Panama

Jorge Loaiza III

Part II. Flag and Registration of Vessels and Mortgages of Vessels

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Jorge Loaiza III[1]

Jorge Loaiza III studied at the Universidad Santa Maria La Antigua, Panama (Degree in Law and Political Science, 1988) and Southern Methodist University, Texas (LLM in International and Comparative Law, 1989). He was admitted to the Bar of the Republic of Panama in 1990. He worked as a foreign associate with Kelley Drye & Warren in Washington, DC, in 1989. He joined the Panamanian law firm Arias, Fabrega & Fabrega in 1990, where he practises maritime and corporate law as partner. He speaks Spanish and English.

[1] *Note*: The author wishes to acknowledge the previous contributions of Rogelio de la Guardia, who untimely passed away on 23 Jun. 2009, and who authored the prior versions of this chapter.

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I. Flag and Registration of Vessels

1. Sources of Law and Principal Rules

For this chapter, we shall concentrate on the registration of vessels engaged in the international service, as Panama is at present the largest shipping registry in terms of the number of vessels, and we will ignore the rules and regulations dealing with domestic shipping and fishing in the coastal waters of Panama.

The registration of vessels in Panama is governed primarily by Law 57 of 2008 as amended by Law 41 of 2013, Law 27 of 2014 and Law 4 of 2015 ('Law 57') of the Merchant Marine Administration as concerns administrative procedures, which was passed to compile and update previous legislation and administrative practices, and as concerns substantive law in connection with maritime commerce in general, including registration of ownership rights and mortgages and other maritime contracts and maritime liens, Law 55 of 2008, as amended by Law 21 of 2009 and by Law 27 of 2014 ('Law 55'), which replaced Book II of the Code of Commerce of Panama.

In addition to the laws regarding the registration of vessels in Panama, the administrative entity responsible for the overseeing of the activities of the Merchant Marine of Panama, the Directorate General of the Merchant Marine (the DGMM), within the Panama Maritime Authority (PMA), has issued regulations and circulars with the purpose of carrying out the intent of the law.

Likewise, the General Directorate of the Public Registry of Property of Vessels (PRV), which is also within the PMA, works in close cooperation with the DGMM and is the registry office where ownership title and recordable encumbrances affecting Panama flag vessels and any amendments, assignments or discharges thereof are recorded, is also subject to Executive Decree No. 159 of 2021 ("Decree 159") which Organizes and Regulates the Operations of PRV in terms of, *inter alia*: requirements that recordable documents much contain for registration.

1.1. Restrictions as to nationality and/or domicile of owners

The Panamanian registry is open to applicants of any nationality or domicile without any restrictions. The current flagging procedure contemplates a pre-check which entitles the DGMM to verify if the vessel or owner-to-be under the registry has a background that could lessen the national interest and, therefore, reject the registration.

There is no difference in the treatment of shipowners on account of nationality, except in the case of pleasure yachts in international service, which are subject to the payment of lower registration and biennial fees if they are owned by Panamanian rather than foreign individuals or entities.

1.2. Links between registration and flag

Vessels are entitled to fly the Panamanian flag if they are duly registered in the Panamanian merchant marine or in such cases where foreign-registered vessels are registered in Panama under a special bareboat charter registry, which allows such vessels to fly the Panamanian flag while preserving their foreign base registration, as will be discussed later on in this chapter.

Panamanian vessels are subject to the control and supervision of the DGMM and are required to undergo an annual inspection, to be coordinated with the Panama Maritime Safety Office, known as 'SEGUMAR' and to verify the conditions of the vessel and its compliance with the applicable rules and regulations of Panama and the International Shipping Conventions to which Panama is a party.

1.3. Possibility to flag in and/or to flag out

Foreign-flag vessels may be registered in Panama, initially with the issuance of provisional navigation documents (i.e., six-month validity Patente of Navigation) either preserving their current ownership structure or pursuant to a sale, upon supplying the necessary particulars of the vessel and paying the applicable registration charges and subsequently producing the requisite documentation.

In special circumstances, such as civil war or serious political turmoil, the authorities have granted waivers and proceed with the registration of vessels without receiving all the usually required documentation.

Likewise, vessels registered under provisional or full-term documentation in Panama may be readily deleted from the flag upon filing an application with the DGMM, paying the applicable documentary charges and submitting official evidence that ownership title to the vessel has been properly registered that the vessel is free of registered encumbrances. The DGMM may grant a written consent to the deletion, for instance, if the vessel is mortgaged, in which case the issuance of such consent to deletion shall be conditioned upon obtaining the consent of the registered mortgagees for such purposes or the discharge of all the registered mortgages on the vessel.

2. Registration of Vessels

2.1. Location and type of register

The provisional registration of vessels in Panama is done at the DGMM, either locally or through any of the various Panamanian consulates abroad that are authorized to handle administrative shipping matters, with issuance of a six-month Provisional Patent of Navigation and, where applicable, a radio permit. There are over fifty consulates of Panama qualified to handle maritime registrations in the main port cities of the world.

The issuance of the full-term patent of navigation and radio licence must be applied for before the DGMM in Panama through the local legal representative/resident agent of the vessel, which by law must be a lawyer or law firm qualified to practise law in Panama.

Preliminary registrations at the PRV may be made locally or abroad through any of the Panama consulates authorized to deal with shipping matters, subject to the completion of the corresponding registration with the timeframe provided by law at the PRV in Panama.

For vessels under construction, Law 57 provides for the issuance of a certificate of assignation to include the provisional patent number, Call Signs or Maritime Mobile Service Identity (MMSI) in anticipation to delivery (the 'Certificate of Assignment') and would give the vessel the status of registration under the Merchant Marine of Panama.

Prior to the registration or redocumentation under the registry, for vessels already registered, it is necessary to undergo a 'precheck' which is based on basic information of the vessel and intended owner.

2.2. Type of vessels eligible for registration

Any sea-going vessel without limitation as to size or age may be registered in Panama. Vessels that are over twenty years of age may be provisionally registered in Panama, but they must undergo a special inspection, which must be coordinated through the Technical Department of the DGMM/SEGUMAR before they are granted their permanent navigation documents.

There are no restrictions as to the type of vessel which may be registered, provided it may be considered as a vessel within the scope of the law. 'Vessels' are defined, for purposes of registration under Law 57 as: 'Any embarkation engaged in the transportation of cargo or persons; pontoons, dredgers, floating docks, oil drilling platforms or any other hulls engaged in or which may engage in maritime trade, as well as any other structure recognized as a vessel by the Panama Maritime Authority'.

The DGMM has been quite flexible, and therefore all sorts of floating structures dedicated to commercial, recreational, educational or scientific activities, whether self-propelled or not, including barges, rigs and platforms of all types, and submarines may be registered in Panama and are deemed to fall within the foregoing definition of a vessel.

On the other hand, on account of national interest and depuration of the registry, the DGMM has issued temporary restrictions on certain types of vessels.

2.3. Type of ownership

Panama flag vessels may be owned by one or more individual or legal entity, without any restriction as to nationality or domicile. Consequently, Panama has registered vessels in the name of foreign individuals, corporations, partnerships, trusts and other forms of legal entity with the capacity to own and/or operate a vessel pursuant to the laws of its country of nationality or constitution, as the case may be.

2.4. Particulars recorded in the register

Upon registration, Panama flag vessels are issued a Provisional Patent of Navigation, which has a number followed by a code that would imply that it is not the 'permanent' or 'full-term one', such as 'PEXT', which is the common term.

For such purposes, the vessel must have a name approved by the DGMM, which may not be identical to that of another vessel registered in Panama, and radio call letters assigned by the DGMM, which remain unaltered while the vessel remains in the Registry.

In addition to the foregoing, the following information must be submitted to the DGMM in respect of the vessel by way of a formal application and will be reflected in her navigation documents:

(a) the former name of the vessel;
(b) name and address of the shipowner;
(c) type of vessel and type of service for which it will be utilized;
(d) registered gross and net tonnages;
(e) registered dimensions (length, width and depth);
(f) year and place of construction;
(g) name of the builder;
(h) description of engines: type, make, number of cylinders, speed, horsepower, etc., unless the vessel is non-self-propelled;

(i) country of former registration, if applicable;
(j) name of the radio accounting authority for the vessel, to be chosen from the official list of qualified radio accounting agencies approved by the DGMM, if applicable;
(k) name of the classification society which surveys the vessel, if applicable;
(l) IMO number, if applicable; and
(m) any other further particulars which may identify the vessel, as may be required by the officials.

Panama flag vessels do not have a 'Port of Registry' *per se* for the registration of vessels engaged in the international service. However, under Law 57, the Port of Panama can be deemed as the port of registry of such vessels. Registration is effected at the central office of the DGMM in Panama, which has exclusive jurisdiction over this matter, without the involvement of any Panamanian port authorities.

2.5. Costs of registration

The registration costs are set in United States (US) Dollars, which is legal tender in Panama by virtue of a 1904 Treaty with the US. Such costs are as follows:
(a) One-time registration tax payable by all vessels, other than pleasure yachts, at the time of application for their provisional Patent of Navigation:

For vessels of up to 2,000 gross tons	USD 500.00
For vessels of more than 2,000 gross tons up to 5,000 gross tons	USD 2,000.00
For vessels of more than 5,000 gross tons up to 15,000 gross tons	USD 3,000.00
For vessels of more than 15,000 gross tons plus USD 0.10 per each gross ton or fraction thereof in excess of 15,000 gross tons up to an overall maximum fee of	USD 3,000.00 USD 6,500.00

(i) Pleasure yachts

Pleasure yachts only pay a single biennial registration charge (to the exclusion of any other initial or annual charge) at the rate of USD 1,500 if the yacht is owned by a foreign individual or legal entity or USD 1,000 if the yacht is owned by a Panamanian individual or legal entity, including Panama corporations, whose shareholders and directors and officers may all be foreigners and reside abroad.
(b) Annual Taxes and Duties. These fees are payable yearly during the month of January and vary considerably depending on the size and type of service of the vessel, as follows:

i. Annual Tax: applicable to all vessels without distinction per net ton or fraction thereof	USD 0.10

(ii) Single Annual Consular Tasa

In the case of all vessels engaged in maritime commerce:

Up to and including 1,000 gross tons	USD 1,200.00
In excess of 1,001 up to and including 3,000 gross tons	USD 1,800.00
In excess of 3,001 up to and including 5,000 gross tons	USD 2,000.00
In excess of 5,001 up to and including 15,000 gross tons	USD 2,700.00
In excess of 15,001 gross tons	USD 3,000.00

In the case of non-self-propelled vessels, scientific research or other non-commercial type vessels:

Up to and including 500 gross tons	USD 850.00
From 501 up to and including 1,000 gross tons	USD 1,400.00
In excess of 1,001 gross tons	USD 1,800.00

(iii) Annual Inspection Tasa

In the case of passenger vessels:

Up to and including 1,600 gross tons	USD 900.00
In excess of 1,601 gross tons	USD 1,800.00

In the case of dry or liquid cargo carriers:

Up to and including 500 gross tons	USD 500.00
From 501 up to and including 1,600 gross tons	USD 750.00
From 1,601 up to and including 5,000 gross tons	USD 850.00
From 5,001 up to and including 15,000 gross tons	USD 1,000.00
In excess of 15,001 gross tons	USD 1,200.00
In the case of other vessels used in non-profit activities	USD 400.00
In the case of drilling rigs	USD 1,300.00

In the case of all other vessels:

Up to and including 500 gross tons	USD 500.00
From 501 up to and including 5,000 gross tons	USD 800.00
In excess of 5,001 gross tons	USD 1,000.00

(iv) Tasa for Accident Investigation and Governmental Participation in International Treaties and Conferences:

In the case of tankers, drilling rigs, passenger vessels, gas and chemical carriers	USD 850.00
plus USD 0.03 per net registered ton.	

In the case of all other vessels, except for vessels engaged in non-profit activities and non-self-propelled vessels, which are exempted from this tasa:

Up to and including 500 gross tons	USD 300.00
plus USD 0.03 per net registered ton;	
From 501 up to and including 10,000 gross tons	USD 400.00
plus USD 0.03 per net registered ton;	
In excess of 10,001 gross tons	USD 500.00
plus USD 0.03 per net registered ton.	

The total amount payable in connection with the initial registration of vessels, other than pleasure yachts, is the sum of the one-time registration charge plus the applicable annual taxes and duties.

Special discounts on the one-time registration charge of up to 50% may be negotiated with the DGMM in the case of registration of three or more vessels belonging to the same owner or the same financial group. The amount of the discount depends on the total gross net tonnage of the fleet, with higher net totals resulting in larger discounts.

Other discounts are offered under special resolutions from the DGMM from time to time to provide more competitiveness to the Registry, especially on new constructions.

Other costs associated with registration are as follows:

(i)	Documentary charges for issue of new navigation documents on account of changes in ownership, name of vessel, dimensions or tonnages	USD 1,000.00
(ii)	Documentary charges for issue of new navigation documents on account of a change in the radio accounting authority	USD 500.00
(iii)	Fine for the expiry of the Provisional Patent of Navigation	USD 500.00
(iv)	Extension of the Provisional Patent of Navigation per month	USD 50.00
(v)	Extension of Provisional Radio Permit per quarter	USD 150.00
(vi)	Deletion fees	USD 1,000.00
(vii)	Renewal of Regulation Patent or expedition of new Patent due to loss	USD 300.00
(viii)	Reservation of vessel's name per month	USD 20.00
(ix)	Renewal of Radio Licence or Expedition of a new Radio Licence due to loss	USD 150.00

The registration of naval mortgages at the PRV is subject to the payment of registration charges at the rate of USD 0.10 per net registered ton with a maximum fee of USD 500 plus a 20% surcharge. If the mortgage is preliminarily recorded at the PRV (which is an optional registration system involving the registration of an application form containing certain required information of the mortgage prior to its translation into Spanish and protocolization in notarial instrument form), an additional preliminary recordation charge will be levied, based upon the amount secured by the mortgage, with a minimum fee of USD 450 for the first two million dollars of the principal amount secured, increasing by USD 150 for each additional million dollars or fraction thereof of the amount secured, up to a maximum fee of USD 1,200. If the preliminary recordation is processed through one of the Panamanian consulates abroad qualified to handle maritime matters, there will be an additional handling charge of USD 750.

2.6. *Errors and changes in the register*

Errors appearing in the navigation documents of the vessel may be corrected by the DGMM upon application and payment of the appropriate documentary charges unless the error is attributable to the DGMM, in which case the correction would be made at no cost to the applicant.

Errors in documents recorded at the PRV may be corrected by filing an amendatory notarial instrument with the PRV.

3. Documentation Required for Registration

3.1. Generally

In addition to the full particulars of the vessel and the payment of the applicable registration charges discussed above (which are sufficient for the purposes of obtaining the provisional registration of the vessel and the Provisional Patent of Navigation and the Provisional Radio Permit, valid for an initial period of six months), the following documentation must be submitted to the DGMM in order to obtain the Regulation Patent of Navigation and the Radio Licence:

(a) power of attorney from the shipowner in favour of a lawyer or law firm admitted to practise in Panama, designating such a lawyer or law firm as the resident agent of the vessel in Panama;

(b) copy of the Bill of Sale and Acceptance of Sale whereby the shipowner acquires title to the vessel, or of a Builder's Certificate issued in favour of the shipowner in the case of a new building, or of other evidence of ownership issued by the former registry of the vessel in the case of a change of flag under the same ownership or corresponding court documents in case of a judicial sale;

(c) evidence that the title to the vessel as per paragraph (b) above has been permanently recorded at the PRV;

(d) certificate of deletion from the country where the vessel was previously registered, except in the case of a new building or when the vessel is purchased under judicial sale;

The above documentation, if executed abroad, must be legalized by a Panamanian consul in the place of execution or authenticated by the Apostille pursuant to the 1961 Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents, to which Panama is a party.

In case of Governmental registries, the certificate of deletion can be accepted without legalization, especially is issued with a security code (QR or similar). This is, unless the deletion certificate is used as proof of ownership if transfer to the Panamanian registry under the same previous ownership, in which case the PRV would require the notarization/authentication formalities.

(e) copy of the International Tonnage Certificate of the vessel issued pursuant to the 1969 Tonnage Convention by an International Classification Society which is duly authorized for such purposes by the Republic of Panama, when applicable;

(f) the vessel's technical certificates related to the International Code for the Security of Ships and Port Facilities (ISPS Code) according to the International Convention for the Safety of Life at Sea (SOLAS), if applicable, including:
   (i) International Shipping Security Certificate (ISSC).
   (ii) Continuous Synopsis Record (CSR).
   (iii) Document of Compliance (DOC).
   (iv) Safety Management Certificate (SMC).

(g) Although documents in section (f) above need to be kept updated and on board, the DGMM generally only requires the SMC, for purposes of obtainment or renewal of the full-term navigation documents.

(h) applicable certificates of coverage under the Maritime Labor Convention 2006.

(i) Certificates of insurance under applicable Conventions such as Oil Pollution Civil Liability, Bunker Contamination, Wreck Removal amongst others.

3.2. Differences between registration for a new building (first registration) and a vessel previously registered in another country

The procedure to register a new building is similar to that for the registration of a vessel previously registered in another country. Insofar as documentation is concerned, in the case of a vessel registered in a foreign country, its owners are required to produce a certificate of deletion from the previous registry. In the case of a new building, the evidence of title is likely to consist of a Builder's Certificate rather than a Bill of Sale, although both may be available to the owners upon taking delivery of the vessel. In such case, the Builder's Certificate would serve as evidence of the vessel being of new construction before the DGMM.

In addition, certain technical certificates from the previous registry may be requested by the officials.

3.3. Where a vessel is sold in a judicial sale procedure in Panama or in another country

A Panama-registered vessel sold at a judicial sale procedure is deemed to be sold free of all maritime liens and encumbrances, including amounts due to the Panamanian registry.

In addition, Law 57 provides that the judicial sale shall extinguish the Registry *ipso jure*.

The DGMM would issue a confirmation of cancellation of the Registry *ipso jure*, upon filing of the relevant judicial sale documents, which would have to be notarized and/or legalized either by Panamanian consul, Apostille or, in such countries where Panama does not have a consular representative or non-party to the Apostille notarized and filed along with a confirmation issued by the Ministry of Foreign Affairs confirming the absence of a consular representative in such country.

The new owner may register the vessel anew after the judicial sale, likewise by obtaining the declaration of cancellation *ipso jure* and ownership based on the judicial sale documents.

4. Deregistration

4.1. After a sale

The sale of a vessel may be grounds for deregistration if the purchaser decides to register the vessel in another registry.

If the purchaser chooses to maintain the vessel in the Panamanian registry there would not be a ‘de-registration’, but the vessel would have to be re-documented and the registration of the vessel shall be continuous.

Where the vessel is to be deleted from the Registry, it is customary, but not mandatory, to obtain a consent to sale and deletion from the DGMM. This document is issued either in the central offices of the DGMM in Panama or through any of the consulates of Panama with shipping attributions so as to facilitate the closings taking place abroad. The consent to sale and deletion is valid for a thirty-day period and is issued upon application and payment of the deletion charges of USD 1,000. This document, also known as the provisional deletion, is to be supplemented in due course by a final certificate of deletion, issued only by the central office of the DGMM in Panama, upon producing evidence from the PRV to the effect that the vessel is free of recorded liens and encumbrances or, alternatively, evidence that all registered mortgagees have consented to the deletion of the vessel from the Panamanian registry. The application for deletion must indicate the reasons for deletion, i.e., the name of the purchaser and the new registry or if the vessel is being sold for scrapping. The vessel must be current in the payment of all applicable taxes and tasas, as well as any other government charge in Panama, as well as free from all recorded liens or restrictions, in order to be deleted from the Registry.

It is advisable to apply for and obtain the deletion of a vessel prior to the end of the year or, by concession from the DGMM, prior to the end of the month of January, for otherwise, the taxes for the new year, which are payable in advance, will accrue in full.

The official navigation documents of the vessel are cancelled by the DGMM upon the issue of the certificate of deletion, and therefore they cease from that moment to have any force or effect.

4.2. *Upon transfer of registry*

The same owner under the Panamanian registry may elect for a number of reasons, including those of a commercial nature or requirements under the jurisdiction where the vessel may be operating to obtain the flag or registration of such jurisdiction. In such cases, the same requirements would apply, and the deletion certificate would reflect the last owner of record and that the vessel was deleted due to its transfer to a foreign registry.

4.3. *After a total loss*

The total loss of a vessel constitutes grounds for deletion from the Panamanian registry. Once sufficient evidence has been produced to the DGMM to the effect that a vessel is a total loss, it will grant the final deletion from the Registry *ex officio*, without requiring payment of the applicable deletion charges. If the vessel is subject to any registered encumbrances, the DGMM must inform all registered mortgagees at least sixty days prior to the date of deletion that it intends to delete the vessel from the Registry.

There are other grounds for the cancellation *ex officio* of Panamanian vessels by the DGMM, namely:

- (i) the placing of the vessel at the service of an enemy nation;
- (ii) the registration of the vessel in another country (except in the case of a bareboat charter registration with the consent of Secnaves);
- (iii) the engagement by the vessel in contraband, illegal commerce or piracy;
- (iv) the serious non-compliance with legal provisions applicable to vessels, whether domestic or arising out of international conventions ratified by Panama; and
- (v) the expiration of the Patent of Navigation of the vessel without its renewal having been obtained in due course.

In practice, however, the DGMM would only proceed to cancel the registration of a vessel for failure to renew its expired Patent of Navigation if such a situation remains unremedied for a considerable length of time.

4.4. *Is mortgagee's consent required?*

Whenever a vessel is mortgaged, its voluntary deletion from the Panama registry would be subject to the discharge of all the existing mortgages or the consent of all registered mortgagees to such a deletion. If the vessel is to be deleted *ex officio* by the DGMM as discussed above, all registered mortgagees must receive at least sixty days prior notice of the intention of the DGMM to delete the vessel.

4.5. Governmental consents

If a vessel were subsequently deleted and registered in another registry as a result of its sale, such a sale would not require the prior consent from the Panamanian authorities. However, such consent may be applied for and will be readily granted by the DGMM upon clearing any arrears of taxes, submitting evidence that the vessel is free of registered liens and encumbrances and, in the case of mortgaged vessels, submitting the releases of all the existing mortgages or the consents from all registered mortgagees.

If a vessel is to remain registered in Panama, the sale thereof should be documented and approved by the DGMM by means of a new Provisional Patent of Navigation and Provisional Radio Permit, upon payment of the applicable documentary charges, and, in the case of mortgaged vessels, submission of the release of all the mortgages of record or the consent of all registered mortgagees to the sale of the vessel.

Permission or certificate of no objection to sell a vessel may be issued by the DGMM in Panama or any of the Panamanian consulates with shipping attributions abroad prior to the sale upon application and, in the case of the sale of a mortgaged vessel, submission of the consent by all registered mortgagees or discharges of all registered mortgages.

5. Legal Effect of Registration

The registration of a vessel in Panama takes place at two separate governmental offices which work in close collaboration.

The provisional registration is done at the DGMM, either in Panama or through any of the Panamanian consulates with shipping attributions abroad. The DGMM also deals with the issuance of the provisional and permanent navigation documents, collection of taxes, policing compliance with safety standards, applicable laws and international conventions, etc. All matters relating to title to property and mortgages on Panamanian vessels are handled by the PRV.

In order to register a Bill of Sale or other evidence of ownership for the first time in respect of a vessel which has been flagged under the Panamanian registry, the same must come with a certification from a Notary Public issued at the place of execution confirming the authenticity of the signature and, in case of legal entities, the authorization to represent the same of the signor, and that the sellers were the owners of the vessel immediately prior to the sale and that they had the power to convey title thereto to the purchasers. Subsequent Bills of Sale would not require such a certification because the PRV would already validate such condition pursuant to the chain of titles already registered.

The transfer of ownership title to a vessel as between the parties is generally effected by way of a Bill of Sale, which must be accepted by the purchasers and which becomes effective from the date of its execution and delivery. The ownership title is transferred, as between seller and purchaser from the date of physical delivery of the vessel, except where the parties declare in the Bill of Sale that the property is immediately transferred to the purchasers upon execution and delivery of the Bill of Sale, in which case such a stipulation would prevail.

Vis-à-vis third parties, both title and rights of ownership pass upon registration of the Bill of Sale and Acceptance of Sale or other evidence of title, as appropriate, at the PRV, relating back to the date of filing of the document for registration.

In the case of new buildings, title to the property may consist of a Builder's Certificate or similar documentary evidence together with a declaration of the owner that (s)he has received the vessel and is in possession thereof, or alternatively the title to the property may consist of the construction contract together with a statement from the owner to the effect that the vessel has been built at his/her expense.

In the above cases, it is also necessary to evidence the purchase price. This could be done by way of a certified copy of the commercial invoice in which case the same must be done by Notary Public and further legalized by the Panamanian consul or Apostilled.

In the case of vessels coming into the flag without a change in ownership, title to the property may consist of a fresh ownership certificate issued by the authorities of the former country of registration of the vessel or of a deletion certificate from such a registry indicating the name of the owner at the time of deletion.

In the case of judicial sales, the corresponding court order of adjudication or marshal's Bill of Sale is to be further notarized and/or legalized as explained above.

6. International Conventions for the Unification of Certain Rules Relating to Maritime Liens and Mortgages 1926 and/or 1967 and/or 1993

Panama has not subscribed to or ratified these conventions; however, most of its provisions are already incorporated into our domestic law as discussed in this chapter.

7. Flagging-In of Vessels which Remain Registered in Another Country

7.1. Permissions required

The bareboat charterer of a vessel which is registered under a foreign registry (the 'Base Registry') may register such a vessel in the special bareboat charter registry of Panama without losing its foreign nationality, subject to certain statutory conditions. The special bareboat charter registry is open to bareboat charterers of any nationality who may wish to avail themselves of the advantages of the system because the law provides no restriction in this regard.

One of the conditions for registration is that the laws of the country of the Base Registry allow for such a special registration and that the appropriate authorities of such a country give their specific written consent to the bareboat registration of the vessel in Panama.

7.2. Time for which a permission can be granted: possibilities of prolongation

The bareboat charter registration can be granted up to the period corresponding to the agreed term of the bareboat charter party.

7.3. Conditions to be fulfilled to receive a permission

The bareboat charterer must submit an application for bareboat charter registration through a lawyer or law firm admitted to practise in Panama, including full particulars of the vessel, its Base Registry, identity of its owner, details of all registered encumbrances and any other information which may be required to identify the vessel.

7.4. Documents required

The following documentation is required to be filed in connection with the application for bareboat charter registration:

(a) power of attorney designating a lawyer or law firm admitted to practise in Panama as the legal representative of the vessel in Panama;
(b) consent from the appropriate authorities of the Base Registry to the bareboat charter registration of the vessel in Panama;
(c) consent from the shipowner to the bareboat charter registration of the vessel in Panama;
(d) certified copy of the bareboat charter party; and
(e) certificate of ownership and encumbrances in respect of the vessel issued by the Base Registry.

7.5. Will the vessel be registered (split registration), in which kind of register and with which particulars?

A Special Patent of Navigation valid for a term of the charter party will be issued to the vessel upon registration of a foreign vessel in the bareboat charter registry of Panama indicating, *inter alia,* the name of the owner and the name of the bareboat charterer, the port of registry in the Base Registry, any registered lien or encumbrances created under the laws of the Base Registry which may appear in the certificate of ownership and encumbrances issued by the Base Registry and the full particulars of the vessel.

Neither the Bill of Sale nor other evidence of title to property in the vessel nor any naval mortgages or other encumbrances thereon may be recorded at the PRV because Panama takes the view that these documents may only be recorded in the appropriate registries of the Base Registry. The intent of the Panamanian prohibition is to preclude the creation of two 13(2) separate sets of liens under two different legal systems with the consequent confusion to third parties dealing with the vessel.

The DGMM has adopted special regulations in order to allow a vessel with base Panamanian registry to obtain a special registration under bareboat charter also in Panama.

7.6. Which kind of evidence certificate of permission to carry the flag will be available to the owner?

The Special Patente of Navigation entitles the bareboat charterer to fly the Panamanian flag without losing its nationality of origin. The owner must consent in writing to such registration. Vessels registered in the Panama bareboat charter registry shall be subject to the same tax obligations applicable to vessels entered in the regular Panama registry and shall be subject to the laws of Panama on all matters concerning:

(i) safety of navigation (of the vessel, passengers and cargo);
(ii) pollution of the environment;
(iii) minimum crew, adequate accommodations and labour relations; and
(iv) in general, any other matters relating to its operation.

However, all matters relating to ownership, encumbrances, maritime liens, operation, etc., shall continue to be governed by the laws of the Base Registry.

In this case, it is also necessary to maintain up-to-date navigation documents and to pay annual tax and other dues.

7.7. Costs and procedure

The procedure to obtain the registration of a vessel in the Panamanian bareboat charter registry is rather simple. It consists of giving the appropriate instructions to the chosen local counsel in Panama, providing the documentation specified in section 7.4. above and paying the applicable registration fees, which are identical to those payable by vessels entered in the regular Panama registry, except for an additional charge of USD 150, plus USD 0.20 per gross ton for registration of the bareboat charter party.

However, there is a special regulation to avoid double payment of annual taxes, in case of Panamanian vessels which also apply for Bareboat Registry in Panama.

8. Essential Laws and Regulations Applicable to Panamanian Vessels Permitted to Carry the Flag of Another Country

A Panamanian vessel which is permitted to fly the flag of another country pursuant to a bareboat charter registration would remain subject to all tax obligations applicable to Panamanian-registered vessels. The title and mortgage registration may only be effected at the PRV, as the law regards as null and void any registration of title to property or encumbrances made in any other registry. Moreover, such a registration of title to property or encumbrances in the bareboat charter registry would be grounds for the cancellation *ex officio* of the Panamanian registration. However, annotations of mortgages made in the bareboat charter registry exclusively for public notice purposes should be permissible so long as they reflect that it is a Panamanian mortgage subject to the laws of Panama and do not purport to create a duplicate registry of liens with the ensuing confusion.

Although the law does not address this issue, the Panama authorities have recognized the authorities of the bareboat charter registry as the competent authorities to exercise jurisdiction and control over the internal order of the vessel and all matters relating to employment, manning, operation, safety, etc., in accordance with the applicable international conventions and agreements to which it is a party and its domestic law; Panama would require, however, that the vessel be equipped, maintained and operated to standards not lower than to those applicable to Panama-registered vessels pursuant to the laws and regulations of Panama and the international conventions or agreements to which Panama is a party.

Panama-registered vessels bareboat-chartered abroad shall not be entitled to fly the Panama flag while such a bareboat charter registration is in effect but are required to maintain their Panamanian navigation documents current, although the same shall not be used for sailing while the vessel is flying a foreign flag.

9. Essential Laws and Regulations Applying to Vessels which Have Been Flagged-In with Respect to Safety of Ships and Environmental Protection

Foreign-registered vessels which are registered in the bareboat charter registry in Panama would remain subject to the laws of their Base Registry in all matters pertaining to the registration of title and encumbrances and would be subject to the laws of Panama on all matters regulating the internal order of the vessel, its operation, safety, manning, marine pollution and other matters. These vessels are required to comply with all applicable Panama tax laws and with all requirements generally applicable to Panama flag vessels, including those pertaining to safety of vessels and environmental protection.

10. Flagging out of Vessels which Remain Registered in Panama

10.1. Permission required by whom?

The registration of a Panama-registered vessel in a foreign bareboat charter registry requires the prior consent from the DGMM.

10.2. Time for which a permission can be granted: possibilities of prolongation

The aforesaid consent can be granted up to the duration of the corresponding bareboat charter party.

10.3. Conditions to be fulfilled to receive a permission

The conditions to be fulfilled in order for the consent to a bareboat charter registration to be granted by the Panama authorities are as follows:

(a) the proposed country of bareboat charter registration must have a bareboat charter registration procedure similar to that prevailing in Panama;
(b) an application must be submitted to the DGMM, either in Panama or through any of the Panamanian consulates with shipping attributions, indicating the name and address of the bareboat charterer, the duration of the charter party and the country of bareboat charter registration; and
(c) the owner of the vessel must give its consent to its bareboat charter registration. The consent of the mortgagee is not required for obtaining the consent to bareboat charter registration from the Panama authorities.

10.4. What influence has flagging out on the status of a ship under civil law?

The flagging out as aforesaid shall not affect the Panamanian Base Registry of the vessel because all matters pertaining to the title to property transfers thereof or liens or encumbrances thereon remain exclusively governed by the laws of Panama. The vessel remains subject to the laws of Panama for such purposes while it becomes subject to the laws of the bareboat charter registry in regard to its operation, manning, safety, etc. Immediately upon termination of the bareboat charter registration, the vessel reverts automatically to its full Panamanian registration and recovers its right to fly the Panamanian flag, thus becoming once more subject to all the laws and regulations of Panama and to the international conventions and agreements to which Panama is a party.

Panamanian laws and regulations in respect of manning, employment, ship safety and environmental protection apply to Panama-registered vessels which fly the Panama flag, and therefore the same shall temporarily cease to apply when a Panama-registered vessel is flying a foreign flag pursuant to a bareboat charter registry because Panama recognizes the said foreign registry to be the competent authority to exercise jurisdiction and control over the vessel.

II. Registration of Rights in Respect of Vessels under Construction

11. Register

There is no special, separate registry in Panama for vessels under construction; however, the same may be registered at the DGMM and the PRV, as will be discussed below.

11.1. Type of register

Subject to certain conditions, vessels under construction may be provisionally registered in Panama with the DGMM, either locally or through any of the Panamanian consulates abroad with shipping attributions. Title to property and naval mortgages in respect of a vessel under construction may be recorded at the PRV, subject to certain conditions.

Prior to the obtainment of the Provisional Patent of Navigation and Radio Permit, the DGMM would issue a Certificate of Registration by Assignation, whereby the vessel would be given a patent number, Call Signs and MMSI number.

This would allow the vessel to acquire the Panamanian nationality while the same remains under construction and to avoid the need for the Patent of Navigation and Radio Permit during such period that the vessel shall not be engaging in commercial navigation.

11.2. Content of register

The records of a vessel under construction registered in Panama would contain basically the same information as in the case of a vessel already completed, except that the information as to the year of construction, main dimensions, tonnages, speed, etc., would only be an estimate thereof at the time of provisional registration of a vessel under construction.

11.3. Inspection or search of the register

The records of both the DGMM and the PRV Office are open for inspection by the public.

11.4. Registration fees

The fees payable in connection with the registration of a vessel under construction are the same as those payable in the case of the registration of a vessel which is already completed.

However, while the vessel maintains the registration under the Certificate of Assignation (i.e., without issuance of the Patent of Navigation and Radio Permit), the annual tax and other rates (Tasas) would not be due.

12. Type of Vessel which May Be Registered

Any vessel eligible for regular registration may be registered as a vessel under construction in Panama.

12.1. At what stage during construction may a vessel be registered?

Neither Law 55 nor Law 57 provides for a minimum of construction stage for the registration of a vessel under construction.

So long as the builder may confirm the necessary information in a letter as to the vessel being built for the potential buyer, such potential buyer may apply for the registration.

Such a letter would have to include the anticipated dimensions, tonnages, the type of service and the place of construction of the vessel.

13. Type of Rights which May Be Registered

Ownership title in respect of vessels under construction, and, pursuant to Decree 159 the following are also recordable documents:

(1) Financial leasing or leasing
(2) Trust agreement.
(3) Bareboat charter agreement.
(4) Promise of sale.

13.1. Restrictions as to the nationality of the purchaser of a vessel under construction

There are no restrictions on the nationality, domicile or place of incorporation of the owner of a vessel under construction.

13.2. Ownership of a vessel under construction

Panama would recognize as the owner of a vessel under construction, the party named as owner of the vessel in the appropriate title documents and recorded as such at the PRV. However, this may conflict with the laws of the country where the vessel is being built, which may regard the vessel under construction as the property of the shipyard until such time as the vessel is completed and delivered to the purchaser.

Panama has not ratified the Convention Relating to Registration of Rights in Respect of Vessels under Construction of 1967.

B. Registration of Mortgages on Vessels and Vessels under Construction and Legal Nature of These Mortgages

I. Registration of Mortgages on Vessels and Legal Nature of These Mortgages

14. Sources of Law

14.1. Sources of national law and general characterization of mortgages

Mortgages on Panama-registered vessels are regulated primarily by the provisions of Law 55 and by the provisions of the Civil Code of Panama on real estate mortgages, to the extent that these are not in conflict with the special provisions of Law 55. The Panamanian statute dealing with chattel mortgages does not apply to naval mortgages.

14.2. Different types of ship mortgages

There is a single type of ship mortgage in Panama, which affords the mortgagee the ranking and privileges specified in the appropriate provisions of Law 55.

There is no concept of preferred versus non-preferred mortgages because all naval mortgages are given the same treatment under the applicable provisions of law, ranked among themselves depending on the order of filing (subject to registration being completed) at the PRV which is what provides the order of priority. A naval mortgage on a vessel becomes effective vis-à-vis third parties and creates a maritime lien on the vessel once it has been recorded at the PRV.

14.3. International Conventions

Panama is not a party to the International Conventions for the Unification of Certain Rules Relating to Maritime Liens and Mortgages, Brussels 1926/1967. However, Panama is a party to the Code of International Private Law of 1928 (the 'Bustamante Code'), which provides that naval mortgages and the maritime liens (privileged credits) created under the laws of the flag of the vessel shall have extraterritorial effects, even in such countries, that are parties to the Convention, where naval mortgages or such maritime liens are not recognized or regulated.

Naval mortgages registered on foreign-registered vessels may be enforced in rem before the Maritime Courts of Panama if the vessel should come within its jurisdiction and the applicable procedural requirements are complied with.

15. The Register

15.1. Description

Registration of the ownership title and mortgages on Panama-registered vessels is effected at the PRV. The PRV is located in the City of Panama, the Republic of Panama, nearby the DGMM and may be accessed for purposes of preliminary recordation of documents by any of the Panamanian consulates abroad with shipping attributions.

There are two types of registrations available in Panama.

(i) Preliminary registration

The preliminary registration system was implemented in 1980 to facilitate closings by allowing the parties to complete the registration by using an application containing certain required information as extracted from the document, rather than the document itself. The procedure is rather simple and involves the completion of the application, the confrontation by the Panamanian consul handling the recordation of such form with the document to be recorded to verify that the information in the form conforms with that in the document and the transmission of the completed form by electronic means to the PRV if submitted to a Panamanian consul with shipping attributions abroad or the filing of the form at the PRV in the case of a local preliminary recordation.

Once the application is received by the Registrar, it is immediately assigned an entry number at the PRV. Once the application is verified by the Registrar, the same is scanned, thus completing the process, and the consul requesting the recordation receives confirmation of preliminary recordation from the Registry. The preliminary recordation produces legal effects and affords the parties full protection for a six-month period, during which the document must be filed for regular or definitive recordation at the PRV and preserving the lien so created on a continuous basis.

The PRV is opened for preliminary recordation out of regular working hours in order to accommodate any time zone.

The preliminary recordation system is available to record title to property, transfers of title, naval mortgages, amendments, assignments and releases of mortgages, etc.

(ii) Definitive recordation

The permanent recordation of a document may only be effected at the PRV.

The documents to be recorded must be submitted in notarial instrument form. This requires the translation of documents into Spanish executed in foreign languages (for which there is an abundant local supply of public interpreters) and the protocolization (i.e., transcription into a public instrument) of the original executed document together with its Spanish translation before a local Notary Public, who prepares a notarial instrument or deed.

The filing of a document for permanent recordation at the PRV fixes its priority relating back to the date of entry at the PRV, except in such cases where the said document has already been preliminarily recorded, because in that case the effective date of recordation and its respective priority relate back to the original date of entry of the application for preliminary recordation at the PRV.

15.2. Legal form for recordation of a naval mortgage

A naval mortgage on a Panama flag vessel may only be granted by the owner thereof after the vessel has been provisionally registered as a Panama flag vessel.

Although the law seems to allow for unilateral naval mortgages, namely those granted only by the mortgagor, in practice it is preferable to structure the mortgage as a contract and to have the mortgage accepted by the mortgagee; in particular, some remedies and rights would depend on the express agreement of the parties thereof. Naval mortgages may be executed in any language, and the signatures of the parties thereto must be recognized by a Notary Public at the place of execution, who should certify the authenticity of such signatures and the authority of the parties to act on behalf of their respective principals. The signature of the Notary Public must be legalized either by a Panama consul or by the Apostille.

However, Law 55 provides for an additional six-month term to remedy the initial lapse of six months. For permanent recordation purposes, the mortgage engrossment duly authenticated as aforesaid should be forwarded to the Panama lawyer or law firm which will deal with its recordation, to proceed with its translation into Spanish, if required, its protocolization in a notarial instrument and its filing for permanent recordation. Care must be taken to forward such documents and the necessary funds to cover the anticipated costs of recordation in due time, for otherwise, the preliminary recordation would lapse upon the expiry of the six-month preliminary recordation period.

A naval mortgage must contain at least the following information, which are deemed essential elements pursuant to Article 260 of Law 55, to wit:

(i) the names and domiciles of the mortgagor and mortgagee;

(ii) the fixed or maximum amount of principal secured;

(iii) the dates for the payment of principal and interest, or for compliance of the obligation secured by the mortgage, except in the case of mortgages granted to secure obligations payable on demand, future or conditional obligations, when such stipulations are not required; also, when the secured debt is payable in a single date (i.e., balloon payment) or compliance is set for a particular date, then that sole date would suffice to satisfy the requirement;

(iv) if the obligation secured is subject to payment of interest, the applicable rate of interest or the method of determining the same;

(v) the name and full particulars of the vessel, including the radio call sign, if any, the Patent of Navigation number, dimensions, registered tonnages, etc.

(vi) if more than one vessel is mortgaged to secure a single credit (fleet mortgage), the amount or part of the lien for which each vessel is liable should be specified. If that is not done, the mortgagee shall be entitled to proceed against any of the vessels or against all of them, jointly, and severally, for the total amount secured; and

(vii) any other provision(s) which the parties may agree.

It is not mandatory to append the supporting loan agreement or other financial documentation to the mortgage, as long as all the requisite information as aforesaid is specified in the mortgage. In practice, however, many lenders prefer to append the loan agreement to the mortgage in order to record the same together with the mortgage to place third parties on notice of its contents and facilitate the presentation in evidence of its text in the event of judicial enforcement.

The law allows for the possibility that the parties execute an 'extract' of mortgage in order to file such extract instead of the whole of the mortgage for registration. In such case, the mortgage and the extract would have to be filed with the Notary who would issue a notarial deed confirming the receipt of both documents and the translation of the extract, which would be then transcribed into the notarial deed for purposes of definitive registration of the mortgage.

In addition, it is also possible to accompany the mortgage and/or the corresponding loan document or such document being secured by the mortgage in English, whereby the same would be evidenced as to third parties in the PRV.

15.3. Costs of registration

15.3.1. Preliminary recordation

The preliminary recordation of a naval mortgage, which is optional, triggers preliminary recordation fees based upon the principal amount secured by the mortgage as follows:

> USD 450 for the first two million dollars of the amount secured; USD 150 per each additional million dollars of the amount secured or fraction thereof with a maximum fee of USD 1,200.

If the preliminary recordation is done through a Panama consulate, there would be an additional consular handling charge of USD 750 per transaction. This charge does not apply if the preliminary recordation is handled in Panama.

15.3.2. Definitive or regular recordation

The recordation fees are based upon the net registered tonnage of the vessel at the rate of USD 0.12 per each net registered ton or fraction thereof, with a maximum fee of USD 600.

16. Vessels which Can Be Mortgaged

Any vessel which is eligible for registration in the Panamanian registry may be mortgaged.

17. Who Can Be a Mortgagee?

Any natural person or legal entity, without restriction as to nationality, domicile or place of incorporation, may be a mortgagee of a Panama-registered vessel. Mortgages may be granted in favour of an agent acting for a bank or lending syndicate without specifying all the members in the syndicate or the changes in the composition of such a syndicate, which may take place from time to time.

18. Rights and/or Claims for which a Mortgage Can Be Registered

18.1. Existing rights or claims

A mortgage may be recorded to secure any type of valid obligation of the mortgagor or a third party guaranteed by the mortgagor. The mortgage must specify the fixed or maximum principal amount secured.

18.2. Future, contingent or conditional claims for indefinite amounts

A mortgage may be validly registered as security for a future, conditional or contingent obligation, as long as the fixed or maximum principal amount secured is specified. It is not required to process a filing for e a marginal notation at the PRV upon the occurrence of the future event which triggered the secured obligation or the fulfilment of the condition.

Mortgages for indefinite amounts would not be recordable. However, such mortgages may be structured as mortgages securing a maximum principal amount, which may be freely agreed between the mortgagor and mortgagee.

18.3. As security for a guarantee

A mortgage may be granted as security for the obligations of a guarantor under a guarantee. In this case, the mortgage should specify the basic information pertaining to the principal obligations secured under the guarantee and the mortgage. Generally, the obligations of the guarantor would be to satisfy the obligations of the principal obligor under the loan documentation, and thus the amount secured, dates of repayment or of compliance with the obligation secured (if other than a monetary obligation), interest rate, etc., secured by the mortgage would be those specified in the loan documentation.

18.4. As security for revolving debts

A mortgage may be granted as security for revolving credits, and the repayment of the full amount of the credit will not extinguish the mortgage as long as the facility remains available. These mortgages are structured as maximum-amount mortgages.

18.5. As security for third-party claims

A mortgage may be granted as security for the obligations of third parties, without the need for a separate guarantee agreement. These mortgages, known as mortgage guarantees in Panama, would limit the exposure of the mortgagor to the value of the mortgaged vessel because the mortgagor does not guarantee the obligations of the principal obligor and, therefore, does not assume any liability in respect thereof, should the proceeds of an enforced sale of the vessel be insufficient to satisfy the said principal obligations. Generally, a guarantee agreement is executed in order to extend the exposure of the mortgagor to the full amount of the obligations of the principal obligor without being restricted to the value of the vessel, particularly where the mortgagor may have other assets.

18.6. Restrictions as to the currency in which the obligations secured by a mortgage are denominated

A mortgage may be validly registered in any currency.

In the case of a preliminary recordation of foreign-currency mortgages, the Registrar would request confirmation of the current conversion rates in US dollars, but solely for purposes of computation of the applicable preliminary recordation charges.

A mortgage may contain multicurrency provisions agreed upon by the parties, and any variations which the principal amount secured may suffer as a result of currency fluctuations would be validly secured by the mortgage without having to stipulate such amounts in the maximum principal amount.

19. Interest and Costs

The mortgage secures in addition to the principal amount, interest, costs and expenses of collection, amounts due as a result of currency fluctuations and any other amounts of whatever nature agreed upon by the parties; these need not be specified in the maximum principal amount secured.

The rate of interest or the method for determining the same must be specified. Such a rate may be established with reference to the type of interest in a particular interbank market or the prime bank rate granted by the mortgagee to selected borrowers in any market. The rate of interest may be adopted as that existing at the time of granting of the mortgage or in accordance with the fluctuations it may undergo through the life of the obligation. There are no maximum or usurious interest rates applicable in the case of obligations secured by naval mortgages.

In the event of litigation, the amount of the indebtedness secured, as stated in the complaint to be outstanding and due and payable, shall be presumed to be true against the mortgagor and third parties. Thus, the burden shall be on the mortgagor and third parties to disprove the allegations.

20. Particulars Recorded and Other Evidence of a Duly Registered Mortgage

20.1. In respect of a mortgage on a vessel registered in Panama

The complete text of the notarial instrument containing the protocolization of the mortgage or the extract, as the case may be, is scanned at the PRV in connection with its regular or permanent recordation, and therefore the whole document becomes available for public inspection. Additionally, if the mortgage had been preliminarily recorded, the PRV will have the application form or the communication from the consul scanned and inserted in the individual file of the vessel, thus making available for public inspection the essential information of the mortgage contract, namely, the identity of the mortgagor and mortgagee, their domiciles, the names and addresses of their respective representatives or attorneys who executed the mortgage on their behalf, the identity of the Notary Public or the Panama consul who certified the signatures of the parties, the name and particulars of the vessel, the principal amount secured, the applicable interest rate and schedule for repayment of principal and interest.

Upon application, the PRV would issue certificates of ownership and encumbrances from time to time confirming the existence of mortgages on the vessel and any other recorded information which the applicant may wish the certificate to cover.

20.2. In respect of a foreign vessel registered under the special bareboat charter registry in Panama

The bareboat charter registry precludes the registration of any mortgage on the vessel at the PRV, for insofar as Panama is concerned; such mortgages may only be recorded in the appropriate registries of the Base Registry.

In Panama, the mortgages encumbering such vessels are reflected in the Special Patent of Navigation, based upon the ownership and encumbrance certificate produced in connection with the special registration of the vessel in the Panamanian bareboat charter registry.

21. Further Preconditions for the Creation of a Valid Mortgage

In order to create a valid mortgage, the vessel must be at least provisionally documented with the DGMM under the name of the mortgagor. Title to property in the vessel in favour of the mortgagor must be recorded together with or prior to the mortgage at the PRV.

22. Priorities of Registered Mortgages *Inter se*

Recorded mortgages rank between themselves according to the date and time of recordation, that is to say, the time of entry at the PRV of the application for preliminary recordation of the mortgage or the mortgage itself, as the case may be. In the event of recordation of the discharge of a registered mortgage, all remaining mortgages would automatically fill the gap and take the ranking left by the released mortgage.

23. Priorities Between Mortgages and Other Registered Encumbrances

Under Panama law, the only maritime liens which are the subject of recordation at the PRV are those arising out of naval mortgages.

Pursuant to Decree 159 the following are also recordable documents:

(1) Financial leasing or leasing
(2) Trust agreement.
(3) Bareboat charter agreement.
(4) Promise of sale.

The naval mortgage would be deemed as ranking above the other recordable liens.

The ranking of liens against the vessel is provided for under Article 244 of Law 55 (see below).

24. Relation of Registered Mortgages to Unregistered Preferential Rights

Under the Panamanian rules on conflict of laws, if litigation is brought before the Maritime Court of Panama, the liens on a vessel would be determined by the law of its registry; consequently, the creation and ranking of liens on Panama-registered vessels should be governed by Panama law, which specifies that the following liens shall be recognized:

(1) judicial costs incurred in the common interest of maritime creditors;
(2) expenses, indemnities and wages for aid and salvage;
(3) wages, compensations and indemnities of the master and crew members;
(4) the naval mortgage;
(5) amounts due to the Panamanian Government for the annual tax and tasa of the vessel;
(6) wages and stipends due to stevedores and other wharfers[2] engaged directly by the owner, operator or master of the vessel for the loading and unloading of the vessel;
(7) compensation for damages caused by fault or negligence;
(8) contributions to general average;
(9) amounts due on obligations incurred for the necessaries and supplies of the vessel;
(10) amounts taken in bottomry over the hull of the vessel and its apparel for supplies, equipment and tackle if the contract were entered into and executed prior to departure of the vessel from the port where such obligations were contracted, and the insurance premiums;
(11) wages of pilots and watchmen and expenses for the conservation and custody of the vessel, its rigs and gears;
(12) indemnities due to shippers and passengers for failure to deliver the cargo or effects loaded or for damage thereto, attributable to the master or crew; and
(13) the price of the last acquisition of the vessel and interest.

25. To What Property Does a Registered Mortgage Attach?

A naval mortgage covers the hull of the vessel and, unless otherwise specifically provided, all of its appurtenances, engines and other accessories.

The mortgage also extends, unless otherwise agreed, to the accrued and unpaid freight for the voyage which it is making or for the last voyage made

[2] A wharf is a man-made, fixed structure where the vessels can dock for safe loading and unloading of cargo. Wharfage refers to the fee for using the wharf (also called quay) to store the incoming or outgoing freight.

immediately prior to the enforcement of the mortgage, the indemnities due from collision or other accidents giving rise to indemnities and the indemnities from insurers in case of a casualty.

26. Effect of Payment of Debts Secured by the Mortgage

Except in the case of a revolving credit facility, where the commitment remains available even when there is no amount outstanding at any given time, the repayment of the debt would be the precondition for the mortgagee to execute an instrument of release of the mortgage. For all legal purposes, however, the vessel would remain mortgaged until such time as the release of the said mortgage (duly executed by the mortgagee, certified by a Notary Public and legalized by a Panama consul or by the Apostille) is recorded at the PRV. As in the case of the mortgage, a mortgage discharge may be preliminarily recorded at the PRV. Such recordation is effective for a six-month period, during which the mortgage discharge must be filed for regular or permanent recordation with the PRV.

27. Assignability of Mortgages

A mortgage may be assigned together with the obligations thereby secured, but the assignment must be recorded at the PRV in order to be effective vis-à-vis third parties. Unless otherwise restricted in the loan documentation or the mortgage instrument, no special qualification shall be required from the assignee of the mortgagee in order to be registered as such.

The mortgagor must be notified of the assignment because otherwise the assignee would have no recourse against the mortgagor for payments made to the assignor subsequent to the assignment. Unless otherwise provided in the mortgage instrument or the loan documentation, the consent of the mortgagor to the assignment shall not be required.

In the case of loan syndications where the mortgage is registered in the name of an agent, there is no need to record an assignment when the various members of the syndicate transfer their respective participations.

28. Effect of Change of Ownership of Vessel

A mortgaged vessel may only be sold with either the written consent of the mortgagees or the release of the mortgages on the vessel. It is possible to sell a vessel subject to the existing mortgages if the registered mortgagees consent to such a sale. In that case, the vessel remains subject to the mortgages, and the purchaser assumes the obligations of the mortgagor under such mortgages. As part of the consideration for the purchase of a mortgaged vessel, the purchaser generally assumes the obligations of the seller under the underlying loan or credit, for otherwise, the purchaser would become a mortgage guarantor, while the seller would remain as the sole obligor. An instrument of assumption and amendment of mortgage may be entered into by the seller, the purchaser and the mortgagee and be registered at the PRV.

29. Protection of Mortgagees Against Seizure, Etc.

The rights of mortgagees of Panama-registered vessels should be recognized in the event of seizure or forfeiture of a vessel by the Government of Panama, except where the mortgagee is a participant in the criminal activity which triggered such a sanction. The sanction of seizure is, however, rather extraordinary and would be imposed only in extreme cases of serious crimes or war.

Such protection under Panamanian law may depending on the timely intervention of the mortgagee, especially if the vessel is arrested or seized by a foreign court or other entity as local procedural rules may affect such mortgagee's rights.

30. Mortgagees' Protection in Case of Deregistration of a Vessel

In order to delete a vessel subject to a mortgage, the same must be first discharged, or in case of a consent to deletion, the mortgagees would have to give their written consent to the deletion of the vessel, and the release must be recorded at the PRV prior to the deletion of the vessel from the Registry.

In the cases where a mortgaged vessel is to be deleted *ex officio* by the DGMM on account of serious violations of the applicable statutes, criminal activities or otherwise, all registered mortgagees shall be given thirty working days prior notice of the intention of the authorities to take such action, in order to enable them to enforce the mortgages over the vessel or take any other action that they may deem appropriate to preserve their rights. In some instances, the term for enforcement may be extended, prior to deletion, depending on the circumstances.

Vessels coming from another registry will not be permanently documented in Panama unless a certificate of deletion from the former country of registration is produced. These certificates of deletion presumably will be issued only after the country of former registration is satisfied that the vessel is free of registered mortgages in such a registry or, if it is mortgaged, that all mortgagees have given their consent to the transfer of registry subject to the mortgages.

In the case of a constructive total loss, the vessel may not be voluntarily deleted prior to producing evidence that she is free of registered encumbrances or that all the registered mortgagees have given their consent to her deletion. If she is to be deleted *ex officio* by the DGMM, the thirty working days prior notice of its intention to delete must be given to all registered mortgagees, if any.

31. Liability of Mortgagees

A mortgagee who is not in possession of the vessel shall not be personally liable for the actions of the shipowner in tort or otherwise, although such actions may create a lien on the vessel ranking ahead of naval mortgages, thus prejudicing the position of the mortgagee.

When the mortgagee takes possession of the mortgaged vessel pursuant to the mortgage, (s)he shall be required to account to the mortgagor for his/her management every quarter and at the end of the term, unless otherwise provided in the mortgage. The mortgagee in possession shall be liable for the loss or damage resulting from his/her management, but such liability may be restricted to cover only such instances where the mortgagee acted with gross negligence or wilful misconduct in the performance of his/her duties. The mortgagor may apply to a court for the termination of the mortgagee's possession of the vessel in case of poor or negligent management.

32. Submission to Enforced Execution under the Mortgage

Under Panama law, a mortgage on a Panama-registered vessel may be enforced in rem before the Maritime Courts of Panama if the vessel is physically arrested in Panama and comes within the jurisdiction of the Panama Maritime Court.

Mortgages on Panama-registered vessels may be enforced in rem in foreign ports where the vessel may be located if such courts recognize the validity and enforceability of Panama-registered mortgages. Given the age of the Registry, and the large number of its vessels which trade all over the world, there is sufficient familiarity with Panama shipping mortgages, and a number of such mortgages have been successfully enforced in the maritime courts of several jurisdictions.

Law 55 contemplates certain special remedies, among other things, to sanction the remedy of a non-judicial sale of the vessel pursuant to the mortgage, which was therefore regarded as conflicting with our domestic public policy. The provisions in the mortgage instrument which allow the mortgagee to sell the vessel out of court in the event of default shall be recognized, as long as at least twenty days prior notice is given to the mortgagor and other registered mortgagees, if any. Care should be taken to specify in the mortgage that the non-judicial sale remedy is subject to the said twenty days prior notice requirement and the way in which such notice is to be given, generally by publication in a major newspaper in Panama or in any other suitable jurisdiction. The non-judicial sale of the vessel extinguishes the lien of the mortgage thus enforced, but it does not affect other liens on the vessel. Such other liens, with the exception of other registered mortgages, would be extinguished six months after the permanent recordation of the Bill of Sale (together with the acceptance of the buyer) conveying title to the vessel at the Panama Public Registry.

II. Registration of Mortgages on Vessels under Construction

33. Type of Mortgages

There is only a single type of naval mortgage in Panama, which may cover vessels under construction, subject to certain conditions.

34. Preconditions for Registration of a Mortgage on a Vessel under Construction

The vessel must be provisionally documented in Panama in the name of the mortgagor, and the title to the vessel in the name of the mortgagor must be recorded at the PRV. For this last, a declaration from the builder confirming the intention to transfer the ownership to the potential owner as well as the description of the vessel would suffice.

It is possible for the DGMM to issue a Certificate of Assignation, including the vessels' name or builder number, whereby a patent number would be given, as well as Call Signs and MMSI number, with payment of the registration fee alone, and in anticipation to the same being ready for navigation and until it is so ready as for the Provisional Patent to be applied for.

However, mortgagees should be aware that so long as the actual ownership is not transferred to the potential owner, the mortgage so registered would not be actually materialized until the ownership is effectively transferred.

35. Documentation Required for the Registration of a Mortgage on a Vessel under Construction

To record a mortgage on a vessel under construction, in addition to the title to the property or declaration from the builder stated above with the specific requirements discussed *above*, the mortgagor and mortgagee must execute a mortgage with the same requirements and formalities applicable in respect of a vessel already completed as discussed above.

36. Evidence of a Duly Registered Mortgage

As in the case of a mortgage on a completed vessel, evidence of a mortgage on a vessel under construction is shown by a certified copy of the notarial deed containing the mortgage or by certificates of ownership and encumbrances issued by the PRV.

37. Who Can Legally Hold a Mortgage?

Any natural person or legal entity of any nationality, place of incorporation or domicile may be the mortgagee in a mortgage registered on a Panama-registered vessel under construction.

A mortgage on a vessel under construction creates a maritime lien on the vessel of the same ranking as that created by a mortgage on a vessel which is already built.

38. Legal Effects of a Valid Mortgage on a Vessel under Construction

A mortgage on a vessel under construction bears the same effects as those of a mortgage on a vessel already built, safe for the observations made with respect to the actual ownership being transferred, in whole or partially, for the mortgage lien to actually materialize.

It is important to note that, at least from a Panama law perspective, the Builder may enjoy a right of retention (i.e. enforce a debt by keeping the asset until paid) which may be opposed to the mortgagee, but that would depend on the place of enforcement on whether or not the mortgage would be deemed as ranked over the debts of the "vessel" to the builder vis-à-vis such retention rights.

39. To What Property Does a Registered Mortgage on a Vessel under Construction Attach?

A mortgage on a vessel under construction attaches to the same things as a mortgage on a vessel already built, as long as the same has been actually transferred to the potential owner.

We consider that the drafting of the mortgage would be relevant to adequately cover the vessel on the various stages of construction.

40. Effect of Payment of the Secured Indebtedness

The repayment of the secured indebtedness should support the release of the mortgage by the mortgagee, which shall be recorded at the PRV to bear the full effects vis-à-vis third parties.

41. Can a Mortgage on a Vessel under Construction Be Assigned?

As in the case of a mortgage on a vessel already built, a mortgage on a vessel under construction may be assigned to any natural person or legal entity, without restriction as to nationality, place of incorporation or domicile, unless otherwise provided in the mortgage or the loan documentation.

42. Effect of Change in Ownership of a Vessel under Construction

The transfer of title to property in respect of a mortgaged vessel under construction may only be recorded at the PRV if such a mortgage is discharged or the mortgagee consents in writing to the transfer.

43. Procedure on Delivery of the Vessel

When a vessel under construction is completed and delivered to the mortgagor, a notation should be made at the PRV to reflect such a fact. Additionally, on or before such a date, the mortgagor should secure from the DGMM or a Panama consul with shipping attributions abroad the Provisional Patent of Navigation and Radio Permit which will enable the mortgagor to operate the vessel.

44. Enforcement of a Mortgage on a Vessel under Construction

Under Panama law, a mortgage on a vessel under construction is valid, binding and enforceable. However, as there are no ocean-going vessels being built in Panama at present, and vessels under construction generally are not in a position to sail, it is unlikely that a mortgage on such vessels may be enforced in rem before the Maritime Courts of Panama. The forum where such mortgages may be enforced will probably be where the vessels are being built.

45. International Conventions

Panama is not a party to the Convention Relating to Registration of Vessels under Construction, Brussels 1967, or to any other international convention relating to this matter.