

BERMUDA'S SHIPPING REGISTER: FACILITATING GLOBAL TRADE

David Astwood – January 2010

Bermuda continues to flourish as a first-class international financial centre. It was the shipping industry that first put the island on the international business map more than fifty years ago and today Bermuda also has a thriving international ship finance and registration industry.

As at January 2010, 159 commercial vessels were registered with the Bermuda Department of Maritime Administration (DMA), totalling 10.4m gross tons and 250 yachts with a gross tonnage of 67,454. The Bermuda Register of Ships continues to expand. In fact, the DMA has a mandate from the Bermuda Government to attract more business and is busy working to this end. By the close of 2012, it is anticipated that there will be 200 commercial vessels on the Register of Ships totalling 12.5m gross tons. The DMA presently has 17 ships committed to registering in Bermuda within the next 12 months or so, all of which are new constructions. Amongst a series of new initiatives, the DMA is investigating the possibility of opening an office in Europe to better serve their clients in that region and the Far East. The DMA has also submitted an application to the IMO for a Voluntary Flag State audit.

Many of the world's leading owners, managers, builders, insurers, lawyers, accountants and bankers have developed close relationships over the years with Bermuda, in order to put together financial structures tailored to the specific requirements of the shipping industry. As a result, Bermuda lawyers practising shipping law are able to follow developments in the industry very closely. A case in point is that, following the Exxon Valdez oil spill in Alaska in 1989 and the introduction by the US of the Oil Pollution Act 1990, two leading insurance companies (The Shipowners Insurance and Guaranty Company Ltd. and Shoreline Mutual (Bermuda) Ltd.) were incorporated in Bermuda. These companies were set up to meet the needs of the shipping industry for guarantees to be issued so that Certificates of Financial Responsibility could be issued by the Coast Guard for all ships trading in US waters and continue to play an important role in facilitating trade into and out of US waters.

The past decade in particular has afforded lawyers in Bermuda the chance to observe significant developments in ship financing as the shipping industry has swung from seeing some of the best years ever to deep recession. Despite the current economic climate, there is always a need to provide some form of financing to existing vessels or new vessels so there is always activity in the pipeline and we are seeing signs of the credit-crunch easing and the fabled "green-shoots" beginning to appear.

The two most significant developments from a ship finance perspective as relates to Bermuda are: 1) the increasing use of Bermuda as a base (both for the incorporation and management of companies and for the registration of vessels) for LNG/LPG and FPSO ships; and 2) the surge in restructuring activity (both corporate and financial) of shipping groups.

Of great significance is the increasing use of Bermuda as a base of operations for LNG/LPG and FPSO shipping groups. A series of LNG newbuildings is currently on order or under construction for the Bermuda flag, with most of the newbuildings in South Korea. With the continuing positioning of shipping groups to move into LNG, with its attractions as an alternative source of energy, Bermuda has proved to be an attractive jurisdiction – acceptable to shipowners and, more importantly, to charterers – for flagging LNG vessels and incorporating their owning companies. Also, with the heightened need to explore for oil and gas at offshore sites, many former tankers and related vessels are being converted into FPSOs to accommodate this need. Many of these vessels are being flagged in Bermuda.

Also in recent years, there has been an increase in restructuring activity both of Bermuda based corporate groups and of their loan and financial arrangements in the light of the downturn brought on by the 2008 financial crisis.

There is always the fear that the ongoing spurt of newbuilding activity will accentuate the current downswing of the economic cycle due to overcapacity. Much of the world's ageing tanker fleet, for example, is getting to the stage when it has to be replaced. Accordingly, it is to be hoped that a prosperous equilibrium will be achieved between the forces of supply and demand in the shipping sector as a whole.

There are a number of reasons why Bermuda continues to be used as a jurisdiction of choice for the shipping industry. These include:

- i) a sophisticated and stable regulatory framework;
- ii) shipping industry expertise;
- iii) an advanced and sophisticated communications infrastructure;
- iv) an English law-based legal system that provides for the application of legal principles and concepts well-known to the shipping industry. The legal system is based on that of the UK, with a final appeal to the Judicial Committee of the Privy Council sitting in London;
- v) sophisticated banking, computer, legal and accounting services;
- vi) an efficient and well-run shipping registry which is willing to operate on a 24 hour basis, as needed, to accommodate clients. This flexibility makes Bermuda a very user-friendly jurisdiction for the shipping industry;
- vii) the lowest port state control detention figures for 2008 and 2009 as recorded by the Paris MOU White List. Bermuda ships are considered low risk ships and accordingly are inspected less frequently than others, a factor which should be attractive to potential clients;
- viii) a government committed to the flexibility and adaptability of Bermuda's international laws in order that they may keep pace with the current requirements and demands of international clients. The Bermuda Government has given its remit to allow the DMA to increase the size of the Bermuda Registry. This initiative bodes well for those interested in using Bermuda as a base for their shipping industry needs;
- ix) no income tax or profits tax, withholding tax, capital gains tax, capital transfer tax, estate duty or inheritance tax is payable by a Bermuda company or its shareholders, other than shareholders ordinarily resident in Bermuda; and
- x) no exchange controls.

It is anticipated that Bermuda will go from strength to strength as one of the world's premier shipping centres providing financial and legal services to the international shipping industry, in good times and bad.

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