

SHIPPING: BERMUDA'S SECRET

David W.J. Astwood – September 2009

Shipping is one of Bermuda's best kept secrets. Most people do not realize that it was shipping that first put Bermuda firmly on the international business map in the 1950s. Through the efforts of David Graham - a partner of Conyers Dill & Pearman at the time initiated through a famous letter to the Editor of the London Times in December 1955 - the ground was set for Bermuda's offshore industry. The letter pointed out, to a sophisticated audience, the advantages that Bermuda afforded to shipowners at a time when the world was flooded with excess shipping capacity following the Second World War. David Graham's efforts were fortuitous because, by the mid 1950s, shipping was about to have a great revival as it was needed to assist with the post-war rebuilding effort and related economic boom around the world, particularly in the United States, Europe and Japan.

It may also surprise many to learn that 90% of world trade is carried by the international shipping industry. It is not an exaggeration to state that shipping is a vital cog in international trade and thus a major catalyst in fostering economic growth and general prosperity throughout the world. According to one shipping industry website, there are approximately 50,000 merchant ships trading internationally, transporting every kind of cargo. The world fleet is registered in over 150 nations and manned by over one million seafarers of almost every nationality.

Despite the recent worldwide economic downturn, Bermuda continues to play an important role in the shipping industry as a "shipping service cluster". Specifically, Bermuda thrives as a first class offshore financial jurisdiction with a buoyant ship finance and registration industry. There are currently 161 commercial vessels registered with the Department of Maritime Administration in Bermuda (the "DMA") aggregating to just over 10m gross tons. At the same time, there are 255 yachts registered with the DMA with a total gross tonnage of 69,413. The Registry of Shipping of Bermuda (the "Registry"), which now forms part of the DMA, has been in existence since 1789 as part of the British Register of Ships, having Hamilton as its Port of Registry. It is a category 1 (i.e. no restriction on size, type or age of vessel) Red Ensign Group Register whose ships fly the undefaced Red Ensign. Bermuda flagged ships flying the Red Ensign are entitled to Royal Navy protection in times of conflict and British Consular representation when needed.

A special feature of the DMA is that it incorporates the registry functions and survey functions in one office, which permits better coordination in the ship registration process, quick response to the needs of shipowners and the industry, and efficient enforcement of safety policies across the fleet. Both the registry and survey staff at the DMA are fully qualified and experienced to the standards set by the UK Maritime and Coastguard Agency and the Department of Transport.

Although it is part of the British Registry, the DMA operates independently from it having enacted its own Merchant Shipping legislation based on the relevant International Maritime and Labour Conventions which have been extended to Bermuda. Bermuda's Merchant Shipping legislation closely mirrors that of the United Kingdom. Currently the DMA operates under the provisions of the Merchant Shipping Act 2002 (which mirrors the UK Merchant Shipping Act 1995).

The DMA has a broad fleet of ships comprising passenger ships, ro-ro ships, gas carriers, oil tankers, bulk carriers, container vessels, refrigerated cargo vessels, offshore vehicles and structures including oil rigs. Being a category 1 registry, Bermuda can and does accept vessels of any type, size or age. In order to maintain a high standard across the fleet, a stringent flagging-in survey is carried out by a DMA surveyor at or near to the time of registration. Any deficiencies observed during such surveys have to be rectified prior to accepting the vessel on to the register.

All responsible and reputable ship owners uphold this vetting system, since this process helps to eliminate any substandard ships from joining the register. It is well understood within the DMA and the ship owning community that the reputation of the DMA is of paramount importance to the wellbeing of the whole Bermuda fleet.

In order to maintain the quality and high standard after flagging-in, close liaison is maintained with the DMA's and owners' technical staff, the Classification Societies and various Port State Control authorities around the world. With regards to safety and pollution matters, Bermuda takes its Flag State responsibilities seriously. Only a limited number of statutory surveys are delegated to a Bermuda vessel's Classification Society. Other surveys come under the direct control of the DMA.

Keeping in line with the policy of the U.K. Government, Bermuda recognizes only five major Classification Societies, American Bureau of Shipping (ABS), Bureau Veritas (BV), Det Norske Veritas (DNV), Germanischer Lloyd (GL) and Lloyd's Register (LR). A sixth Classification Society, Registro Italiano Navale (RINA), is acceptable under special arrangements.

One of the criteria used for the assessment of the performance standards (safety, pollution prevention, welfare of seamen, etc.) of a Flag State is the ship detention statistics produced by the Port State Control Inspection regime. The countries who are party to the Paris Memorandum of Understanding (MOU) on Port State Control publish the relevant statistics on ships trading into European waters. The recently published 2008 statistics of the Paris MOU show Bermuda as having the lowest detention percentage in the world which is a testimony to Bermuda's commitment to quality and safety. This means that Bermuda flagged vessels suffer fewer delays while in port and can thus be used more profitably.

With this legal framework in mind, many of the world's leading shipowners, managers, builders, insurers, lawyers, accountants and bankers have developed close relationships over the years with Bermuda 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; however, the flow has been slower than normal. In the past two or three months it has started to pick up pace and maybe we are seeing signs of the credit-crunch easing and the fabled "green-shoots" beginning to appear.

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 Privy Council of the House of Lords in London;
- v) sophisticated banking, telecommunications, 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 as recorded by the Paris MOU White List;
- 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.

Over the next two or three years it will become clear whether the nascent signs of returning prosperity in the shipping industry will endure. Given the cyclical nature of the business, this goal may ultimately prove to be elusive. Bermuda, however, will continue to provide financial and legal services to the international shipping industry, in good times and bad.

David Astwood, Conyers Dill & Pearman

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

Notes to Editors

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Conyers Dill & Pearman was named Offshore Law Firm of the Year 2009 by *The Lawyer*.

For further information please contact:

David W. J. Astwood

+1 441 299 4937

david.astwood@conyersdillandpearman.com

www.conyersdillandpearman.com