

CONYERS

A photograph of a modern glass skyscraper with a grid-like facade, reflecting the sky and surrounding environment. The building is partially obscured by a semi-transparent blue rectangle containing the title text. The foreground shows a paved plaza with geometric patterns and a few small, cylindrical metal bollards.

Shipping Companies and Ship Registration in Bermuda

Preface

This publication has been prepared for the assistance of those who are considering the incorporation of a Bermuda company to own or operate ships, or the registration of ships on the Bermuda Register. It deals in broad terms with the requirements of Bermuda law. It is not intended to be exhaustive but merely to provide brief details and information which we hope will be of use to our clients. In particular, it should not be construed as advice on the tax laws of the United States or any other jurisdiction. We recommend that our clients and prospective clients seek legal advice in Bermuda on their specific proposals, and consult with their tax, legal and other professional advisers in their respective jurisdictions.

Conyers Dill & Pearman

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1. GENERAL INFORMATION ABOUT BERMUDA

The Islands of Bermuda consist of a fish-hook shaped chain of 150 islands and islets situated in the western Atlantic ocean approximately 917 kilometres (570 miles) due east of Cape Hatteras on the North Carolina coast. The warming effect of the Gulf-Stream makes Bermuda the most northerly group of coral islands in the world. The ten principal islands are connected by bridges or causeways to form a chain about 35.4 kilometres (22 miles) long with an average width of less than 1.7 kilometres. (1 mile).

Bermuda is the oldest self-governing territory in the Commonwealth of Nations and has a Parliament third in age only to the Parliaments of the United Kingdom and Iceland.

Representative government was introduced to Bermuda in 1620. Since 1684 the Governors have been appointed by the Crown. The Bermuda Constitution, which became effective on 8 June 1968, provides for internal self-government, while the Governor's responsibilities lie in the administration of justice, external affairs, internal security, and defence.

The exercise of government is through a legislature which comprises two Houses of Parliament, namely the House of Assembly and the Senate. The House of Assembly consists of 36 members elected under universal adult franchise. The Senate is the upper House of Parliament with eleven senators.

2. INTERNATIONAL BUSINESS IN BERMUDA

Bermuda is a well-established centre for international business. More than ten thousand international exempted companies are based on the Island, which number includes subsidiaries or affiliates of many of the world's major corporations. More than 50% of the world's merchant shipping tonnage is insured through the International Group Protection and Indemnity Clubs (P&I) which are established in Bermuda. Bermuda is also a centre for ship ownership and management.

International communications with the Island are amongst the best in the world, with both cable and satellite communications.

3. INCORPORATION OF COMPANIES IN BERMUDA

The principal statute governing the formation and operation of Bermuda companies is the Companies Act 1981 (the "Companies Act"). Bermuda law draws a distinction between a "local company" which is required by statute to be at least 60% beneficially owned by Bermudians and which is permitted to carry on and compete for business within Bermuda, and an "exempted company" which is owned predominantly by non-Bermudians and which is restricted to carrying on business from Bermuda in connection with transactions and activities external to the Island. It is to exempted companies that the following discussion applies.

In general, a company will be incorporated by registration under the provisions of the Companies Act. An application must be submitted for approval to the Bermuda Monetary Authority (the "BMA"), together with a declaration confirming the financial standing and integrity of a proposed ultimate beneficial owner of a company. If the BMA is satisfied, a consent to incorporate will be issued. The Memorandum of

Association may then be filed with the Registrar of Companies. A fee must be paid both at the time of incorporation and in January of each year thereafter.

The fee is provided for on a sliding scale based on a company's capital, which comprises for these purposes, the aggregate of the authorised capital and the premium (if any) on the issue of shares. For a current listing of these fees, please contact Conyers Dill & Pearman.

Each member will be liable to make payment on shares owned by them when called upon to do so by the directors (or sole director, as the case may be) or by a liquidator on winding-up. The issue of shares of no par value or bearer shares is not permitted under Bermuda law.

A company must have a registered office in Bermuda, the address of which is filed with the Registrar of Companies, and at which are kept the share register, register of directors and officers, minutes and such records of account as will enable the directors to ascertain with reasonable accuracy the financial position of the company at the end of each quarter. The name and address of shareholders will be entered in the register of members, the register itself being available for inspection at the company's registered office.

Each Bermuda exempted company is required to have at least one director and a secretary. A secretary of an exempted company may be an individual or a company. A director of an exempted company may be an individual or any type of legal person (including any company or association or body of persons, whether corporate or unincorporate). For practical reasons, it is most common for the office of director to be filled by an individual or a company.

To satisfy the residency requirement contained in the Companies Act, the secretary or at least one director must be ordinarily resident in Bermuda. A company may satisfy the residency requirement by appointing either an individual or a company to act as its resident representative in Bermuda.

The company may appoint officers, who may or may not be directors, along with a Secretary of the company.

The initial subscribers to the Memorandum of Association will be the provisional directors of the company who hold office until a Board of Directors is appointed by the shareholders. It is the duty of the provisional directors to convene a general meeting as soon as convenient after the minimum share capital has been subscribed. This meeting will be deemed to be the annual general meeting for the year in which it takes place, and is usually followed by the first meeting of the Board.

4. TAXATION IN BERMUDA

At the date of this publication, Bermuda corporate income tax (CIT) applies only to certain Bermuda constituent entities that are members of Multinational Enterprise Groups with consolidated financial statements showing annual revenue of at least 750 million Euros for at least two of the last four fiscal years. For all Bermuda companies which are out of scope of CIT, there is no Bermuda income or profits tax, withholding tax, capital gains tax, capital transfer tax, estate duty or inheritance tax payable by such Bermuda company or its shareholders, other than shareholders ordinarily resident in Bermuda.

No stamp duty or similar duty is payable in respect of any instrument executed by an exempted company or in respect of an instrument relating to an interest in an exempted company. Stamp duty may, however, be payable in respect of transactions involving Bermuda property.

There is no taxation on seafarer's wages by the Bermuda Government.

Exempted companies are designated non-resident for exchange control purposes. This designation enables such entities to operate free of exchange control regulations so that they may make payments of dividends, distribute capital, open and maintain foreign currency bank accounts and purchase securities etc., without reference to the BMA.

5. SHIPPING COMPANIES IN BERMUDA

The current legislation governing ship registration in Bermuda is the Merchant Shipping Act 2002, as amended by the Merchant Shipping Amendment Act 2004 (the "Shipping Act"). The Shipping Act and the Merchant Shipping (Registration of Ships) Regulations 2003 (the "Regulations") together form a comprehensive and modern shipping code which mirrors that of the United Kingdom.

Bermuda companies are permitted to own ships registered in any jurisdiction throughout the world, provided always of course that such jurisdiction allows a Bermuda company to own ships registered on its register. Bermuda companies can also charter and operate ships of any flag.

6. SHIP REGISTRATION IN BERMUDA

The Bermuda Register has been in existence since 1789. As a port of British registry Bermuda registered ships fly the red ensign undefaced. Bermuda has been classified as a Category 1 register and is thus capable of accepting for registration all types of vessels, with the exception of fishing vessels.

As a member of the red ensign group Bermuda registered ships are entitled to British Consular representation and the protection of the Royal Navy.

As of the date of the memorandum, the Register has approximately 144 commercial vessels totalling approximately 11,000,000 gross tons and 201 yachts totalling approximately 77,000,000 gross tons.

The administrative staff includes the Registrar of Shipping (the "Registrar"), the Assistant Registrar, and the Chief Surveyor, in Bermuda's capital, Hamilton.

7. ELIGIBILITY REQUIREMENTS

The Shipping Act removes the earlier concept of an "obligation" to register and replaces it with an "entitlement" to register a ship on the Bermuda Register. The Shipping Act also sets out those persons qualified to be owners of British ships to be registered on the Bermuda Register, being:

- (a) British citizens;
- (b) Non-United Kingdom nationals exercising their right of freedom of movement of workers or right of establishment;

- (c) British Overseas Territories citizens;
- (d) British Overseas citizens;
- (e) Persons who under the British Nationality Act 1981 of the United Kingdom are British subjects;
- (f) Persons who under the Hong Kong (British Nationality) Order 1986 of the United Kingdom are British Nationals (Overseas);
- (g) Bodies corporate incorporated in an EEA state;
- (h) Bodies corporate incorporated in the United Kingdom or in any relevant British possession;
- (i) Bodies corporate incorporated in Bermuda
- (j) European Economic Interest Groupings; and
- (k) Bodies corporate incorporated in any of the following countries:
 - (i) Australia
 - (ii) Bahamas
 - (iii) Canada
 - (iv) China PR
 - (v) Hong Kong
 - (vi) India
 - (vii) Japan
 - (viii) Liberia
 - (ix) Marshall Islands
 - (x) Monaco
 - (xi) New Zealand
 - (xii) Panama
 - (xiii) Singapore
 - (xiv) South Africa
 - (xv) South Korea
 - (xvi) Switzerland

(xvii) United Arab Emirates

(xviii) United States of America.

A person who does not qualify under the above list may nevertheless be one of the owners of such a ship if a majority interest in the ship is held by persons who do qualify.

Where a Bermuda registered ship is owned by a majority interest that is not resident in Bermuda a “representative person” is required under Part IV of the Regulations. A “representative person” is generally an individual resident in Bermuda or a company incorporated and with its principal place of business in Bermuda.

It is the responsibility of the non-resident owner to appoint the representative person before applying for registration and thereafter to secure that such a representative person is appointed for so long as the ship remains registered on the Bermuda Register.

8. REGISTRATION OF A SHIP IN BERMUDA

8.1. Application to Register

An Application to Register must be made to the Registrar at the Bermuda Shipping and Maritime Authority in the form prescribed in the Regulations. The Application must contain the name and address of the applicant and sufficient information to enable the ship to be identified. Every Application must be accompanied by an instrument evidencing the appointment of a managing owner (where the ship is jointly owned) or a ship’s manager, as the case may be.

8.2. Declaration of Eligibility

The Application must be accompanied by a Declaration of Eligibility which is in prescribed form. The Application includes a breakdown of legal ownership of the ship as well as a declaration of ownership by every owner setting out his qualification to own a British ship. It will also describe the ship’s connection to Bermuda.

Where the ship has already been registered on any other register, the Application must be accompanied by a certified extract from that register with respect to the ship. Where the ship is chartered in by demise, the Application must include a declaration by the registrar of the country of primary registration that the certificate of registration has been surrendered.

8.3. Corporate Ownership

Where application to register is made on behalf of a body corporate, the Application must be accompanied by a certified copy of the company’s certificate of incorporation, memorandum and articles of incorporation (or similar documents) and any certificate pertaining to any changes of name.

8.4. Approval of Name

The Applicant is required to make a proposal for the name of the ship. The Registrar will generally approve a proposed name so long as the name is not already taken, or so similar to another name that it would cause confusion. In addition, the name must be in Roman letters and any numerals must be in Roman or Arabic numerals and must not be likely to be confused with a distress signal.

8.5. Evidence of Title

The Application must be supported by evidence of title, in the form of the builder's certificate, or in the case of a ship which is not new, either a previous bill of sale showing ownership for at least 5 years before the Application is made or, if the ship has been registered with full registration at any time within the last 5 years, a bill of sale evidencing all transfer of ownership during the period so registered. The Registrar may accept other forms of evidence of title where necessary.

8.6. Survey

A Certificate of Survey of final tonnage measurement, (incidental to registration in Bermuda), must be furnished to the Registrar to obtain a Certificate of Registration. In most cases, the survey will be arranged by the beneficial owners or attorneys for the owners abroad, and will be sent directly to the Registrar.

Surveyors who are acceptable to the Registrar include the American Bureau of Shipping, Lloyd's Register of Shipping, Bureau Veritas, Det Norske Veritas and Germanischer Lloyd.

If an application for a survey of tonnage measurement is to be made to the Registrar in Bermuda, the information to be provided must include the intended name of the vessel (yard and hull number if it is a new ship), gross tonnage and description, a location where the vessel may be surveyed, and confirmation of the party who is to be responsible for any costs involved.

8.7. Additional Inspection Requirements

On receipt of the Application, if the Registrar is satisfied that all requirements are met, the Registrar will allocate an official number to the ship and will issue a carving and marking note. An inspector of marks will satisfy himself that the ship has been carved and marked in accordance with the Regulations.

9. TRANSFER OF A VESSEL FROM ANOTHER PORT

Where a ship is registered in the register of a port in the United Kingdom or British possession, the registration of that ship may be transferred to the port of Hamilton upon application. Such application must be accompanied by a declaration by all registered owners of the ship, full particulars of the ship, and the names of all persons appearing on the registry to be interested in the ship as owners and mortgagees. The consent of the mortgagees will be required.

The existing Certificate of Registry should be forwarded to the Registrar in Bermuda who will then be able to issue an Official Number and a Provisional Certificate of Registration and Carving and Marking Note. A new Certificate will be issued by the Registrar and the existing Certificate cancelled once the new port of registry (Hamilton) has been acceptably marked on the stern of the vessel, and the Carving and Marking Note, issued by the Registrar has been certified and returned.

Where the ship is being transferred from a port outside the United Kingdom and her possessions, the full registration procedure outlined in section 8 of this memorandum must be followed. New mortgages (if applicable) must be filed.

10. RADIO LICENCE

10.1. Application

When application is made to the Registrar to register a ship in Bermuda, or any preliminary steps are taken in that regard, the Registrar will generally liaise with the Department of Telecommunications to obtain signal letters for the ship in question. However, the Telecommunications Act 1986 provides that a licence issued by the Minister responsible for telecommunications is required in order to possess or use any radio apparatus on board any ship registered in Bermuda.

Radio licences are divided into four main categories;

- (1) class 1 radio station;
- (2) class 2 radio station;
- (3) restricted radio station; and
- (4) restricted VHF radio station.

All applications for radio licences must be submitted in writing to the Department of Telecommunications and shall set out all of the following information:

- (a) name of vessel;
- (b) official number;
- (c) IMO number;
- (d) signal letters;
- (e) type of radio installation;
- (f) gross tonnage;
- (g) type of vessel;
- (h) year built;
- (i) particulars of registered owner;
- (j) particulars of managing agent;
- (k) accounting authority;
- (l) particulars of emergency contact person;

- (m) description of radio installation, including type of equipment, maker, frequency range and radiated power;
- (n) source of energy power supply;
- (o) type of internal communication;
- (p) clock and emergency lighting particulars; and
- (q) number of radio operators.

The application will be checked and presented to the Department of Telecommunications for approval. This process normally requires five working days. If approval is given and the licence fee has been received,¹ a licence will be issued.

Approval cannot be given unless confirmation has been received in writing from the Designated Accounting Authority.

10.2. INMARSAT Applications

If the ship will be using Satellite Navigation Equipment, an application will be required to be made to INMARSAT in London. This may be submitted through the Department of Telecommunications in Bermuda. A Commissioning Application must be submitted for each set of Equipment.

11. REGISTRATION AND TONNAGE FEES

On the registration of a ship both registration and annual tonnage fees will be payable. Registration fees are payable upon registration while annual tonnage fees are due both upon registration and annually thereafter by 31st March of every year. If a ship is registered after 31st September in any year, only one half of the Annual Tonnage fees will be payable for that year.²

12. FINAL REGISTRATION

When all of the above documents have been completed to the Registrar's satisfaction, and applicable fees paid, an Official Number will be allocated and a Ships' Carving and Marking Note issued to the owner. The ship's name, Official Number and port of registry must be formally marked on the stern of the vessel, and certified in accordance with the Shipping Act by a proper Officer, (e.g. a Registrar of Shipping in a foreign port or a British Consular Officer). Once the Ship's Carving and Marking Note has been returned duly certified, the vessel will be registered on Part I of the Bermuda Register and a Certificate of British Registry issued.

13. PROVISIONAL REGISTRATION

Where a ship which the owner intends should be registered is in fact outside of Bermuda, the owner may apply for provisional registration. If the Registrar is satisfied that the ship is eligible for registration

¹ Details of radio fees payable are available upon request.

² Details of fees payable are available upon request.

in Bermuda, he may register the ship provisionally and issue a Provisional Certificate. The Provisional Certificate allows the vessel to sail for a period of three months or until the vessel's arrival in Bermuda or a port specified in the certificate of provisional registration.

14. REFUSAL OF REGISTRATION/REMOVAL FROM THE REGISTER

The Registrar has power to refuse registration of a ship if he is not satisfied that the ship is entitled to be registered or if he is satisfied that it would be inappropriate for the ship to be registered, taking into account any requirement of the Shipping Act relating to the condition of the ship or its equipment so far as it is relevant to its safety or to any risk of pollution or to the safety, health and welfare of persons engaged in any capacity on the ship or if the ship fails to comply with the International Safety Management code.

The Registrar may direct the removal of a ship from the Register in the following circumstances:

- (1) on application by the owner;
- (2) on failure of the owner to notify the Registrar of a change in ownership;
- (3) on the ship no longer being eligible to be registered;
- (4) on the ship being destroyed;
- (5) if the condition of the ship is such that there is a risk to safety or a risk of pollution to such a degree that continued registration would be inappropriate;
- (6) when any penalty under the Shipping Act remains unpaid for a period of more than 3 months and no appeal is pending;
- (7) when any summons under the Shipping Act has been served on an owner but the owner has failed to appear and not less than 3 months has elapsed since the time and place appointed in the summons; and
- (8) where any fee due to the Department of Maritime Administration has remained unpaid for a period of more than 3 months.

15. INTERNATIONAL MARITIME CONVENTIONS

Bermuda law is up to date and in line with the UK with regard to the ratification of the primary international conventions for merchant shipping. A complete and current listing of conventions is available upon request.

16. MANNING REQUIREMENTS

Bermuda is a signatory to the standards of Training, Certification and Watchkeeping Convention 1978 (STCW) which is given effect in Bermuda by a number of regulations, the principal effect of which relates to senior officer manning. Briefly, the regulations reflect the Bermuda Shipping and Maritime Authority's emphasis on the competence of senior crew as the criteria for service on Bermuda registered ships.

In addition, the Shipping Act sets out requirements pertaining to the wages, health and safety of seamen, full particulars of which are available upon request.

17. US TAX EXEMPTION FROM FREIGHT TAX

Bermuda has been awarded “Equivalent Exemption Status” under the 1986 United States Tax Code. This classification allows Bermuda registered vessels and shipping companies to apply to the Inland Revenue Service for exemption from the 4% freight tax levied under the 1986 Tax Reform Act on certain U.S. related income of foreign shipping corporations. Bermuda is included in the U.S. list of status holding countries which do not impose tax on non-resident shipping operations.

By sections 872(b) and 883(a) of the United States Tax Code, gross income derived by individuals and corporations resident in a foreign country, from the international operation of ships and/or aircraft, including income derived from the rental (on a full or bareboat basis) of ships or aircraft, the use of containers, and income from the carriage of passengers as well as cargo, is exempt from the 4% freight tax provided that the foreign country concerned grants an equivalent exemption to individuals or corporations resident in the United States. As Bermuda has never imposed an income tax on U.S. individuals or corporations the exemption is automatic.

18. SHIP MORTGAGES

Part VI of the Regulations sets out the requirements for, and effects of, the registration of a ship's mortgage. Mortgages, transfers of registered mortgages, and discharges of registered mortgages are all to be made in prescribed form for registration under the Shipping Act. Mortgages rank in priority according to the date and time at which they are produced and accepted for registration and not according to the date of the mortgage deeds themselves.

A party intending to take a mortgage over a ship not yet registered may obtain priority by delivering to the Registrar a notice of its intention. The Registrar will record details of the notice on the Register for a period of up to 30 days. Such a notice may be renewed for a further 30 days upon written request.

Where Bermuda companies own foreign registered vessels, mortgages and other security documents can be registered on the Register of Charges at the office of the Registrar of Companies.

Individuals, joint mortgagees and bodies corporate may all be entered in the Register Book as mortgagees. There is no requirement that mortgagees must be British Subjects, and foreigners and foreign bodies corporate may, therefore, be registered as mortgagees.

19. DEMISE CHARTER REGISTRATION

Part IX of the Regulations deals with ships chartered-in on demise charter terms. Such registrations are listed in Part II of the Bermuda Register.

A ship may be registered on Part II of the Register if it is chartered by demise to a person qualified to be an owner of a ship registered in Bermuda. Furthermore, if the charterer is not a resident in Bermuda, then it must instead appoint an individual or company in Bermuda to be its representative.

An application for registration must be made in writing by the charterer or its agent to the Registrar, containing the name of the ship, a description of the ship, the names and addresses of every owner, and of the charterer, the date of the charterparty, and the duration of the charterparty. The Regulations also require certain documents to accompany the application, including written consent from every owner, any mortgagees, and from the maritime authorities of the country of registry. The Certificate of Registry (or other like document) must also be provided.

The Registrar will register the ship if he is satisfied that the ship is eligible and has been marked and carved and (where necessary) surveyed in accordance with the Shipping Act. On registration of a ship both registration and annual tonnage fees will be payable.

The Shipping Act and Regulations also provide for a ship registered in Bermuda to be demise charter registered in a foreign demise charter register, upon the approval of the Registrar. Among other things, the owners must surrender the Bermuda Certificate of British Registry and obtain the written consent of all registered mortgagees. Such a ship will still be subject to the payment of all the fees in respect of a ship registered in Bermuda.

This publication should not be construed as legal advice and is not intended to be relied upon in relation to any specific matter. It deals in broad terms only and is intended merely to provide a brief overview and give general information.

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