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Ship Registration and Finance in Malta

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Malta owes much of its historical development to its strategic location in the centre of the Mediterranean, its natural harbours and its extensive range of maritime services including specialized ship repair, excellent freeport facilities, bunkering services, ship supplies and towage services.

Today, the Maltese flag has earned the confidence of several reputable ship owners, ship financiers and ship management companies as attested by the increasing registered tonnage. As at end of June 2008, the total number of Malta-flagged vessels was nearing the 5,000 mark with a total gross tonnage of over 32 million tonnes and an average age of 16.72 years. The current registered tonnage makes Malta the eighth largest maritime flag in the world and the second largest in Europe.

The Maltese Merchant Shipping Act (the “Act”) largely based on its English counterpart, principally governs the registration and operation of vessels. The Merchant Shipping Directorate of the Malta Maritime Authority (“MMA”), commonly referred to as the Malta Ship registry, is responsible for the registration of vessels under the Malta flag and the provision of all aspects of the on-going administration of Malta-flagged vessels.

In its constant efforts towards promoting the Maltese flag as a flag of choice, the MMA has undertaken several initiatives to ensure the reputation of the Maltese maritime flag, and it has appointed inspectors worldwide to conduct ship safety inspections onboard Maltese registered vessels on a regular basis, ensuring full and rigorous compliance with all applicable Maltese regulations and international treaties. Indeed, Malta is a party to most major IMO and International Labour Organisation conventions.

1. TAX AND FINANCIAL BENEFITS

A. Exemption from Income Tax

Maltese law affords a number of fiscal benefits to ship owners or bareboat charterers operating “*tonnage tax ships*”. Tonnage tax ships are vessels of at least 1,000 net tonnes registered under the Maltese flag and owned, chartered, managed or administered by a *Shipping Organisation*¹ - a status automatically

¹ Merchant Shipping (Licensing of Shipping Organisations) Regulations, L.N. 238 of 2005



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conferred on a company, partnership, trust or foundation having as its activities the owning, operating, administration or management of vessels². Vessels not satisfying the 1,000 net tonne threshold could also be granted the status of “*tonnage tax ships*” by specific Ministerial approval.

Shipping Organisations operating tonnage tax ships are exempt from Malta tax in respect of:

- (i) all income derived from their shipping activities; and
- (ii) any gain arising on the liquidation, redemption, cancellation, or any other disposal of shares, securities or any other interest, including goodwill, held in any shipping organisation owning, operating, administering or managing a tonnage tax ship³.

Besides, an exemption of Malta tax is also granted in favour of financiers in respect of interest or other income payable in relation to any financing of the operations of a Shipping Organisation or the financing of any tonnage tax ship. Persons being resident in Malta may not avail themselves of this exemption unless they qualify as appropriately licenced banks or credit or financial institutions.

B. Exemption from Duty on Documents and Transfers (Stamp Duties)

The registration of a tonnage tax ship, any sale or other transfer of such ship, the issue or allotment of any equity or other interest in a shipping organisation and the registration, transfer or assignment of any security or interest in a shipping organisation or any vessel are specifically exempt from transfer duty in virtue of the provisions of the Merchant Shipping Act.

This exemption is of particular relevance in view of the fact that a 2.6% duty would otherwise be payable on the transfer of a ship or 2% on the transfer of shares of a ship-owning company in terms of the general rules laid down in the Duty on Documents and Transfers Act⁴.

C. Exemption from Exchange Control Restrictions

Although licensed shipping organisations are exempt from the provisions of the External Transactions Act⁵ on any transaction connected with the ownership, operation, administration, management, purchase

² Merchant Shipping (Taxation and other matters relating to Shipping Organisations) Regulations, 2004, LN. 224 of 2004.

³ This exemption is conditional upon (i) the settlement of all relevant registration fees and tonnage taxes due in respect of the vessel and (ii) separate accounts are kept by the shipping organisation clearly distinguishing the receipts and payments in respect of shipping activities and those in respect of any other business. In practice this requirement (ii) is of little effect as shipping companies are established with the very specific and limited purpose contemplated by this concession.

⁴ Chapter 264 of the Laws of Malta



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or financing of a tonnage tax ship, this exemption has little relevance today since Malta is fully compliant with the principle of free movement of capital and payments as one of the basic freedoms of the European Union.

2. FLEXIBILITY OF OWNERSHIP STRUCTURES

Besides companies, partnerships, trusts or foundations which may be licensed as Shipping Organisations as explained above, individuals being European Union citizens are also qualified to own Maltese ships in their own personal capacity. In doing so, however, the individual concerned is not entitled to avail himself of the tax exemptions referred to above due to the specific wording of the law, since individuals are excluded from the definition of a “*shipping organisation*” thereby placing individuals outside of the scope of the applicable tax exemptions. Whether or not this anomaly is a deliberate exclusion on the part of the legislator, it is submitted that its removal should be the subject of a legislative amendment to place individuals on equal footing with licensed *shipping organisations* in their eligibility to benefit from the applicable tax incentives.

The registration of a vessel on the Maltese Register no longer necessitates the incorporation of a Maltese company. On the 1st May 2004, the date of Malta’s accession into the European Union, regulations permitting foreign bodies to be registered as owners of Malta-flagged vessels were introduced. The formalities that must be satisfied relate to the company’s existence, management and ownership and structure. An international owner is required to appoint a Resident Agent in Malta to liaise with the MMA and act as agent of the international owner in respect of all matters pertaining to the upkeep of the vessel’s register and to act as the owner’s judicial representative in Malta. It is precisely this framework which makes it possible for foundations, trusts and other bodies corporate registered or domiciled in jurisdictions outside Malta to be licensed as shipping organisations and register tonnage tax ships under the Maltese maritime flag.

Hulls under construction and vessels not strictly considered as ships, such as oilrigs, platforms and barges, may also be registered under the Maltese flag. The registration of hulls under construction under the Malta flag (with a “non-operational” certificate) has proven to be an effective solution to enable financiers to register a mortgage over the hull to secure any advance/s made in the course of the vessel’s construction.

The Maltese flag does not impose any restrictions on the nationality of the shareholders, directors or officers of ship-owning entities. Neither are there any conditions imposed in respect of the nature of trading carried out by Malta-flagged vessels or the nationality of the master, officers and crew serving on such vessels. This flexibility allows vessel managers a high level of freedom in organising the manning and operation of Malta-flagged vessels.

Pre- or post- registration inspections are of relevance for vessels which have been in operation for 15 years or more. Vessels between 15 and 20 years old are subject to an inspection within one month after their provisional registration under the Malta flag. Vessels which are between 20 and 25 years old, on the

⁵ Chapter 233 of the Laws of Malta



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other hand, require a pre-registration inspection by an MMA-appointed inspector who must be fully satisfied with the condition of the vessel before it is recommended for registration under the Malta flag.

3. FINANCING ARRANGEMENTS

Another benefit of registering a vessel under the Maltese flag is the easy and efficient procedure for the registration of mortgages over vessels and the relative simplicity with which any mortgage security rights can be enforced.

The registration of a mortgage is a relatively simple procedure and is completed with the filing of an appropriate Mortgage Deed form with the MMA. Mortgages are recorded in the exact chronological order (time and date) in which they are registered by the Registrar. It is common for mortgage deeds to contain a specific clause prohibiting any further mortgages to be registered over the vessel and/ or any transfers of the vessel or any share therein to be made without the mortgagee's prior written consent. Once a mortgage is registered, special privileges or liens not previously recorded on any part, appurtenance or accessory of the vessel do not affect the mortgagee's position.

The mortgage deed need not have a specific monetary value, and this is typically capped at a maximum amount, allowing the mortgagor to secure its general financing arrangements granted by the mortgagee bank by means of the mortgage over the vessel. The deed would usually also provide that the amount of indebtedness due by the mortgagee to the mortgagor is to be determined by reference to the mortgagee's own books of account.

Maltese law also recognizes and acknowledges the role of security trustees acting on behalf of a person or a syndicate to whom any debt or other obligation is due. This arrangement is widely used in the context of syndicated financing arrangements, particularly for the more substantial financial requirements involved in acquiring substantial fleets or certain classes of highly specialised vessels.

Insofar as the enforcement of mortgage rights are concerned, Maltese law provides a high degree of protection to mortgagees⁶. Thus, in the event of default on the part of the mortgagor, the mortgagee may simply give notice to the mortgagor, take possession of the ship in respect of which the mortgagee has a registered interest and proceed to sell the ship or any share/s therein, provided that there are no other registered mortgagees ranking prior to the enforcing creditor's mortgage. Where there is more than one person registered as a mortgagee of a particular ship, a subsequent mortgagee shall only be entitled to sell the ship pursuant to a court order or with the consent of every prior mortgagee.

Any surplus from the proceeds of the sale of the vessel, after the secured debt is settled and the mortgage discharged, is required to be deposited under the Authority of the Maltese courts for the benefit of other creditors and the mortgagor. Apart from the mortgagee's rights to take possession and sell the vessel secured by the mortgage when the debtor is in breach, the mortgagee is also empowered to maintain the status and validity of the registration of the ship.

⁶ The most important provision in this regard is Article 42 of the Merchant Shipping Act



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Of particular interest is the fact that, the procedure for the recovery of the debt secured by the mortgage is expedited since validly registered mortgages are conferred the status of “executive titles” meaning that there is no need for a prior court judgment in order to render them enforceable. The Act also provides that foreign mortgages are also recognised as mortgages for the purpose of Maltese law and thereby benefit from this status, subject to certain conditions.

The discharge of a mortgage registered over a Maltese registered vessel is also a relatively straightforward procedure which is finalized by completing the relative discharge declaration on the reverse side of the original mortgage deed form and filing the said deed form with the MMA. On the basis of such discharge declaration, the Registrar records the date and time of the discharge, rendering the vessel free from encumbrances and restrictions and enabling the owner to sell or delete the vessel from the Maltese register.

Besides these security-related attractions, it is important to emphasise that Maltese general public policy rules relating to the illegality of imposing an interest rate in excess of 8% per annum, the illegality of compounding interest and the prohibition of having the interest exceed the principal amount due are all rendered inapplicable by the provisions of the Civil Code in respect of “*debts or other obligations secured by a mortgage registered or recognized under the Merchant Shipping Act*”⁷. The exclusion of these rigid public policy rules is intended to allow complete commercial flexibility in respect of vessel financing transactions.

4. CONCLUSION

Malta has clearly established itself as a full-fledged maritime centre, complemented by an efficient and effective Registry which fully meets the requirements and challenges posed by its ever-increasing registered tonnage, and professionals having a deep expertise and pragmatism in the sector, providing ship owners, charterers and financiers as the main stakeholders in the industry with a quality of service that continues to surpass expectations.

Each of the advantages outlined above continue to provide a winning formula for these stakeholders and have contributed to making it one of the world’s leading and most widely-recognised merchant shipping flags.

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⁷ Article 1855A, Civil Code, Chap 16



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Zammit & Associates - Advocates is one of Malta's leading legal practices involved in vessel registration and finance transactions, acting for a number of correspondent law firms, shipping lines and financial institutions around the world. The firm offers the full spectrum of services related to ship registration and finance, including inter alia the formation of shipping companies, acting as Resident Agent to International Owners, and carrying out vessel searches.

Should you wish to request the firm for any assistance in respect of the registration of Maltese vessels or the financing arrangements in relation thereto, kindly send an e-mail to info@zammit-law.com or visit www.zammit-law.com.

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