Bareboat registration – what is it?

There are basically two ways by which a person can charter a ship or a floating vessel for a fixed period of time: he either charters it bareboat or on a time charter. The defining characteristic of a bareboat charter, as the term suggests, is the transfer of not just possession but also management from the owner to the charterer. So, during the charter period, the charterer has total control over how the vessel is managed, manned and operated and where it will be deployed. The bareboat charterer is sometimes known as the “disponent owner”.

The owner of a merchant ship has to register it in a country (and thereby subjecting the vessel to the laws of that country) if it sails into or is operated in international waters. Its registered status gives the ship:

1. the right to fly the primary registry’s flag; and
2. the protection accorded by the laws of the flag.

A common analogy for ship registration is that of a person having a passport - he will not be able to travel out of his country and enter another without a valid passport.

What is not commonly known is that the laws of some countries allow bareboat registration, that is a legal framework which allows parallel registration of a ship in two countries - a ship registered by its owner in one state (commonly called the “primary registry”) can also be registered temporarily (usually for the duration of the charter period) by its bareboat charterer in another state (often the state in which the bareboat charterer operates, and is usually referred to as the “bareboat registry”).

During the dual registration period, the owner’s title remains registered at the primary registry (and so do any mortgages by the owner which had been registered at the primary registry). However, the right to fly the primary registry’s flag will be suspended by the primary registry while the ship is “bareboat charted out”. The suspension of the primary registry’s flag is a condition for the primary registry’s approval for “bareboat charter out” and for the bareboat registry’s “bareboat charter in”. The bareboat registry will usually allow the ship to “bareboat charter in” for a period equivalent to but no longer than the bareboat charter period.

It is important to note that the suspension of the primary registry’s flag does not mean that the owner’s title (and any registered mortgages) is deregistered. The owner’s title and registered mortgages remain registered at the primary registry, and the owner and the mortgagee continue to enjoy the protection and rights accorded by the primary registry’s laws. However, while the ship is registered at another country’s bareboat registry, it must comply with that country’s laws if they apply to bareboat chartered-in vessels.

To help us understand the concept, let us go back to the earlier analogy of our intrepid traveller with a valid passport: if he decides to seek employment in
another country, he has to apply for a temporary work permit to work in the foreign country. However, his nationality (i.e. the primary registry of a ship) is not revoked. His work permit (i.e. the bareboat registration at the foreign country) will only be valid as long as he has a job in that country (i.e. if a ship, as long as the ship is on bareboat charter).

Although there are no international conventions or laws governing bareboat registration, it is subject to reciprocity and compatibility of the respective laws of the primary registry state and bareboat registry state. Both states’ laws should at least recognise that:-

(1) the laws of the primary registry will exclusively apply to the ship’s title and mortgages, and the order of priority of any security interest in the vessel;

(2) while the laws of the bareboat registry state (whose flag the ship flies) will exclusively regulate the operation (e.g. crewing, manning, licensing and safety) of the ship.

In some countries, the primary registry is known as the “flagging out state”, and the bareboat registry the “flagging in state”. In the authors’ view, the terms are not quite right because during the dual registration period, the vessel can only fly the flag of the bareboat registry; the flag of the primary registry is suspended.

**Cabotage jurisdictions**

Cabotage refers to the domestic trade by ships conducted between ports of the same country. Cabotage jurisdictions which adhere to the cabotage principle generally allow only vessels flying their country’s flag to engage in domestic trade in its territorial waters.

Alternatively, a cabotage jurisdiction may impose less favourable tax rates on foreign flags.

Many of these countries install a bareboat registry as a convenient legal solution to overcome a shortage of merchant ships. The bareboat registry also allows a country to expand their fleet to meet temporary domestic shipping demands.

Examples of countries with cabotage policies in place are our immediate neighbours Malaysia and Indonesia. Other cabotage jurisdictions in the Association of Southeast Asian Nations, such as the Philippines and Vietnam, are allowing flagging-in or taking baby steps to relax their policies. Even though Singapore has no cabotage restrictions, it has a well-established bareboat registration regime.

**The Singapore Bareboat Registry**

**Bareboat charter in**

The Singapore Ship Registry (the Registry) allows the registration of bareboat charter ships.
A foreign vessel may be registered in Singapore if it is chartered on bareboat charter terms to a charterer who is qualified to own Singapore ships (i.e. must be a citizen of or a body corporate incorporated in Singapore) and its primary registry is closed/suspended. Further, if the bareboat charterer is a company and is not the registered owner of any Singapore ship, the bareboat charterer must have a minimum paid-up capital of $50,000 in order for the bareboat charter ship to qualify for registration.

Bareboat charter out

For the vessel to be bareboat chartered out of Singapore, the vessel's Singapore registry has to be suspended for the duration of the charter period. While the Singapore registry is suspended, the provisions of the Merchant Shipping Act and its regulations will cease to apply to the vessel except:

1. the provisions relating to mortgages and property in the vessel in Part II of the Act;
2. the provisions relating to the vessel's register; and
3. the provisions relating to the continued payment of the vessel's annual tonnage tax.

Treatment of mortgages

When a shipowner's acquisition of the ship is financed by a bank or financial institution, more often than not a mortgage will have to be created over the ship. The financier should ensure that its mortgage is registered in a primary registry with a well established and effective legal system. If the vessel has to be bareboat chartered and flagged in another country, the financier should also ensure that the bareboat registration will not prejudice or jeopardise its mortgage in any way. A prudent financier will want to satisfy itself that its mortgage is not only enforceable in the state of its primary registry but also in the bareboat registry state.

It would be a bonus for the mortgagee if the flagging state's registry's rules allow for the "recording" of mortgages created by the shipowner. Such a facility will enable outsiders (who check the bareboat registry) to have notice of the existence of an existing mortgage on the vessel. Invariably, the bareboat registries who do have such a facility will only allow mortgages already registered in the relevant primary registry to be recorded.

The Singapore Bareboat Registry unfortunately does not provide for recordation of mortgages registered in the primary registry of the vessel. It also does not require any evidence of consent from the primary registry mortgagee.

In contrast, leading bareboat chartering in jurisdictions such as Liberia, Panama, Marshall Islands and the Philippines allow some form of recordation or annotation of mortgages, which are recorded in the primary registry of the vessel, in the relevant bareboat charter register to serve as notice to third parties. Additionally, these jurisdictions require consent from the mortgagees for flagging in, thereby preventing the ship owner from changing the flag of the
vessel without consent from the mortgagees (though, there would invariably be an undertaking from the ship owner to not change the flag of the vessel).

1 As opposed to a voyage charter (i.e. the vessel is chartered for a particular voyage) or a time charter (i.e. the vessel is chartered for a set period of time) where the owner of the vessel retains possession of the vessel.

2 Merchant Shipping (Registration of Ships) Regulations reg 35