

REGISTRY OF SHIPS (PANAMA/HONG KONG) - TWO DIFFERENT SYSTEMS

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 sufficient evidence to their ship registration authorities that it owns the ship before a certificate of registry can be issued to the ship. Examples of such countries include Hong Kong (The Registry of Ships is the body handling such registration in Hong Kong), The Republic of The Marshall Islands (International Registries, Inc. and their overseas offices handle such registration for this country) and The Republic of Liberia (LISCR and their overseas offices handle such registration for this country).

The Republic of Panama have a different ship registration system. The registration of a ship is handled by a government department called Digemar (in English - The Directorate General of Merchant Marine). The ship's navigational licenses (e.g. provisional patente, ship station license and regulatory patente) are issued by this body. The Public Registry of Panama handle the registration of ownership title to a ship as well as the registration of any mortgages over the ship. 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 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 (valid for six months) is issued to the ship upon such registration. The documents required for provisional registration of the ship include 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 Public Registry of Panama. Finally, a regulatory patente (valid for four years) is 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 deletion certificate from the former registry of the ship has been produced to Digemar and copies of all previous CSR documents relating to the ship have been received by Digemar from the ship's former registry). A regulatory patente is renewable every four years.

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

1. Navigational licenses

(Hong Kong) - The Registry of Ships in Hong Kong will not issue a Certificate of Registry to a ship unless the buyer has produced sufficient evidence to the registrar that it owns the ship.

(Panama) - Evidence of ownership of a ship by the buyer is not a pre-requisite to the issue of a Provisional Patente to the ship by Digemar. However, such evidence is essential for the registration at the Public Registry of Panama of the ship's first title under the Panamanian Registry, whether in the form of the notarial certification mentioned in point 2 below, a builder's certificate in the case of newbuildings, any documents evidencing a ship's title transfers after its delivery as a newbuilding, a deletion certificate from the ship's former registry attesting to the fact that the seller was the last owner there, etc.

2. Evidence of ownership and clean title (in the case of a second hand vessel 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 current owner of the ship and the ship to be free from encumbrances is required to be produced to the registrar.

(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 (in some places like the Republic of China and Greece, such statements are given by a Panamanian Consul instead of by a notary public) (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 purpose of registration of the bill of sale with The Mercantile Division of the Public Registry of Panama, the statement in item 2(b) of the sample Notarial Certificate of the Bill of Sale (e.g. "and that "the VESSEL" was free from any incumbrances and maritime liens.") is not essential and may be omitted.

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

(Hong Kong) - Before the Hong Kong Registrar registers 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 Hong Kong 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 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.

4. 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 Hong Kong Registrar a builder's certificate or a bill of sale, whereby it acquires title from the builder or the seller and a copy of a protocol of delivery and acceptance signed by the builder and the buyer or the seller and the buyer. If the Hong Kong Registrar is not satisfied with the above documents, he may require the buyer to produce any further documents.

(Panama) - The Mercantile Division of the Public Registry of Panama 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 a memorandum of agreement for sale and purchase of the ship. 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 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 they can be filed with the Public Registry 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.

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The sections in this Article concerning Panama have been approved by Panamanian lawyers.