels of 2,500 Net Tons (NT) or less	US\$2,500
.2	For vessels of 2,501 NT to 15,000 NT	US\$5,000
.3	For vessels of 15,001 NT to 35,000 NT	US\$10,000
.4	For vessels of 35,001 NT to 50,000 NT	US\$15,000
.5	For vessels over 50,000 NT	US\$20,000

2.2 A discount of one-third (1/3) off the Initial Registration Fee will be available to owners under the following circumstances:
☐

a) Registration of a vessel that is five (5) years of age or less from date of first construction or that has undergone a major conversion within the past five (5) years.

b) Registration of three (3) or more vessels at the same time that are fifteen (15) years of age or less or at least an irrevocable written commitment to register three (3) or more such vessels within a calendar year.

c) This discount will be increased to fifty percent (50%) for an owner registering ten (10) or more vessels that are fifteen (15) years of age or less at the same time or submitting an irrevocable written commitment to register ten (10) or more such vessels within a calendar year.

[...]

4.0 Re-Registration Fees

4.1 Re-registration Fee per vessel (irrespective of Schedule A or B) US\$1,500

4.2 Yachts US\$1,500

4.3 Annual fees for re-registered vessels or yachts remain the same as established at initial registration or as per the published fee schedule.

5.0 Annual Tonnage Taxes - Schedule A

5.1 Commercial Vessels, Annual Tonnage Tax per net ton US\$0.20

• The minimum Annual Tonnage Tax payable shall not be less than US\$500

6.0 Annual Tonnage Taxes - Schedule B

6.1 Annual tonnage tax per vessel (excluding yachts):

.1 For vessels of 2,500 NT or less	US\$500	
.2 For vessels of 2,501 NT to 5,000 NT	US\$0.20	per NT
.3 For vessels of 5,001 NT to 25,000 NT	US\$0.17	per NT
.4 For vessels of 25,001 NT to 50,000 NT	US\$0.15	per NT
.5 For vessels over 50,000 NT	US\$0.125	per NT

7.0 Marshall Islands International Participation (MIIP) - Schedule A

7.1 Annual MIIP fee per vessel (excluding private yachts):

- | | |
|--|-----------|
| .1 All vessels engaged in commerce up to 4,000 gross tons (GT) | US\$1,660 |
| .2 Commercial yachts of 400 GT or more up to 4,000 GT | US\$1,660 |

	.3 All vessels engaged in commerce over 4,000 GT	US\$1,500 plus US\$0.04 per GT
8.0	Marshall Islands International Participation (MIIP) - Schedule B	
8.1	Annual MIIP fee per vessel (excluding yachts):	
	.1 For vessels of 5,000 NT or less	US\$2,000
	.2 For vessels of 5,001 NT to 25,000 NT	US\$1,750 plus US\$0.04 per NT
	.3 For vessels of 25,001 NT to 50,000 NT	US\$1,500 plus US\$0.04 per NT
	.4 For vessels over 50,000 NT	US\$1,250 plus US\$0.04 per NT
9.0	Marine Services Fee - Schedules A & B	
9.1	For routine service requests not otherwise specified and each inspection regularly due or otherwise required, as provided by Maritime Regulation 5.34 , all vessels engaged in commerce, including fishing vessels, shall pay an annual fee of	US\$2,000
9.2	Subsequent to the required initial safety inspection, vessels under 400 gross tons, at cost, when requested by the Administrator by owner.	
9.3	For Passenger Ships that are inspected semi-annually, the mid-cycle inspection shall be invoiced additionally at cost.	
9.4	For inspections outside a station area or outside normal working hours, or for release of a vessel from detention, restoration or collection of documents, examining rectification of a deficiency, etc., all actual costs will be charged in addition to the fee in sub-paragraphs 11.1 and 11.2 above.	
9.5	Single Hull Tank Vessels and Bulk Carriers 15 years of age or more and any vessel granted a waiver on the age limitation for registration shall be charged a higher services fee to compensate for a comprehensive initial safety inspection and at least one (1) additional follow-up inspection during the first year in the registry of	US\$4,000
9.6	<u>Pre-registration inspections:</u> Any vessel being considered for registration may be subject to a pre-registration inspection as required for a waiver of the age limitation to registration or as deemed necessary by the Administrator to adequately assess the condition of the vessel prior to acceptance into the registry. When so required or deemed necessary, it shall be pre-arranged and agreed. The direct costs of the inspection shall be for the account of the prospective registering owner/operator irrespective of the results and be included as part of the registration closing fees, if known by closing, or invoiced immediately after the inspection when the direct costs have been determined.	

9.7	The said fee for Marine Services shall be adjusted annually to be effective as of the first day of each year. The Administrator will make this adjustment by amendment to this Marine Notice, 1-005-1, Section 11.	
10.0	Change of Name	
10.1	For securing the change of name of a vessel of any size under Section 232 of the Maritime Act	US\$250
11.0	Documentation of Vessels	
11.1	For the issuance or re-issuance of a Certificate of Registry (Permanent, Provisional, Construction or Restricted)	US\$300
11.2	For the issuance or reissuance of a Temporary Certificate of Registry for Yacht Engaged in Trade	US\$450
11.3	For issuance of a Certificate of Registry to a commercial yacht reflecting a change of operational status	US\$150
11.4	For the issuance of an extension to a Provisional Certificate of Registry:	
	.1 For a vessel in navigation	US\$450
	.2 For a vessel in Laid-up Status	US\$100
11.5	For the issuance of Continuous Synopsis Records:	
	.1 For issuance of initial CSR Document	US\$300
	.2 For issuance of amended CSR Document	US\$300
	.3 For replacement or transfer of CSR File	US\$450
11.6	For Bareboat Charter Registration:	
	.1 For issuance of Letter of Consent	US\$200
	.2 For issuance of Certificate of Deletion	US\$200
11.7	For issuance of a Certificate of Permission for Foreign Bareboat Charter Registration	US\$225
11.8	For the issuance of a Certificate of Permission to Sell for re-registration	US\$200
11.9	For the issuance of a Certificate of Permission to Transfer an RMI flagged vessel:	
	.1 For 90 days validity on Permission to Transfer	US\$200
11.10	For issuance of Certificate of Cancellation	US\$200

12.0 Recording of Instruments**12.1 For recording a Bill of Sale of a vessel:**

- .1 Vessels engaged in commerce and all yachts US\$200

12.2 For the recordation of any other instrument, including a Mortgage, Financing Charter, Amendment, Supplement or other instrument recordable under the RMI Maritime Act or Regulations, whether or not it provides for the addition of new security, or deals with an obligation unrelated to that described in the original Mortgage or Financing Charter:

- .1 Vessels engaged in commerce and all yachts US\$600
- .2 Vessels under Construction, each US\$600

12.3 For the recording of a Satisfaction, Release or Discharge of a Mortgage or Financing Charter:

- .1 Vessels engaged in commerce and all yachts, each US\$300
- .2 Vessels under Construction, each US\$300

13.0 Radio Communications**13.1 For the issuance of a Temporary Authority (TA) to operate a Ship Radio Station:**

- .1 Vessels engaged in commerce, including commercial and passenger yachts US\$150
 - First Renewal US\$150
 - Second and subsequent renewals US\$350
- .2 PYLCs and YETs US\$100
 - First Renewal US\$100
 - Second and subsequent renewals US\$150

13.2 For the issuance of a Permanent Ship Radio Station License:

- .1 Vessels engaged in commerce, including commercial and passenger yachts - Original issuance; amendment; or renewal US\$300
- .2 PYLCs and YETs - Original issuance; amendment; or renewal US\$100
- .3 Private yachts

	Original issuance; or renewal (includes the TA)	US\$200
	Amendment	US\$100
13.3	For renewal or amendment of a Permanent Ship Radio Station License that includes a Ship Earth Station (vessels engaged in commerce, including commercial yachts and passenger yachts only)	US\$400
14.0	Seafarer Certification	
	(Refer to publications MI-118 and MI-118E for full details).	
14.1	For initial issuance of Officer Certificate of Competence upon qualification by examination or endorsement, as follows:	
	.1 All Management & Operational Officers	
	(Includes issuance of a Certificate of Receipt of Application (CRA))	US\$200
	.2 Restricted and General Operator - GMDSS only	US\$50
14.2	For renewal of an Officer Certificate of Competence:	
	.1 Prior to expiration	US\$100
	.2 Within one (1) year after expiration	US\$150
14.3	For the issuance of a Temporary Authorization as Officer under:	
	.1 RMI Maritime Regulation 7.39	US\$100
	(Must hold a valid RMI Endorsement in lower capacity)	
14.4	For the issuance of an RMI Seafarer's Identification and Record Book (SIRB) and Identification Card:	
	.1 5-year issuance, renewal or replacement of an SIRB	US\$60
	.2 Optional Identification Card	US\$25
	.3 Expediting Fees:	
	First five (5) applicants	US\$50
	Plus for every five (5) or part of five (5) applicants thereafter an additional	US\$50
14.5	For the issuance of Special Qualifications Certificates upon qualification by examination or endorsement:	
	.1 Basic Training, Wiper, Junior Ordinary Seafarer, GP-Trainee, General Steward Utility	No Fee

	.2 All others	US\$35
14.6	Examinations for Officer's Certificate of Competence	US\$300
	.1 Requests from owner/agents or applicants to hold special group examinations or individual examinations away from the designated test centers will be honored, if possible, provided the requesting party undertakes the costs of all administrative out-of-pocket expenses, including the examiner's transportation, lodging and meals, exam facility rental, assisting proctors' fees, and related expenses as may be reasonably incurred, or a \$50 per day proctoring fee, whichever is greater.	
	.2 Each re-take of failed officer examination	US\$150
14.7	Examinations for Ratings and Special Qualifications	US\$150
	.1 If the candidate does not already possess an RMI SIRB, the fee will include its issuance.	
14.8	For Urgent Authorization for an Officer to Serve on Assignment of Officer Certificate Number PRIOR to submission of completed application	US\$100
14.9	For replacement of a lost or destroyed certificate of competence	US\$100
14.10	For authentication of sea service and all Special Services/Expediting	US\$50
14.11	Courier service fee required for secured delivery of seafarer documentation:	
	.1 Courier fee for overseas delivery for one (1) to eight (8) Applicants	US\$40
	Plus for each Applicant over eight (8)	US\$5
15.0	Miscellaneous	
15.1	For the issuance of each Certificate of Ownership and Encumbrance of a vessel	
	.1 Vessels engaged in commerce and all yachts	US\$150
15.2	For Certified Extract of Preferred Mortgage Index	US\$100
15.3	For a Certificate of a Marriage, Birth, Death or Burial at Sea	US\$150
15.4	For issuance of a waiver under Section 203 of the RMI Maritime Act (excluding yachts):	
	.1 20 year age limitation	US\$500
	.2 Other allowances	US\$150

15.5	For authentication of any document not otherwise specified	US\$150
15.6	For providing certified copies of documents, for first copy of each document provided and certified (plus costs)	US\$150
	• Additional certified copies, each (plus costs)	US\$150
15.7	For issuance of Minimum Safe Manning Certificate	US\$300
	• For re-issue of Minimum Safe Manning Certificate	US\$150
15.8	Approving Cargo Securing Manuals, per vessel	US\$400
	• For each additional plan submitted by an owner based on the original approved manual, per vessel	US\$200
15.9	Approving Passenger Ship Emergency Plans, per vessel	US\$2,500
15.10	Issuance of Civil Liability Certificate for Oil Pollution Damage, per vessel	US\$200
15.11	Issuance of Civil Liability Certificate for Bunker Oil Pollution Damage, per vessel	US\$200
15.12	Issuance of Certificate of Insurance or Other Financial Security in Respect of Liability for the Removal of Wrecks, per each RMI registered vessel, including yachts of 300 or more gross tons	US\$200
15.13	Issuance of Certificate of Insurance or Other Financial Security in Respect of Liability for the Death of and Personal Injury to Passengers, per each RMI registered passenger vessel, including passenger yachts	US\$200
15.14	Issuance of a Certificate of Insurance or other Financial Security for non-RMI registered vessels:	
	.1 per each order of 4 or fewer non-RMI registered vessels, per vessel	US\$500
	.2 per groups of 5-10 non-RMI registered vessels, per vessel	US\$300
	.3 per groups of 11-100 non-RMI registered vessels, per vessel	US\$250
	.4 per groups of 101 or more non-RMI registered vessels, per vessel	US\$200
15.15	Multiple Load Line Assignment Book	US\$400
15.16	For issuance of any certificate or document not otherwise specified (plus costs)	US\$150
15.17	For issuance of a Voluntary Compliance Certificate to a private yacht to maintain commercial yacht or PYLC voluntary compliance	US\$300

15.18	Music Licensing for Passenger Ships	contact Administrator
15.19	Tenders (stored onboard)	US\$500
16.0	Fees for Special Services	
	In addition to any applicable fees referred to in this Notice, the following fees for special services may also be payable to the Administrator:	
16.1	<u>Regional Office:</u> The fees for services requiring the attendance of a representative of the Administrator during a transaction conducted outside the normal hours of business is as follows:	
	• First two (2) hours of transaction or any portion thereof	US\$250
	• Each additional two (2) hours of transaction or any portion thereof	US\$250
	.1 If the above transaction commences after 1700 on Friday and before 0700 hours on Monday, or is scheduled on a holiday as defined by the Administrator, the fees for services are:	
	• First two (2) hours of transaction or any portion thereof	US\$350
	• Thereafter, every additional two (2) hour increment, or portion thereof	US\$350
	.2 Where such services are made available outside the normal business hours of the Administrator, the following additional expenses shall also be applied per transaction:	
	• Meals (if applicable)	US\$50
	• Transportation	US\$150
16.2	Fees for secretarial, cable, fax, photocopying and secure delivery expenses incurred for the convenience of the requesting party and/or for the secure delivery of "official documents" shall be charged as follows:	
	• Fixed fee for vessel registration transactions	US\$100
	• Delivery of any other official documents listed in Sections 13.0 thru 17.0	Actual Cost
16.3	If a third party, or a representative of the Administrator, is involved in a transaction, there may be a 15% processing fee added to the total invoice. This processing fee is based on the costs associated with the transaction.	
16.4	For methods of payment see the instructions on www.register-iri.com .	
17.0	Investigations or Formal Hearings	
	Regarding specific Investigations or Formal Hearings on casualties and contraventions, the Parties and interested persons may be required to pay certain actual costs incurred by the Administrator in connection therewith.	

18.0 Publications

To place an order for Oil Record Books, Cargo Record Books or Articles of Agreement, complete RMI form [TCMI-03](#) and email it to publications@register-iri.com. Do not send any form of payment with a publication order. Invoicing is done separately and at a later date for the total cost of an order, which is the cost of the items ordered plus courier shipping and handling charges. Once the official invoice is received, payment may be made [online](#) with a credit card or by following these [instructions](#).

18.1	Oil Record Book	US\$15
18.2	Cargo Record Book	US\$15
	Cargo Record Book Instructions (MI-333A) - Download from website	
18.3	Articles of Agreement, one (1) set of three (3) pieces	US\$15

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G. SWEDEN

1. Introduction

1.1. Background on role of shipping in local economy

Largely due to its geographical location, the maritime industry has always been important to Sweden, both for trade and transport. Not only is more than 90% of Swedish foreign trade at some stage transported at sea⁵⁰⁸, but the value of the annual export of Swedish shipping services amounts to about SEK 35 billion.⁵⁰⁹ Around 10,000 persons are directly employed on Swedish ships and about 100,000 persons have jobs closely linked to shipping (shipping consultants, personnel in harbors, administration and financing jobs, shipping companies' shore based personnel, etc.).⁵¹⁰

In 2016, the number of ships in the Swedish commercial fleet (ships with at least 300 GT) was 465. Of those, 190 were Swedish flagged and 275 foreign flagged.⁵¹¹ The majority of the latter are registered in Denmark or Finland.

In a press release 4 December 2017, the Swedish Shipowners' Association reported that the Swedish commercial fleet is increasing for the first time in several years.⁵¹² According to the Association, this is a consequence of improved conditions for Swedish shipping. The improvements included a series of measures such as the introduction of tonnage tax system, regulatory simplifications, inspection delegation and so-called "temporarily employed personnel agreement" (TAP) agreements that permit the use of non-EEA crewmembers.⁵¹³ Many of these measures were addressed in the 2013 Government's Action plan for improved competitiveness of Swedish Shipping⁵¹⁴ and were implemented by the government principally and by the social partners (TAP agreements).

1.2. Background on ship registration

One of the first ship registers in the world, the Swedish Register of Ships dates back to 1870. Today, ship registration is regulated mainly in Chapter 2 of the Swedish Maritime Code (*Sjölag (1994:1009)*). The basic requirement laid down in the Chapter's first provision states that all *Swedish ships (skepp)* must be registered in the ship section of the Vessel Register (*Fartygsregistret*), kept by the Swedish Transport Agency (*Transportstyrelsen*).

⁵⁰⁸ Government bill Prop 2015/16:127 Ett svenskt tonnagebeskattningssystem, p. 41.

⁵⁰⁹ Figures from the Swedish Ship-owners Association available at <http://www.sweship.se/svensk-sjofart-i-korthet/sjofarten-i-siffror/> (17.01.2018).

⁵¹⁰ Figures from the Swedish Ship-owners Association available at <http://www.sweship.se/svensk-sjofart-i-korthet/sjofarten-i-siffror/> (17.01.2018).

⁵¹¹ Figures from the Swedish Ship-owners Association available at <http://www.sweship.se/wp-content/uploads/2015/08/Svensk-sjöfarts-nyckeltal-2016.pdf> (17.01.2018).

⁵¹² <http://www.sweship.se/nyhet/a-break-in-the-trend-the-swedish-merchant-fleet-is-now-increasing-for-the-first-time-in-several-years/> (21.02.2018).

⁵¹³ Ibid.

⁵¹⁴ The Government's Action plan is available in English at <https://www.zerovisiontool.com/sites/www.zerovisiontool.com/files/attachments/swedishshippingactionplan.pdf> (21.02.2018).

The present system of registration of vessels was introduced with effect from 1 January 1976. Further important modifications were introduced as a consequence of the European Court of Justice's *Factortame* cases⁵¹⁵, which held that Member States whose national legislation contravened European Union law – such as strict nationality rules for registration of ships on a national registry – could be liable to private persons injured by such legislation. These amendments, allowing - under certain conditions - the registration of ships owned by EU citizens, took effect on 1 July 1997 and are the most recent substantial amendments to the legal framework governing registration.⁵¹⁶

An organizational change was introduced on 1 December 2001, whereby the previous three registers for ships, ships under construction (a ship is a vessel having a hull exceeding 24 meters), and boats were united as three parts of one Register of Vessels (*Fartygsregistret*). This register was then moved from the Stockholm District Court to the Swedish Transport Agency (*Transportstyrelsen*), thus operating as part of an administrative rather than a judicial authority.⁵¹⁷ The Register is public and practically all documents filed with the register or issued by the register are public.⁵¹⁸

Rules on fees for ship registration as well as other ship related fees are laid down in Transport Agency's Regulation on Fees (*Transportstyrelsens föreskrifter om avgifter TSFS 2016:105*). The fees are set based on the principle that they should cover the Agency's actual costs for the measure taken or for the service provided.⁵¹⁹ The fees are therefore regularly adjusted in order to comply with this principle.

1.3. Any current discussions as to registration requirements

To our knowledge, there are currently no discussion as to registration requirements as such.

However, it may be mentioned that legislation was adopted in 2017 which allows ship owners to choose to pay a tonnage tax rather than being taxed on income. This legislation was intended to increase the competitiveness of the Swedish shipping industry and, in particular, to stop the negative trend of "flagging out" of Swedish ships (see question 4 below).

2. Questions

2.1. What are the conditions on registration for the various categories of internationally active commercial high seas ships? This should include a differentiation among different types of ships (e.g., passenger ships, tankers, cargo ships)

The rules on ship registration are laid down in the Swedish Maritime Code (*Sjölag (1994:1009)*). In accordance with Chapter 2 section 1, all Swedish ships must be registered in the ship section of the Vessel

⁵¹⁵ See cases C-213/89 and C-221/89 - *The Queen v Secretary of State for Transport, ex parte Factortame* .

⁵¹⁶ J. Rosengren, *Kluwer Maritime Law Handbook* (Chapter on Sweden), Kluwer Law Online 2017, Part II p. 1. See also K. Sundholm, *Lagkommentarer till Sjölag (1994:1009)*, Karnov 2017, commentary to Chapter 2, no 26.

⁵¹⁷ J. Rosengren, *Kluwer Maritime Law Handbook* (Chapter on Sweden), Kluwer Law Online 2017, Part II p. 1.

⁵¹⁸ *Ibid*, p. 3.

⁵¹⁹ <https://transportstyrelsen.se/sv/Om-transportstyrelsen/Avgifter/principer-for-avgifter1/> (30.01.2018).

Register (*Fartygsregistret*), kept by the Swedish Transport Agency (*Transportstyrelsen*).⁵²⁰ A “ship” (*skepp*) is a vessel having a hull exceeding 24 meters.⁵²¹

The formal conditions for registration relate to ownership and identification. These **apply to all kinds of ships** and will be discussed below. There are also a **number of conditions that** do not concern the registration as such, but that **must be fulfilled in order to operate a ship**. These will also be discussed below and include a basic requirement of seaworthiness and an obligation to have the certifications required for the ship in question. Depending on the type of ship and cargo, there may also be a requirement to have specific insurance.

2.1.1. The ownership criteria

The rules on when a vessel (i.e. ship or boat) is considered to be Swedish are laid down in Chapter 1 sections 1 to 1b in the Maritime Code. The basic rule states that a vessel is Swedish and entitled to fly the Swedish flag if it is **owned to at least 50 percent by Swedish nationals or Swedish legal persons**. However, this does not apply if the vessel is already registered in another country within the European Economic Area (EEA), provided that the vessel is part of an economic activity established in that country and that the vessel’s management is conducted and controlled from that country.⁵²² This exception to the basic majority ownership rule enables Swedish ship owners to exercise their freedom of establishment under EU law.

A ship can be considered Swedish even if the owner requirements referred to above are not met if either:

- the operation of the vessel is essentially under Swedish control (this can be the case for example in cases of bare boat chartering) or the owner has its permanent residence in Sweden.⁵²³
- Upon the request of the owner of the ship, if the ship forms part of an economic activity established in Sweden and:
 - o the operation of the ship is conducted and controlled from Sweden; and
 - o the ship is owned at least 50 percent by a physical or moral person established within the EEA.⁵²⁴

Registration cannot be granted if the applicant cannot prove that he is the rightful owner or if the transferor did not have the right to dispose of the property.⁵²⁵

2.1.2. Identification requirement

A ship entered into the ship section of the Vessel Register must have a name and an identification signal consisting of signal letters (*signalbokstäver*). The Government may decide on the marking of registered vessels and prohibit the operation of any registered vessel without the prescribed marks.⁵²⁶

⁵²⁰ The other two sections of the Vessel Register concern ships under construction and boats.

⁵²¹ Maritime Code (*Sjölag (1994:1009)*) Chapter 1 section 2.

⁵²² Maritime Code (*Sjölag (1994:1009)*) Chapter 1 section 1 para. 2.

⁵²³ Maritime Code (*Sjölag (1994:1009)*) Chapter 1 section 1 b.

⁵²⁴ Maritime Code (*Sjölag (1994:1009)*) Chapter 2 section 1 para 2.

⁵²⁵ Maritime Code (*Sjölag (1994:1009)*) Chapter 2 section 23.

⁵²⁶ Maritime Code (*Sjölag (1994:1009)*) Chapter 1 sections 6 and 8.

2.1.3. Requirement of seaworthiness

The requirement on seaworthiness is laid down in Chapter 1 section 9 in the Maritime Code. It states that a vessel in operation must be seaworthy and duly fitted (*sjövärdigt*) in order to prevent illness and injuries. It must also be safely manned, sufficiently victualled and equipped, and loaded or ballasted in a way that the safety of the vessel and of lives or goods on board are not endangered. More detailed rules on safety are laid down in the **Vessel Safety Act** (*Fartygssäkerhetslagen* (2003:364)) and in the **Vessel Safety Ordinance** (*Fartygssäkerhetsförordningen* (2003:438)).

2.1.4. Certifications

A Swedish flagged ship requires certification from the Transport Agency (*Transportstyrelsen*). Certificates are proof that the Agency's inspection of the ship found it to meet applicable standards. Certificates are issued for a specific time period, sometimes with requirements for periodical re-inspections.⁵²⁷ The **basic national safety certificates** listed in the Vessel safety Act (*Fartygssäkerhetslagen* (2003:364)) are the following:⁵²⁸

- Trade Certificate (*fartcertifikat*): Proof that a vessel was found seaworthy when inspected.
- Passenger Ship Safety Certificate (*passagerarfartygscertifikat*): Proof that a vessel was found suitable to carry passengers when inspected and states the maximum permitted number of passengers the vessel may carry.
- Load Line Certificate (*fribordscertifikat*): Proof that the vessel's freeboard has been established upon inspection and that load lines have been marked correctly and permanently.
- Safety Management Certificate (*certifikat om godkänd säkerhetsorganisation*): Proof that the vessel's safety management organisation was found in compliance with the shipping company's approved safety management organisation.
- Document of Compliance on Safety Management (*dokument om godkänd säkerhetsorganisation*): Proof that the shipping company's safety management organisation has been approved upon survey of the shipping company.

The **specific certificates required depend on the size and type of the ship** (e.g., if it is used as a cargo or passenger ship).⁵²⁹ The Transport Agency provides a certificate guide tool (*certifikatsguiden*) on its website. By providing key information about the ship such as size, weight, tonnage, engine, year of construction, type of goods, geographical use, number of the crew, etc., a ship owner receives information on the certificates required.⁵³⁰

In accordance with Chapter 6 in the Vessel Safety Act, the **Transport Agency can prohibit the use of a ship if it does not respect safety standards or does not have the required certifications.**

All **registered Swedish ships must be measured by the Transport Agency.** Therefore, when applying for registration, an application for tonnage measurement must be submitted as well. The regulations

⁵²⁷ Vessel Safety Act (*Fartygssäkerhetslagen* (2003:364)) Chapter 1 to 3.

⁵²⁸ Vessel Safety Act (*Fartygssäkerhetslagen* (2003:364)) Chapter 1 section 4. See also H. Tillberg et al., *Swedish Shipping Law*, Stockholm: Jure Förlag AB, 2013, p. 41.

⁵²⁹ Vessel Safety Act (*Fartygssäkerhetslagen* (2003:364)) Chapter 3.

⁵³⁰ <https://www.transportstyrelsen.se/sv/sjofart/Fartyg/Certifikat/Certifikatsguiden/> (06.02.2018).

applicable to tonnage measurement are found mainly in the Ordinance (SFS 1994:1162) on tonnage measurement.⁵³¹

2.1.5. Insurance requirement

Various insurance requirements apply to owners of a Swedish vessel. The general requirements are described in Chapter 7 in the Maritime Code. For certain types of ships or cargos, specific insurances may be necessary. Accordingly, ships carrying more than 2,000 tons of oil require a specific insurance or guarantee approved by the competent authority.⁵³²

2.2. What are the requirements regarding the revocation of a licence/flag?

The rules on deregistration of ships are laid down in Chapter 2 section 6 in the Maritime Code. It states that a ship shall be deregistered in the following cases:

- If it has been wrecked, broken up or otherwise destroyed,
- if it has disappeared or been abandoned at sea and has not since been heard off during three months,
- if it is no longer subject to registration duty (for example if the ship is sold to a non-Swedish individual or legal person),
- if the owner, without there being any registration obligation, has requested the ship to be registered asks to have it deregistered or if certain prerequisites no longer are at hand,⁵³³
- if it has ceased, because of rebuilding or other such modification, to be a ship or, without such modification, is found not to be a ship.

To our knowledge, there are no other provisions governing the revocation of a flag/deregistration.

As mentioned in the previous question, the **Transport Agency can prohibit the use of a ship if it does not respect safety** standards or does not have the required certifications.⁵³⁴ However, it does not mean that the flag is revoked.

⁵³¹ Information on tonnage measurement is available in English on the website of the Transport Agency <https://www.transportstyrelsen.se/en/shipping/Vessels/Application-for-Tonnage-Measurement/> (27.02.2018).

⁵³² Maritime Code (*Sjölag (1994:1009)*) Chapter 10 section 12.

⁵³³ According to the Maritime Code (*Sjölag (1994:1009)*) Chapter 2 section 1 para 2, a ship shall be registered upon the request of the owner of the ship if the ship forms part of an economic activity established in Sweden and provided that the operation of the ship is conducted and controlled from Sweden and that the ship is owned at least 50 percent by a physical or moral person established within the European Economic Area

⁵³⁴ See Chapter 6 in the Vessel Safety Act (*Fartygssäkerhetslagen (2003:364)*).

2.3. What are the supervisory obligations toward fleets, ship owners, and seafarer recruitment and placement services (SRPS)?

The Transport Agency is tasked with supervising ships and shipping activities. The Agency conducts about 4,000 surveys, inspections and controls annually.⁵³⁵ The main laws governing these activities are the following:

- Vessel Safety Act (*Fartygssäkerhetslagen (2003:364)*),
- Work Environment Act (*Arbetsmiljölagen (1977:1160)*)
- Act on Prevention of Pollution from Ships (*Lag (1980:424) om åtgärder mot förorening från fartyg*)
- Act on Port Security (*Lag (2006:1209) om hamnskydd*)
- Act on Maritime Security (*Lag (2004:487) om sjöfartsskydd*)

The scope of the supervision is described more in detail in the **Transport Agency's regulation and general guidance on supervision in the field of maritime transport** (*TSFS 2009:2 Transportstyrelsens föreskrifter och allmänna råd om tillsyn inom sjöfartsområdet*).⁵³⁶

In its **Supervisory Handbook** (*Tillsynshandboken*), the Transport Agency describes how the inspections are carried out and in which legal instruments the different requirements are laid down.⁵³⁷ The Handbook is based on the forms and templates used for the surveying and inspection of ships.

An application for inspection of a ship must be submitted to the Transport Agency at least 14 days before the requested date of inspection.⁵³⁸

The Transport Agency's initial and periodic **surveys and inspections of vessels can be delegated to international classification organisations** approved by the European Commission.⁵³⁹ Accordingly, the Transport Agency has entered into such agreement with the following five organisations:

- American Bureau of Shipping (ABS)
- Bureau Veritas (BV)
- DNV GL AS (DNVGL)
- Lloyd's Register Group Ltd (LR)
- RINA Services S.p.A. (RINA)⁵⁴⁰

⁵³⁵ <https://www.transportstyrelsen.se/sv/sjofart/Fartyg/Tillsyn/> (22.02.2018).

⁵³⁶ Available at <https://www.transportstyrelsen.se/sv/Regler/sok-ts-foreskrifter/?RuleNumber=2009:2&rulePrefix=TSFS> (22.02.2018).

⁵³⁷ The Handbook is available at <https://www.transportstyrelsen.se/sv/sjofart/Fartyg/Tillsyn/> (28.02.2018).

⁵³⁸ <https://www.transportstyrelsen.se/en/shipping/Vessels/Survey/> (28.02.2018).

⁵³⁹ H. Tiberg *et al.*, Swedish Shipping Law, 1st ed., Stockholm: Jure Förlag AB 2013, p. 41. See also Chapter 1 section 5 in the Vessel Safety Act (*Fartygssäkerhetslagen (2003:364)*).

⁵⁴⁰ Information available in English at <https://www.transportstyrelsen.se/en/shipping/Vessels/Survey-and-inspection/Recognised-Organisations/> (27.02.2018).

The certificates and documents (and associated surveys and inspections) subject to delegation are listed in Appendix 1 of the delegation agreement.⁵⁴¹ A shipowner that appoints one of these organisations must fill in a specific form that is available on the Transport Agency's website.⁵⁴²

Sweden is party to several international maritime conventions, including the **Maritime Labour Convention (MLC)** and the **International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW)**.

Ship's officers with competencies and special competencies issued by other states than Sweden who wish to serve on Swedish ships **must have their foreign competence and special competencies approved by the Swedish Transport Agency** prior to their assignment. The Agency approves of qualifications issued by Member States of the EEA and states with which the Swedish Transport Agency has an agreement on approval, currently the Philippines and Russia.⁵⁴³

2.4. To what types of taxes are shipowners and fleetowners subject?

On 28 September 2016, Sweden adopted a **voluntary tonnage tax regime** applicable for fiscal years beginning 1 January 2017 or later through.⁵⁴⁴ The rules on tonnage tax are laid down in Chapter 39 b in the Income Tax Act (*Inkomstskattelagen (1999:1229)*). Supplementary rules mostly relating to procedural issues are laid down in Chapter 13 a in the Tax Procedures Act (*Skatteförfarandelagen (2011:1244)*).

The introduction of the tonnage tax regime was motivated by the need to strengthen the Swedish shipping industry's competitive situation and to increase the number of Swedish flagged vessels (or at least stop the out-flagging of Swedish vessels).⁵⁴⁵ In particular, the Government bill referred to the fact that most EU countries with shipping industries currently apply tonnage tax regimes.⁵⁴⁶

Companies that wish to be subject to the tonnage tax regime must submit an application to the Swedish Tax Authority (*Skatteverket*), who will assess if they fulfill the criteria.⁵⁴⁷ The regime is aimed to apply to shipping subject to international competition. All companies undertaking so-called "qualified shipping operations" can be approved for tonnage taxation.⁵⁴⁸ By qualified shipping operations is meant, amongst other things, the transport of goods and passengers at sea with "qualified vessels". A qualified vessel means a vessel that fulfils all of the following three criteria:

- having a gross tonnage of at least 100
- having its strategic and financial management in Sweden

⁵⁴¹ <https://www.transportstyrelsen.se/globalassets/global/sjofart/fartyg/appendix-i-version-2-0---model.pdf> (27.02.2018).

⁵⁴² <https://www.transportstyrelsen.se/globalassets/global/blanketter/sjofart/tillsyn/anlitande-av-erkand-organisation-bss142251.pdf> (27.02.2018).

⁵⁴³ Further information is available in English At the Agency's website <https://www.transportstyrelsen.se/en/shipping/Foreign-competencies/> (27.02.2018).

⁵⁴⁴ SFS 2016:887 Lag om ändring i inkomstskattelagen (1999:1229).

⁵⁴⁵ Government bill Prop 2015/16:127 Ett svenskt tonnagebeskattningsystem, p. 41.

⁵⁴⁶ Ibid, p. 42.

⁵⁴⁷ Tax Procedures Act (*Skatteförfarandelagen (2011:1244)*) Chapter 13 a section 2.

⁵⁴⁸ Income Tax Act (*Inkomstskattelagen (1999:1229)*) Chapter 39 b sections 3 and 4.

- being, primarily, used in international transport or in domestic transport in another country⁵⁴⁹

In order for the shipping operations to qualify, there are also certain requirements as regards the company's fleet. Among other things, at least 20% of the qualified vessels must be registered within the European Economic Area (EEA) and 20% of the qualified vessels must be owned by, or chartered in, on bare boat terms. If less than a minimum of 60% of the company's (or the group's) qualified vessels are registered within the EEA, there is also a requirement that the portion of the EEA registered vessels is to be maintained, or increased, in each fiscal year.⁵⁵⁰

Finally, it should be mentioned that a subsidy – the **“maritime transport aid”** (*sjöfartsstöd*) – can be granted to employers having Swedish flagged ships in accordance with the rules laid down in the **Government Ordinance on Maritime Aid** (*Förordning 2001:770 om sjöfartsstöd*).⁵⁵¹ This aid scheme compensates employers for the payroll taxes and social security contributions they need to pay for their employees.⁵⁵² Introduced in 2001, the maritime transport aid aims to improve the competitiveness of the Swedish shipping industry.⁵⁵³ It can therefore only be granted to Swedish flagged ships that are subject to international competition.⁵⁵⁴ The Government has proposed to reform the maritime transport aid to cover 99 percent of the employers' costs for the payroll taxes and social security contributions (currently 100 percent of the costs are covered).⁵⁵⁵ Although initially planned to enter into force in 2017, the new rules have still not been adopted.

2.5. What is the fee system used by the officials?

Fees related to shipping (such as registration, measuring and other services, and supervision) are regulated in part IV of the Transport Agency's Regulation on Fees (*Transportstyrelsens föreskrifter om avgifter TSFS 2016:105*).⁵⁵⁶ The fees are listed in Swedish crowns.⁵⁵⁷

The **fees are set based on the principle that they should cover the actual costs for the Agency to take the measure or provide the service in question**.⁵⁵⁸ The different fees are listed in Chapter 20 to 27 in the Transport Agency's Regulation on Fees.⁵⁵⁹ Given their significant number, we will only comment on those more commonly applied and those that directly concern the registration.

⁵⁴⁹ Income Tax Act (*Inkomstskattelagen (1999:1229)*) Chapter 39 b section 6.

⁵⁵⁰ Income Tax Act (*Inkomstskattelagen (1999:1229)*) Chapter 39 b section 5.

⁵⁵¹ The Government Ordinance on Maritime Aid (*Förordning 2001:770 om sjöfartsstöd*) is available at https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2001770-om-sjofartsstod_sfs-2001-770 (31.01.2018).

⁵⁵² The Government Ordinance on Maritime Aid (*Förordning 2001:770 om sjöfartsstöd*), section 4.

⁵⁵³ Government bill Prop 2015/16:127 Ett svenskt tonnagebeskattningsystem, p. 38.

⁵⁵⁴ The Government Ordinance on Maritime Aid (*Förordning 2001:770 om sjöfartsstöd*), section 2.

⁵⁵⁵ <http://www.regeringen.se/artiklar/2016/11/forslag-pa-andring-av-sjofartsstod-lamnat-till-eu-kommissionen/> (31.01.2018).

⁵⁵⁶ The Regulation is available in Swedish at https://www.transportstyrelsen.se/TSFS/TSFS%202016_105k.pdf (30.01.2018).

⁵⁵⁷ Currently 1 EUR is equivalent to 10,1 SEK (01.03.2017).

⁵⁵⁸ <https://transportstyrelsen.se/sv/Om-transportstyrelsen/Avgifter/principer-for-avgifter1/> (30.01.2018).

⁵⁵⁹ The Transport Agency's Regulation on Fees (*Transportstyrelsens föreskrifter om avgifter TSFS 2016:105*) Chapter 20 to 27, available at https://www.transportstyrelsen.se/TSFS/TSFS%202016_105k.pdf (06.02.2018).

The fees for the registration as such are the following:

- **Registration of a ship** in in the ship section of the Vessel Register including registration of transfer of ownership and nationality certificate: 23,000 SEK (approximately 2'650 CHF);
- **Yearly record keeping fee:** 500 SEK (approximately 60 CHF) for each registered ship.

Other important and generally applied fees are the following:

- **Examination/control of ships** following new construction, re-construction and ships that change to Swedish flag: 2,800 SEK basic fee and an hourly rate of 1,400 SEK (approximately 160 CHF);
- **Provision of certification document:** 2,500 SEK (approximately 290 CHF);
- **Measuring of ships:** basic fee of 15,000 SEK which, depending on the size of the ship, can increase to a maximum of 250,000 SEK (approximately 1'700-28'600 CHF).⁵⁶⁰

⁵⁶⁰ See the Transport Agency's Regulation on Fees (*Transportstyrelsens föreskrifter om avgifter TSFS 2016:105*) Chapter 20 to 27, available at https://www.transportstyrelsen.se/TSFS/TSFS%202016_105k.pdf (06.02.2018).

H. ANTIGUA AND BARBUDA

1. Introduction

1.1. Background on role of shipping in local economy

A former colony of the United Kingdom, Antigua and Barbuda remains a “constitutional monarchy” belonging to the Commonwealth; the government of Antigua and Barbuda is entirely independent of the British government, but the Queen or King of Great Britain and Northern Ireland is also the Head of the State of Antigua and Barbuda.

Like the Republic of the Marshall Islands,⁵⁶¹ Antigua and Barbuda is a small island country with very limited natural resources. The “offshore services” sector provides an important part of the total national income. Although its population is not as poor as that of Liberia,⁵⁶² the economy of Antigua and Barbuda is quite precarious. The country’s own resources will not suffice to repair the damage done in September of 2017 by Hurricane Irma, which destroyed virtually all the buildings and infrastructure on the island of Barbuda.

Although shipping has naturally been extremely important for the islands of Antigua and Barbuda throughout the history of the human inhabitation, it focused heavily on transport between the United Kingdom, Antigua and Barbuda and other British colonies in the Caribbean, until independence was attained in 1981. The “international shipping registry” of Antigua and Barbuda came into operation only in 1986.

1.2. Background on ship registration

The legislation⁵⁶³ governing ship registration in Antigua and Barbuda was largely revised and re-enacted in the form of the Antigua and Barbuda Merchant Shipping Act 2006, which has been amended on several occasions in the meantime. A number of much older statutes, partially incompatible with the Antigua and Barbuda Merchant Shipping Act 2006, are still in force, however. In response to our enquiry, the relevant department of the government of Antigua and Barbuda informed us⁵⁶⁴ that those statutes have been identified for repeal in the course of a general review. The Antigua and Barbuda Merchant Shipping Act 2006 is supplemented by secondary legislation (regulations and other “statutory instruments”), only some of which is accessible outside the country. We have been informed that the secondary legislation is also being revised and that all of the regulations will be published on the internet once the new instruments have been promulgated.

⁵⁶¹ Refer below, to point 7. of the present study.

⁵⁶² Compare below, point 5.1.1. of the present study.

⁵⁶³ All of the primary legislation in force in Antigua and Barbuda is freely accessible on the official governmental website dedicated to *Antigua and Barbuda Laws* (<http://laws.gov.ag/new/index.php> - last consulted on 26.03.2018). Various regulations, directives and circulars of specific relevant to ship registration and maritime activities and freely accessible on the website of the ADOMS: <http://abregistry.ag/information-center/> (last consulted on 26.03.2018).

⁵⁶⁴ In an e-mail from Mr. Kenroy Simmons, Deputy Registrar and Legal Research Officer of the ADOMS, to Mr. Martin Sychold, Deputy Head of the Legal Division of the Swiss Institute of Comparative Law, dated 22.02.2018.

The shipping registry is both controlled and operated by the Antigua and Barbuda Department of Marine Services and Merchant Shipping, abbreviated to “ADOMS”.⁵⁶⁵ Despite its name, this “Department” appears to be a statutory authority existing independently of any government ministry.⁵⁶⁶

2. Questions

It has proven very difficult, in the time available for the preparation of the present report, to obtain information on the manner in which the international shipping registry operates.

For the purposes of global comparison, it may suffice to point out three general aspects.

First, Antigua and Barbuda has adopted the Liberian model⁵⁶⁷ of integrating its international shipping registry into a broader “offshore services sector” of the national economy.⁵⁶⁸ In principle, only persons having the nationality of Antigua and Barbuda or of another Member State of the Caribbean Community or the Organisation of Eastern Caribbean States may register their ships in the Antiguan Registry. An exception has always been made for offshore companies registered under the International Business Corporation Act. Foreign ship owners are therefore required to incorporate IBCs and engage Registered Agents to represent them in Antigua and Barbuda and to pay the annual fees of both the corporate registry and the agents. Since 1995, it has also been possible for foreign companies owning ships to be registered in Antigua and Barbuda as “external companies” under the Companies Act. A foreign ship owner may thus register her ship in the Antiguan registry without incorporating a new company, but her “external company” will be required to pay the same registry and agent’s fees as would an IBC. Subsection 11(5) of the Antigua and Barbuda Merchant Shipping Act 2006 provides a guarantee to every such ship-owner: for a period of fifty years, no income, capital gains or other direct tax of Antigua and Barbuda will be levied “in respect of his shipping business”.

Secondly, on a relatively small scale, Antigua and Barbuda has adopted the business model of International Registries, Inc. and the Liberian International Ship and Corporate Registry, LLC, in that it maintains branch offices close to major international ports. Specifically, the ADOMS has a registry office in Oldenburg, Germany, staffed by a Registrar and a Deputy Registrar. In addition, the whole “Inspection and Investigation Division” of the ADOMS is located close to Bremerhaven. It has been reported⁵⁶⁹ that the ADOMS concentrates its attention on the German shipping market, which at one time accounted for 80% of the vessels registered in the Antiguan registry.

Thirdly, the ADOMS makes a particular effort to attract the registration of “commercial pleasure yachts”. The administration’s website states⁵⁷⁰ that it has maintained a “Mega Yacht Registry” since 2011, offering “competitive rates” and services specially tailored to this niche of the global market. In response to our

⁵⁶⁵ Refer to the official website of this administrative entity: <http://abregistry.ag/about-us/> (last consulted on 26.03.2018).

⁵⁶⁶ Refer to the list of “Government Ministries and Statutory Bodies” published on the official website of the government of Antigua and Barbuda: https://ab.gov.ag/detail_page.php?page=1 (last consulted on 26.03.2018).

⁵⁶⁷ Refer below, to point 5.1.2.4. of the present study.

⁵⁶⁸ Refer above, to point 1.1.1. of the present study.

⁵⁶⁹ On the page dedicated to Antigua and Barbuda on the website of the so-called *Official Guide to Ship & Yacht Registries*, freely accessible at <https://guidetoshipregistries.com/shipregistries-country/antigua-barbuda> and last consulted on 26.03.2018.

⁵⁷⁰ <http://abregistry.ag/about-us/> (last consulted on 26.03.2018), under the heading, “The registry today”.

enquiry, it was stated⁵⁷¹ that the Antigua and Barbuda Merchant Shipping Act 2006 provides a legislative basis for the “Mega Yacht Registry”. That statute in fact makes no mention of such a specialised registry.

Finally, the ADOMS has provided us with a complicated schedule of “Registration fees (permanent / bareboat-charter)”. We were informed that this information, on the structure of fees charged by the registry, is not published, because it, like the governing legislative provisions,⁵⁷² is “currently being reviewed”.

If detailed responses to individual questions are required, we could probably provide them as a supplement to the present report. It is currently unclear how much time the additional research would require and how high the expenses of that research would be.

⁵⁷¹ In an e-mail from Mr. Kenroy Simmons, *op. cit.*

⁵⁷² Refer above, to point 1.1.2. of the present study.

II. CONCLUSIONS

The conditions of maritime registration among the different jurisdictions reviewed show surprisingly slight variations in the extent of regulation in the law and in the individual provisions. Most do not restrict ownership of vessels to their own nationals (Liberia is the exception, requiring Liberian corporations to own vessels flying its flag; and Sweden only allows other EU nationals to be owners, and Germany requires residency of owners), all can register any type of vessel (commercial or private, large or yacht or bareboat charter) none have restrictions on nationality of crews (although Germany requires the Master to be an EU national), all place the responsibility of ensuring crew safety with the Master, and all have governmental authorities to oversee adherence to the laws.

Even the legal differences between the known “flags of convenience” (including Liberia and RMI) and the more traditional national registries (including Germany and Sweden), are not dramatic. In fact, given the similarity of legal rules, one is left to presume that the main difference among registries rests with the administrative practices and the rigor of rule enforcement associated with the different jurisdictions.

This is not to say that there is a unified approach to regulation. Certainly there are differences. The number of registers varies (RMI has a separate register for yachts, Antigua and Barbuda has a registry for mega-yachts, but Sweden conglomerated its earlier three registries into a single one). Revocation differs, with some authorities (Liberia, RMI) deleting ships from the registry if serious violations of safety rules are detected or other concerns arise, while others (Sweden) withdraw operating approval, but leave the registration in place. The regulation of SRPS is also very different from one jurisdiction to another, with Germany having a rather elaborate framework of rules to determine their activities and a clear requirement of state licensing for such agencies, but most other jurisdictions not giving much legal attention to the topic. Moreover, there are differences in taxation. While several jurisdictions use a tonnage tax rather than income tax for their vessels, EUROMAR, Liberia and Luxembourg apply income taxes instead (although EUROMAR appears to be in the process of changing to tonnage tax). RMI allows the vessel owner to choose between annual taxation and multiple year taxation programs, and Swedish legislation allows for a choice of tonnage or income tax.

The fee systems are where perhaps the biggest differences lie. Interestingly, however, a brief look at the initial registration fees indicates that there is no clear correlation between “flags of convenience” and level of fees (although Liberian authorities seem to enjoy discretion in setting fees, making it impossible to know how low they go in pricing). From a low of approximately CHF 90 for Germany, fees progress upwards to approximately CHF 2500 for RMI and CHF 2650 for Sweden. Inspection costs also vary substantially, with safety inspections in Luxembourg costing approximately CHF 1500 (plus travel) and from CHF 2000-4000 in RMI.

Lessons from the Jurisdictions

While Liberian and RMI registries’ alleged susceptibility to corruption and organized crime make it difficult to draw positive lessons from their model of registration practices, it is potentially important to point out that a part of their success (in terms of tonnage and number of ships) comes from the real convenience they offer owners by means of their partnership with private administrating entities that can offer ship owners a one-stop shop (ship registration + corporate registry + mortgage administration) in a variety of locations around the world.⁵⁷³ This idea is reinforced by contrasting RMI and Liberia in terms of how

⁵⁷³ The high level of discretion left to officials of Antigua and Barbuda, Liberia, and RMI in matters of fees, fulfilment of conditions, and the granting/revocation of licenses contributes to the difficulties in accurately assessing the processes of registration.

accessible their rules are: information about current laws, regulations, and guidelines for an RMI flag is easily found on the website of the governmental authority's delegee, the private company IRI; information about Liberia is only partially available on the internet, and what does exist is out of date. Whether this or other factors (including U.S. political support) are behind RMI's growth, seemingly at the cost of Liberia, can only be hypothesized, but the correlation exists. This suggests that easy access to the basic information about the registration process, on-line submission of documents, and possibly the same-place assistance in establishing a corporation to own the vessel needing registration are significant advantages for a flag state in attracting registrations.

The most valuable lessons from the more rigorous registries, and in particular of Germany and Portugal, may lie in their establishment of offshore registration options. EUROMAR and Germany's secondary registry allow for vessel owners to hire non-nationals even while staying subject to the traditionally rigorous standards of their well-regarded supervisory administrators. At the same time, Luxembourg's recent growth invites attention, as it maintains stricter controls on vessels and crews but is actively marketing itself through a non-profit organization (Cluster Maritime).

Final Comment

While it is impossible in a study such as the one here to offer a "best" overall model, we hope that the reports can offer insights into different possibilities that can be adapted to the Swiss context to ensure the continued existence of a high quality maritime fleet.

The ISDC remains happy to discuss our findings further, and/or to elaborate specific aspects of this report.

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