

SHIP REGISTRY IN PANAMA

ABOGADOS-ATTORNEYS AT LAW



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ESTABLISHED 1920



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SHIP REGISTRY IN PANAMA

The strategic geographical location of Panama and the existence of Panama Canal have earned the Republic of Panama a high degree of prominence throughout the nations of the world engaged in maritime trade and transportation.

At present, Panama is an international crossroads of maritime routes and an important distribution and redistribution cargo center, with the world's first largest fleet. The maritime sector of the Republic of Panama contributes with 20% of the national GIP.

The legislation of Panama provides substantial incentives to the manufacturing, agricultural, and tourist industry. Free zones facilities, an international banking, financial and shipping center, insurance and reinsurance activity, complement the scenario to induce any businessman to seriously take in account the Republic of Panama as the ideal recipient for capital investments.

A. PANAMA SHIP & MORTGAGE REGISTRATION

The Republic of Panama has offered facilities for the registration of vessels engaged in all types of maritime activities. Through Law N° 8 of 1925 a procedure for the registration of vessels was adopted, which permits the enrolment of cargo and passenger vessels, as well as dredgers, barges, floating docks and other type of vessels.

A wide range of legal services related to ship registration and mortgages under the laws of the Republic of Panama has been offered by our firm to the international maritime community since 1920.

Professional services are available for ship and mortgage registration in other open registry countries such as Bahamas, Liberia, Honduras, Belize and Cyprus through our affiliated offices strategically located in various offshore centers.

B. ADVANTAGES OF REGISTERING A SHIP IN PANAMA

- An open registry sovereign system recognized by the international maritime community as having successfully adapted to its needs since 1925, which is presently the largest world registry in tonnage and number of vessels.
- Any ship owner, whether a natural or corporate person, and irrespective of its nationality or domicile, is entitled to register a vessel under the Panama flag.
- **Taxation.** The revenues derived from the international maritime commerce of merchant ships registered under the Panama flag is not subject to income tax in Panama, and such vessels enjoy very competitive tonnage tariffs.

- **Manning and labor.** The ship owners may engage personnel of any nationality within the prevailing international maritime usages under very advantageous labor conditions.
- **Financing shipping activities.** The market for such purpose has found ample support through the Panama ship mortgage, extensively used by highly ranked worldwide credit institutions, which have accepted said medium as an expeditious and institutionally stable security vehicle. Registration proceedings may be completed in 24 hours.
- **Yachts and Ship Fleet.** Pleasure yachts are entitled to reduced tariffs, and ship fleets to tax rebates under current regulations.

C. PROCEDURE FOR SHIP REGISTRATION

Among the features which distinguish the Republic of Panama as an open ship registry country may be mentioned: the fact that any natural or juridical person may register its ships under the Panamanian flag, irrespective of its nationality and residence; the fact that there is no limitation on the age of the ship sought to be registered nor to the type of activity it may engage into.

Consequently the ship owner may operate it on the high seas, on costal, river, port navigation, etc.

1. **Application for registration:** The procedure for registration begins by filing an application form for Registration by the owner of the ship or by his legal representative before the Panama Maritime Authority, or abroad, before an authorized Consulate of the Republic of Panama.
2. **Provisional Registration:** A Provisional Navigation Patent shall be issued by the Consular Office or Panama Registry Office upon the filing of a complete description of the ship, as per annexed form, and payment of the corresponding annual fees or taxes. The entire procedure takes approximately a working day.
3. **Permanent Patent:** The respective Title Deed must be duly recorded in the Public Registry of the Republic of Panama within the six (6) months after the issuance of the Provisional Navigation Patent. After its recordal, an application must be filed to procure the issuance of the Permanent Patent of Navigation, valid for four (4) years.
4. **Documents & information required:**
 - a. Deletion Certificate or Waiver of Previous Registry duly certified by the respective Consulate of the Republic of Panama or by Apostille.
 - b. Proof the applicant is the owner of the ship for the registration of which application was filed.

- c. The Title Deed evidenced either by a New Building Certificate or by Bill of Sale, duly notarized or certified. If there is no sale involved, the property deed, or certified copy of a priori registry showing the owner; Judicial Sale.
 - d. Appointment of a resident agent in Panama (Power of Attorney in favor of ICAZA, GONZALEZ-RUIZ & ALEMÁN).
 - e. Tonnage Certificate.
5. **Radio License:** It is a legal requirement that the ships under Panamanian Registry must carry on board a Radio License issued by the Panama Government. To that effect, the corresponding application must be filled in, and may be filed through the Panama Consulates abroad or through our offices in the city of Panama. Said application must be filed before the Directorate General of Merchant Marine in Panama within the three (3) months after the issuance of the Provisional Patent of Navigation.

D. ESSENTIAL FEATURES OF PANAMA SHIP MORTGAGE LAW

Any type of ships under Panama registry may be mortgaged pursuant to the provisions of the Commercial Code of Panama dealing with naval mortgages. Panama naval mortgages are widely used in international financial circles and the principal credit institutions of the world are familiar with Panama naval mortgages.

The registration of the mortgage in Panama or preliminarily before Panamanian Consulates abroad, should be made after recording the Bill of Sale in the Public Registry Office, or simultaneously with the recording of said Title of Ownership. It is important to note that the language of the mortgage document pertaining to the constitution of the mortgage should not recite that the mortgagor "grants, conveys, mortgages, pledges, etc." to the mortgagee the mortgaged vessel. The system of having the mortgagor grant, convey and mortgage the vessel is completely foreign to Panamanian law. Under this system, the mortgagor cannot convey the vessel and, at the same time, hypothecate it. The following language should be used: "To secure and to guarantee the payment on demand of... the shipowner (or the mortgagor) hereby executes and constitutes a first and absolute naval mortgage in accordance with the provisions of Chapter V, Title IV of Book II of the Code of Commerce, and the pertinent provisions of the Civil Code and other legislation of the Republic of Panama, upon the vessel, property of the shipowner, of Panamanian flag and registry, the description of which is as follows:..."

1. Formalities and requirements

Formalities to constitute a ship mortgage may be constituted in Panama or abroad, in any language, by either a private document or a public deed document, and with the formalities required by the laws of the place of execution; but it will affect third parties only from the date of recording in the Public Registry. The document to be filed must have been previously legalized by a Panama consul.

A Panama naval mortgage must always be a bilateral document, that is, it must be executed by the mortgagor on the mortgagee.

2. What must the mortgage contain?

- Name and domicile of the mortgagor and mortgagee.
- The exact amount or the maximum amount secured thereby.
- Dates on which capital and interest must be paid or manner of determine same, except where the obligation guaranteed is payable on demand or where it guarantees future obligations or obligations subject to a condition precedent.
- Rate of interest or manner of ascertaining it.
- Name, number of patent, call identification, tonnage and measurement of vessel; and if vessel is under construction the date referred to in Article 1518.
- In case of mortgage on several vessels, any or all vessels(shall be subject to the payment of the debt, unless otherwise provided in the mortgage (see Article 11 of Law N° 43 of November 8, 1984).

3. What is secured by the mortgage?

The capital, all interest, costs, expenses for collection of amounts due, the sums resulting from variations in the currency or of payment, any other sums set forth in the mortgage.

A ship mortgage may also secure the performance of obligations arising from credit facilities, such as lines of credit; revolving credits, overdrafts or of any other kind. The payment of the total amount due will not extinguish the credit contract or the mortgage which secures such obligations. The variation in the currency, change of payment dates or means of payment or variation in interest will not extinguish the agreement or the mortgage securing the obligations; nor will it be extinguished by the substitution of one debtor by another (Article 9 of Law N° 43 of November 8, 1984).

The provisions of Articles 1591 and 1592 of the Civil Code are not applicable to future ship mortgages already recorded prior to its enactment. Therefore, it is no longer necessary to record supplemental mortgages containing:

- declarations of drawdowns when the original mortgage secures obligations rising from credit facilities, such as revolving credit agreements; or,
- declarations on the performance of conditions when the mortgages secure future obligations or obligations subject to condition precedent.

Presumption: It is presumed, as to the parties and third parties, that the amounts due are those set forth in the complaint unless shown otherwise.

Interest provisions: It can be agreed, and so stated in the mortgage, that the interest rate is that prevailing in a given market, or the prime rate in any market. It can be stipulated that the rate is that prevailing on the date of the mortgage or that it will be subject to the fluctuations occurring during the existence of the obligations.

The obligations secured by a ship mortgage shall not be subject to a maximum rate of interest; however the National Banking Commission may fix a maximum when the mortgage is constituted on vessels for coastal service in Panama.

Private sale of mortgaged vessels: The ship mortgage law of Panama recognizes the validity of private sales according to express provisions added to Article 1527 of the Commercial Code by Law N° 43 of November 8, 1984. However, the following conditions must be complied with:

- Twenty days advanced notice must be given to the owner, and to any other mortgagees.
- The mortgagee seeking such a private sale is responsible for the damages caused thereby.
- The buyer acquires the vessel subject to the payment of debts and liens thereon, except the credit of the mortgagee seeking such sale (Article 13 of Law N°43 of November 8, 1984).

Extinguishing maritime liens: Maritime liens are extinguished by judicial sale, and within six months from the final registration of the document evidencing the private sale; but the private sale will not extinguish a ship mortgage (Article 4 of Law N°43 of November,8, 1984).

Management of mortgaged vessel: The mortgagee may provide that the mortgagee can take possession and management of the vessel, collect the freight revenue from it and apply the proceeds to the payment of sums owing. He may exercise such power even if the vessel is in possession of third parties.

The mortgagee is responsible for the damages caused by this action. The owner can petition the court to deprive the mortgagee of such possession in case of mismanagement thereof. (Article.14 of Law N°43 of November 8, 1984).

Preliminary registration proceedings: Laws N°14 of 1980 and N°43 of November 8, 1984 created and reinforced the system of preliminary regulation of titles of ownership and mortgage on vessels of Panamanian, registry.

The preliminary registration may be carried out either directly before the public registry offices in Panama, through a law firm, or before Panama consuls abroad.

The provisions now in force require that the following documents be submitted for the preliminary registration:

- Titles of ownership over Panamanian flag vessels (Bill of Sale, Builder's Certificate or Marshal's Sale).
- Mortgage deeds and documents amending or releasing mortgages or assignment of mortgage credits constituted on vessels registered in the Merchant Marine of Panama.

The party wanting to carry out preliminary registration of the documents before a Panama consul must fill in a printed form (available in Spanish and English) which summarizes the main features of the documents to be submitted for the registration. It is then compared by the consul with the original text of the document to determine whether the summary and the respective document conform in substance. A transcript of the summary is then telexed by the consul to the public registry office. The registrar will then effect a preliminary registration of the document in question by microfilming the summary, and will send the consul the authorization to issue a preliminary registration certificate showing the date and hour of the entry, made in the journal and the respective microfilm registration data.

If the interested party prefers to effect preliminary registration directly through the Registry Office in Panama, it will have to send the relevant documents to a law firm, duly executed by the parties and their signatures acknowledged before a Panama consul. Alternatively, an unexecuted document may be sent to a lawyer together with powers of attorney for its execution in Panama by persons appointed for such purpose, possibly lawyers.

A certificate evidencing preliminary registration may then be issued in Panama or through the Panama consul designated by the interested parties. This certificate will evidence registration of the title of ownership or mortgage in the Registry Office of Panama; and such entries will be valid for a period of six months, from the date on which the certificate is issued.

Preliminary proceedings for the registration of title deeds and naval mortgage or assignments, amendments or releases thereon will take approximately one working day. Preliminary Registration proceedings may be completed on the same date that the interested parties appear before the Consul of Panama, or on which the lawyer receives the documents from the clients.

The preliminary registration is valid for a period of six months during which the documents recorded under such proceedings should be forwarded to attorneys in Panama for translation, formalization and registration. If the registration of these documents is not completed within the six month period, the preliminary registration becomes invalid. But although a preliminary procedure to register the above documents has been established, this does not imply that this procedure cannot be waived.

ADMIRALTY PRACTICE MARITIME LITIGATION

Upon the creation of the Maritime Courts of Panama in the year 1982 and availing ourselves of the vast and rich experience of our partners, the Maritime Litigation Department is in position to offer to both our domestic and international clientele all of its knowledge and infrastructure to cope with claims arising from the transportation of merchandise by water, including: conflicts involving maritime insurance policies of every type, lawsuits arising from labor relationships, conflicts arising from the breach of charter contracts, judicial execution of maritime credits arising from port services and ship chandler, bunker and fuel dispatch in general, collision, salvaging, and claims related to the transit of ships through the Panama Canal.

Jurisdiction of the Maritime courts extended to all acts arising from maritime, commerce and maritime traffic within the territory of the Republic of Panama: its territorial seas, navigable waters of rivers and lakes, and in waters of the Panama Canal. Also those areas elsewhere, from maritime commerce and traffic, in the following cases:

- a. When actions are filed against vessel or its owner and vessel is attached within the jurisdiction of the Republic of Panama;
- b. When the Maritime Court has attached the property of defendant, even if he is not domiciled within the territory of the Republic of Panama;
- c. When defendant is found within the jurisdiction of the Republic of Panama and has been personally served with complaint of acts filed in Maritime Courts;
- d. When one of the vessels involved is of Panama registry, or the substantive law of Panama will be applicable by virtue of contract; or because so provided by Panama law, or when parties had submitted, expressly, or implied the jurisdiction of the Maritime Court of Panama.

A. Action in Rem for the Execution of Maritime Liens (including mortgage foreclosure)

1. The action must be filed against the vessel, cargo, freight, or any two of them, jointly.
2. The complaint must comply with the general provisions on pleadings and set forth the following:
 - a. Title to identify the actions a special proceedings for the execution of maritime liens;
 - b. Description of vessel, cargo or freight subject to the lien, and amount of the lien, stating whether they are, or shall shortly be, within the jurisdiction of the court;
 - c. The prayer for attachment of the property subject to the lien.
 - d. After the complaint has been admitted and the property subject to the lien has been duly attached, the action shall continue its course following the provisions applicable to regular proceedings.

B. Attachment

The rules of maritime procedure state that the purposes of an attachment are: 1) to provide security and prevent that the defendant secret, sell, encumber or otherwise cause a loss in value of the property or that it be wasted; 2) as a means of acquiring jurisdiction; 3) to satisfy maritime liens on the property attached.

C. Amount of security required in order to issue attachment

An indemnity bond of \$1,000.00, plus an initial advance to the marshal not to exceed \$2,500.00 for the maintenance and custody of the property attached. If the property attached is a vessel, the advance to the marshal shall be \$2,500.00. The marshal may require additional advances.

When the attachment is made for security purposes only, and not to satisfy maritime liens, the amount of security shall be fixed by the Court and shall not be less than 20% nor more than 30% of the amount sued for.

DESCRIPTION OF THE VESSEL

Name of Vessel:
Former Name of Vessel (if any):
Previous Registry of Vessel (if any):
Name of Builder:
Date of Construction:
Place of Construction:
Number of Decks:
Number of Bridges:
Number of Masts:
Number of Funnels:
Kind of Vessel (Engine Specification):
Material of Hull:
Type of Service:
Length:
Breadth:
Depth:
Tonnage Below Deck:
Gross Tonnage:
Net Tonnage:
Type and Number of Motors:
Number and Type of Cylinders:
Horsepower:
Name of Manufacturer:
Name of Party Responsible for Radio Account:
Classification Society:
Speed of Vessel:
Name and Address of the Owner of the Vessel:
Name of Legal Representative in Panama: Icaza, González-Ruiz & Alemán
IMO#:

IMPORTANT NOTICE:

Attached to this application form it should be included:

- a. Copy of "The Safety Management Certificate" to be issued by a recognized classification society, on behalf of the Government of The Republic of Panama, as per SOLAS Convention, 1974, as amended.
- b. Copy of "The Document of Compliance" as required by ISM Code.



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SPECIAL POWER OF ATTORNEY

I, the undersigned, for and on behalf of _____, fully empowered, do hereby appoint as LEGAL REPRESENTATIVES in the Republic of Panama lawyers ICAZA, GONZALEZ-RUIZ & ALEMAN, of Calle Aquilino de la Guardia No. 8, City of Panama, Republic of Panama, so that they may do any and whatsoever as required by any laws and regulations in force in Panama as regards the vessel known as _____ and particularly for the following:

To first register the above mentioned vessel in the National Merchant Marine and to this effect to obtain all and any Provisional and Permanent Patents of Navigation; Radio Licenses; and whatsoever documents issued by the Directorate General of Merchant Marine in the Republic of Panama.

To change the name of the vessel by name to re-register her under a new owner and to this effect to obtain all and any Provisional and Permanent Patents of Navigation; Radio Licenses; and whatsoever documents issued by the Directorate General of Merchant Marine in the Republic of Panama.

To file and to obtain Provisional and Permanent Deletion from the Panamanian authorities be it in Panama City at the Directorate General of Merchant Marine or at a Consulate of Panama abroad.

For the above-mentioned purposes the legal representative in Panama is authorized to lodge applications and to withdraw them; to present evidence for each and every of the above written registrations, change of ownership and re-registration; and, to pay any and whatsoever taxes; to receive sums of money on behalf of the owner of the vessel; to receive, transact or settle, appoint substitutes.

Dated this _____ day of the month of _____ of the year ____

Position or Title: _____

Authorized to execute Power of Attorney

REMARKS: This document must be acknowledged before Notary Public and legalized Panamanian Consul.