

A GENERAL REVIEW UPDATING THE ARTICLE ON
REGISTRY OF SHIPS (PANAMA/HONG KONG) - TWO DIFFERENT SYSTEMS
APPEARING IN VOLUME 85 SPRING 2009 OF THE JOURNAL OF THE INSTITUTE OF
SEATRANSPORT

Many countries have adopted a ship registration system which require the party to be named as owner of a ship on their shipping register to produce specific evidence of ownership before a certificate of registry can be issued to the ship. Examples of such countries include Hong Kong (The Hong Kong Shipping Registry under the control of the Director of Marine, Marine Department, Hong Kong is the body handling such registration in Hong Kong), The Republic of The Marshall Islands (International Registries, Inc., Reston, Virginia, USA and their overseas offices handle such registration for this country) and The Republic of Liberia (LISCR, Vienna, Virginia, USA and their overseas offices handle such registration for this country).

The Republic of Panama has a different ship registration system which allows ships to be provisionally registered without evidence of actual ownership but by showing an intention to become the owner at a future date. The registration of a ship is handled by a government department called Digemar (in English - The Directorate General of Merchant Marine) which is a division of the Panama Maritime Authority ("**PMA**"). The ship's navigational licenses (e.g. provisional patente, ship station license and regulatory patente) are issued by this body. The Directorate General of the Public Registry of Titles and Encumbrances of Vessels, which is a separate division of PMA, handles the registration of ownership title to a ship as well as the registration of any mortgages over the ship. The Directorate General of the Public Registry of Titles and Encumbrances of Vessels was formed in the latter half of the year 2010. The Shipping Department from the office of the Public Registry of Panama was officially transferred to the PMA as of 31 December 2010. The same staff and relevant officials of the Shipping Department of the Public Registry of Panama, with some new recruits, made up the officials in charge of operating the Directorate General of the Public Registry of Titles and Encumbrances of Vessels at the PMA. The system and procedures for registration of documents remained basically the same, and this change helped to expedite and generally, enhance the registration of these documents. The buyer of a ship who wishes the ship to fly the Panamanian flag needs to apply to Digemar for provisional registration of the ship. The application is usually made through a Panamanian Consul located in the country where the buyer is carrying on its business or through any one of Panama's Economic and Commercial Offices or directly in Panama through a Panamanian law firm which will normally be appointed by the buyer as the legal representative of the ship in Panama. A provisional patente and a provisional radio license (valid for up to six months) are issued to the ship upon such registration. The documents required for provisional registration of the ship include those providing *prima facie*

evidence of the vessel's ownership or of the intention to acquire said ownership such as a copy of an agreement whereby the buyer agrees to purchase the ship (e.g. a shipbuilding contract or an MOA) and particulars of the ship. As a part of the process to effect permanent registration of the ship, the title document for the ship (e.g. a builder's certificate or a bill of sale obtained by the buyer after completion) needs to be subsequently registered with the Directorate General of the Public Registry of Titles and Encumbrances of Vessels. Finally, a regulatory patente and a long term radio license (valid for up to five years) are issued to the ship (this step completes the permanent registration process of the ship) after all other formalities have been complied with by the buyer (e.g. a builder's certificate in the case of a newbuilding or a deletion certificate from the former registry of the ship or any document attesting to the judicial sale of a ship has been produced to Digemar and copies of all previous Continuous Synopsis Record documents relating to the ship have been received by Digemar from the ship's former registry). The regulatory patente and the long term radio license is renewable every five years.

Upon a close examination of the two systems, inevitably you will find the following major differences:

1. Navigational licenses

(Hong Kong) - The Hong Kong Shipping Registry will not issue a Certificate of Registry (or a Certificate of Provisional Registry in the case of a provisionally registered ship) to a ship unless the buyer has produced sufficient evidence to the registrar that it owns the ship. The registrar will accept an original builder's certificate, bill of sale or court order as title documents and hence evidence of ownership. If the original title document of the ship is not submitted to the registrar at the time of registration of the ship on the Hong Kong shipping register because only a copy is available, the ship will be placed under provisional registration and the buyer needs to submit the original title document of the ship to the registrar within thirty (30) days after such registration so that the ship can be permanently registered on the Hong Kong shipping register and a Certificate of Registry can be issued to the ship by the registrar. The registrar has a discretion under statute law to grant an extension of the period of provisional registration and, if not, the ship's entry in the register will be closed and the Certificate of Provisional Registry will automatically lapse.

(Panama) - Evidence of ownership of a ship by the buyer is not a pre-requisite to the issue of a provisional patente and a provisional radio license to the ship by Digemar. However, such evidence is essential for the registration at the Directorate General of the Public Registry of Titles and Encumbrances of Vessels of the ship's first title under the Panamanian Registry,

whether in the form of a builder's certificate in the case of a newbuilding, a bill of sale or a series of bills of sale if more than one title transfer, a deletion certificate from the ship's former registry attesting to the fact that the seller was the last owner on the former registry, etc.

2. Mortgages over provisionally registered ships

(Hong Kong) - The buyer may mortgage the ship to anyone while the ship is under full registration or provisional registration and that mortgage can be registered against the ship on the Hong Kong shipping register. The mortgagee by itself or through its solicitor has to declare that the original title document which is not submitted to the registrar is held by the mortgagee or to the order of the mortgagee in order for the registrar to accept the mortgage for registration against a provisionally registered ship. The closure of the ship's entry in the register due to failure to complete the full registration of the ship before the date of expiry of the ship's Certificate of Provisional Registry will not affect any undischarged mortgage on the register. However, it is hard to see this happening because the mortgagee is in control of the original title document.

(Panama) - Upon acquiring title to the ship by the buyer, the buyer may mortgage the ship to anyone while the ship is under provisional registration but that mortgage cannot be registered against the ship at the Directorate General of the Public Registry of Titles and Encumbrances of Vessels until the buyer has registered its title to the ship at the Directorate General of the Public Registry of Titles and Encumbrances of Vessels. The preliminary registration system for title and mortgage allows the buyer to register its title to the ship and the mortgagee to obtain security over the ship expeditiously after closing. The preliminary registration mentioned above has the same effect as a permanent registration, and the buyer is entitled to exercise any and all property rights over the ship and the mortgagee is entitled to exercise any and all rights pursuant to the mortgage both for a period of six months, commencing on the date and hour of the title and mortgage registration in the Journal of the Directorate General of the Public Registry of Titles and Encumbrances of Vessels, within which time, the buyer and the mortgagee need to ensure that the title and mortgage documents are submitted to the Directorate General of the Public Registry of Titles and Encumbrances of Vessels for permanent registration. If the title and mortgage documents are not submitted for their permanent registration prior to the expiration of the six-month period, the preliminary registration will lapse by operation of law.

3. Evidence of ownership and clean title (in the case of a second hand ship coming in from a foreign registry)

(Hong Kong) - A certificate of ownership and encumbrance or a similar document issued by the former registry of a ship showing the seller of the ship to be the last owner of the ship on the former registry and the ship to be free from encumbrances is required to be produced to the Hong Kong Shipping Registry.

(Panama) - Instead of requiring a certificate of ownership and encumbrance or a similar document issued by the former registry of a ship, the Panamanian authorities rely on (a) the statements made by a notary public in the notarial certificate attached to the ship's bill of sale (sometimes such statements are given by a Panamanian Consul instead of by a notary public as found in bills of sale issued in Taiwan and Greece) (see sample attached) and (b) the deletion certificate issued by the former registry of the ship attesting to the fact that the seller was the last owner there, etc. For the purpose of registration of the bill of sale with the Directorate General of the Public Registry of Titles and Encumbrances of Vessels, the statement in item 2(b) of the sample Notarial Certificate of the Bill of Sale saying that "the VESSEL was free from any incumbrances and maritime liens." is not essential and may be omitted.

4. Evidence of deletion from the former registry of a ship

(Hong Kong) - Before the Registrar of Ships, Hong Kong is able to register a ship coming in from a foreign registry, he requires evidence of deletion of the ship from its former registry in one of the following forms:-

- (a) a copy of a deletion certificate issued by the former registry of the ship; or
- (b) a copy of a consent/permission for sale and transfer of registry issued by the former registry of the ship; or
- (c) a copy of an application for cancellation of the ship's registry signed by the seller of the ship; or
- (d) a copy of a letter of undertaking issued by the seller of the ship whereby the seller undertakes to produce a deletion certificate of the ship to the buyer within a period not longer than thirty (30) days after delivery of the ship.

The original deletion certificate needs to be delivered by the buyer to the registrar within thirty (30) days after the registration of the ship in Hong Kong.

(Panama) - There is no requirement at the time of provisional registration of the ship for evidence of deletion from the former registry of a ship to be produced to the Panamanian authorities. Before the ship is permanently registered there, the original deletion certificate must be submitted by the buyer to Digemar, and normally this document is submitted before the date of expiry of the Provisional Patente (i.e. six months after the date of provisional registration of the ship unless the Provisional Patente is extended with the approval of Digemar). Article 14 of Law 57 of 2008 of the Panamanian Code of Laws provides a term of up to thirty (30) days for the presentation of those documents not submitted at the time of a ship's flagging and which the applicant undertakes to deliver. This means that Digemar can demand that the deletion certificate be submitted within that time limit if they wish. A deletion certificate is not acceptable to Digemar unless the signature and position of the officer signing this document on behalf of the foreign government have been authenticated by a Panamanian Consul or legalised by way of an Apostille.

5. Ship's title

(Hong Kong) - There is no title register for a ship in Hong Kong. In order to establish the buyer's title to a ship, the buyer needs to submit to the Registrar of Ships, Hong Kong, a builder's certificate or a bill of sale, whereby it acquires title from the builder or the seller, or a court order vesting title to the ship in the buyer, and in all the cases mentioned above, such document must be accompanied by a declaration of entitlement to own a ship registered in Hong Kong made by one of the directors of the buyer or an authorized person appointed by it. A copy of a protocol of delivery and acceptance signed by the builder and the buyer or the seller and the buyer will normally be submitted to the registrar for his records. If the registrar is not satisfied with the above documents, he may require the buyer to produce any further documents. The registration of a ship only constitutes prima facie evidence as to the ownership of the ship. That evidence is not conclusive, nor is the Certificate of Registry itself a document of title. Any dispute as to the ownership of a ship registered in Hong Kong will have to be resolved by proceedings instituted in the High Court.

(Panama) - The Directorate General of the Public Registry of Titles and Encumbrances of Vessels act as the title register for a ship. Under Panamanian law, the title to the ship in the name of the buyer is "guaranteed" provided that there is evidence showing that ownership of the ship has been duly passed to the buyer by the builder or the seller according to the terms of a shipbuilding contract or an MOA. The title document (e.g. a builder's certificate or a bill of sale) together with an acceptance of transfer or acceptance of sale signed by the buyer both need to be translated into Spanish if written in a foreign language and protocolized (put into the form of a public deed) by a Panamanian notary before it can be filed with the Directorate

General of the Public Registry of Titles and Encumbrances of Vessels for registration. Normally, a protocol of delivery and acceptance is not required to be translated, protocolized and filed with the above documents except in very special circumstances.

(Mr. Harry Chan is the Section Head of Shipping at Mayer Brown JSM, Hong Kong)

The sections in this Article concerning Panama have been approved by Messrs. Arias B. & Associates of Panama.

NOTARIAL CERTIFICATE OF THE BILL OF SALE

Notarization del Contrato de Venta

I _____ Notary Public, duly authorized, admitted and
YO _____ Notario Público, debidamente autorizado, facultado
sworn, practising at _____
y juramentado, con residencia y ejerciendo en _____

do hereby certify that:

por este medio Certifico que:

1. The Common Seal of the Vendors mentioned in the written Bill of Sale was affixed thereto in my presence and
 1. El Sello Corporativo del Vendedor arriba mencionado en el CONTRATO DE VENTA fué sellado a este documento en mi presencia
- the presence of _____ and _____ on behalf
y en la presencia de _____ y _____
of the vendors and that the signatures “_____” and “_____”
en representación del VENDEDOR y que las firmas de “_____” y “_____”
appearing beside the said seal are their respective authentic signatures.
que aparecen al lado de dicho sello son sus firmas auténticas.

2. Sufficient proof has been produced to me that: -
Suficientes pruebas me han sido presentadas de que:-
 - (a) The Vendors were immediately prior to the execution of the said Bill of Sale the owners of “the VESSEL” therein referred to
Los Vendedores inmediatamente antes del otorgamiento del Contrato de Venta eran los propietarios de “la NAVE” a que ésta se refiere y
AND had the right to sell and transfer the said “VESSEL.”
tienen el derecho para vender y traspasar “la NAVE.”
 - (b) The above mentioned signatories had power to execute the Bill of Sale on behalf of the Vendors in manner aforesaid,
Los arriba firmantes tenían el poder para otorgar dicho CONTRATO DE VENTA en representación de LOS VENEDORES en la forma antes

and that “the VESSEL” was free from any incumbrances and maritime liens.
mencionada, y que “la NAVE” se encuentra LIBRE de Gravámenes y deudas marítimas.

AUTHENTICATION BY THE CONSUL OF PANAMA
AUTENTICACION DEL CONSUL DE PANAMA

IN TESTIMONY whereof I have hereunto
EN TESTIMONIO de lo cual he suscrito
suscribed my name and affixed my seal of office
mi nombre y fijado mi sello de oficio
this day of _____
en este día _____
of _____ Two Thousand
de _____ dos mil
and _____

Notary Public
Notario Público