

ICS* Column – Commercial Aspects of Shipping

Article 13 – August 2006

The views expressed here are solely those of the author, and do not necessarily reflect the views of the organization he represents.

“Commercial Aspects of Shipping – Ship Registration”

Jagmeet Makkar, FRINA, FICS, FIMarE (I), MCI Arb
Education Officer, Institute of Chartered Shipbrokers, Hong Kong Branch

Whether we travel on business or for pleasure across the international borders, the one thing that we all must possess is a travel document and a valid visa, if a visa is required by the laws of the country where we plan to go. The travel document expressly states our “nationality” and gives us the protection of the authority that has issued the travel document, e.g. the Government of India in case of an Indian Passport. In return of this protection, we are obliged to uphold the “honour” of the protecting country by obeying the law of the mother country as well as the law of the country we are visiting. In layman terms, for a ship, we can call the mother country as the “country of registration” and the country where we are visiting as the “port state control”.

Now let us look at the need for registration of a ship in detail.

Ships, like human beings, must have a name and in addition must also have an established identity, port of registration and nationality before setting forth on the oceans of the world. The owners must declare to the Registrar of Shipping, or other appropriate authority, their interest according to the flag under which the vessel in question is intended to trade. Details of the ship with plans and other data will be filed and when formalities are completed and the ship's tonnage verified by a government surveyor the owners will receive a Certificate of Registration. On this certificate will appear the official number allotted to the ship together with her port of registry, details of tonnage and construction with the name(s) of her Owner(s). The Registration Certificate is the most important of the ship's papers and must be kept aboard in the custody of the Captain. Those of us who have not seen a certificate of registration so far, it would be a good idea to see one and go through it.

A ship on the oceans of the world is considered part of the territory of the country under whose flag she sails. Her name must appear on both sides of her bow and also at her stern where the port of registry must also appear. Traditionally also the merchant marine flag of the country of registration is flown at the stern. However, the certificate of registry is the only acceptable evidence of identity and its production to persons at sea or ashore entitles those on board to the protection and assistance from her country and its representatives. It follows that even in time of war, provided she is not violating neutrality or trying to run a blockade she is entitled to full protection under International Law and should be free from seizure or arrest. A ship which is not officially registered and without identity papers would be regarded as ‘stateless’ and even liable to be regarded as a pirate ship, registration of merchant tonnage being compulsory throughout the world. There may be exceptions in the case of

small coasters and fishing vessels which never venture out of territorial waters or small pleasure boats in private ownership. These minor categories can be exempt from compulsory official registration dependent on the laws of individual countries.

There is no conformity of qualification required for the bodies or persons who are entitled to register ships under, and claim the protection of, a particular country. It follows that the degree of control over ship owners and the conditions under which their ships trade differs in severity from flag to flag. Not only does this apply to their civic and tax liabilities but also in regard to manning levels, living conditions and general maintenance of the ships themselves. The extremes lie between, on one hand, those flags whose only requirement is a modest registration fee in return for a listing in the national register and the painting of the ship owner's name on the office door of an attorney and on the other hand, the demands and regulations of the traditional maritime nations.

Genuine maritime nations require that the owners have a permanent place of business within the national territory and also that none but nationals of the country under which the ship is to be registered appear as owners.

Originally, as an example, none but British subjects were permitted to register the ownership of merchant ships in their own names under the Red Ensign. Now, with the open borders of the European Union, a citizen of any of the EU member countries may register under British Flag if they so wish and have established an office in the UK. Nationals of other countries may share in the ownership by investment in Limited Companies or other corporate bodies provided such companies have their place of business in the territory where the ships are registered.

It is a tradition going back to the days of the merchant venturers that ownership of a British ship is considered to be divided into 64 individual shares. In this manner merchants would club together to finance a ship owning enterprise. It follows that a single person who owns an entire ship will be registered as the possessor of 64/64ths. As, however, it is almost invariable for a British ship to be owned by a limited company the 64th rule is now hardly relevant although reference to it may still be encountered. The port of registry may not be the same as the business address of the owners who may have their place of business anywhere within the United Kingdom. In such cases the port of registry will probably be the one most frequently used by the ship or alternatively a commercial port with a long maritime tradition.

Other maritime countries have their own rules, laws and traditions in connection with registering ships.

“OPEN” REGISTRIES

Traditional maritime nations have tended to impose stringent safety levels upon ships registered under their flags. These include regulations as to the numbers as well as the proficiency of all shipboard personnel. In many cases these regulations have been heavily reinforced by powerful trades unions who also impose wage levels. Furthermore, many of those same nations have a high rate of taxation so that the combination of these factors has made registration under a traditional flag less popular.

Many years ago, a handful of countries established far less stringent maritime laws, little or no taxation beyond the actual cost of ship registration and a nationality qualification which demanded nothing more than a small brass plate on the entrance to an attorney's office. The benefits of such legislation rendered trading under these flags beneficial to owners to such an extent that they are now a major force in world shipping.

Some countries were so keen to establish a national merchant fleet that they went beyond simply attracting registration and ensured preference for cargo being given to locally registered ships.

No matter how eager one may be to own and operate ships, the profit motive is primary in importance and a ship owner will naturally consider the incentives available when deciding under which flag his vessel should trade to his greater advantage.

A problem always facing ship owners is the difference between the cost of living – and hence wage levels – in one country as compared with another. Furthermore, high cost countries tend to have powerful trades unions. To attract seafarers, a ship owner in a high cost country will be expected to match shore-based wages which will result in a wage bill far higher than that of a low-cost country. Thus ships owned in high-cost countries become uncompetitive in the international market of shipping business. The United States was among the earliest to encounter this problem.

Since the early years of the 20th century there have been close links between the US and the republic of Panama and thus the first open registry country to be placed with full international legal recognition was that of **Panama** in the 1920s. The incentive was cheap labour and in 1939 a treaty was signed between the United States and Panama whereby profits from shipping were exempted from taxes which made it attractive for American owners to take advantage of freedom of employment while obtaining tax benefits. Panama's neutrality during time of war was an additional encouragement for ship owners, not only from the United States but also world wide, to trade under the Panamanian flag.

Honduras was similarly attractive at that time being within the Western Hemisphere and therefore considered safe for US investment. Over 100 vessels which were American controlled traded under the Panamanian and Honduran flags during the second World War.

Liberia, a state in West Africa originally created in 1847 as a new homeland for freed American slaves, was the third of the original trio of free flags. Liberia's close links with the USA made it another country especially favoured by American ship owners.

Because of the relaxed regulations and minimum taxation, these countries, and most of those that followed their traditions became known as **flags of convenience**. They attracted many ship owners whose own national flag became uncompetitive due to regulation, taxation and local wage levels. Unfortunately flags of convenience (FOCs) not only attracted genuinely reliable ship owners whose only motivation was remaining competitive, they also attracted owners who had no compunction about operating dangerously sub-standard ships. It became quite common for such owners to establish a separate limited company for each of their ships, thus making legal action against them a hopeless task. The use of these flags by unscrupulous owners has severely damaged the reputation of flags of convenience.

For those aspiring to learn more about the commercial aspects of shipping, it is recommended they become student members of the Institute of Chartered Shipbrokers and pass the qualifying examinations to become a full members. Additional information is available at www.ics.org.uk and www.ics.org.hk.

Tutorship Copyright Material: Adapted for Marine Engineers' Review (I), Institute of Marine Engineers (I) with permission from the Director General, ICS, UK

Courtesy: Jagmeet Makkar, Education Officer, Institute of Chartered Shipbrokers - Hong Kong Branch.

For more details, visit www.ics.org.uk or www.ics.org.hk.

For feedback and comments, please contact: shiplearn@yahoo.com
