



IMO
INTERNATIONAL MARITIME LAW INSTITUTE
Established under the auspices of the International Maritime Organization
A specialized agency of the United Nations



**A LAW ON
THE MALAGASY SHIP REGISTRATION,
AMENDING LAW NO. 99-028
OF 03 FEBRUARY 2000 RECASTING THE
MARITIME CODE**

**A Legislation Drafting Project submitted in partial fulfilment of the
requirements for the award of the Degree of Master of Laws (LL.M.)
in International Maritime Law at the IMO International Maritime
Law Institute**

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Academic Year 2015/2016

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PART I
EXPLANATORY NOTE

1. INTRODUCTION

More than 80% of the world trade is made by seaway transportation. Described as a strategic crossroad, the Indian Ocean records around 70% of the world oil traffic and nearly half of the world commercial freight passes through this space.¹ It is a primary sea-lane linking East and West, or more specifically connecting Africa, the Middle East, East Asia and Australasia with Europe and the Americas.² Every analysis of the Indian Ocean region reaches the same conclusion “The near future will undoubtedly see an increase in maritime developments and activities in and along the Indian Ocean waters. Factors such as increasing international trade amongst nations, demographic changes, integration of economies, modernization in ports and shipping, increasing dependence of economic powers on energy supply, politics, and growing strategic interests will shape the contours of the Indian Ocean region and beyond.”³ Therefore, the ignition of a new maritime transport policy is nowadays more than necessary for Madagascar in order to take advantage of this maritime transport global trend.

Maritime transport is composed of maritime shipping and the ports dimensions.⁴ It seems that the former policies on the maritime sector, unfortunately, considered as a “sub-sector” of the global policy on transport, have neglected this fact and underestimated the potential of Madagascar as a maritime power. For the time being, there is no official document or policy dedicated particularly and wholly to the maritime transport sector in Madagascar. The “National Transports Policy Declaration”, adopted in 2000, is the only official document that contains indications on the subject. The basic principles of that policy are the disengagement of the State from all commercial activities while keeping the *regalia* functions in matters such as legislation and reforms.

The recasting of the Maritime Code of 1966 by Law No. 99-028 of 03 February 2000 was based on the policy adopted in 2000. Since 2000 no major improvement in the Malagasy maritime

¹ Fiorina, Jean François ; «Un carrefour stratégique au cœur de la mondialisation ». <<http://notes-geopolitiques.com/les-mondes-de-locean-indien/>> 17 Nov. 2013.

² Khalid, Nazery; “The Tides That Bind: Maritime Trade In The Indian Ocean And Its Growth Prospects”, Paper presented at the Conference on Maritime Threats and Opportunities in the 21st Century : A Global Perspective on the Indian Ocean at Bahria University, Karachi, Pakistan on March 2007. <<http://www.mima.gov.my/v2/data/pdf/presentation/93.Karachi%20Mar07.pdf>> 30 Mar. 2016.

³ *Ibid.*

⁴ Rodrigue, Jean-Paul Maritime; “Transportation: Drivers for the Shipping and Port Industries”, Paper Commissioned for the Experts” Session on Innovation and the Future of Transport, Paris, 26 January 2010.

transport industry has been observed. In contrast, a decline of the national fleet is to be noted. Moreover, despite the development of a new State policy between 2005 and 2015, only some incidental insertions of the maritime sector can be noted. The latest global policy paper of Madagascar, *i.e.* the “National Development Plan for 2015 – 2019”⁵ and its “Implementation Plan”⁶ continue to treat the maritime transport sector as a mere ‘sub-sector’, and, hence, minimize its potentiality as a vector of development.

Researchers on maritime policies reveal that the drivers of change for the transportation system come in six major category policies: demography and society, energy and environment, technology, economics, and finance. Each plays a role individually and as a unit.⁷ It is therefore virtually impossible to establish outcomes accurately as there are too many interrelationships and uncertainties, particularly if a longer time frame is considered. It is, however, possible to identify trends that may impact each driver individually and try to assess how these trends will shape different components of the transport system. The belief that the establishment of a strong Malagasy national fleet is one of the trends that would induce the revival of the maritime sector of Madagascar has led to the drafting of this policy paper. The means to achieve this goal is the establishment of an attractive and transparent registration system.

However, it should be mentioned that the policy implemented by this proposal is a short-term one. The proposed policy would be regarded by some studies on shipping industry policies as an ‘inducement policy’ that should be followed by ‘resistance’ and ‘adaptation policies’ which are nowadays implemented by more developed and advanced countries (in terms of shipping) on a long term vision.⁸

Before discussing the Malagasy registry and the proposed policy to be implemented in compliance with Madagascar’s international obligations, a good understanding of the notions surrounding ship nationality and registration functions, on the international, legal and economic levels, is necessary.

⁵ Plan National de Développement (PND) 2015-2019. < http://mg.chm-cbd.net/implementation/Documents_nationaux/document-cadre/plan-national-de-developpement-pnd-2015-2019 > 30 Mar. 2016.

⁶ Paritra Malagasy zary Ohabolana, *Plan de Mise en Œuvre* du PND 2015 – 2019. <http://mg.chm-cbd.net/implementation/Documents_nationaux/document-cadre/plan-de-mise-en-oeuvre-du-pnd-2015-2019> 18 Jun. 2015.

⁷ Rodrigue, Jean-Paul Maritime; *op. cit.* ; also, Meersman, Hilde *et al.*; “Scenarios and Strategies for the Port and Shipping Sector” in Meersman, Hilde *et al.* (Ed.); Future Challenges for the Port and Shipping Sector, Informa, London, 2015, pp. 143 – 160.

⁸ Meersman, Hilde *et al.*; *ibid.*

2. INTERNATIONAL BACKGROUND OF SHIP NATIONALITY AND REGISTRATION

2.1 The legal framework

2.1.1 Freedom of the high seas and ship nationality

The oceans had long been subject to the freedom of the high seas doctrine, a principle, put forth in the 17th century, essentially limiting national rights and jurisdiction over the oceans to a narrow belt of sea surrounding a nation's coastline, whereas the remainder of the seas was proclaimed to be free to all and belonging to none. The wording of the 1958 Convention on the High Seas⁹ reflects this traditional concept, which was reaffirmed by many case law before 1958. Article 2 of the Convention states the four components of the exercise of freedom of the high seas both for coastal and landlocked States as follows: (1) Freedom of navigation; (2) Freedom of fishing; (3) Freedom to lay submarine cables and pipelines; (4) Freedom to fly over the high seas. It concludes that “These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas.”

The nationality of ships is the most fundamental regulatory matter pertaining to the high seas and is intrinsically linked to the freedom of the high seas. Given that no State has the competence to regulate activities on the high seas on a spatial basis, it should not be seen as a legal vacuum on the high seas. Some limits had to be fixed in order to avoid any misconception as to the high seas regime.¹⁰ The aim here is to allocate primacy of jurisdiction to the flag State, over the ships entitled to fly its flag and operating on the high seas, rather than exclusivity.¹¹ Thus, “in the interest of order on the open sea, a vessel not sailing under the maritime flag of a State enjoys no protection whatsoever, for the freedom of navigation on the open sea is a freedom for such vessel only as sail under the flag of a State.”¹²

Article 6 of the 1958 Convention states that a ship without a valid proof of nationality or which sails under the flags of two or more States, using them according to convenience, may be

⁹ Convention on the High Seas, Geneva, 29 April 1958. United Nations, *Treaty Series*, vol. 450, p. 11, p. 82.

¹⁰ Serdy, Andrew; “Public International Law Aspects of Shipping Regulation” in Baatz, Yvonne (Ed.); *Maritime Law*, 3rd Edition, Informa Law from Routledge, New York, 2014, pp.303 -335.

¹¹ See *Sellers v Maritime Safety Inspector* [1999] 2 NZLR 44: On the misconception that high seas freedom and exclusivity of flag State jurisdiction are absolute, so that States cannot enforce their laws in their own ports where this would prevent a foreign ship from returning to the high seas - the New-Zealand Court of Appeal quashed a conviction for leaving port without the prescribed safety equipment.

¹² Jennings, Robert and Watts, Arthur (Ed.); *Oppenheim's International Law*, 9th edition, Volume 1, Peace, Oxford University Press, Oxford / New York, 2008.

assimilated to a ship without nationality and as such cannot claim the protection of any State. The basic rule set out by Article 6 of the Convention on the High Seas is found again in Article 92 (1) of the 1982 United Nations Convention on the Law of the Sea:¹³

Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.

Acquiring nationality for a ship is to be determined by each State through its national law. The classic statement of the right of individual States unilaterally to fix the conditions for grant of nationality to merchant vessels was made by the Permanent Court of Arbitration in 1905 in the *Muscat Dhows*¹⁴ case. The principle enunciated in the *Muscat Dhows* case was upheld more recently by the United Supreme Court in the case of *Lauritzen v Larson* (1953):¹⁵

Each State under international law may determine itself the conditions on which it will grant its nationality to a merchant ship, thereby accepting responsibility for it and acquiring authority over it. Nationality is evidenced to the world by the ship's papers and its flag. The United States has firmly and successfully maintained that the regularity and validity of a registration can be questioned only by the registering State.

Even in a case of proven fraud it has been argued that only the State whose laws have been infringed had jurisdiction over the wrongdoing ship. In the *Virginus affair* of 1873, the ship flying the American flag was seized on the high seas by a Spanish warship on suspicion of aiding insurgents on the island of Cuba, then part of the Spanish empire. It was discovered that the ship's documents had been obtained by deception from the competent American authorities. In an Opinion which gave for the benefit of the State Department, the Attorney-General wrote about this case that Spain "has no jurisdiction whatever over the question as to whether or not such vessel is on the high seas in violation of any law of the United States". President Grant declared with respect to the fraud that "the crime was committed against the American laws and only its tribunals were competent to decide the question".¹⁶ This state of international customary law as reflected by case law is again reflected by Article 5 of the Convention on the High Seas, whose phrasing was used by Article 91 of UNCLOS which provides:

¹³ United Nations Convention on the Law of the Sea, Montego Bay 10 December 1982, Jamaica, United Nations; *Treaty Series*, Vol. 1833, p.3.

¹⁴ *France v Great Britain*, Award of the Permanent Court of Arbitration, The Hague, August 8, 1905

¹⁵ *Lauritzen v Larson* 345 U.S. 517 (1953).

¹⁶ In Moore's Digest II, pp. 899,900, cited by Meyers, Herman; *The Nationality of Ships*, Martinus Nijhoff, The Hague, 1967, pp. 179-181.

1. Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.

2. Every State shall issue to ships to which it has granted the right to fly its flag documents to that effect.

2.1.2 Registration and the genuine link

Registration

Registration is generally a precondition but also considered to be the essential objective test, of a ship's nationality.¹⁷ International law requires every merchant ship to be registered in a sovereign State with the intention to exercise proper control over the ship. Registration is the administrative act by which the national character is given to a ship and collateral rights and duties are conferred on the ship. The ship is therefore entered in the State's public records and officially recognized as conforming to all the relevant national requirements provided by the said-State.

The proper effective control, as conceived in the 1958 Convention on the High Seas and the 1982 UNCLOS, prescribe that "[t]here must exist a genuine link between the State and the ship." However, the concept of genuine link was not given a distinct or further definition.

Attempts to give an accurate definition to the genuine link were inspired by cases where the question on nationality referred to natural and legal persons.¹⁸ The need for the existence of a substantive link between the owner, the ship and flag State (the concept of beneficial ownership) were notably pointed out by some traditional maritime countries in the 1960 *Advisory Opinion of ICJ in connection with the constitution of the Maritime Safety Committee of the Inter-governmental Maritime Consultative Organisation*¹⁹ and by way of parallelism with the *Nottebohm case*.²⁰ In the latter case, the issue to be addressed by the ICJ was whether the nationality of an individual presupposed the existence of a substantive connection between the individual and the State whose nationality he claims. The substantive connection was described

¹⁷ Coles, Richard and Watt, Edward; *Ship Registration: Law and Practice*, Informa, London, 2009, p.7.

¹⁸ On nationality of legal person and State jurisdiction see the *Barcelona Traction, Light and Power Company, Limited*, Judgment, I.C.J. Reports 1970, p. 3.

¹⁹ "*Constitution of the Maritime Safety Committee of the Inter-governmental Maritime Consultative Organisation*" Advisory Opinion of 8 June 1960; I.C.J. Reports 1960, p.150.

²⁰ *Nottebohm Case (second phase)*, Judgment of April 6th, 1955; I.C. J. Reports 1955, p. 4.

as “... a legal bond having as its basis a social fact of attachment, a genuine connection of existence interests and sentiments, together with the existence of reciprocal rights and duties.”

The over-extrapolation from the *Nottebohm case* decision to the question of the nationality of merchant vessels has led to much confusion. For Coles and Watt,²¹ there is a degree of illogicality in seeking to extend considerations relevant to the determination of an individual’s nationality to the question of State jurisdiction over a naturally itinerant chattel.

The functional definition of the genuine link

The United Nations Convention on Conditions for Registration of Ships (UNCCROS),²² which has not entered into force until now, tried to address the issues relating to the abuse of freedom regarding registration conditions by States. Although reaffirming the requirement of a genuine link, the Convention did not succeed more to determine precisely what is meant by a “genuine link”. Nonetheless, UNCCROS gives a more detailed “functional” definition of the genuine link principle by emphasizing the expected outcomes from the existence of a genuine link. The utmost outcome is ensuring or, as the case may be, strengthening the genuine link between a State and ships flying its flag.²³

The functional definition of the genuine link was notably pointed out by the International Tribunal for the Law of the Sea (ITLOS) in the *M/V Saiga (No. 2)*²⁴ where the Tribunal made it clear that under UNCLOS “the need for a genuine link between a ship and its flag State is to secure more effective implementation of the duties of the flag State, and not to establish a criteria by reference to which the validity of the registration of ships in a flag State may be challenged by other States.” The Court added that there is no provision under UNCCROS which lends support to the notion that “a basic condition for the registration of a ship is that also the owner or operator of the ship is under the jurisdiction of the flag State”.

Whilst earlier conventions envisaged the “genuine link, in terms of jurisdiction and control, the 1986 Convention introduces the concept of “economic link”, providing for the participation by nationals of the flag State in the ownership, manning and management of ships. The relevant provisions for this purpose are contained in Articles 7, 8, 9 and 10.²⁵

²¹ *Op. cit.*, p.15.

²² United Nations Convention on Conditions for Registration of Ships, Geneva, 7 February 1986. Not in force. Doc. TD/RS/CONF/19/Add.1.7

²³ See Article 1 of UNCCROS.

²⁴ *The M/V Saiga (No 2)* (Saint Vincent and the Grenadines v Guinea), ITLOS Reports 1999, p. 48, [106].

²⁵ Coles, Richard and Watt, Edward; *op. cit.*, p. 17.

2.1.3 The obligations of flag States

Flag states have the following duties and obligations as listed in Section 1 of Part VII of UNCLOS, Article 94:

1. to issue documents;
2. to exercise effective jurisdiction;
3. to take measures to ensure safety;
4. to take measures to protect the marine environment;
5. to exercise penal jurisdiction in matters of collision or other incidents of navigation;
6. to render assistance;
7. to prohibit the transport of slaves; and
8. to cooperate in the repression of piracy.

Article 5 of UNCCROS also gives guidance in what is expected from a flag State in terms of “effective control” over its fleet and provides as follows:

The maritime administration of the flag State shall ensure:

- (a) That ships flying the flag of such State comply with its laws and regulations concerning registration of ships and with applicable international rules and standards concerning, in particular, the safety of ships and persons on board and the prevention of pollution of the marine environment,
- (b) That ships flying the flag of such State are periodically surveyed by its authorized surveyors in order to ensure compliance with applicable international rules and standards,
- (c) That ships flying the flag of such State carry on board documents, in particular, those evidencing the right to fly its flag and other valid relevant documents, including those required by international conventions to which the State of registration is a Party.

In a nutshell, a flag State shall ensure that their domestic laws are in compliance with and reflect, to a large extent, international rules and standards relating to safety of ships and persons and prevention of pollution of the marine environment. Effective control must be carried out at least through periodical physical surveys and control of the documentation of vessels under the flag State’s jurisdiction.

2.2 Types of registries

2.2.1 Open and closed registries

The debate on the concept of genuine link was actually fuelled by the emergence in the 1920’s of the phenomenon of “open registries” in newly independent States such as Liberia and

Panama, which acquired in just a few decades the largest international merchant fleet in the world until nowadays. Before 1986, there was no international convention specifically on the registration of, or granting of nationality to merchant vessels. This lack of international regulation has been largely instrumental in allowing a number of small countries to set up open registry fleets and have attracted considerable tonnage without adequate administrative or governmental facilities for regulation and enforcing the necessary standards at sea.

Opponents to open registries point out that there is no effective jurisdiction over the ships in such registries because the ship is registered in a sovereign State different from that of the shipowner. Some will go further by saying that the flag State is a 'flag of convenience' (FOC). The label FOC is used by the Fair Practice Committee of the International Transport Workers Federation (ITF) Union. A special emphasis made on features attributed to FOCs is that the country of the registry has neither the power nor the administrative machinery to impose any governmental or international regulations.²⁶

The Paris Memorandum of Understanding (Paris MOU) Organisation is one of the first international bodies established particularly to assess flag states performances. Its mission is to eliminate the operation of sub-standard ships through a harmonized system of port State control.²⁷ The performance of each Flag is calculated using a standard formula for statistical calculations in which certain values have been fixed in accordance with agreed Paris MOU policy. The organisation categorises flag States as White, Grey or Black. Two limits have been included in the system, the 'black to grey' and the 'grey to white' limit, each with its own specific formula.²⁸

Some former maritime powers such as France,²⁹ and Australia,³⁰ in order to reduce the flagging-out from their registers, had created a second off-shore registry, also known as "international registry" with the same facilities and benefits provided by open registries. The

²⁶ See *Committee of Inquiry into Shipping – Report*, Cmnd 4335, HMSO. Known as the Rochdale Report, this document is still used by the ITF as a basis for determining whether or not a particular registry is a flag of convenience – cited by Coles, Richard and Watt, Edward; op. cit., p.24; also, Ademuni-Odeke; *Bareboat Charter (Ship) Registration*, Kluwer Law International, The Hague, The Netherlands, 1998, p. 25.

²⁷ Paris MOU Organisation; "Presentation". <<https://www.parismou.org/about-us/organisation>> 30 Mar. 2016.

²⁸ Paris MOU Organisation; "Explanatory Note – 'White', 'Grey', 'Black' Lists".

<https://www.parismou.org/system/files/Explanatory%20Notes%20Annual_0.pdf> 30 Mar. 2016. The organization consists of 27 participating maritime Administrations and covers the waters of the European coastal States and the North Atlantic basin from North America to Europe.

²⁹ *Loi n° 2005-412 du 3 mai 2005 relative à la création du registre international français*.

³⁰ Reference should be made to the Shipping Registration Act 1981, and the Shipping Registration Regulations 1981 (as amended by the Shipping Registration Amendment Regulations 2012). <<http://www.comlaw.gov.au>> 30 Mar. 2016.

actual application or the system is basically the same as open registries and the label international registry is more of an “artifice of language”.³¹

Closed registries are opposed to open registries due to the fact that more connecting factors could be found between the vessel and its country of registry, such as the contribution of the national economy of the country; the treatment of revenues and expenditure of shipping, as well as purchases and sales of vessels, in the national balance-of-payments accounts; the employment of nationals on vessels and the beneficial ownership of the vessel.³²

2.2.2 Bareboat charter registration

Another interesting development that had followed the practice of open registry system is bareboat charter registration. The system is based on the permission to fly the flag of a second State for a determined period.³³ The phrase ‘bareboat charter’ is used commercially rather than legally. “In commercial terms, it [bareboat charter] is a contract for the lease of a ship for a stipulated period of time by virtue of which the lessee has complete possession and control of the ship”.³⁴ The lease is formalised through a bareboat charter registration, a legal arrangement whereby the nationality of the charterer’s choice, as temporary owner of the vessel is allocated to the vessel and evidenced by flying the flag of that nation during the life of the charter. The primary registration is therefore considered as suspended or cancelled, at least for certain purposes, but become fully effective once again upon termination of the charterparty.³⁵

Furthermore, the concept of bareboat registration includes two complementary regulations, *i.e.* the primary registry and the second registry regulations allowing the “chartering-in” or “flagging-in” and the “chartering out” or “flagging-out”. In other words, the registration of bareboat charter in another registry would be possible only if the temporary flagging-out is authorised by the underlying registry.

Legal experts in many countries have pointed out that international law does not in any way forbid the concept of bareboat registration at all, but rather that of a dual registration. This method of registration has led to the reference to “parallel” or “dual” registration.³⁶ However, questions may arise on the issue of maritime liens and mortgages attached to the vessels that

³¹ See on “Second or International Registries”, Ademuni-Odeke; *op. cit.* p. 31.

³² Coles, Richard and Watt, Edward; *op. cit.*, p. 28.

³³ *Ibid.*, p. 45.

³⁴ Ademuni-Odeke; *op. cit.*, p. 27.

³⁵ Ademuni-Odeke; *ibid.*; Coles, Richard and Watt, Edward; *op. cit.*, p. 45.

³⁶ Ademuni-Odeke; *op. cit.*, p. 28; Coles, Richard and Watt, Edward; *loc. cit.*

are registered in the primary registry. Article 16 (b) of the 1993 United Nations Convention on Maritime Liens and Mortgages³⁷ deals in detail with this question and provides that the “law of the State of registration shall be determinative for the purpose of recognition of registered mortgages, ‘*hypothèques*’ and charges”.³⁸ In this regard, Coles and Watt explain that the protection of the mortgagee’s interest in a bareboat charter registration depends primarily on ensuring that in the event of the mortgagee wishing to enforce his security or protect the preferred status of his lien against competing creditors, the law applied by the court in the jurisdiction where the action is heard will be the law of the primary flag State.³⁹

Bareboat charter registration is not regulated by any international convention. It has for the first time been taken into account in UNCCROS, which has not entered into force, as already stated. This Convention sparked widespread interests in the benefits of bareboat charter registration resulting from a growing awareness within maritime circles on the need of additional flexible forms of financing, costs containment and fleet development.⁴⁰ The provisions enabling bareboat registration are contained in Articles 11 and 12 of the Convention. These provisions helped to alleviate most of the doubts surrounding the system of bareboat registration by setting out minimum conditions to be met.⁴¹

For Prof. Ademuni-Odeke,⁴² from the flag State point of view, many advantages can be expected from the bareboat charter registration such as fleet expansion, an improvement of the balance of payment, transfer of technology, transfer of skills, creation of employment, development of ancillary industries, and a potential emergency tonnage in wartime. However, he also notes that the system can also hide some disadvantages such as the creation of a false economy, exploitation of resources (human resources mainly), accentuation of lack of genuine link, ability to control effectively those ships, etc.

2.3 The economic background

2.3.1 Beneficial ownership

Debates on the issue of ‘beneficial ownership’ arise quite often in respect of genuine link and ship registration. A question put forward in the *Advisory Opinion of ICJ in connection with the*

³⁷ United Nations Convention on Maritime Liens and Mortgages, Geneva, 6 May 1993, United Nations, *Treaty Series*, vol. 2276, p. 39; Doc. A/CONF.162/7.

³⁸ Coles, Richard and Watt, Edward; *op. cit.*, p.48.

³⁹ *Ibid.*

⁴⁰ Ademuni-Odeke; *op. cit.*, p. 69.

⁴¹ Coles, Richard and Watt, Edward; *op. cit.*, p.51.

⁴² *Op. cit.*; p.69.

constitution of the Maritime Safety Committee of the Inter-governmental Maritime Consultative Organisation, was whether the nations owning the largest tonnage should be interpreted as States having the majority of nationals as real beneficial owners or the States recording the greatest tonnage under their national flags. According to the Court dictum, the nationality of the beneficial owner is not relevant in the determination of the nationality of a ship, hence, only registration should be considered when it comes to considering the largest tonnage owning. Indeed, it has never been established as a requirement of international law, as stated in the *M/V Saiga (No.2) case*, that a State may attribute its national character only to vessels owned by its nationals. In most countries the law provides for registration not only by individuals but several others, such as various forms of partnerships and corporations. In the latter case, even minority ownership in a corporation is adequate as for example in the United States of America and many others said-to-be closed registry countries.⁴³

The beneficial owner is the person, company or organization which gains the pecuniary benefits from the shipping operations, while the true manager has been defined as the person, company or organization responsible for the day-to-day husbandry of the vessel concerned, as distinct from the manager of the company nominally owning the vessel. The true manager can also be its ‘beneficial owner’ but in many instances, it can be a different person company or organisation. Article 2 of UNCCROS defines ‘operator’ as the owner or any other national or juridical person to whom of the responsibilities of the owner have been formally assigned.⁴⁴ The ‘beneficial ownership’ concept is blurred by the complication induced by the management and operation of ships, and this has led to further confusion. The beneficial owner is straight forward only in the case where the sole shipowner resides locally.⁴⁵

2.3.2 The ship owning realities

The complication on the concept of beneficial ownership is explained by the fact that the shipping industry has had to adjust in response to the changing requirements of the trade. In a footloose and competitive market, ownership of vessels has become more complicated. Therefore, ship owners are more detached from a direct involvement in ship operations, leaving the subject to managers with more expertise and specialization.

⁴³ South African Ministry of Transport; *op. cit.*

⁴⁴ Kasoulides, George C.; *op. cit.*, p.85.

⁴⁵ South African Ministry of Transport; “Report on South African Maritime Transport Sector Study”, Part 4: Proposals and recommendations. <<http://www.transport.gov.za/Maritime.aspx>> 04 Jan 2016.

The ship operating facets are:

1. financing the acquisition of ships by granting ship mortgages a specialized banking operation;
2. trading in ships as assets which involves high risks and the means to remain invested for long periods: acquisition of ships, chartering-out, freight derivatives;
3. employing ships through chartering, marketing, selling shipping space based on the ability to predict trends in the geographic demand for commodities and cycles in the supply of shipping;
4. managing ships on behalf of shipowners, bareboat charterers, mastering, in particular, crewing, fuelling, provisioning, maintenance and repair, marketing costs; and,
5. specializing in specific functions in the value of chain of the production of supply of shipping.⁴⁶

Ship operation “has become the art of maximizing the financial returns that can be obtained through that asset - the ship. This can be achieved not so much or exclusively by increasing the gross revenue (which is also important), but by controlling and reducing costs. Effective management and controlled operations are the necessary tools to achieve these objectives and to survive”.⁴⁷ These different and complex facets of the ship owning/operating system explain the factors influencing the choice of a flag.

The major factors range from economic factors, operating costs, access to capital markets, to political factors. On the subject, Coles and Watt⁴⁸ enumerate other potential determinant factors for a shipowner or operator: vessels eligibility, government stability, labour problem, manning and certification costs, national preference, accessibility fishing vessels, pleasure yachts, commercial yachts, and reputation.

According to a study on the South Africa maritime transport industry,⁴⁹ the most deterrent factors to registration are crewing requirements, taxation on profits and registration fees, local incomes from purchase of provisions, bunkers, and ship repairs.

⁴⁶ South African Ministry of Transport; *op. cit.*

⁴⁷ Xerri, Godwin; “The Management and Operation of Ships”, Lecture at the International Maritime Law Institute, Malta, January 2016.

⁴⁸ *Op. cit.*, pp. 61 – 65.

⁴⁹ South African Ministry of Transport; *op. cit.*

2.3.3 Successful registries

The most successful registries such as Panama, Liberia and Malta have managed to develop their open registry system by taking into account the constraints surrounding vessels ownership, and to gradually escape from the odium of flag of conveniences.

Panama

Panama now has the largest registry in the world, followed by Liberia, the Marshall Islands, Hong Kong and Singapore. The registry is lucrative for Panama, bringing in half a billion dollars for the economy in fees, services and taxes.⁵⁰

The main features of the Panamanian registry are that there are no restrictions on ownership (i.e. for the owner to be Panamanian), the registration process is simple and cheap, ship mortgages are easily registered, revenues generated from international maritime commerce are not taxed and capital gains from the sale or transfer of a vessel registered in Panama are exempt from tax.⁵¹

Panamanian legislation⁵² does allow for the dual registration of ships on charter, including bareboat contracts, provided that the government of the other country of registration also consents to the dual registration. All dual-registered vessels are subject to the laws of Panama with respect to safety and other operational matters but remain subject to the laws of the country of original registration with respect to rights of ownership, ship mortgages and the payment of taxes.

Panamanian standards for ship safety are advertised as “among the most stringent worldwide”. The recent reviews of international bodies monitoring flag States performance, such as the Paris MOU⁵³ and the International Chamber of Shipping (ICS),⁵⁴ record the Panamanian flag in the White list.

⁵⁰ BBC; “Why so many shipowners find Panama's flag convenient”. <<http://www.bbc.com/news/world-latin-america-28558480>> 5 Aug. 2014.

⁵¹ Law No. 57 of 6 August 2008 updating ship registration requirements as well as organizational aspects of the General Directorate of Merchant Marine.

⁵² Liberian Maritime Law, being Title 21 of the Liberian Code of Laws of 1956, as amended.

⁵³ Paris MOU Organization; “WGB 2014 Lists”.

<www.parismou.org/sites/default/files/WGB%20lists%202014.pdf> 30 Mar. 2016.

⁵⁴ ICS-Shipping; “Shipping Industry Flag State Performance Table 2014/2015”. <<http://www.ics-shipping.org/docs/flag-state-performance-table>> 11 Feb. 2016. The International Chamber of Shipping (ICS) is the principal international trade association for the shipowners, concerned with all regulatory, operational, legal and employment affairs issues. The membership of ICS comprises national shipowners’ associations representing all sectors and trades from 36 countries, covering more than 80% of the world merchant fleet.

Liberia

The Liberian Registry – the second largest in the world – having over 3900 ships of more than 131 million gross tons, represents 11 % of the world's ocean-going fleet.⁵⁵

The Liberian registry similarly to that of Panama has no ownership restrictions. Registration fees are low. Tax is in the form of a tonnage tax. There are no requirements on disclosure of beneficial ownership of a vessel. There are also no restrictions on the nationality of the crew. The Liberian Registry is administered off-shore in the USA by the Liberian International Ship & Corporate Registry (LISCR, LLC). LISCR advertises its “commitment to safe and secure shipping”. Liberian-flagged ships have a low detention in the United States and Europe, which implies that Liberian ships rarely face serious consequences from inspection. Liberia ranks 17th in the white list of Paris MOU 2014.

Malta

Malta is renowned as the largest ship registry in the European Union and is the 6th largest merchant ship registry in the world.⁵⁶

The Maltese system implements a sophisticated policy of adaptation,⁵⁷ maximizing the function of market mechanisms. Maltese legislation provides for footings to integrated logistic providers. The small island is thus reputed as a maritime services provider.⁵⁸

Like in the biggest open registries, the Maltese legislation implements a facilitated registration procedure.⁵⁹ Ships may be registered in the name of legally constituted corporate bodies or entities irrespective of nationality, or by European Union citizenship. There are no restrictions on the nationality of the master, officers, and crew, nor on the sale or transfer of shares of a company owning Maltese ships.

⁵⁵ LISCR; « About the Liberian Registry ».

<<http://www.liscr.com/liscr/AboutUs/AboutLiberianRegistry/tabid/206/Default.aspx>> 17 Jan. 2016.

⁵⁶ Malta Independent; “Malta Flag becomes the 6th Largest Merchant Ship Register in the World”.

<<http://www.independent.com.mt/articles/2015-01-29/business-news/Malta-Flag-becomes-the-6th-Largest-Merchant-Ship-Register-in-the-World-6736129672>> 29 Jan. 2016.

⁵⁷ On the topic of shipping policies see Jung, Bong-Min and Kim, Sung-June; “Change of Shipping Industry Circumstances and Shipping Policy Directions of Developing and Developed Countries” in *The Asian Journal of Shipping and Logistics* Vol 28, n°2 August 2012 pp. 135 – 160.

⁵⁸ Transport Malta; “Ship Registration”. <<http://www.transport.gov.mt/ship-registration>> 23 Jan. 2016.

⁵⁹ The Maltese Merchant Shipping Act 1973, ACT XI of 1973, as amended.

Maltese law provides both for bareboat charter registration of foreign ships under the Malta flag and also for the bareboat charter registration of Maltese ships under a foreign flag.

Many incentives measure accompany the ship registration system, notably low company formation, ship registration and tonnage tax costs, attractive incentives to owners, registered charterers and financiers of Maltese ships of over 1,000 net tonnage, and progressive reduction in registration and tonnage tax costs for younger ships.

3. THE COMPELLING REASONS TO REVIVE THE MALAGASY MARITIME TRANSPORT INDUSTRY

3.1 Madagascar, a potential major actor of the world maritime transport

With its 5000 km coastal zones and its accessibility to South-Eastern Africa and the South parts of Asia and China, Madagascar is located in an undeniable strategical position in the Indian Ocean. On its way to find new roads to development and growth, the Malagasy potential as a major actor of the “South-South trade”⁶⁰ the Malagasy is to be studied thoroughly.

The Government has to undertake a new and pragmatic way of thinking on the policy regarding the maritime area – a driving force of development - to reach the goals stated in the National Development Plan (2015-2019) and accomplish the asserted vision of “Madagascar: a prosperous and modern nation”. The inclusive growth concept found in the State general policy gathers four elements: economic inclusion, social inclusion, spatial inclusion and political inclusion.⁶¹

The maritime industry is one of the economic sectors that can address most of these issues. Madagascar has most of the assets to take its part in the international trade in the Indian Ocean region and make its voice heard in the international negotiations on the matter. The time has come for Madagascar to have a more pragmatic vision of its maritime sector. Intensification of maritime traffic between Madagascar and the rest of the world in the next two decades is more than predictable due to its increasing involvement in the mining supply.

3.2 The mining industry, the key to unlock the potential for Malagasy shipping business

With an impressive oil and mining potential Madagascar is considered nowadays as the new “Eldorado” for the extractive industry.⁶²

The years 1980-1990 were marked by the increase in world commodity prices and scarcity. It was only after ten years that the Government of Madagascar has implemented a policy favouring the arrival of foreign investors (Mining Code and Law on Large Mining Investment-

⁶⁰ ‘South-South’ describes the exchange of resources, technology, and knowledge between developing countries, also known as countries of the global South. South-South trade therefore relates to trade between developing countries. See notably on the subject: Dutt, Amitava Krishna,; “ South-South Issues from A North-South Perspective” <http://unctad.org/en/PublicationsLibrary/ecidc2012_bp2.pdf> 13 Feb. 2016.

⁶¹ See World Bank Group; “What is Inclusive Growth?”. <<http://siteresources.worldbank.org/INTDEBTDEPT/Resources/468980-1218567884549/WhatIsInclusiveGrowth20081230.pdf>> 10 Feb. 2016.

⁶² Association IRESA (Initiative pour la recherche économique et sociale en Afrique sub-saharienne); Madagascar: Nouvel Eldorado des Compagnies Minières et Pétrolières, Les Amis de la Terre France, Novembre 2012.

Code Minier et Loi sur les Grands investissement miniers - LGIM). The establishment of LGIM, rising global demand for raw materials, and the growing importance of emerging countries such as China have intensified the interest of foreign investors and multinational oil companies to the Big Island. The extractive activity once ‘artisanal’ has entered a new phase, in recent years, with the installation of gigantic mining projects. The industrial mining sector has an important place in the Malagasy economy, it now represents 95% of mining revenues of the country; the remaining 5% is related to the exploitation of precious stones (Source: World Bank, 1998). Mining contribution to Gross Domestic Product (GDP) is increasingly important. To date, the mining sector attracts many national and international actors contributing to the strengthening of the Malagasy economy.⁶³

All the measures proposed to develop a shipping industry are unlikely to succeed unless the core demand that it aims to satisfy is forthcoming locally. The potential existence of such demand is by far the main hope when projecting a dynamic Malagasy shipping sector that would be created by the exporters of bulk commodities as well as the importers. In the absence of a local demand, efforts to encourage ship owning and operations in Madagascar would be fruitless.

In 2009, five extractive industries have committed to join the process, three mining companies: Rio Tinto-QMM (ilmenite) of Kraoma (chromite), Ambatovy SA (nickel and cobalt), Madagascar Oil, and ExxonMobil. The development of mining projects requires transport infrastructure, export, and accommodations. The improvements on the port of Toamasina (on the Middle-East) and *Port d'Ehoala*,⁶⁴ (on the North part) and the rehabilitation and modernization of the Port of Toliary (on the Southern part) were actually pushed by the mining industry in the regions next to the mining activities. The Malagasy latent shipping industry must be aroused through the existence of local demand within the business community to which the suppliers of the shipping belong. Hence, the mining industry is definitely the key to unlock the potential for Malagasy shipping business.

⁶³ Chambre des Mines Madagascar; “Monographie du secteur minier”.

<<http://www.mineschamber.mg/images/Monographie-du-secteur-minier-malgache.pdf>> 10 Jan. 2016.

⁶⁴ Port d'Ehoala will attract regional and international vessels and new investors thanks to its technical features: 1988 deep-water port (15.75 meters) with a breakwater of 625 meters, its security standards ISPS (International Ship and Port Security).

3.3 The importance of acquiring a national fleet

For the time being as already stated, Madagascar has not yet defined a clear global policy regarding its maritime transport sector. The “National Transports Policy Declaration”, adopted in 2000, is the only official document where the maritime transport sector is incidentally mentioned. Currently, the Malagasy fleet is very poorly supplied. There are no more ships on long-course and national cabotage. The international trade is fully insured by foreign-flagged ships. At the national level cabotage, the fleet is old because the average age of vessels is 30 years, no longer offering either security or reliability.⁶⁵

Needless to stress out that the possible economic spinoff that could be obtained from the mining industry would be more tangible for the rest of the Malagasy population if it is sustained by a more pragmatic global policy on maritime transport. Although the industrial mining sector is taking a more important place in the economy, foreign investors and consequently foreign countries are the major beneficiaries from it. The benefits would be essentially job creation and foreign earnings for the carriage of freight or saving in foreign exchange if national ships instead of foreign ships are employed, net of the foreign cost or hire of ships and wages to foreign crews and expenditure in foreign ports, including insurance (usually laid off overseas).

The prospect for Madagascar to gain a role in the international shipping would depend on, at a first stage, the acquisition of a strong national fleet that would enhance the comparative cost advantages that might enable Madagascar to specialize in one of the facets of ship ownership, use, management or operation in the different branches of shipping supply. It is necessary, in parallel with the creation of a national fleet, to specialise in a particular segment of the market according to the trade and based on the realities in the country. Thus, focus on ores, minerals, dry bulk, and agricultural products shipping is recommended for Madagascar to boost the economic development of Madagascar in a more balanced and inclusive way.

Generally, acquiring a national fleet would create local business and employment in the services associated with the supply of shipping - ship finance and management, ship broking, trading in ships and ship spaces (i.e. development of the so-called paper market), ship insurance,... - apart from an expansion of existing associated services. The first employment sector that is likely to profit from the strengthening of a national fleet would be the shipping manning supply, i.e. seafarers. The Maritime Training School in Mahajanga (*Ecole Nationale Maritime de*

⁶⁵ Ministère des Transports Malagasy ; “Présentation de l’Ecole Nationale Maritime de Mahajanga (ENEM)”.
<<http://www.transport.gov.mg/presentation-de-lenem/>> 30 Mar. 2016.

Mahajanga -ENEM) established since 1962, and implementing the Standards of Training Certification and Watch keeping of 1995 (STCW 95) had trained since 2007 more than 3000 qualified and competent seafarers, unfortunately, only 200 of them have been recruited.⁶⁶

⁶⁶ Ministère des Transports Malagasy; *op.cit.*

4. STUDY OF THE MALAGASY REGISTRY

4.1 Overview of the current legal framework

Source of law

The registration of vessels under the Malagasy flag is governed by the Maritime Code 2000,⁶⁷ Law No. 99-028 of 03 February 2000 recasting the Maritime Code. It repealed the Maritime Code of 1966 by consolidating the numerous amendments and incorporating the international conventions ratified by Madagascar between 1966 and 1999.

The Maritime Code is complemented by many regulatory acts. In relation to registration, in particular, the Bylaw No. 1173/62 of 21 May 1962,⁶⁸ setting out the rules to be followed by vessels on naturalisation, registration, title of navigation, is still in force. The regulatory act has not been amended since 1962.

Art.1.6.01 of the Maritime Code provides:

The Malagasy State shall keep a central register showing the names and details of ships flying its flag and shall take all the necessary measures for ensuring safety at sea, in particular with regard to:

- the vessel's construction, equipment, and seaworthiness;
- the composition, working conditions, qualification and training of the crew members as to be in compliance with international instruments;
- the use of signals, communications and collision prevention; and,
- the inspection of the vessel before its registration and thereafter at appropriate intervals by an agent within the maritime inspection.⁶⁹

Vessel eligibility

Any self-propelled or sailing vessel is subject to registration and naturalisation.⁷⁰ No limitation of size or age is found in the Maritime Code. According to their use purpose, vessels are categorised as:

- Fishing vessels

⁶⁷ Law No. 99-028 of 03 February 2000 recasting the Maritime Code, Official Journal No. 2625 E.S. of 08 February 2000, p. 526; Errata: OG No. 2638 of 01 May 2000, p. 1817.

⁶⁸ *Arrêté n° 1173/62 du 21 mai 1962 fixant les règles auxquelles sont astreints les navires, en matières de naturalisation, d'immatriculation, de titre de navigation, de mutation et de partance*, Official Journal of 26 May 1962, p. 921.

⁶⁹ Author's loose translation.

⁷⁰ Art. 2.2.01 of the Maritime Code 2000.

- Pleasure craft not used for commercial purpose
- Vessels exclusively affected to a public service
- War vessels

The last two categories of vessels are not in the scope of the Maritime Code.⁷¹

Conversely, the Bylaw No. 1173/62 of 21 May 1962 provides that vessels of less than 10 gross tonnes such, as 1) canoes, 2) pirogues, and 3) pleasure crafts for non-commercial use, are exempt from naturalisation but remain subject to registration.⁷²

Ownership

The Malagasy registered vessel is required to be owned by a natural person residing on the Malagasy territory or by a legal person, a company, having its headquarters in Madagascar.⁷³

Company formation

Incorporation of corporations, limited partnerships limited liability companies, and registered business companies in Madagascar is regulated by the Law No. 2003-036 of 30 January 2004 on commercial companies to be consulted with the Law No. 2007-036 of 14 January 2008 on Investments in Madagascar.

No restriction is imposed by the Law No. 2003-036 of 30 January 2004 on Commercial Companies on the nationality of the shareholders or partners on the date of creation of the company, whichever type of corporation is chosen.⁷⁴

A corporation or company is established by two or more persons suitable, for a contract to assign to a joint venture of cash goods, kind or in industry, in order to share the profits or take advantage of the economy may result.⁷⁵ The corporation may also be instituted by one person or entity, referred to as 'sole shareholder'.⁷⁶

The Law No. 2007-036 of 14 January 2008 on Investments in Madagascar provides that on the date of registration of the company there is no special requirement of nationality or residence of the executive officers. Nonetheless, within three months from the date of registration, at least

⁷¹ Art. 2.1.04 of the Maritime Code 2000.

⁷² Article 2 and 17 of the Bylaw No. 1173/62 of 21 May 1962.

⁷³ Art. 2.3.04 of the Maritime Code 2000.

⁷⁴ Art. 3 of the Law No. 2003-036 of 30 January 2004.

⁷⁵ Art. 1 of the Law No. 2003-036 of 30 January 2004.

⁷⁶ Art. 2 of the Law No. 2003-036 of 30 January 2004.

one of the executive officers must reside in Madagascar or is a Malagasy national. The foreign executive officer must be in possession of a valid residence permit or otherwise of a receipt of its application for such visa.⁷⁷

Bareboat charter registration

The flagging-in of bareboat chartered vessels to the Malagasy flag is implied by the wording of the conditions on registration⁷⁸ but is provided more explicitly for under the conditions of temporary naturalisation.⁷⁹ The temporary flagging-out must be allowed by the State of the original registry (see registration procedure below). No mention of the possibility to temporarily flag out from the Malagasy registry is found in the current Maritime Code.

Manning requirements

Malagasy flagged vessels shall be totally crewed by Malagasy citizens. However, an exemption may be granted in the case of insufficiency of Malagasy officers. In return, the shipowner would have to lodge a special contribution to the budget of the Maritime National School of Mahajanga, the amount of which is to be fixed by a decree.⁸⁰

The status of “Malagasy seafarer” is reserved to Malagasy citizens in possession of Malagasy transport or of a seafarer’s identity document delivered by the Marine Merchant service.⁸¹

Malagasy seafarers are trained at the Maritime National School of Mahajanga in compliance with the STCW-95 standards since 2007.⁸²

Taxation

Since there is no special exoneration from income or profits taxation in the Maritime Code or any relevant regulatory act referring to such exoneration, the general regime applicable to all companies registered in Madagascar is also applied to individuals or companies owning a Malagasy-flagged vessel.

Procedure for registration

Registration and naturalisation are distinguished under the Malagasy legislation.

⁷⁷ Article 12 of the Law No. 2007-036 of 14 January 2008.

⁷⁸ Art.2.2.08 of the Maritime Code 2000.

⁷⁹ Art. 2.3.05 of the Maritime Code 2000.

⁸⁰ Art. 2.3.04 (4) of the Maritime Code 2000.

⁸¹ Art. 3.2.01 and Art.3.2.06 of the Maritime Code 2000.

⁸² Ministère des Transports Malagasy; *op. cit.*

Registration

Registration is compulsory for all vessels without distinction. Vessels are to be registered in one of the Malagasy home ports of the owner's choice. The home ports are Antsiranana (*Diégo –Suarez*), Mahajanga (*Majunga*), Toamasina (*Tamatave*), and Toliara (*Tuléar*).⁸³ According to the Maritime Code 2000⁸⁴ for the registration of a vessel the following documents are required:

- the owner's application;
- the owners or bareboat charterers status;
- the shipbuilding contract, or the bill of sale as proof of the ownership, and, if necessary, the bareboat charter;
- certificates proving the vessel's situation in relation with maritime encumbrances, liens and mortgages;
- the vessel's plan sets;
- the certificate of gross tonnage;
- a certificate of non-registration in a foreign registry
- insurance policies on the civil liability of the owner, notably in matters of passengers transportation and pollution;
- the licence for the use of radio communication;
- as appropriate, the agreement or authorisation for fishery, or the licence to provide touristic services;
- a proposal for the number of crew;
- a receipt of payment of customs taxes in Madagascar.

Permanent naturalisation

The naturalisation is described as the administrative act conferring to the vessel the right to fly the Malagasy flag and enjoy the rights and privileges attached to it.⁸⁵ To this aim, the conditions of ownership and manning are to be complied with. Moreover, a declaration made by the owner and all the documentation required for the registration shall be submitted to the head office of the maritime area of the homeport.⁸⁶

⁸³ Art.15 of the Bylaw No. 1173/62 of 21 May 1962.

⁸⁴ Art. 2.2.08 of the Maritime Code 2000.

⁸⁵ Art. 2.3.02 of the Maritime Code 2000 and Art. 1 of the Bylaw No. 1173/62 of 21 May 1962.

⁸⁶ Art.17 of the Bylaw No. 1173/62 of 21 May 1962.

The certificate of naturalisation is issued by the Minister in charge of the merchant marine, on behalf of the Republic of Madagascar, after an audit of the provided information on the vessel. Apart from the permanent naturalisation, two other types of naturalisation can be issued.

Temporary naturalisation / Bareboat charter registration

The temporary naturalisation is issued for a foreign vessel which is on a bareboat charter under a 'hire and purchase' operation and on the paramount condition that the temporary flagging-out from the primary registry is authorised by the foreign State. The validity of a temporary naturalisation is 3 years, subject to a single extension for 3 years.⁸⁷

Under the Bylaw of 1962, the temporary naturalisation was issued for vessels intended to be permanently registered. The validity of such naturalisation was 12 months and extendable at the discretion of the minister in charge of the merchant marine.⁸⁸

*Provisional naturalisation*⁸⁹

The provisional naturalisation is issued to a vessel purchased in a foreign country or a newly built ship, in order to navigate under the Malagasy flag before its permanent naturalisation. The validity of the provisional naturalisation is 6 months. The vessel is provisionally registered, even if the ownership conditions are not met, nonetheless, the application must be submitted by a company that has a special agreement with the Malagasy State.

Mortgages and security interests

Vessels over 10 gross tonnes can be mortgaged.⁹⁰ A mortgage over a vessel under construction is also allowed.⁹¹ The Malagasy Maritime Code contains detailed provisions relating to the registration of security interests over vessels. Book VIII of the Code in Title A deals with maritime liens and mortgages. Mortgages are ranked after a list of privileged claims on the vessels arising from Article 8.1.01 of the Maritime Code, which are:

1. Legal costs incurred in connection with the sale of the vessel and apportionment of proceeds;

⁸⁷ Art. 2.3.05 of the Maritime Code 2000.

⁸⁸ Art. 6 of the Bylaw No. 1173/62 of 21 May 1962.

⁸⁹ Art. 2.3.06 of the Maritime Code 2000.

⁹⁰ Art. 8.2.01 of the Maritime Code 2000.

⁹¹ Art. 8.2.04 of the Maritime Code 2000.

2. Tonnage and port dues and other official charges and taxes of the same kinds, pilotage fees, and surveillance, preservation costs since the vessel's arrival in the latest port;
3. Claims resulting from the articles of agreement of the master, crew or other persons employed on board;
4. Salvage and assistance awards and the vessel's contribution to general average;
5. Compensation in respect of collisions or other accidents of navigation or for damage caused to the installations of ports or waterways, and compensation for personal injuries to passengers or crew and for loss or damage of cargo or luggage;
6. Claims arising from contracts concluded or operations carried out by a master away from the port, pursuant to his legal power, in connection with actual requirements of the preservation of the vessel or the continuation of the voyage, regardless of whether the master is at the same time the vessel's owner or whether the claim has by him or his suppliers, repairers, lenders or other contractors.⁹²

Mortgages are recorded on a public register to show the time and date of registration, and the name of the vessel.⁹³ If the vessel is mortgaged more than once, the rank of preference is determined by the date of registration.⁹⁴

No provision related to protection of registered mortgaged over a vessel flagging-in or flagging-out from the Malagasy registry is made by the Maritime Code.

Surveys

An initial safety inspection is required before a permanent certificate of nationality is issued.⁹⁵ For the issuance and renewal of certificates related to security, habitability, and sanitary matters on board, Malagasy vessels undergo periodical inspections and surveys.⁹⁶

Deregistration procedure

Only deletion *ex officio* is mentioned in the Maritime Code at two conditions: the sale of the vessel in a foreign country or the vessel's unseaworthiness recorded for over one year.⁹⁷

⁹² Translation by the UN Division for Ocean Affairs and the Law of the Sea (DOALOS). *Law of the Sea Bulletin* no. 56, p. 47. < http://www.un.org/Depts/los/doalos_publications/los_bult.htm > 30 Mar. 2016.

⁹³ Art. 8.2.07 of the Maritime Code 2000.

⁹⁴ Art. 8.2.13 of the Maritime Code 2000.

⁹⁵ Art. 2.3.04 (3) of the Maritime Code 2000.

⁹⁶ Art. 2.5.01 to 2.5.10 of the Maritime Code 2000.

⁹⁷ Art. 2.2.09 of the Maritime Code 2000.

In contrast, Article 9 of the Bylaw of 1962 provides that the deletion from the registry is performed at the shipowners' request, or *ex officio* in case of infringement or deficiency at several conditions, i.e. as soon as the rules set out by the condition of registration are not complied with; at the time of the application for a sale in a foreign country; in case of total loss, permanent unseaworthiness, or disintegration; in case of capture or seizure; and, in case of a transfer to national cabotage.

Registration fees

Several fees called « *taxes* » are to be paid by the shipowner on the date of registration and for the first issuance or renewal of the vessels documentations and certificates which are:

- fee for the issuance of the tonnage certificate⁹⁸ on registration;
- fee for the issuance of the naturalisation certificate;⁹⁹
- fee for the issuance of navigation documentation¹⁰⁰ (*Titres de navigation*); and,
- fee for the issuance of survey and security certificates.

These fees are to be set out by decrees.

4.2 Discussion and policy proposals

4.2.1 Discussion

Bearing in mind all the discussions undertaken in points 2 and 3 of this paper, the weaknesses of the current system, in comparison with other open registries, are numerous. However, certain of these elements deserve to be particularly underlined.

Transparency and clarity

The preamble (*'exposé des motifs'*) of the Maritime Code 2000 announces a greater openness of the maritime sector to foreign investors. Nonetheless, the only major changes operated are more lax conditions of ownership and the introduction of bareboat charter registration without subsequent incentive measures.

In relation to registration, the Maritime Code 2000 is too laconic, thus, leaving many questions to be set out by further regulatory acts. This leads to the scattering of texts that may deal with the same topic. Access to these regulatory acts is also difficult. Many of the regulatory texts to

⁹⁸ Art. 2.2.04 of the Maritime Code 2000.

⁹⁹ Art. 2.3.08 of the Maritime Code 2000.

¹⁰⁰ Art. 2.4.04 of the Maritime Code 2000.

which the Maritime Code refers are not available yet. In addition, the Bylaw of 1962 is still in force despite its discrepancies with the Maritime Code 2000, which is superior in the hierarchy of norms.

The apparent openness of the system is rapidly curbed by some contradictions found in the Maritime Code itself. The latter seems to implement a more rigid regime than the Bylaw of 1962 regarding the matters of deregistration. As pointed out in the discussions above, only an *ex officio* deletion is envisaged in the Maritime Code.

Other weaknesses of the Code is the structure adopted which is not reader friendly. For instance, the relation between naturalisation and registration is not clearly stated in the Code. Moreover, the procedure established by the Maritime Code, by making compulsory both registration and naturalisation for all types of vessels is stricter than the one set out in the Bylaw of 1962. The Maritime Code puts the vessels intended for foreign trade and national cabotage at the same level. Another point is whether two procedures are necessary when their functions are not substantially different.

Consequently, the current structure of the Maritime Code on registration lacks clarity and transparency and does not really reflect the intention to open access to the Malagasy registry. It is difficult therefore for any potential investor or shipowner to have a clear understanding of what is expected from the current Malagasy registry.

Taxation

In a very competitive market such as the shipping industry, the taxation of revenues, profits or income currently applied, may constitute one of the major deterrents to ship registration in Madagascar.

A measure on which great store is placed to encourage ship ownership in Madagascar is the introduction of a tonnage tax in line with the taxation of shipping profits in many other countries of open registry systems. In a nutshell, a tonnage tax contrasts with normal corporate tax based on commercial profits during a year by ignoring actual profits and computing a notional profit on the basis of the number and size of ships operated, and taxes that profit rather than the actual commercial profit. A tonnage tax is usually set so that the notional profit and the actual tax are minimal.

Even in some European countries, tax tonnage is also applied to ensure that there is a genuine link between flag registration in the European Union and the ship operator benefiting from the

tax. Tonnage tax enabled high-cost fleets in Europe to compete on an equal basis with their industry competitors worldwide. Even the United Kingdom, the first representative of closed registries implements the tonnage tax system. In 2012, shipping earned £1.5 million for the UK economy every hour of every day. During this time, recruitment of professional seagoing officers has doubled – which is crucial also for the full range of other maritime activities in the UK, including ports, manufacturing, business services in the city, government regulatory activity, and much more.¹⁰¹

Bareboat charter registration and mortgages protection

No explicit provision on the fate of mortgages registered under a foreign flag is found in the Maritime Code, which may lead to some confusions. As discussed in point 2.2.2 the issue of security of mortgages under a bareboat charter registration is very critical for every stakeholder in the shipping industry. A clear provision on the matter must be added to the current provisions of the Maritime Code if Madagascar wishes to implement an adequate bareboat registration system.

Labour issues

Malagasy ships must be crewed totally by Malagasy seafarers. It is unlikely that wages of Malagasy seafarers are a deterrent to ship registration. Art. 3.5.01 of the Maritime Code provides that a seafarer's wages must be more than the minimum wages in the agricultural sector. The rarity of Malagasy seafarers' recruitment would, thus, be easier to explain by the lack of a clear policy of manning supply, in comparison with some countries like the Philippines.

Furthermore, the low rate of ratification of international conventions by Madagascar is a big handicap to the confidence of a prospecting shipowner. Although the STCW-95 standards seafarers are applied for the training of seafarers at the ENEM, Madagascar has not ratified the international instrument implementing it. It means that no certificate in compliance with the STCW-95 can be issued by the Malagasy administration. It is important to note in this regard that, the weight of port state controls, regarding enforcement of safety and security norms as well as working conditions on board, is a heavy burden for shipowners. Many maritime conventions now contain the "no more favourable treatment clause" to strengthen and enforce port State control. In the labour area, in particular, the Maritime Labour Convention 2006, for

¹⁰¹ Maritime UK; « The success of tonnage tax ». <<http://www.maritimeuk.org>> 18 Feb. 2016.

instance, which is in force since 2013, provides for State Parties to enforce control in compliance with the Convention even against non-contracting States-flagged vessels.

The imposition of a crew composition is also a deterrent to ship registration. Most of the countries that have taken measures to retain ships in their registers or to induce the repatriation of their nationally owned ships have done so *inter alia* with a view to ensuring the employment of their seafarers and have made quotas of such employment a condition for registration. Thus, shipping companies that seek to benefit from tonnage taxes by registering in the national ship registry are obliged to employ a percentage of local seafarers as crew. Most of those countries have in turn been obliged to back the requirement by the subsidisation of crew costs in one way or another. For example, air travel expense by British crews joining or leaving ships in foreign ports is borne by the government.¹⁰²

A more flexible system is recommended for Madagascar which cannot afford such subsidies. The creation of incentive measures instead of quotas and restrictions to render the employment of Malagasy seafarers attractive would be more likely to produce positive results.

Administration

Many of the open registries are operated off-shore as seen earlier. Accessibility and simplification are the keywords for success. The guarantee of an effective control by the Flag State is ensured by the proximity to the users of the public service. For instance, online services for registration are now available for the Panamanian registry. Furthermore, for the most conscientious open registries, a wide web of overseas offices and authorised agencies ensure the effective control of the flag State over its vessels. To that aim, overseas agencies and surveyors spread out worldwide are employed by the registry administration, including classification societies.¹⁰³

Some changes in that sense must be envisaged regarding the administration of the Malagasy registry.

¹⁰² South African Ministry of Transport; *op. cit.*

¹⁰³ Criticism, as seen in the previous points, about the question of beneficial ownership is based on the risk of inability of identification of the actual owner of a ship. The solution proposed by Panama is a compulsory nomination of a “resident agent” which is an attorney or a law firm appointed in writing by the owner of the vessel to process any matter before the General Directorate of the Merchant Marine (Article 168 of the Panamanian Law No. 57 of 6 August 2008).

Ratification of international conventions

The ratification of the relevant conventions in terms of safety at sea and social issues should be a priority for the Malagasy government. The maritime sector is one of the most regulated matters at the international level. The rate of ratification and effective implementation of international conventions by a country gives an idea of its reliability as a flag State.

4.2.2 Proposals for the Law on Ship Registration

The proposals concerning ship registration and associated matters based on the above discussion are as follows:

- The drafting of a more comprehensive and transparent law on ship registration, reflecting the general policy that it supports;
- The improvement of the open registry system initiated by the Maritime Code 2000;
- The simplification and transparency of procedures notably by fusing the notions of naturalisation and registration, and elaborated provisions related to bareboat registration;
- The amendment of maritime liens, privileges and mortgages provisions in order to promote better prospects on bareboat registration in the Malagasy registry;
- The introduction of tonnage tax to replace the general regime on income taxation, and other concessional tax arrangements made available by the Government as part of the shipping reforms;
- The creation of incentives measures for the employment of seafarers rather than quotas or restrictive conditions; and
- The implementation of a system of effective inspection and control by the Maritime Authority through its agency and other authorized entities to ensure the compliance of registered vessels with the Malagasy legislation and international maritime conventions regarding safety and security at sea and the working conditions of any seamen, are to be emphasized, notably, through the creation of a specific office that will coordinate and monitor the off-shore offices and other authorised agencies or entities.

5. THE PROCESS TO IMPLEMENT THE LAW ON SHIP REGISTRATION

5.1 The drafting and adoption process

The Maritime Code was adopted in a legal form of a law, thus, its amendment must be undertaken under the same legal form. A legislation for Ship Registration falls within the Article 95 (II) (5°) of the Constitution as it determines the general principles of the organization of or the functioning of one economic activity. The process to be followed for its adoption is described in Article 96 of the Constitution.

In practice, the drafting of the law proposal will be prepared by the *Autorité Portuaire Maritime et Fluviale* and be defended by the Ministry of Transport before the Government. Once the consent of the Government is obtained, the law proposal will be submitted to the two chambers of the Parliament – the National Assembly and the Senate. For its adoption and admission as an effective law of Madagascar, a vote of the Parliament is necessary (Article 68 of the Constitution). According to Article 138 al.4 of the Constitution, the publication of the law in the Official Journal of the Republic will render it enforceable and binding before the courts.

5.2 The legal instruments to be taken into consideration

In relation to ship registration, it has been seen that at least three international conventions should be taken into consideration by Madagascar: on one hand, from a general perspective the 1982 UNCLOS and the 1986 UNCCROS, and on the other hand, the 1993 United Nations International Convention on Maritime Liens and Mortgages especially concerning bareboat charter registration.

Madagascar is not a party to the 1986 UNCCROS, which is unlikely to come into force. Similarly, despite its participation in the United Nations / International Maritime Organization Conference of Plenipotentiaries on a Convention on Maritime Liens and Mortgages Madagascar has not ratified the Convention.¹⁰⁴

Nevertheless, the instrument of ratification of Madagascar of the 1982 UNCLOS was deposited on 22 August 2001.¹⁰⁵ Hence, Madagascar is a State-party to the UNCLOS and is bound by its international obligations and rights under the Convention. The approach in the drafting of a law

¹⁰⁴ UNCTAD; “Final Act and International Convention on Maritime Liens and Mortgages, 1993”.

<http://unctad.org/en/PublicationsLibrary/aconf162d7_en.pdf> 11 Feb. 2016.

¹⁰⁵ United Nations; “Chronological lists of ratifications of, accessions and successions to the Convention and the related Agreements as at 02 January 2015”.

<http://www.un.org/depts/los/reference_files/chronological_lists_of_ratifications.htm> 11 Feb. 2016.

on ship registration should consequently, at least, reflect consistency and compliance with the provisions of the Convention, notably its general requirements on the topic found in Article 91 to 94. Although Madagascar is not legally bound to the two other conventions cited above, there is no restriction to implement some of their provisions in the law on the Malagasy ship registration system.

The lessons taken from the successful experiences of other States in the matter of ship registration should also be taken into account. The Malagasy law proposal is mainly inspired by the Panamanian and Maltese legislations on ship registration.

5.2 Overview of the law proposal

The form adopted for the law proposal is a comprehensive separate enactment that would repeal some provisions of the Maritime Code. The choice of a separate enactment is justified by the necessity of clarity and efficiency. It is more advisable to include the provisions of the law proposal in the process of consolidation and total recasting of the Maritime Code in later times.¹⁰⁶

The law enumerates the general principles to be applied to the improved registry, hence, Book II, First Chapter to Chapter 5 of the Maritime Code is technically repealed. Regarding maritime security rights, no substantial change is to be made to the provisions of the current maritime Code, however, it is necessary to amend Book VIII, Title A, in order to include provisions related to the protection of security rights under bareboat charter registration. The regulatory and specific technical matters for its full implementation are left to the Maritime Authority. The law is divided into 5 parts.

The law structure:

- First part - Preliminary
- Second part - The registry
- Third part - Measures for the development of the shipping industry
- Fourth part - Administrative and management provisions
- Fifth part - Miscellaneous and final provisions

¹⁰⁶ In fact, a total recasting of the Maritime Code is currently under preparation at the *Autorité Portuaire Maritime et Fluviale* level. The integration of the law proposal provisions as it will seem adequate to the Maritime Authority would be thereon easier.

PART II

THE LAW ON THE MALAGASY SHIP REGISTRATION



NATIONAL ASSEMBLY

**Law No. _____
on the Malagasy Ship Registration,
amending and completing Law No. 99-028 of 03 February 2000
recasting the Maritime Code**

PREAMBLE

The goals of this law are to provide an internationally competitive registry to facilitate the long-term growth of the Malagasy shipping industry; to promote the enhancement and viability of the Malagasy maritime skills base and therefore increase the Malagasy maritime employment. The law enumerates the general principles to be applied to ship registration in Madagascar.

The Malagasy Ship Registration complies with the rights and obligations of Madagascar under international law, notably it is in line with Article 91 – 94 of the 1982 United Nation Convention on the Law of the Sea, to which Madagascar is a State party.

The law is divided into five parts with a First preliminary Part giving the definitions and meaning of the phrasing used in the law.

The Second Part deals with the generality on the registration and deletion of vessels regarding foreign and domestic trade on the Malagasy register, as well as the special registrations that are also available, with clarification on each specific procedure. Chapter 4 of the Second Part deals particularly with bareboat registration, one of the structures that will help Madagascar to increase rapidly its national tonnage. The introduction of the recognition of the foreign mortgages is also made under this Chapter. An emphasis is also made on the maritime safety over which an effective control would be exercised by the Maritime Authority and its agencies and the non-compliance to which will expose the contraveners to penalties. To maximize their deterrent effects these penalties are imposed on the vessel, the shipowners but also the auxiliary agencies and safety inspectors.

The Third Part provides for general principles to be implemented for the promotion of employment of Malagasy seafarers and the optimisation and maintenance of the fleet through the introduction of the tonnage tax system and applying special tariffs depending on various vessels' categories.

The Fourth Part provides for the administrative and management of the registry, and asserts the need for the creation of a Registrar-General Office under the supervision of the Maritime Authority, that will focus on the management and coordination of the operations for the effectiveness and efficiency of the registry.

The Fifth Part is on the miscellaneous and final provisions.

This is the purpose of the current law.



NATIONAL ASSEMBLY

Law No. _____
on the Malagasy Ship Registration,
amending and completing Law No. 99-028 of 03 February 2000
recasting the Maritime Code

The Senate and the National Assembly have adopted on their respective session of _____ and _____ the following law:

FIRST PART

PRELIMINARY

Article 1

Definition and interpretation

For the purpose of this law, the following terms shall have the following meaning:

Auxiliary agencies: any public or private agency duly authorized by the Madagascar Maritime Authority to ascertain compliance with the navigation and safety rules of the Merchant Marine, of any Recognized Organizations, Security Organizations, Radio Account Authorities and Inmarsat service providers, among others

Certificate of registration: a document providing evidence of the registration of the vessel in the Merchant Marine of the Republic of Madagascar

Competent Maritime Authority: the holder of the delegated powers of the Maritime Authority which may exercise its powers in a specific territorial division, as provided by the Maritime Code or its implementing regulations

Gross tonnage (GRT): measure of the overall size of a ship determined in accordance with the provisions, it is calculated according to Rule 3 of Annex I to the London International Convention of 23 June 1969 on Tonnage Measurement of Ships and / or under the provisions of the 1947 Oslo Convention.

IMO: the International Maritime Organization.

Madagascar: the Republic of Madagascar.

Maritime Authority: the Ministry in charge of the development and implementation of maritime policy and national maritime governance in relation to the use and exploitation of Malagasy maritime areas. It may delegate any of its powers to the branches of the state or autonomous entities in the exercise of this function. It has full responsibility for these delegated powers.

Maritime Navigation: navigation at sea, in ports and harbours, on the salt ponds and estuaries and rivers frequented by seagoing vessels, up to the limit of the first obstacle to shipping, set by the Maritime Authority.

Master: every person having command or charge of a ship;

Merchant Marine: every subject linked to the maritime transport of goods or passengers; all commercial and fishing vessels; all vessels and crews used to trade and /or transport by sea. The different branches of Merchant Marine are: 1. the transport of goods by sea; 2. passenger transport by sea; 3. sea fishery in every aspects related to navigation and fishing vessel crews

Net tonnage: measure of the useful capacity of a ship; it is calculated under Rule 4 of Annex I to the aforementioned London Convention and / or the provisions of the 1947 Oslo Convention.

Office of the Registrar-General: the special office of the Maritime Authority in charge of the coordination and supervision of registration related matters

Officer: any person holding an appropriate certificate other than the captain on the crew list. The quality of officer, refers to the second, lieutenant, the chief engineer, engineer officers, commissioners, doctors, cadets and anyone scope as an officer on the crew list.

Operator: any individual or legal entity who, pursuant to a contract, takes on the technical, operational and commercial responsibility of a vessel.

Owner: any person in whose name the vessel is registered or in the absence of registration the person with a right in rem over a vessel, and who may, therefore, sell, use and enjoy it, as well as retain its peaceful and uninterrupted possession.

Passenger ship: any ship which carries more than twelve passengers;

Pleasure craft: Merchant Marine vessels which due to their design are used by their owners for non – commercial activities.

Recognized Organization: any organization duly authorized by the Madagascar Maritime Authority to inspect, audit, and issue certificates in the name of the Republic of Madagascar and, in general, undertaking any Laws delegated to it by the Madagascar Maritime Authority.

Register: the record to be kept by the registrar.

Registered: registered under this Law.

Registrar: a person appointed as registrar, and includes any person acting under his authority with the permission of the Registrar-General.

Registrar-General: the person nominated as the head of the Office of the Registrar-General.

Registration port: port where the competent Maritime Authority is located, which in view of an application for registration of a vessel shall make the registration on the register open for this purpose.

Residence: a) in the case of a company or other legal person or association of natural or legal persons: i) its registered office, place of incorporation (Place of incorporation) or its registered headquarters (central registered office), as applicable; ii) central administration, or iii) principal place of business, and b) in the case of a natural person, its habitual residence.

Resident agent: an attorney or law firm appointed in writing by the owner of the vessel to process any matter before the Office of the Registrar-General.

Shipping activities: designate the international carriage of goods or passengers by sea or the provision of other services to or by a ship as may be ancillary thereto or associated therewith including the ownership, chartering or any other operation of a ship engaged in all or any of the above activities or as otherwise may be prescribed"

Tax clearance: situation whereby a vessel is in good standing with regard to the payment of its taxes, rates, fees, contributions and any other sums payable to the Republic of Madagascar.¹⁷ Public Registry. The Office of the Public Registry of the Republic of Madagascar.

Vessel: any structure or floating craft of movable nature regardless of its tonnage or form, with or without mechanical propulsion, and engaged primarily in maritime navigation, as well as any other structure recognized as a vessel by the Maritime Authority.

Vessels engaged in domestic trade: Merchant Marine vessels navigating exclusively in waters which are subject to the jurisdiction of the Republic of Madagascar.

Vessels engaged in foreign trade: Merchant Marine vessels regularly navigating in waters which are not subject to the jurisdiction of the Republic of Madagascar.

SECOND PART

THE REGISTRY

FIRST CHAPTER Registration of vessels

Section 1 General provisions

Article 2 Registration

The registration of a vessel is the legal act whereby the Republic of Madagascar shall admit a vessel to the Malagasy Merchant Marine, enabling it to hoist the national flag, on the application of the owner, and upon his compliance with the provisions of this law.

Any vessel registered in the Merchant Marine shall comply with Malagasy law regardless of its location.

Antsiranana, Ehoala, Mahajanga, Toamasina, Toliara, and any other ports nominated by the Maritime Authority, shall be recognized as ports of registration for any vessel registered in the Malagasy Ship Register.

Article 3 Merchant Marine Composition

The Malagasy Merchant Marine shall be comprised of vessels engaged in foreign trade and vessels engaged in domestic trade. The Registrar-General shall classify registered vessels in accordance with any parameters deemed appropriate, and shall establish the requirements for each specific category.

Article 4 Ownership conditions

A vessel shall not be eligible to be registered under this law unless owned wholly by persons of the following description:

1. citizens of Madagascar;
2. residents of Madagascar;
3. bodies corporate established under and subject to the laws of Madagascar, having their principal place of business in Madagascar or having a place of business in Madagascar and satisfying the Maritime Authority that they can and will ensure due observance of the laws of Madagascar;

4. such other persons that the Maritime Authority may by regulations prescribe.

Article 5

Registration conditions

In order to register a vessel in the Malagasy Merchant Marine its owner must submit a formal application, pay any applicable fees, rates and taxes, and provide any document required by the Office of the Registrar-General. The Malagasy Maritime Authority may use any electronic medium available in the market for such purpose.

Article 6

Grounds for refusal of registration

Notwithstanding the owner's compliance with the requirements mentioned in the preceding article, the Office of the Registrar-General may refuse to register any vessel in the Malagasy Merchant Marine if it considers that the said registration would be detrimental to the interests of Madagascar, or to domestic or foreign shipping, after taking the following considerations into account:

1. Any rules contained in international Conventions, particularly those in relation to maritime safety and security, the prevention of pollution, offenses committed on board vessels, drug trafficking, the trafficking of persons, money laundering, and fishing regulations.
2. The working conditions of any seamen.
3. The vessel's condition, age, previous record and its activities.
4. Any inconvenience caused as a result of political or economic conflict with any other State or groups of States.
5. Any indication that the vessel is being used for illegal activities.
6. On any other grounds provided by the Maritime Authority due to technical or market strategy conditions.

Article 7

Change of trade type

Any vessel registered in the Merchant Marine engaged in foreign trade may request a change to domestic trade or vice versa. The Office of the Registrar-General may authorize vessels to engage in both types of trade. In any of these cases, vessels shall be subject to any of the additional requirements provided for the type of trade in which they wish to engage. These changes do not require the vessel's deletion from its original registry, therefore, no deletion fees shall be payable.

Article 8

Confirmation of payment of the annual corporate tax

Confirmation of payment of the annual corporate tax shall not be required in order to register at the Public Registry, any title deed, discharge of mortgage, mortgage, or any other document relating to any vessel registered in the National Merchant Marine in which a Malagasy corporation may be involved. However, said confirmation of payment shall be delivered to the Office of the Registrar-General prior to securing a deletion of the vessel from the Malagasy Public Register.

Article 9

Regulatory matters of the Office of the Registrar-General

The Office of the Registrar-General shall regulate the general and special procedures and requirements to be complied with by ships and Merchant Marine users in accordance with, among others, the ship's type and size, its technical condition, the type of trade engaged in, the size of the fleet, its country of

origin, the area of operation, and any market conditions. For this reason and pursuant to a considered resolution, it may waive payment of any charges, fees, and rates, to promote the expansion of the Malagasy merchant fleet.

Section 2

Name of the Vessel

Article 10

Vessel's unique name

A vessel to be registered in the Merchant Marine cannot not be registered with the name of any other vessel registered with Madagascar's Merchant Marine. The name shall be printed on the hull and the vessel shall also be required to hoist the national flag subject to any conditions prescribed by the Office of the Registrar-General.

Article 11

Name change

The prior approval of the Office of the Registrar-General shall be secured for the change of name of any vessel registered in the Merchant Marine, and the owner shall be obliged to update the vessel's documents in order to record the vessel's new name on the navigation license, radio license, technical certificates and any other document.

Article 12

Certificate of registration

Once the vessel's change of name has been authorized, the Office of the Registrar-General shall issue a new certificate of registration with evidence of the vessel's new name and the change shall be notified to the Public Registry.

Article 13

Name reservation

On the application of any interested party, the Office of the Registrar-General may reserve any name which may be subsequently used to register a vessel in the Merchant Marine. The Maritime Authority, through the Office of the Registrar-General shall regulate the procedure, the requirements and the cost of this reservation.

Section 3

Vessels engaged in Foreign Trade

Article 14

Application

In the case of vessels engaged in foreign trade, the application for registration shall be submitted to the Office of the Registrar-General through the owner of the vessel, or through his representative, or an attorney qualified to practice law in Madagascar.

An application for registration submitted directly to the Office of the Registrar-General may include a request for the navigation license and radio license.

Article 15
Regulation of documents

The Office of the Registrar-General shall indicate the information or documents required to register a ship, or to renew or amend its registration.

The Office of the Registrar-General may exempt any of the parties, at their request, from having to submit any of the documents required for enrolment, granting them a term of thirty days within which they shall have to be submitted.

Article 16
Documentation

The following documents shall be submitted with any application for registration of a vessel engaged in foreign trade in the Merchant Marine:

1. Original copy of the instrument issued by the owner, appointing the resident agent, to be authenticated if issued abroad.
2. Prima facie evidence of the vessel's ownership or of the intention to acquire said ownership.
3. Proof of payment of any corresponding taxes, rates and fees.
4. Any additional document required by the Office of the Registrar-General.

The Office of the Registrar-General may exempt any of the parties, at their request, from having to submit any of the abovementioned documents required at the time the application for registration is submitted, granting them a term of thirty days within which they shall have to be submitted.

Once the application for registration is accepted and all corresponding fees, rates and taxes are paid, the Office of the Registrar-General shall issue a certificate of registration containing any of the vessel's particulars deemed appropriate by the Office of the Registrar-General, as evidence of the vessel's enrolment in Madagascar's Merchant Marine. Likewise, the Office of the Registrar-General shall issue the corresponding navigation license and radio license if the vessel is seaworthy.

The Maritime Authority shall regulate the procedures, formalities and the issue of the certificate of registration.

Any documentation issued by the Office of the Registrar-General, or on its behalf, to be carried on board ships engaged in foreign trade, shall be printed in Malagasy, French and English.

Section 4
Vessels engaged in Domestic Trade

Article 17
Application

In the case of vessels engaged in domestic trade, the application for registration shall be submitted directly to the Office of the Registrar-General, to any other agency of the Maritime Authority authorized therefor by the owner of the vessel or by his representative, without requiring the assistance of an attorney. The Office of the Registrar-General shall establish a special registration system for vessels trading in domestic waters to include floating equipment used for recreational activities, together with the rates to be charged for this service.

Article 18

Regulation on documents

The Office of the Registrar-General shall establish any information or documents required for the registration of a vessel engaged in domestic trade, or for the renewal or amendment of its registration, together with any requirements for the operation of any vessel navigating in waters within the jurisdiction of Madagascar.

Article 19

Special rates

The Office of the Registrar-General may establish a special system of rates for vessels engaged in domestic trade calculated on the basis of their shipping routes, type of operation, rate of renewal of the fleet, and the social nature of the operation.

Article 20

Documentation

The following documents shall be submitted with the application for registration in the Merchant Marine of a vessel engaged in foreign trade:

1. Tonnage Certificate and Valuation Certificate.
2. Prima facie evidence of the vessel's ownership or of the intention to acquire said ownership.
3. Original or authenticated copy of the Builders' Certificate or evidence of deletion from the previous ship register, to be duly authenticated if issued abroad. The Office of the Registrar-General may exempt any of the parties, at their request, from having to present either of these documents on the date that the application for registration is submitted, granting them a period of thirty days within which they shall have to be submitted.
4. Proof of payment of any import duties or proof that the appropriate bond has been deposited with the department in charge of customs, or any document confirming that the vessel is exempt from paying import duties, as applicable.
5. Vessels engaged in activities of a non-commercial nature shall submit an original copy of the Sworn Statement of Private Use stating that the vessel will not be used for commercial purposes, to be duly authenticated if issued abroad.
6. Any other document requested by the Office of the Registrar-General.

Article 21

Certificates

Once the application for registration is accepted and all corresponding fees, rates and taxes are paid, the Office of the Registrar-General shall issue a certificate containing any of the particulars of the vessel deemed appropriate by the Office of the Registrar-General of the Merchant Marine as evidence of the vessel's enrolment in Madagascar's Merchant Marine. Likewise, the Office of the Registrar-General shall issue the corresponding Certificate of Registration and Radio License if the vessel is seaworthy.

Article 22

Safety certificates

Any vessel engaged in domestic trade shall possess the applicable maritime safety certificates issued by the Office of the Registrar-General or by a Recognized Organization, as authorized for such purpose by the Madagascar Maritime Authority.

Section 5
Navigation License and Radio License for Vessels
Engaged in Foreign and Domestic Trade

Article 23

Provisional navigation license and provisional radio license

Once the requirements established for such purpose have been complied with, the Office of the Registrar-General shall issue a provisional navigation license and a provisional radio license valid for up to six months, during which time all further requirements for securing the statutory navigation license and statutory radio license shall be complied with.

The Office of the Registrar-General may limit the period of validity of provisional navigation licenses and of provisional radio licenses to periods less than six months, according to the specific circumstances of certain types of vessels or those of any particular vessel.

Article 24

Extension of provisional licenses

If the vessel has not been issued a statutory navigation license or statutory radio license upon the expiration of the six month term, the Office of the Registrar-General shall grant an additional six months for the documents required to obtain the statutory navigation license or the statutory radio license, to be submitted. If the statutory navigation license and the radio license have not been issued upon the expiration of this additional term, the Office of the Registrar-General may grant additional extensions provided it can be proved that the reason for the failure to submit the required documents cannot be attributed to the owner of the vessel.

The Office of the Registrar-General may limit the period of validity of any extension provided for obtaining a provisional navigation license and a provisional radio license according to the specific circumstances of certain types of vessels or those of any particular vessel.

The Office of the Registrar-General shall periodically review vessels operating under prolonged extensions with the purpose of determining whether their non-compliance merits the imposition of any of the penalties provided by this law.

Article 25

Surcharges for additional extensions

The Maritime Authority shall establish any surcharges payable for additional extensions granted after the second extension.

Article 26

Statutory navigation and radio licenses

Statutory navigation licenses and statutory radio licenses for vessels engaged in foreign and domestic trade shall be valid for up to five years.

The Office of the Registrar-General may limit the validity of statutory navigation licenses and statutory radio licenses to periods of less than five years, according to the specific circumstances of certain types of vessels or those of any particular vessel, and according to Madagascar's best interests.

Article 27

Documentation

The following documents must be submitted in order to obtain a permanent certificate of registration:

1. Evidence that the vessel's title deed has been registered at the Public Registry of Madagascar.

2. Original or authenticated copy of the certificate of deletion from the previous register or builders' certificate in the case of newly built vessels, or any document attesting to the court-ordered sale, to be duly authenticated if issued abroad.
3. Technical and safety certificates and documents requested by the Office of the Registrar-General in accordance with the vessel's type of operation, its cargo, and any other pertinent considerations.
4. Evidence that the vessel has satisfactorily complied with the Office of the Registrar-General's inspection requirements.
5. Receipt of payment for any payable fees.
6. Any other requirement prescribed by the Office of the Registrar-General.

Article 28

Condition on issue of radio license

To obtain a statutory radio license, a vessel must be tax-cleared and must be in possession of valid technical certificates, and must provide the following:

1. A duly completed radio license application form.
2. Receipt of payment for any payable fees.
3. Any other document or information required by the Office of the Registrar-General.

Article 29

Condition on issue of renewal of navigation and radio license

To obtain a renewal of its navigation license and radio license, a vessel must be tax-cleared and must be in possession of valid technical certificates.

Article 30

Changes on the navigation and radio licenses

If any of the vessel's particulars as they appear on the navigation license or the radio license are no longer accurate due to any changes undergone by the vessel, the owner shall submit an application for a new navigation license or radio license including the vessel's accurate particulars.

Article 31

Application

In the case of vessels engaged in domestic trade, this application may be submitted directly by the owner or by his representative to the Office of the Registrar-General, or at any other agency of the Maritime Authority authorized therefor, or through any electronic medium established by the Maritime Authority, without requiring the assistance of an attorney.

In the case of vessels engaged in foreign trade, the application shall be submitted through the owner of the vessel, or through his representative, or an attorney qualified to practice law in Madagascar or through any electronic medium allowed by the Maritime Authority.

Article 32

Request for complementary documents

In the cases provided under Article 30, the Office of the Registrar-General reserves the right to request any type of certification or document to support any changes in the vessel's particulars.

Article 33
Documentation

Once the new provisional navigation license and new provisional radio license are obtained, the owner shall submit any documentation required by the Office of the Registrar-General to obtain the statutory navigation license and statutory radio license. The provisions of this Section shall apply to the issue of these navigation licenses, radio licenses and their extensions.

Section 6
Updating Navigation Documents upon Transfer of Title

Article 34
Application

In order to transfer the title of a vessel registered in the Merchant Marine intending to remain so registered, the owner of the vessel, the buyer or any of their representatives, shall apply for a new provisional navigation license and provisional radio license after the fees for the vessel's new navigation documents have been paid.

The vessel shall be tax-cleared in connection with any of its obligations in Madagascar and shall be in possession of all applicable current technical and safety certificates prior to being issued with any new navigation documents.

Article 35
Regulation by the Office of the Registrar-General

Any information to be provided or requirements to be met for this procedure shall be established by the Office of the Registrar-General, who may use any electronic medium for this purpose.

Article 36
Documentation

The following documents shall be submitted with this application:

1. Original copy of the document issued by the owner appointing the resident agent, to be duly authenticated if issued abroad.
2. Prima facie evidence of the vessel's ownership or of the intention to acquire said ownership.
3. Public Registry certificate stating that the vessel is free of encumbrances or mortgagee consent form.
4. Any other document required by the Office of the Registrar-General.

The Office of the Registrar-General may exempt any of the parties, at their request, from having to submit any of the documents mentioned in paragraphs 1 and 2 at the time that the application for registration is submitted, granting them a term of thirty days within which they shall have to be submitted.

Article 37
Applicant representatives

In any case this application may be submitted directly by the owner, or by his representative, or through an attorney qualified to practice law in Madagascar to the Office of the Registrar-General, or at any other agency of the Maritime Authority authorized therefor, or through any electronic medium established by the Maritime Authority.

Article 38

Application for statutory navigation and radio license

Once the new provisional navigation license and new provisional radio license are obtained, the owner shall submit any documentation required by the Office of the Registrar-General to obtain the statutory navigation license and statutory radio license. The provisions of Section 5 shall apply to the issue of these navigation licenses and radio licenses, and to their extensions, renewals and amendments.

Article 39

Updated certificate of registration

On the application of the new owner, the Office of the Registrar-General shall issue an updated certificate of registration for the vessel under Malagasy Merchant Marine.

Section 7

Assignment of Particulars of Registration

Article 40

Vessel under construction provisional navigation license number

On the application of any of the parties, the Office of the Registrar-General may issue any vessel under construction and prior to its registration with a provisional navigation license number, a Mobile Maritime Radio Station number, a call sign, and any other particulars required to identify a vessel and to process its documentation.

The assignment of the particulars referred to above shall have the same effect as registering the vessel in the Merchant Marine, from the date on which the certificate of registration is issued.

Article 41

Regulation by the Office of the Registrar-General

Any information to be provided or requirements to be met for this procedure shall be established by the Office of the Registrar-General. The vessel's registration fee shall be paid prior to beginning this procedure.

Article 42

Use of the particulars

Once the preliminary particulars of registration are assigned, the owner shall have the right to use these particulars on any documentation prepared for the vessel during its construction, financing, or for any other technical and commercial operation which the owner of the vessel may be interested in.

Article 43

Owner's obligations

The owner of the vessel to whom the preliminary particulars have been assigned shall comply with the following obligations:

1. He shall complete the registration of the vessel in the Merchant Marine prior to the start of any voyage.
2. When the application for the assignment of the preliminary particulars is submitted, he shall notify any change in the vessel's information to the Office of the Registrar-General.

Article 44

Consequence of owner's failure

If the owner does not comply with the obligations prescribed in this Section, the Office of the Registrar-General shall have the right to withhold any amounts received by way of registration fees.

CHAPTER 2

Regulations for Deletion from the Ship Register

Section 1

General Provisions

Article 45

Deletion at request and *ex-officio*

The Office of the Registrar-General shall, at the request of any of the parties or on its own motion, delete any vessels registered in the Merchant Marine, in accordance with the law. Upon the vessel's deletion from the Malagasy Public Register, the Office of the Registrar-General shall issue a certificate of deletion to be registered at the Public Registry, and it will send the appropriate notices to the International Maritime Organization and to any other entity as prescribed by the law.

Section 2

Deletion from the Register at the request of the Owner

Article 46

Conditions on deletion

At the request of the owner, the Office of the Registrar-General shall delete any vessel from the Merchant Marine provided that:

1. The vessel is tax-cleared.
2. The vessel is free of encumbrances.
3. Deletion fees have been paid.
4. There is evidence of the applicant's name on the title deed. A duly authenticated original copy of the document shall be submitted if the document has been issued abroad.
5. There is evidence of deletion from the previous ship register or Builders' Certificate, as the case may be. If these documents have been issued abroad, then copies duly authenticated abroad shall be submitted.

The requirements listed in paragraphs 4 and 5 shall not apply if this information is already recorded at the Office of the Registrar-General.

Article 47

Application

The application for deletion shall include:

1. The name of the vessel's buyer in the event of a transfer of title.

2. The vessel's new register following its deletion from the Merchant Marine.
3. The reason for the deletion.
4. Any other information required by the Office of the Registrar-General.

Article 48

Annual taxes or rates special conditions

Any vessels which have been granted a consent to deletion in the month of December shall not pay any annual taxes or rates corresponding to the following financial year, provided that the application for deletion is submitted with the Office of the Registrar-General during the period of validity of the consent to deletion.

Section 3

***Ex-officio* Deletion**

Article 49

Conditions on deletion

The following are grounds for the ex-officio deletion of a vessel from the register:

1. Any type of action which is contrary to national interests.
2. Any serious violation of Malagasy current laws, of any maritime safety, pollution prevention, or maritime security regulations, or of any international convention ratified by the Republic of Madagascar.
3. The expiration of the provisional navigation license or of the statutory navigation license without having secured a renewal within the five year period, beginning on the date of its expiration, unless reasons are provided in support of the failure to submit the application to renew within the appropriate time.
4. If the vessel is used for smuggling, for illegal or clandestine trade or piracy, or to commit any other offense.
5. If any forged or altered documents are submitted.
6. Abandonment of the vessel.
7. The vessel's registration at another registry, save for its registration in a special bareboat charter register, in accordance with the formalities prescribed by this law.
8. Due to the total loss of the vessel.
9. Due to a high rate of detentions for serious or repeated defects which are detrimental to maritime safety.
10. Any other cases in accordance with the law or international law.

Article 50

***Ex-officio* deletion pursuant to a considered resolution**

The Office of the Registrar-General may grant an *ex-officio* deletion pursuant to a considered resolution. This resolution shall state that it has been issued for the internal administrative purposes of the Maritime Authority and shall not be used for any other purpose. If any evidence of the deletion from the Merchant Marine is required, a certificate of deletion shall be issued, provided that the vessel is tax cleared. This certificate shall not give rise to any rights whatsoever.

Article 51

Notification of representatives

The vessel's mortgagee, his legal representative or attorney-in-fact shall be notified that the Office of the Registrar-General has begun the process of deleting the mortgaged vessel from the register, so that he may assert his rights within thirty business days, beginning on the date of notification. Written notification shall be sent by mail, fax, email message, or any other electronic medium to the physical address, post office box or email address, recorded in the mortgage agreement registered at the Public Registry and, in the absence thereof, to any address which the Office of the Registrar-General is able to ascertain by its own means.

If the Office of the Registrar-General receives notification from the mortgagee challenging the ex-officio deletion, the process of deletion shall be suspended for the length of time required to evaluate the mortgagee's considerations and to take any steps deemed appropriate by the Office of the Registrar-General.

The Office of the Registrar-General shall send a copy of the mortgagee's written notification to the Public Registry to be registered for the purposes of third party publication. This shall not have the same effect as providing notification to the mortgagee.

Notwithstanding the provisions of the preceding paragraph, if any particular conditions exist which prevent Madagascar from continuing to allow the navigation of a vessel registered in its registry, the Office of the Registrar-General may, prior to deleting the vessel from the register, suspend the vessel's navigation license, notifying the mortgagee of this fact so that he may exercise any of his rights over the vessel pursuant to the mortgage agreement.

Article 52

Arrears of payments prescription

Any arrears of payments of vessels registered in the Merchant Marine shall accrue for a period of five years, only if there is evidence that they have abandoned the Malagasy flag.

For the purposes of this Article and in order for this provision to apply, any failure to renew the vessel's navigation documents or any failure by the vessel's owner, his legal representative or ship agent, to make an application or to begin any procedure at any of the Office of the Registrar-General agencies, or at any technical office entity authorized for this purpose by the Maritime Authority, shall be construed as evidence of the above.

The Office of the Registrar-General shall not collect the annual fee for any inspection, accident investigation, and international conference attendance if there is evidence that the vessel was not in operation.

Section 4

Automatic deletion due to a court-ordered sale

Article 53

Automatic deletion

A court-ordered sale of a vessel automatically extinguishes its registration in the Merchant Marine from the date of the court-ordered sale.

Article 54
Debts extinction

Any debts owed by the vessel shall be extinguished after the vessel's court ordered sale, including any taxes, rates, fees, fines or any other charges pending at the time of court-ordered sale.

Article 55
Proof of court-ordered sale

It shall be up to any interested party to provide sufficient evidence to the Office of the Registrar-General that the vessel has been the subject of a court ordered sale in any country as proof of the automatic deletion referred to in the preceding

Upon proof of the automatic deletion, the Office of the Registrar-General shall issue an order recognizing the termination of the registration as of the date of the court -ordered sale, and it shall send a copy of this order to the Public Registry to be processed as appropriate.

Article 56
Registration of a vessel pursuant to a court-ordered sale

If the buyer acquiring a vessel pursuant to a court-ordered sale wishes to register it in the Merchant Marine, it shall comply with the requirements and formalities prescribed for any new enrolment, with the exception that the vessel shall not be required to submit a certificate of deletion from its previous register.

Section 5
Consent to Deletion of a Vessel from the Register

Article 57
Certificate of consent to deletion

The Office of the Registrar-General shall, at the request of any of the parties and as the first step in securing the vessel's deletion, issue the vessel with a certificate of consent to deletion from the Malagasy Public Register.

Article 58
Place of issue of the certificate

The certificate of consent to deletion may be issued by the Office of the Registrar-General or by any Consulate, or by any other overseas agency authorized therefor by the Maritime Authority, after obtaining the authorization of the Office of the Registrar-General.

Article 59
Conditions on consent to deletion

To be issued with a certificate of consent to deletion, a vessel shall have to comply with the following requirements:

1. The vessel shall be tax -cleared.
2. The vessel shall be free of encumbrances. Otherwise, the issue of said certificate shall be conditional upon the production of the mortgagee's consent or upon the discharge of any encumbrance registered against the vessel at Public Registry.
3. The payment of the fee for the final deletion of the vessel from the Malagasy Register.

Article 60
Regulation on rates

The Maritime Authority shall set the rates for the issue of the certificate of consent to deletion.

Article 61
Certificate validity and consequences

The certificate of consent to deletion from the Malagasy Register shall be valid for thirty calendar days from date of issue.

Payment of any charge arising within the thirty-day term shall be immediately suspended from the date of issue of the certificate of consent to deletion. If the application for final deletion is not submitted within the term provided herein, any tax, surcharge or charge applicable during this period shall be calculated and collected retroactively.

Any interested party submitting an application during the thirty calendar days in which the certificates of consent to deletion are valid may register these certificates temporarily at the Public Registry, in accordance with the procedure established in the Commercial Code for titles deeds and mortgages, subject to the provisions of this paragraph. Said registration shall have the effect of immediately suspending the registration of any new titles deeds and mortgages from the date of entry in the Journal of the Public Registry until the expiration of the period of validity of the certificates. A fee prescribed for such purpose shall be payable for the temporary registration of the certificate of consent to deletion.

Upon the expiration of the period of validity of the certificate of consent to deletion, its temporary registration shall expire without further formality, and the Public Registry, on its own motion, shall make the appropriate annotation.

Section 6
**Cancellation of Navigation Documents for failure to Complete the
Registration of the Vessel in the Merchant Marine**

Article 62
Cancellation due to failure to obtain the vessel's title

The Office of the Registrar-General may, at the request of any of the parties, cancel any provisional navigation documents issued in connection with the registration or change of ownership of the vessel if there is evidence that the applicant has not obtained the vessel's title or if the transaction leading to application for the navigation documents has not taken place.

Article 63
Cancellation due to failure to change of ownership

The Office of the Registrar-General may, at the request of the seller, cancel the provisional navigation documents issued due to a change of ownership and it may restore the validity of the previous navigation documents upon receiving evidence that the vessel's title has not been transferred.

Article 64
Conditions on cancellation

The vessel must be tax-cleared to secure the cancellation of provisional documents, and the cancellation shall not give rise to any right of reimbursement or credit for sums paid in connection with any registration, change of ownership, extension or otherwise.

CHAPTER 3

Certificates

Article 65

Condition on issue of certificates

The Office of the Registrar-General may, after payment of the corresponding fees, issue an authenticated copy of, or a certificate in connection with, any information which is recorded in its registers, unless the Maritime Authority deems that such information is of a private nature and that its disclosure would not be in the national interest.

Article 66

Place of issue

These certificates shall be issued by the Office of the Registrar-General, a Consulate, or by any other agency authorized therefor by the Maritime Authority, with the prior authorization of the Office of the Registrar-General.

Article 67

Regulation of applicable rates

The Board of Directors of the Maritime Authority shall establish the rates for the issue of the certificates referred to in the preceding Articles.

Article 68

Certificates languages

The Office of the Registrar-General of the Merchant Marine shall authorize the issue of certificates in any language other than the official languages of the Republic of Madagascar.

Article 69

Content of the certificates

The Office of the Registrar-General shall issue certificates solely on the basis of information recorded in its registers,

1. at the request of any of the parties, if the vessel is tax -cleared, except in the event that a certificate is required to begin legal proceedings, or;
2. at the request of the mortgagee, in which case the certificate shall include a statement to the effect that it may only be used for a specific purpose.

CHAPTER 4

Special Registrations

Section 1

Registration of Foreign Ships under Bareboat Charter in Madagascar

Article 70

Condition on registration of bareboat charterparty

Any vessel operating pursuant to a bareboat charterparty registered at a foreign register may be registered in the Merchant Marine without leaving the foreign register, provided this is permitted under the legislation of the country of registration. In this case, the interested party shall submit a formal application to the Office of the Registrar-General through an attorney qualified to practice law in Madagascar, or to any Consulate, or any other overseas organization authorized therefor by the Maritime Authority, or through any electronic medium authorized by this Authority.

The following shall be attached with the application:

1. Copy of the bareboat charterparty.
2. Duly authenticated owners' and mortgagees' consent, if any.
3. Certificate of ownership and encumbrances issued by the vessel's foreign register.
4. Certificate consenting to the registration of the vessel in the special bareboat charter register.
5. Original copy of the document issued by the charterer appointing the resident agent, to be duly authenticated if it has been issued abroad.
6. Any additional information requested by the Office of the Registrar-General.

Article 71

Integration in the Merchant Marine conditions

Once a vessel registered under a foreign register is registered in Madagascar's special bareboat charter register:

1. It shall be considered part of the Merchant Marine for the purposes of this law, and, therefore, shall be subject to the payment of any taxes, rates and fees prescribed by law.
2. It shall not hoist the flag of any other country.

Article 72

Certificate of registration and special licenses

Vessels registered in the special bareboat charter register shall be issued with a certificate of registration by the Office of the Registrar-General as evidence of their registration in the Merchant Marine, which shall contain the vessel's particulars as specified by the Office of the Registrar-General.

In addition, this Office shall issue a special navigation license and a special radio license due to the bareboat charter.

Article 73

Applicable technical, labour and safety regulations

Vessels enrolled in the special bareboat charter register shall be subject to the same technical, labour and safety regulations imposed by Malagasy legislation upon its Merchant Marine.

Article 74
Complementary information

The following information shall be provided in addition to the information generally required for the issue of a navigation license:

1. The name and address of the charterer.
2. The name and address of the vessel's mortgagees under its principal register and the priority and the mortgage amount, if any.
3. The required length of time for the vessel's registration.

Article 75
Information changes

If the information contained in the special navigation license and/or special radio license changes in any way, the charterer shall apply for a new special navigation license and/or special radio license providing any updated information.

Article 76
Special navigation license and special radio license validity

The special navigation license and special radio license under the special bareboat charter register shall be valid for the term of the charter-party giving rise to the registration of the vessel. All applicable fees, taxes and rates relating to the term of duration of the certificate of registration and to the navigation and radio license shall be payable in advance.

Article 77
Extension of registration validity

In the event that the vessel is registered in the special bareboat charter register for a term of duration which is shorter than the term of the charterparty or of any extension of the charterparty, the special navigation license and the special radio license may be extended for a term equivalent to the additional contractual term.

The application for an extension shall be presented together with any supporting documents and shall be submitted prior the expiration date of the special navigation license.

Article 78
Title or encumbrances

1. Title or encumbrances registered against any vessel enrolled in the special bareboat charter register shall not be registered at the Public Registry.
2. Foreign mortgages shall be recognised as a mortgage with the status and all the rights and powers specified in the Maritime Code, notwithstanding the fact that it is not entered over a registered ship if:
 - a. such mortgage has been validly recorded in the registry of ships of the country under whose laws the ship is documented;
 - b. such registry is a Public Registry;
 - c. such mortgage appears upon a search of the registry and
 - d. such mortgage is granted a preferential and generally equivalent status as a mortgage under the laws of the country where the mortgage is registered.

Article 79

Conditions of termination of registration

A vessel's special bareboat charter registration in the Merchant Marine shall terminate:

1. Upon the expiration of the vessel's navigation license.
2. Upon the early expiration of the charter -party giving rise to the registration of the vessel in the special bareboat charter register.
3. Upon the charterer's assignment of his rights and obligations under the charter party.
4. At the request of the vessel's registered owner.

In the event of the early termination referred to in paragraph 2, the application to terminate shall be submitted together with payment of any deletion fees prescribed by the Maritime Authority.

The Office of the Registrar-General may provide the special technical provisions for this type of special registration as well as for any other special type of register which may be created.

Section 2

Registration of Malagasy Vessels under Foreign Bareboat Charter

Article 80

Consent to temporary de-registration

Vessels registered in Madagascar engaged in foreign trade operating pursuant to a bareboat charterparty may be temporarily registered in a foreign special bareboat charter register with the prior consent of the Office of the Registrar-General, and without having to terminate its Malagasy registration.

Article 81

Conditions on temporary de-registration

The application for consent shall include the name of the charterer and the country under which the bareboat charter is registered. The certificate of consent shall be issued upon payment of the fees.

Article 82

Legal and fiscal obligations

Malagasy vessels temporarily registered under a foreign special bareboat charter register shall continue to be subject to any legal and fiscal obligations in the Republic of Madagascar and they shall not register their titles deeds or encumbrances in that foreign register.

The Office of the Registrar-General may accept any technical and safety certificates issued by the foreign special bareboat charter register and shall establish any special technical provisions for this type of registration.

Article 83

Evidence of the vessel's registration under the foreign special bareboat

The owner shall be obliged to provide any evidence of the vessel's registration under the foreign special bareboat charter register to the Office of the Registrar-General.

It shall also give notice of the deletion of the vessel's registration from the foreign special bareboat charter register.

Article 84

Conditions on withdrawal of consent

The Office of the Registrar-General consent to the registration of a vessel under a foreign special bareboat charter register shall be withdrawn if:

1. The vessel terminates its registration under the foreign special bareboat charter register, being the reason for such authorization.
2. The charter -party is terminated for any reason.

Article 85

Consent revocation

The Office of the Registrar-General may revoke its consent to the registration of a vessel under a foreign special bareboat charter:

1. At the request of the vessel's registered owner.
2. If said authorization is prejudicial to Madagascar's national interests.

Article 86

Flag to be hoisted

Once the Office of the Registrar-General grants its authorization for the registration of a vessel in a foreign special bareboat charter register, the vessel may only hoist the flag of the country of the special register wherein it is registered.

Article 87

Regulation of special time charter registers or any other type of special register

The Maritime Authority may create and regulate special time charter registers or any other type of special register, taking into account the needs of the international shipping community and any national interests. The Board of Directors of the Madagascar Maritime Authority shall approve the creation, regulation and the rates charged for any of these forms of special register.

Section 3

Special Registration for Temporary Navigation

Article 88

Use of temporary navigation

Vessels engaged in foreign trade and which are destined for demolition, delivery voyage or any other type of temporary navigation, shall be issued with a special three-month registration.

The Office of the Registrar-General shall establish the necessary technical provisions for this type of special registration.

Article 89

Documentation

Vessels that wish to obtain this special registration shall submit the following documents:

1. Original copy of the document appointing the resident agent, to be duly authenticated if issued abroad.
2. Original or certified copy of the document certifying the vessel's title, to be duly authenticated if issued abroad.

3. Duly authenticated original or authenticated copy of the builder's certificate or certificate of deletion from the previous registry.

4. Any other document requested by the Office of the Registrar-General.

Non-certified originals or copies of these documents may be submitted together with the application for registration. If non-certified copies have been provided, the originals shall be submitted within a period of thirty days.

Article 90

Navigation license and radio license validity

Vessels enrolled in the special register shall be issued with a navigation license and a radio license, both of which shall be valid for three months.

Article 91

Application

The application for special registration shall be submitted directly to the Office of the Registrar-General through the owner of the vessel, or his representative, or an attorney qualified to practice law in Madagascar; or, it shall be submitted through any one of, through any other overseas entity authorized therefor by the Maritime Authority or through any electronic medium allowed by the Maritime Authority.

Article 92

Registration fee

A registration fee shall be payable for this special registration and the amount shall be set by the Board of Directors of the Maritime Authority based on the vessel's tonnage. The registration fee shall be payable in lieu of any other tax, rate, fee, levy or charge of any kind whatsoever.

Article 93

Registration of the pertinent title and of any mortgages

The registration of the pertinent title and of any mortgages at the Public Registry shall be optional for any vessel enrolled under this special register. However, ship mortgages may only be registered against these vessels if the mortgagee has expressly confirmed that he recognizes that the special registration shall terminate automatically on the expiration date of the navigation license.

Article 94

Enrolment in the general register

Vessels enrolled under this special register which subsequently apply to the general register for enrolment, shall not be required to pay the special register deletion fees to enrol in the general register.

Article 95

Termination

The special registration shall automatically terminate on the expiration date of the navigation license. However, at the request of any interested party, the Office of the Registrar-General may, at any time, delete the vessel from the special register upon payment of the deletion fees and upon compliance with any legal requirements.

Section 4
Registration of Pleasure Craft

Article 96
Type of pleasure craft

Any type of pleasure craft may be registered in the Merchant Marine.

Article 97
Documentation

To register a pleasure craft, the owner shall submit the documents listed in

Articles 15 or 20 of this law to the Office of the Registrar-General in accordance with the vessel's type of service, together with an original copy of the Sworn Statement of Non-Commercial Use, stating that the vessel shall not be used for commercial purposes, to be duly legalized by the pertinent consul if the document has been issued abroad.

Article 98
Regulation

The special system for the registration of pleasure craft shall be established by the Office of the Registrar-General. The statutory navigation license and the statutory radio license for pleasure craft shall be valid for two years.

The Office of the Registrar-General shall provide technical regulations governing the construction, equipment, and maintenance of pleasure craft relation to maritime safety and pollution prevention.

Section 5
Navigation Permits

Article 99
Navigation permit author

Vessels engaged in foreign trade and foreign vessels operating in waters subject to Madagascar's jurisdiction must carry a navigation permit issued by the Office of the Registrar-General.

The Office of the Registrar-General shall establish the technical requirements with which these ships shall comply.

Article 100
Regulation of navigation permit

The Office of the Registrar-General shall regulate the procedure and the requirements for securing the navigation permit.

Article 101
Exercise of innocent passage

The provisions of this Section shall not be applicable to vessels exercising innocent passage; however, in order to navigate, these vessels shall comply with the provisions of international conventions.

CHAPTER 5

The Vessel's Resident Agent

Article 102

Nomination

The owners of every vessel registered in the Merchant Marine shall appoint as their resident agent an attorney or a firm of attorneys qualified to practice their profession in Madagascar.

Article 103

Resident Agent duties

The resident agent of a vessel shall have the following duties:

1. It shall submit the vessel's application for registration, and any new navigation and deletion documents required for vessels registered in the Merchant Marine.
2. It shall pay all taxes.
3. It shall pay fines, represent the vessel in disciplinary proceedings, and file any appeals through the appropriate administrative channels, against any penalties imposed upon the vessel.
4. It shall receive notice of any administrative action which must be notified to the vessel, its owner, operator or master.
5. Any other duty assigned to them in the document pursuant to which they have been appointed.

Article 104

Condition on nomination

Except in the case of the registration of foreign vessels in Madagascar's special bareboat charter registry, the owner of the vessel shall designate a resident agent in a written document addressed to the Office of the Registrar-General.

Article 105

Resident Agent's contact details

The resident agent of every vessel registered in the Merchant Marine shall possess fully updated contact details for the owner or operator to be provided to the Office of the Registrar-General in the event that the vessel is involved in any accident, or upon the occurrence of any other act which may endanger life or compromise safety at sea, or at any time, at the request of the Directorate.

Article 106

Resident Agent's liability

The resident agent shall only be liable to the Office of the Registrar-General for damages which may be caused as a result of the negligent discharge of its duties.

Article 107

Resident Agent replacement

. The owner may replace the resident agent at any time, or he may resign his post, whereupon he shall have to provide a document containing a resignation statement to the Office of the Registrar-General. Notifications delivered to vessels whose resident agent has resigned shall be published once in a newspaper with a national circulation, notice of which shall be posted at the Office of the Registrar-General.

Article 108

Procedure handled by qualified attorneys

Any procedure relating to vessels registered in the Merchant Marine shall be handled by qualified attorneys with the exception of technical or any other issues, which, in accordance with the law or administrative practice, can be handled by any other person.

The Office of the Registrar-General shall indicate which procedures may be handled directly by any interested party.

CHAPTER 6

Registrar-General Qualified Consulates and other offices of representation

Article 109

Grant of title

The Maritime Authority shall confer the title of Registrar-General Qualified Consulates on consulates and overseas offices which, in the interests of the industry, are required to provide support services to the Office of the Registrar-General, and shall delegate any powers deemed appropriate thereto.

Article 110

Authority of Registrar-General Qualified Consulates

The Registrar-General Qualified Consulates, and any other overseas office of representation have the authority to:

1. Execute any act in connection with the Merchant Marine as specifically delegated to them by the Maritime Authority.
2. Collect taxes, rates and any other obligations payable by vessels registered in the Merchant Marine.
3. Board any vessel registered in Madagascar as expressly authorized by the Maritime Authority or if the owner or operator voluntarily requests this in writing.
4. Execute any notarial delegate d to them by law, as well as any other acts, as set out in the list of consular rates and in any special laws relating to the Merchant Marine.
5. Perform any other functions assigned by law, any regulations, or by virtue of any order issued by a competent authority.

Article 111

Accountability and obligations

The Registrar-General Qualified Consulates, and any other authorized overseas agencies shall send copies of any confirmation of payment, navigation license, radio license, official receipt, certificate and any other document issued for Malagasy vessels, to the Office of the Registrar-General as soon as they are issued, using any electronic medium approved by the Maritime Authority. Likewise, they shall comply with any legal provisions relating to the delivery of monthly operation and expense reports.

Article 112

Registrar-General Qualified Consulates and other offices of representation enforcement powers

Staff employed in the Registrar-General Qualified Consulates, and in any other authorized overseas office of representation may only detain, arrest or delay the departure of a vessel registered in Madagascar, with the prior express authorization of the Office of the Registrar-General.

Article 113

Liability

Registrar-General Qualified Consuls, and anyone in charge of any other office of representation authorized by the Madagascar Maritime Authority, shall be liable for any damages caused by their acts or omissions relating to the discharge of their duties, and shall compensate Madagascar for any damage directly or indirectly caused by their actions.

Any offenses by these officials shall be punishable by the Office of the Registrar-General according to the seriousness of the offense and pursuant to the regulations provided by the Board of Directors of the Maritime Authority.

CHAPTER 7 **Maritime Safety**

Section 1 **General Provisions**

Article 114

Regulations on maritime safety

The Office of the Registrar-General may execute and implement any measures and controls deemed necessary to ensure that vessels registered in Madagascar regardless of their location, or vessels of any nationality, navigating in waters subject to the jurisdiction of Madagascar, comply with all maritime safety regulations. In the exercise of this power, it shall be obligatory to provide any information required to comply with any maritime regulations and international conventions ratified by the Republic of Madagascar.

Any vessel carrying passengers in waters subject to the jurisdiction of Madagascar or abroad, and carrying more than twelve passengers, shall secure an insurance policy for liability against accidents which shall cover loss of life and loss to property, as well as the risk of marine pollution. The minimum coverage and the decision as to whether the policy shall be submitted at the time that the vessel is registered shall be determined by the Office of the Registrar-General.

This Directorate may require similar financial cover for other types of ships operating in waters subject to the jurisdiction of Madagascar, or operating abroad, with the purpose of covering any damage provided for in international conventions, particularly in connection with pollution, damage suffered, and loss of life at sea.

Article 115

Remedies to serious violation of safety regulations

If there is any evidence of a serious violation of safety regulations by vessels registered in the Merchant Marine, the Office of the Registrar-General may order restrictions, prescribe conditions for navigation, or detain such vessels, until it receives satisfactory evidence that the defects giving rise to the measures have been remedied. No appeal shall be admissible against any of the adopted measures.

Article 116

Failure to prove compliance consequences

If a vessel registered in the Merchant Marine is unable to prove to the Office of the Registrar-General that it has complied with laws applicable to its operation, or that it possesses the technical certificates as proof thereof, the Office of the Registrar-General shall assign a license number to the vessel and shall provide evidence of its registration in the Merchant Marine without issuing a navigation license, until it complies with the requirements for obtaining a navigation license corresponding to the number assigned.

Section 2

Safety Inspections

Article 117

Annual safety inspection

Save for any exception prescribed by the Office of the Registrar-General, each vessel registered with the Merchant Marine shall submit to an annual safety inspection, with the aim of verifying its compliance with international and domestic laws currently in force.

These vessels shall be subject to general and special inspections, or shall be re-inspected as deemed appropriate by the Office of the Registrar-General.

Article 118

Port State control

In addition, the Office of the Registrar-General shall be responsible for inspecting vessels of any nationality navigating in Madagascar's territorial waters, and may order their detention for violation of any national or international laws pertaining to maritime safety and security and to the prevention of pollution, as well as for violation of any international convention.

Article 119

Authorised ship inspectors and qualified technical personnel

The Office of the Registrar-General may hire the services of ship inspectors or any other qualified technical personnel, in or outside Madagascar, who may be nationals of any country, to carry out the inspections prescribed in the preceding Article, to provide any specialized services, and to investigate any incidents involving ships registered in Madagascar, or foreign vessels navigating in Madagascar's territorial waters, in which case the inspection or investigation report shall be evaluated by the Office of the Registrar-General. This Office shall authorize and/or hire any other national and/or private agencies to carry out these inspections and investigations.

Article 120

Cooperation of the ship owners, masters and operators

The owners of vessels registered in the Merchant Marine, their masters and operators, shall be obliged to allow and shall cooperate with, the safety inspection of their vessels.

The owner, master or operator of a vessel who refuses to allow an inspection referred to in this law, shall be penalized by the Office of the Registrar-General.

Article 121
Rates prescription

The Board of Directors of the Maritime Authority shall prescribe the rates to be paid annually by vessels for any of the inspections and/or investigations referred to in the preceding Articles, together with the remuneration of any person conducting said inspections and investigations.

Article 122
Special fund for inspection

The inspection fees collected shall be deposited in a special fund belonging to the Office of the Registrar-General, which shall be used by the latter to cover the necessary expenses of the inspections.

Article 123
Regulation on inspections procedures

The Office of the Registrar-General shall issue any regulations required to effectively carry out the inspections referred to in this law.

Article 124
Inspection report

As soon as the inspection of a vessel is completed, the inspector shall send a copy of the inspection report to the Office of the Registrar-General, using any medium approved by this Directorate, and a copy shall be delivered to the master of the vessel, to be kept on board.

Article 125
Remedies to reported defects

The owner or operator shall be obliged to provide a prompt remedy for any defects reported by the flag or Port State Control inspectors.

Once any defects found during a flag inspection or during any inspection carried out by the Port State Control are remedied, the owner or operator shall send written notice to the Office of the Registrar-General e listing the corrective measures adopted. The Office reserves the right to request a re-inspection of the vessel or to request certification from an auxiliary agency stating that the defects have been remedied, or to request additional information in connection with any of the remedies.

Section 3
Marine Accidents and Losses

Article 126
Compulsory report

The owner or operator of vessels registered in the Merchant Marine shall be obliged to report any marine accident or loss involving its vessels to the Office of the Registrar-General. Non-compliance with this obligation shall be punishable by the Office of the Registrar-General.

Article 127
Accidents investigation

The Office of the Registrar-General shall investigate accidents involving vessels registered in Madagascar regardless of their location, or involving vessels of any nationality navigating in waters subject to the jurisdiction of Madagascar, and it reserves the right to require owners, operators or auxiliary agencies directly or indirectly involved in the vessel's operation, maintenance or trade, to

provide any information deemed appropriate in connection with the loss, as well as in connection with any prior or later circumstances related thereto.

CHAPTER 8

The Register's Auxiliary Agencies

Article 128

Delegation of powers

The Office of the Registrar-General may delegate its powers in connection with the verification and certification of compliance with navigation, safety, labour, security and prevention of pollution rules of any vessels registered in the National Merchant Marine, and may limit the powers or the number of auxiliary agencies performing such functions, in order to control or improve the safety standards of its fleet.

The power to delegate is an administrative, exclusive and sovereign act of the State of Madagascar, as executed by the Office of the Registrar-General, in compliance with a specific power assigned to it by the State, and it is subject to the laws of the Republic of Madagascar and to its courts of competent jurisdiction.

These auxiliary agencies shall be subject to the labour laws in force in the place of their domicile.

Article 129

Extent of powers

The Office of the Registrar-General shall issue a considered resolution establishing the powers granted to auxiliary agencies, their rights, and obligations, and, if necessary, it shall sign any agreement deemed appropriate, in which the terms and conditions of its relationship with any auxiliary agencies shall be set out.

Article 130

Assessment and supervision of auxiliary agencies

The Office of the Registrar-General is the administrative body with the exclusive jurisdiction to assess, supervise and audit auxiliary agencies, for the purpose of guaranteeing strict compliance with their obligations, and to request any report or information deemed necessary from these agencies, in connection with their services.

The Office of the Registrar-General shall have the power to request any information in connection with compliance with maritime rules and with international conventions. A refusal by any of the register's auxiliary agencies to provide information requested by the Directorate shall be penalized in accordance with the law.

Article 131

Exposure to penalties

Auxiliary agencies violating any rules relating to any delegated power shall be penalized by the Office of the Registrar-General.

Article 132

Compensation for damages

Auxiliary agencies shall compensate Madagascar for any damages suffered as well as for any costs, expenses and other expenditure incurred as a result of any Law or omission relating to the performance of their obligations.

Article 133

Auxiliary agencies liability

Auxiliary agencies shall be liable for any damages suffered by third parties due to the negligent performance of their obligations. For that purpose, they shall be subject to international rules, to the laws of the Republic of Madagascar, and to its courts of competent jurisdiction.

CHAPTER 9

Maritime Communications

Article 134

Exclusive jurisdiction over maritime telecommunications

The Maritime Authority, through the Office of the Registrar-General, shall have exclusive jurisdiction over maritime telecommunications issues linked to vessels registered in Madagascar, with the aim of guaranteeing that they shall possess the appropriate communications system, and that they comply with national regulations and with rules recommended by the International Telegraphic Union, which regulates maritime telecommunications.

In the exercise of this exclusive jurisdiction, the Malagasy Maritime Authority may enter into any agreement with other government agencies.

CHAPTER 10

Penalties

Section 1

General Rules

Article 135

Entities exposed to penalties

The Office of the Registrar-General may penalize vessels, their owners, operators and masters, as well as any auxiliary agency, inspector, Merchant Marine Qualified Consul, and the heads of any other authorized representative office, for violating any of the rules governing the Merchant Marine.

If the penalty imposed by the Office of the Registrar-General consists of a fine levied upon the owner, operator, or master of a vessel registered in the Merchant Marine, said vessel shall be jointly and severally liable for the fine.

Article 136

Administrative penalties

The Office of the Registrar-General shall impose administrative penalties in accordance with the seriousness of the violation, whether it is recurring, whether there are any mitigating factors, and any damage caused to third parties. Violations without any specific penalty assigned to them shall be penalized by the Office of the Registrar-General with a written warning and a fine.

The Board of Directors of the Maritime Authority shall regulate the amount to be charged for any fine in accordance with the provisions of this Chapter.

Article 137

Written warning

A written warning shall be applicable for minor violations.

Article 138

Fine

A fine shall be levied for serious violations or for any minor, recurring violations.

For the purposes of this Article, any prompt remedy of the vessel's defect, together with the vessel's record while registered in the Merchant Marine, shall be considered as a mitigating factor.

In order to determine whether any violation is recurring, any prior penalty levied against the vessel for the same defect shall be taken into account.

Section 2

Penalties imposed on Vessels and Auxiliary Agencies

Article 139

Deletion of vessels from the register

In addition to the penalties described in the preceding Articles, the Office of the Registrar-General may penalize vessels registered in its Merchant Marine with deletion from the register, if their actions constitute grounds for deletion as prescribed under this law.

Article 140

Fine, suspension, and revocation of auxiliary agencies

The Office of the Registrar-General may levy a fine, suspend, or partially or totally revoke the authority of auxiliary agencies to provide services to the Merchant Marine.

The auxiliary agency penalized in such manner may file an appeal, which shall be admitted without the suspension of judgment.

Article 141

Suspension of the agency's acts

If there is evidence that an auxiliary agency is in serious breach of its obligations, the Office of the Registrar-General may include in the list of charges set out in Section 4 of this Chapter, an order suspending any of the agency's acts, or establishing restrictions or conditions in relation to any services provided to the Merchant Marine, until the final ruling of the disciplinary proceedings is duly enforced. No appeal shall be admissible against the order contained in the list of charges.

Article 142

Revocation of authority

The Office of the Registrar-General shall revoke any authority granted to auxiliary companies under this current system, on the following grounds:

1. For non-compliance with any of their authorized functions, duties or aims.
2. For forgery or for supplying false information at the time that the authority was requested, or after it was granted.
3. For conducting their activities to the detriment of the interests of the Merchant Marine, or if they affect the public interest.
4. For violating any of the regulations provided by the Maritime Authority or the Office of the Registrar-General.

5. On the recommendation of the technical evaluation committee appointed for the purpose of assessing their performance.

Section 3

Penalties imposed on Safety Inspectors

Article 143

Suspension, and revocation

The Office of the Registrar-General may penalize safety inspectors with suspension or with the partial or total revocation of their authority to provide services to the Merchant Marine. Upon imposition of the penalties described in this Article, the penalized inspector may submit an appeal which shall be admitted without the suspension of judgment.

Article 144

Suspension of acts and services

If there is evidence that a safety inspector is in serious breach of his obligations, the Office of the Registrar-General may include in the list of charges set out in Section 4 of this Chapter, an order suspending any of the agency's acts or establishing restrictions or conditions on any services provided to the Merchant Marine until the final ruling of the disciplinary proceedings is duly enforced. No appeal shall be admissible against the order contained in the list of charges.

Article 145

Revocation of authority

The Office of the Registrar-General shall revoke any authority granted to safety inspectors under this current system, on the following grounds:

1. For non-compliance with any of its authorized functions, duties or aims.
2. For forgery or for supplying false information at the time that the authority was requested or after it was granted.
3. For conducting their activities to the detriment of the interests of the Merchant Marine, or if they affect the public interest.
4. For violating any of the regulations provided by the Maritime Authority or of the Office of the Registrar-General.
5. On the recommendation of the technical evaluation committee appointed with the purpose of evaluating their performance.

Section 4

Procedure for imposing Penalties

Article 146

Procedure

The Office of the Registrar-General shall impose the appropriate penalties after the following procedure has concluded:

1. The administrative procedure shall begin with a Port State Control report, an inspection report, an accident investigation report, a complaint, and an accusation submitted by a party or made ex-officio in

accordance with the principles of judicial economy, swiftness, effectiveness, simplification of procedures, informality, publicity of proceedings, and legal fairness, fully respecting the rights of any interested party to bring and to defend any action.

The Office of the Registrar-General may order any evidence to be submitted and any action to be taken with the purpose of establishing the facts and determining the corresponding liability and it may delegate these powers to auxiliary officials.

2. Based on whatever steps have been taken, the Office of the Registrar-General shall draw up a list of charges setting out the alleged facts, which shall be immediately notified to the vessel's resident agent by decree, to be posted for a period of five business days. The resident agent shall be given thirty business days to answer the complaint and to propose and submit any evidence deemed pertinent, as well as to provide any other answer to the charges, all of which shall be included in the same writ answering the complaint.

The list of charges shall be notified to the owner and the master of any vessel using the same process used to notify any penalties to vessels. The auxiliary agencies and the inspectors appointed by the Office of the Registrar-General shall immediately be notified of the list of charges at the address recorded in the registers of the Office of the Registrar-General. Auxiliary agencies and inspectors shall be given thirty business days to answer the complaint and to propose and submit any evidence deemed pertinent, together with any other answer to the charges, all of which shall be included in the same writ answering the complaint.

The Consul shall be notified of the list of charges by certified mail at the business address of the Consulate. The Consul shall have thirty business days to answer the complaint and to propose and submit any evidence deemed pertinent, together with any other answer to the charges, all of which shall be included in the same writ answering the complaint.

If there is any failure to reply, the proceedings will continue and the Office of the Registrar-General shall impose the appropriate penalty.

3. The Office of the Registrar-General may grant a term of ten business days to examine any evidence submitted in the answer to the complaint.

4. Upon expiration of this term for examining evidence, if there is any, the Office of the Registrar-General shall resolve the case within thirty business days, providing a succinct account of the proven facts, of the evidence relating to the liability of the party under investigation, of the legal provisions which have been violated, or of any exemption from liability, as the case may be. The vessel's resident agent shall be notified of this resolution by decree.

5. An appeal against resolutions issued by the Office of the Registrar-General may be filed before the Administrator of the Maritime Authority which shall be the only remedy available.

If a decision is made to appeal, the interested party shall submit the appeal within ten business days from the date on which the decree is removed. If a fine has been levied, the interested party shall deposit or pay the fine within the term, as a prerequisite to filing the appeal. If the fine is not deposited within the term on which the resolution becomes final and enforceable, the appeal shall be void and the Office of the Registrar-General shall deny the appeal.

The appeal must be submitted to the Office of the Registrar-General who shall decide whether or not it is viable, for which it shall determine whether the appellant has legal standing to appeal, whether the disputed resolution or action is subject to appeal, whether it was brought within the appropriate time, and whether the payment of the fine has been guaranteed or paid, as the case may be.

Article 147

Change of ownership or deletion from the registry cases

Once the Maritime Authority becomes aware of any violation, the interested party may, in its application for a change of ownership or deletion from the registry, request that the penalty be decided in advance

on the basis of the prima facie evidence available to the Office of the Registrar-General, and, in the case of a fine, it shall be deposited or paid prior to obtaining authorization for any change requested.

Article 148

Proceedings notification

These proceedings shall be notified by decision to be posted for five business days on the Office of the Registrar-General's public board, and the term of enforcement shall begin on the date on which the pertinent decree is removed from the board. Notwithstanding this, the Office of the Registrar-General shall notify the resident agent at his registered postal address, a necessary procedure if the ship does not have a resident agent.

Any term shall begin on the date on which the decree is removed. If the interested party is notified personally, the term shall begin on the date of receipt of the notification.

THIRD PART

MEASURES FOR THE DEVELOPMENT OF THE SHIPPING INDUSTRY

FIRST CHAPTER

Measures for Optimizing and Maintaining the Fleet

Article 149

Tonnage tax

Shipping companies shall be exempted from income tax, to the extent that such income is derived from shipping activities, of a licensed shipping organisation.

A notional tonnage tax shall be paid periodically *in lieu* of income tax, in compliance with the regulations and conditions set out by the Boards of Directors of the Maritime Authority.

Article 150

Newly built vessels and young vessels

The Maritime Authority, through the Office of the Registrar-General shall apply the following special tariffs to vessels which, on the date of their enrolment in the Merchant Marine, meet the following requirements:

1. Newly built vessels with a gross tonnage less than 30,000 GRT shall be given a discount of thirty percent (30%) in relation to the registration fee, annual tax and annual consular rate payable in the first year of their registration in the Merchant Marine; a discount of twenty percent (20%) in relation to the annual tax and annual consular rate payable in the second year; and a discount of ten percent (10%) in relation to the annual and consular tax payable in the third year.
2. Newly built vessels with a gross tonnage equivalent to or greater than 30,000 GRT, but less than 100,000 GRT shall be given a discount of forty percent (40%) in relation to the registration fee, annual tax and annual consular rate payable in the first year of their registration in the Merchant Marine; a discount of twenty five percent (25%) in relation to the annual tax and annual consular rate payable in the second year; and a discount of fifteen percent (15%) in relation to the annual and consular tax payable in the third year.
3. Newly built vessels with a gross tonnage equivalent to or greater than 100,000 GRT, shall be given a discount of fifty percent (50%) in relation to the registration fee, annual tax and annual consular rate payable in the first year of their registration in the Merchant Marine; a discount of thirty five percent

(35%) in relation to the annual tax and annual consular rate payable in the second year; and a discount of twenty percent (20%) in relation to the annual and consular tax payable in the third year.

4. Vessels registered in the Merchant Marine within five years from the date of the laying down of the keel and with a gross tonnage less than 30,000 GRT shall be given a discount of twenty percent (20%) in relation to the registration fee, annual tax and annual consular rate payable in the year of their registration in the Merchant Marine; a discount of ten percent (10%) in relation to the annual tax and annual consular rate payable in the second year, and a discount of five percent (5%) in the annual and consular tax payable in the third year.

5. Vessels registered in the Merchant Marine within five years from the date of the laying down of the keel and with a gross tonnage equivalent to or greater than 30,000 GRT but less than 100,000 GRT shall be given a discount of thirty percent (30%) in relation to the registration fee, annual tax and annual consular rate payable in the year of their registration in the Merchant Marine; a discount of fifteen percent (15%) in relation to the annual tax and annual consular rate payable in the second year; and a discount of ten percent (10%) in the annual and consular tax payable in the third year.

6. Vessels registered in the Merchant Marine within five years from the date of the laying down of the keel and with a gross tonnage equivalent to or greater than 100,000 GRT shall be given a discount of forty percent (40%) in relation to the registration fee, annual tax and annual consular rate payable in the year of their registration in the Merchant Marine; a discount of twenty five percent (25%) in the annual tax and annual consular rate payable in the second year; and a discount of fifteen percent (15%) in the annual and consular tax payable in the third year.

7. Any MODUs ships which can show that they have been registered in the Merchant Marine and who re-apply for registration no later than two years after this law comes into effect, shall pay an initial registration fee of two thousand five hundred balboas (B/.2,500.00) and shall be exempt from paying any other tax for two years, with the exception of the annual inspection fee.

8. Vessels registered in the Merchant Marine, regardless of their tonnage, type or year of build which are able to show that they have not been detained for any Port State Control inspection within a twenty four month period, shall be given a discount of fifteen percent (15%) in relation to the annual tax and annual consular rate payable in the following year, provided that said vessels are not entitled to receive any other or greater discount under this law.

The Administrator of the Maritime Authority shall, at the request of the Office of the Registrar-General, have the power to change any of the abovementioned percentages in order to retain the register's competitiveness within the international shipping industry.

Likewise, the Board of Directors may, with the prior approval of the Administrator, provide special tariffs for vessels registered in the National Merchant Marine which carry officers in training or any other personnel who are Malagasy citizens, and may provide special incentives in connection with corporate social responsibility programs leading to a reduction in the air and sea pollution caused by Malagasy vessels navigating in international waters, or caused by vessels of any nationality navigating in the Republic of Madagascar.

Article 151

Vessels belonging to the same economic group

The Maritime Authority shall, through the Office of the Registrar-General, grant the discounts described in this Article to vessels, which at the time of their enrolment in the Merchant Marine, meet the following requirements:

1. Vessels belonging to the same economic group which on the date of the enactment of this law have between five and fifteen vessels registered in the Merchant Marine shall be given a discount of twenty percent (20%) in relation to the registration fee, annual tax and annual consular rate payable for the registration of any new vessels in the year of their registration, provided that such vessels are not entitled to receive any other or greater discount under this law.

2. Vessels belonging to the same economic group which, on the date of the enactment of this law have between sixteen and fifty vessels registered in the Merchant Marine shall be given a discount of thirty five percent (35%) in relation to the registration fee, annual tax and annual consular rate payable for the registration of any new vessels in the year of their registration, provided that such vessels are not entitled to receive any other or greater discount under this law.

3. Vessels belonging to the same economic group which, on the date of the enactment of this law have more than fifty one vessels registered in the Merchant Marine shall be given a discount of sixty percent (60%) in relation to the registration fee, annual tax and annual consular rate payable for the registration of any new vessels in the year of their registration, provided that such are not entitled to receive any other or greater discount under this law.

Article 152

Three or more vessels belonging to the same economic group

The Maritime Authority shall, through the Office of the Registrar-General, grant the discounts described in this Article to vessels which, on the date of their enrolment in the Merchant Marine, meet the following requirements:

1. Three or more vessels belonging to the same economic group that wish to be registered in the Merchant Marine simultaneously, or no later than by the end of the same calendar year in which the first one of these vessels is registered, shall all be given a discount of twenty five percent (25%) in relation to the registration fee, annual tax and annual consular rate payable in the year of their registration, if their gross tonnage is less than 30,000 GRT, provided that said are not entitled to receive any other or greater discount under this law.

2. Three or more vessels belonging to the same economic group that wish to be registered in the Merchant Marine simultaneously, or no later than by the end of the same calendar year in which the first one of these vessels is registered, shall all be given a discount of forty percent (40%) in relation to the registration fee, annual tax and annual consular rate payable in the year of their registration, if their gross tonnage is equivalent to or greater than 30,000 GRT, but less than 100,000 GRT, provided that said vessels are not entitled to receive any other or greater discount under this law.

3. Three or more vessels belonging to the same economic group that wish to be registered in the Merchant Marine simultaneously, or no later than by the end of the same calendar year in which the first one of these vessels is registered, shall all be given a discount of sixty percent (60%) in relation to the registration fee, annual tax and annual consular rate in the year of their registration, if their gross tonnage is equivalent to or greater than 100,000 GRT, provided that said vessels are not entitled to receive any other or greater discount under this law.

CHAPTER 2

Measures to promote the employment of Malagasy Seafarers

Article 153

Crewing of vessels without distinction

The Madagascar Maritime Authority shall, through the Office of the Registrar-General, grant the discounts described in this Article to vessels, which at the time of their enrolment in the Merchant Marine, and meet the following requirements:

1. Vessels crewed by more than twenty five percent (25%) of Malagasy seafarers, shall all be given a discount of twenty five percent (25%) in relation to the registration fee, annual tax and annual consular rate payable in the year of their registration, if their gross tonnage is less than 30,000 GRT, provided that said are not entitled to receive any other or greater discount under this law.

2. Vessels crewed by more than forty percent (40%) of Malagasy seafarers and among which at least two of the crew members have officer rank, shall all be given a discount of forty percent (40%) in relation to the registration fee, annual tax and annual consular rate payable in the year of their registration, if their gross tonnage is equivalent to or greater than 30,000 GRT, but less than 100,000 GRT, provided that said vessels are not entitled to receive any other or greater discount under this law.

3. Vessels crewed by more than sixty percent (60%) of Malagasy seafarers and among which at least three of the crew members have officer rank, shall all be given a discount of sixty percent (60%) in relation to the registration fee, annual tax and annual consular rate in the year of their registration, if their gross tonnage is equivalent to or greater than 100,000 GRT, provided that said vessels are not entitled to receive any other or greater discount under this law.

FOURTH PART

ADMINISTRATIVE AND MANAGEMENT PROVISIONS

FIRST CHAPTER

The Maritime Authority

Article 154

The Maritime Authority organization and functioning

The Maritime Authority, exercising its autonomy, shall establish its own organization, management structure, and departments, and shall choose, appoint, and transfer personnel from one job category or post to another, or shall dismiss any of its personnel, and establish its pay with full independence, in accordance with the management model for each one of its departments and with its internal Human Resources Management Regulations and the institution's Occupational Classification Manual.

Article 155

Means of control

The services of the Maritime Authority, shall be provided using modern and competitive mechanisms to ensure the proper control of documentation and the effectiveness of the service provided.

Article 156

Creation of overseas offices

The Maritime Authority, through the Office of the Registrar-General, may open overseas offices to provide technical documents to ships in compliance with maritime safety and prevention of pollution regulations.

These offices shall report to the Office of Registrar-General and may charge for their services enabling them to finance their own operations, without prejudicing their corresponding budgetary allocation.

These offices shall maintain an operating fund enabling them to pay directly for any goods and services required to deal with marine accidents, to investigate accidents, and to conduct maritime safety inspections; to pay for travel allowances, transportation costs, and to purchase equipment; to pay for consultancy, training and advisory services in connection with maritime safety and pollution prevention; to pay for sending representatives to international maritime safety conferences, and to pay for any emergency endangering human life at sea, any vessel, or the environment.

Article 157

Applicable maritime labour law

For the purpose of ensuring compliance with international conventions dealing with labour issues and ratified by the Republic of Madagascar, the social security system for seamen shall apply to ships operating in waters subject to the jurisdiction of the Republic of Madagascar.

Article 158

Budget of the foreign offices

The expenses budget belonging to every Consulate and auxiliary agency, shall be included in the General State Budget. The General State Expenses Budget shall allocate a general budget to the Maritime Authority for this purpose, which shall be assessed annually by the Inter-ministerial Commission, whose members are notably the Ministry of Economy and Finance, the Foreign Ministry, the Administrator of the Panama Maritime Authority, the President of the Court of Audit, or any officers appointed by them.

Article 159

Nomination of Registrar-General Qualified Consulate

The Board of Directors of the Maritime Authority shall designate Registrar-General Qualified Consulate by means of resolutions, and it shall have the power to add or remove these functions from any particular Consulate, in accordance with the needs of the National Merchant Marine.

Article 160

Organisation of the entities related to ship registration

The Maritime Authority, Madagascar's Consulates, its technical offices abroad, and any other agency authorized to provide services connected to the Ship Registration shall be recognized as database storage facilities as provided by the law.

The Office of the Registrar-General shall regulate the procedure for providing any services in this capacity.

Merchant Marine services provided pursuant to this special capacity by any agency other than those listed above shall be able subject to additional processing and recognition charges.

The Office of the Registrar-General shall establish any processing requirements in accordance with this legislation.

CHAPTER 2

The Office of the Registrar-General

Article 161

Creation of the Office

The Office of the Registrar shall be created by the Maritime Authority as one of its specialized offices.

Article 162

First responsible of the Office

A Registrar-General together with a Coordinator shall be in charge of the Office of Registrar-General. The Registrar-General and the Coordinator shall be required to hold a law degree or a degree in any maritime subject, such as naval engineering, naval architecture, or any other naval subject, as well as a minimum of three years' employment in any of these fields; or, they shall be required to hold any professional degree, as well as a minimum of seven years' employment in the merchant marine sector.

In addition, the General Registrar and the Coordinator must have detailed knowledge of the rules prescribed under international conventions, and of maritime law and national law; as well as knowledge of the workings and operation of ships, and of the maritime industry.

Article 163

The Office of the Registrar-General powers

The Office of the Registrar-General shall have the following powers:

1. It shall execute any administrative act in connection with the registration of vessels in the National Merchant Marine, it shall authorize any changes to such registration, and it shall order the removal of any vessel from the register, in accordance with the law.
2. It shall establish each department's procedure for handling the documentation of vessels, any charges for services, and any control measures required for the provision of an optimal and efficient service.
3. It shall study, propose, coordinate and execute any measures, action and strategies required to maintain the competitiveness of the National Merchant Marine.
4. It shall reject applications for registration if, in its opinion, they are contrary to Madagascar's national interests.
5. It shall provide any regulations, rules, and technical or administrative procedures required for registration and shall issue technical documents to all vessels.
6. It shall delegate its authority to any other public servants of the Office of the Registrar-General in connection with any acts required for the registration of a vessel and for the issue of its technical documents.
7. It shall delegate the execution of any act in connection with the provisional registration of ships to Merchant Marine Qualified Consuls, subject to the conditions and restrictions prescribed by the law.
8. It shall propose and recommend any taxes, rates and other charges payable by vessels registered in the National Merchant Marine, and shall collect and or supervise the collection of taxes, rates, fees and other obligations payable by vessels registered in the National Merchant Marine in accordance with any current laws and regulations.
9. It shall ensure that any revenue obtained from any rates and fees paid by vessels registered in the National Merchant Marine shall be included in the budget, under the appropriate entry.
10. It shall supervise and deposit any amounts collected, or any remittances received in relation to the National Merchant Marine, and paid in by public servants employed by the Maritime Authority, by Consuls of the Republic of Madagascar, and by any authorized offices abroad.
11. It shall pay any debts of any of the Authority's Consuls or executive public servants, taking into account any existing evidence of and the reason for such debts, subject to confirmation by the General Comptroller of the Republic.
12. It shall approve or reject applications for special discounts in connection with taxes, rates, registration fees, cancellation of surcharges and interest, and any other amounts payable by vessels registered or to be registered in the National Merchant Marine, subject to any conditions and limitations prescribed by law.
13. It shall approve or reject applications for credit in connection with taxes, rates, fees, and other charges which have been paid in excess or otherwise, in relation to vessels registered in the National Merchant Marine, subject to any conditions and limitations prescribed by law.
14. It shall ensure strict compliance with, and the effective application of, any laws currently in force in the Republic of Madagascar, and with any international conventions, codes or guidelines on maritime safety, pollution prevention, and maritime security for its vessels.
15. It shall undertake any investigation of marine accidents, spills or pollution involving vessels registered in Madagascar wherever they may be, or involving vessels of any nationality navigating in waters subject to the jurisdiction of Madagascar.
16. It shall penalize anyone who violates laws or regulations relating to the National Merchant Marine.
17. It shall issue any navigation permits required by vessels navigating in Madagascar's territorial waters.

18. It shall establish procedures for the inspection of National Merchant Marine vessels to ensure adequate compliance with any safety and environmental pollution prevention laws and any other obligation, in accordance with any national legislation.

19. It shall appoint and supervise National Merchant Marine ship inspectors to ensure adequate compliance with safety and environmental pollution prevention laws and any other obligations, in accordance with any national legislation.

20. It shall coordinate and supervise the performance of any of the functions of the Merchant Marine which are carried out by any Merchant Marine Qualified Consulates, and by any other authorized office of representation which has been authorized or created by the Maritime Authority to deal with any act relating to registration overseas; and it shall impose any penalties on public servants for failure to comply with their legal or regulatory obligations.

21. It shall authorize, supervise, audit and control any Recognized Organization, Recognized Safety Organization, and related organizations to whom the Malagasy government has delegated its powers, and it shall regulate any procedures applicable thereto. This function shall not be delegated without the prior consent of the Maritime Authority.

22. It shall declare that a vessel has been wrecked and order the total or partial removal of any vessels, its possessions, and any property abandoned by any vessel which endanger navigation or the marine environment of national or international waters, and shall order third parties to effect such removal, with the authorization of the Administrator of the Authority.

23. It shall approve any plans to build and repair vessels in Madagascar.

24. It shall act as a regulatory body and as a coordinator of policies, strategies and decisions directly or indirectly affecting the registration of vessels in the Republic of Madagascar, and in connection with any issue relating to compliance with national and international laws currently in force, which are applicable to the ships of the National Merchant Marine.

25. It shall perform the duties of a Flag State and it shall enforce compliance of any national laws and international conventions currently in force and ratified by the Republic of Madagascar relating to maritime safety, navigation safety, maritime security, and marine pollution prevention and control, as well as of any international guidelines and codes relating to the Flag State, upon ships registered in Madagascar and upon foreign ships navigating in waters subject to the jurisdiction of Madagascar.

26. It shall execute and enforce national laws, international conventions currently in force and ratified by the Republic of Madagascar, and any international guidelines and codes relating to the Port State Control.

27. It shall comply with any other duties prescribed by the law, in regulations, by the Administrator, or by the Board of Directors of the Authority.

FIFTH PART

MISCELLANEOUS AND FINAL PROVISIONS

Article 164

The Maritime Authority shall issue the necessary directives required for compliance with the provisions of this law.

Article 165

This law repeals Book II, First Chapter to Chapter 5 and Book VIII, and amends Title A of the Maritime Code.

Article 166

Any provision of the Maritime Code not in compliance with this law is hereby repealed.

This Law shall be published in the Official Journal of the Republic.

It shall be carried out as a State law.

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