

Panama Ship Registry
Guide & Procedure



Icaza
González - Ruiz
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PANAMA SHIP REGISTRY GUIDE & PROCEDURE

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Historical Overview

ICAZA, GONZALEZ-RUIZ & ALEMAN founded in the year 1920 under the name LOMBARDI E ICAZA, grows with the international financial services center of Panama. Its founders are pioneers among those who contributed to the creation of the legal structure in our country, which has been developing in order to become the international financial center it is today.

Presently, ICAZA, GONZALEZ-RUIZ & ALEMAN has a qualified group of lawyers, who day to day expand, enrich and renew the capacity of the firm, with studies and up to date specializations required in Panama and abroad, which have converted it into an organization with ample capacity to attend every aspect of legal counseling demanded of cities with important financial and commercial activities.

The experience acquired through the years, supported by its personnel of more than 150 employees, the majority of which are bilingual and the modern computerized systems of the firm allows it to render a most efficient service to its domestic and international clients.

The international demand for services has required of our firm to establish affiliated offices in other international financial service centers, such as Anguilla, Bahamas, Belize, Cyprus, Dubai, British Virgin Islands (BVI), Geneva, Lugano, Luxembourg, Seychelles, Singapore and Uruguay, which has enabled it to satisfy and attend all the particular necessities required by its clients.

Our main concern is to continue rendering a service of quality and efficiency to our distinguished clientele, colleagues and correspondents throughout the world, pursuant to the new market structures which are being developed.



ENGLISH VERSION

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INTRODUCTION

Its geographical location, the strategic position and the operation of the Canal have earned the Republic of Panama a high degree of prominence throughout the nations of the world engaged in maritime trade and transport.

Currently, Panama is a center of confluence of maritime routes and an important hub of sea cargo distribution and redistribution, with the world's largest fleet. The maritime sector of the Republic of Panama contributes with 20% of the GDP.

The legislation of Panama provides incentives to the manufacturing, agricultural, and tourist industry. Free zones facilities, an international banking, financial and maritime center, insurance and reinsurance activities complement the scenario that induces any businessperson to seriously consider the Republic of Panama as the ideal host for capital investments.

For over 85 years the Republic of Panama has offered facilities for the registration of vessels engaged in all type of maritime activities.

The Republic of Panama offers facilities for the registration of ships engaged in all types of maritime activities. Through the General Merchant Marine Act (Law No. 57 of August 6, 2008), a procedure for the registration of ships was adopted and updated, which allows the enrollment of cargo and passenger ships, as well as dredgers, barges, pontoons and all kind of vessels.

The Panama ship registry has consistently maintained the following advantages:

- A sovereign and independent system recognized by the international maritime community since 1925, which is presently the largest world registry in tonnage and number of vessels.
- Any shipowner, whether a natural or juridical person, and irrespective of its nationality or domicile, may register its vessels under the Panamanian flag.
- An open registry sovereign and independent 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 juridical person, and irrespective of its nationality or domicile, may register its vessels under the Panamanian flag.
- Taxation. The revenues derived from the international maritime commerce of merchant ships registered under the Panamanian flag are not subject to income tax in Panama, and said ships only have to pay taxes and fees on its tonnage under a system of highly competitive tariffs.
- Labor Force. The ship owners may hire personnel of any nationality under labor laws that had been adapted to the international practices and costumes of navigation at sea. The Republic of Panama ratified the STCW Treaty related to work conditions on board of ships.
- Ship Financing. The market for such purpose has found ample support in Panama, through

the ship mortgage, extensively used by highly ranked worldwide credit institutions, which have accepted said instrument as an expeditious and institutionally stable security facility.

The ship mortgage holds 4th place of preference within the preferred maritime credits on the ship.

- **Fleet special discount.** Under the current regulations, discounts shall be granted to economic groups that wish to register three (3) or more vessels in the Panamanian Merchant Marine. Said discount shall be from 25% up to 60% in registration taxes and fees, depending on the gross tonnage of the vessels that have a minimum of 30,000 and a maximum of 100,000 gross tons.
- **Reduced fees for yachts.** There is a fixed charge for the yacht owners that wish to register their vessels in the Panamanian Merchant Marine. For yachts whose owner is a foreign corporation, the official fee shall be US\$1500.00 and for the yachts whose owner is a Panamanian corporation, the official fee shall be US\$1000.00.

PROCEDURE FOR SHIP REGISTRATION

Among the essential features that distinguish the Republic of Panama as an open ship registry country is the fact that any natural or juridical person may choose to register its ships under the Panamanian flag, being their owners Panamanians or foreigners, residents or not of the Republic of Panama, further existing the fact that there are no limits regarding the age of the ships sought to be registered, nor to the type of activity it may engage into; consequently, its shipowner may operate the same on high seas navigation as well as on coastal, river and inter-port navigation.

1. **Name Availability.** Before registering a ship, the name with which it wants to be registered, must be free and available. In Panama it is allowed to request name reservation, and same shall be done by month. Reservation fees amount to US\$20.00 monthly.
2. **Application for registration.** The procedure for registration begins by completing an application form for registration using the “token PKI” by the owner of the ship or by his legal representative before the General Directorate of Merchant Marine in Panama, or before an authorized Consulate of the Republic of Panama.
3. **Provisional Registration.** After receiving the complete description of the ship according to the description of the ship form (see annex) and payment of the corresponding annual fees or taxes in accordance to the vessel service and its net and gross tonnage, the General Directorate of Merchant Marine or the corresponding Panamanian Consulate proceeds to issue the Provisional Navigation Patent valid for six (6) months. The complete procedure takes approximately one working day.
4. **Statutory Navigation Patent.** The respective title deed must be duly recorded in the Naval Property Registry Office of the Republic of Panama within the six (6) months after the issuance of the Provisional Navigation Patent. After its registration, an application must be filed for the obtainment of the Statutory Navigation Patent, whose duration is for five (5) years.

5. **Documents & information required to complete the registration of a ship:**
 - Copy of the “Safe Management Certificate” and the Document of Compliance (DOC) related to the ISM Code.
 - Deletion Certificate or Waiver of Previous Registry (duly authenticated by the corresponding Consulate of the Republic of Panama or by Apostille).
 - Proof that the applicant is the owner of the ship for which the registration is requested.
 - Title Deed evidenced either by a Builder’s Certificate or by Bill of Sale, duly notarized or authenticated. If there is no sale involved, the property deed, or authenticated copy of the prior registry showing the owner; Judicial Sale.
 - Appointment of a resident agent in Panama (Power of Attorney in favor of ICAZA, GONZALEZ-RUIZ & ALEMAN).
 - Statement of the goods that the ship transports.
 - Technical Certificates of the ship, depending on each case: CSR, SMC, IOPP, ISSC.

6. **Provisional Radio License.** It is a legal requirement that the ships under Panamanian Registry must carry on board a Radio License issued by the Government of Panama. To that effect, the corresponding application must be filled in, and may be filed through the Panamanian Consulates abroad or through our offices in the city of Panama together with the provisional registration application. The provisional license shall be valid for six (6) months.

7. **Permanent Radio License.** The issuance of the provisional radio license, whose duration is five (5) years, must be filed before the Directorate General of Merchant Marine within six (6) months following the issuance of the permanent license.

8. **Registration of leisure ships or pleasure yachts.** The pleasure yachts or crafts that enter the Panamanian Merchant Marine shall have a special registration valid for two years.

To apply for said registration, the applicants shall submit the following documents:

 - Appointment of Resident Agent (Power of Attorney in favor of IGRA)
 - Deletion Certificate or Waiver of previous registry
 - Proof that the applicant is the owner of the ship for which the registration is requested.
 - Owner’s Affidavit, where it is evidenced that the ship shall not be used for commercial purposes.
 - Owner’s Statement regarding the main areas where the craft shall navigate, setting forth the corresponding coordinates.

9. **Special registration for temporary navigation.** Intended for ships of international services destined to scrapping, delivery trips or any other mode of temporary navigation. A special provisional patent of navigation and Radio license both valid for a term of three (3) shall be issued to the ships registered in said Special Registration.

10. **Chartered Vessels – Dual Registration.** A foreign registry ship chartered for a period, which does not exceed two years, may be registered in Panama by the Charterer and, at the same time, maintain its foreign registry, provided, of course, that such dual registration is permitted by the regulations of the country in which the vessel was originally registered by its owner. Upon requesting such registration, the Charterer must file with the Shipping Bureau in Panama the following:
 - a. Authentic copy of the Charter Party

- b. Consent of the owner for the registration in Panama
- c. Certificate of Registration in the foreign country
- d. Certificate of Consent to the registration in Panama issued by the proper authorities of the country in which the registration originally effected by the ship-owner

Upon granting of the registration, a Special Navigation License is issued by the Panama Maritime Authority. The vessel will be subject to the payment of the same fees payable by vessels having a basic registration in Panama, as above outlined.

The above referred Special Navigation License will state the name of the shipowner; and any lien or encumbrances appearing in the certificate of foreign registration.

The Title Deed of the vessel maintaining a dual registration may not be filed for recordation in Panama. Consequently, no mortgages or other encumbrances against the vessel may be registered in Panama. The laws of the foreign country will apply with respect to any ship mortgage constituted against the vessel. The Special Navigation License is valid for a period of 2 years, which may be renewed for successive periods of 2 years each.

A vessel registered in Panama, subject to a charter party, which does not exceed 2 years, may be likewise registered in a foreign country and, at the same time, maintain its Panama registry. Such foreign registration is, of course, subject to permission being granted by the foreign country. A Panama registry vessel so registered in a foreign country will continue to be subject to all legal and tax obligations of the Republic. The ship owner may not register its title deed or mortgages constituted against the vessel in the foreign country granting the dual registration.

- 11. Lay-up ship registration.** A special registry has been established for ships willing to be registered in Panama and that are laid up for lack of commercial exploitation (Lay-up), due to financing crisis.

Such special registration shall have a validity of one (1) year, and may be extended for an additional term of one (1) year.

The special registration of laid up ships has the following benefits:

- 1. Exemption of the following payments:
 - a. Registration fees for ships that enter the registry for the first time;
 - b. Annual Inspection fee;
 - c. Single Fee for Casualty Investigation, and
- 2. The ship shall not be required to have certificates on board.

- 12. Assignment of patent number and radio call letters for ships in construction.** It is for those ships that are in the process of construction in the shipyard, and wish to obtain a special registry. It only has to be requested and provide the service of the ship together with the approximate dimensions and tonnages, then the Department of Ship Registration proceeds to issue the patent number and radio call letters through a certificate issued by them.

ESSENTIAL FEATURES OF PANAMA SHIP MORTGAGE LAW

Any type of ships under Panama registry may be mortgaged pursuant to the provisions of Law

55 of August 6th, 2008 about Maritime Commerce (that repealed Book II of the Commercial Code of Panama), which deals with ship mortgages. Panama ship mortgages are widely used in international financial circles and the principal credit institutions of the world are familiar with Panama ship mortgages.

The registration of the mortgage in Panama or preliminarily before Panamanian Consulates abroad, should be made after recording the title of ownership at the Naval Property Registry Offices or simultaneously with the recording of said Title of Ownership.

1. Formalities and requirements.

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

A Panama ship mortgage must always be a bilateral document, that is, it must be executed by the mortgagor or at least expressly accepted by the mortgagee.

2. What must the mortgage contain?

- Name and domicile of the mortgagor and the mortgagee.
- The exact amount or the maximum amount secured.
- Dates on which the capital and interest must be paid or manner to determine same, except where the obligation guaranteed is payable on demand or where it guarantees future obligations or obligations subject to a condition precedent.
- Interest rate or manner of ascertaining it.
- Name, number of patent, call identification, gross and net tonnage and measurements and dimensions of the vessel; and if vessel is under construction, the date referred to in Article 263 of Law 55 of August 6th, 2008.
- 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 numeral 6 of Article 260 of Law N° 55 of August 6th, 2008).

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 shall not extinguish the credit contract or the mortgage which secures such obligations. The variations in the currency, change of payment dates or means of payment or variation in interest shall not extinguish the agreement or the mortgage securing the obligations; nor shall it be extinguished by the substitution of one debtor by another (Article 258 of Law 55 of August 6th, 2008).

Presumption. It is presumed, as to the parties and third parties, that the amount due is the one set forth in the respective foreclosure complaint, unless shown otherwise.

Provisions about the interests. 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 interest rate; however the Superintendency of Banks 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. However, the following conditions must be complied with:

A twenty days advanced notice must be given to the owner, and to any other mortgagees.

- The mortgagee shall be liable 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.

Extinguishing preferred maritime liens. Preferred 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 shall not extinguish a ship mortgage.

Management of mortgaged vessel. It may provided on the mortgage deed that the mortgagee can take possession and management of the vessel if it deems it convenient for the protection of its credit, collect the freight revenues from it and apply them to the payment of sums owed. He may exercise such right even if the vessel is in possession of third parties.

The mortgagee is liable for the damages caused by the management of the vessel. The owner can petition the court to deprive the mortgagee of such possession in case of mismanagement thereof.

The mortgagee is bound to render accounts to the owner every three (3) months and at the end of the management, except it was agreed upon otherwise.

There being mortgagees of different rank, the right to take possession of and to manage the vessel shall be exercised in accordance to the priority order of the respective mortgages. (Article 273 of Law 55 of August 6th, 2008).

Preliminary registration proceedings. Law 55 of August 6th, 2008 considers the system of preliminary registration of titles of ownership and ship mortgages on Panamanian flag vessels.

The preliminary registration may be carried out either directly before the Naval Property Registry offices in Panama, through our law firm, or before Panama consuls abroad.

The following documents may be submitted for its preliminary registration:

- Titles of ownership. Bill of Sale, Builder's Certificate or Marshall's Sale.
- Agreements amending or releasing mortgages or assignment of mortgage liens constituted on vessels registered in the Merchant Marine of Panama.

The party willing to carry out preliminary registration of the documents before a Panamanian 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 transmitted by the consul to the Naval Property Registry Office. The Registry shall then make a preliminary registration of the document in question by scanning the summary, and shall 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 make the preliminary registration directly through the Naval Property Registry Office in Panama, it shall have to send the relevant documents to a law firm, duly executed by the parties and their signatures acknowledged before a Panamanian consul. Alternatively, an unexecuted document may be sent to a lawyer together with Special Power 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 Panamanian consul designated by the interested parties. This certificate shall evidence registration of the title of ownership or mortgage in the Naval Property Registry Office of Panama; and such entries shall be valid for a period of six months, from the date on which the certificate is issued.

Proceedings for the preliminary registration of title deeds and naval mortgage or assignments, amendments or releases thereon shall 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 when 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 lawyers 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.

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 transport of goods by sea, including: conflicts involving maritime insurance policies of every kind, lawsuits arising from labor relationships, conflicts arising from the breach of charter contracts, judicial execution of maritime credits arising from port services and maritime commerce, fuel dispatch in general, collision, salvage, and claims related to the transit of ships through the Panama Canal.

Justice in maritime matters is executed by the Maritime Courts, the Maritime Court of Appeals and Arbitration Courts.

The Maritime Courts shall have exclusive competence, in first instance, in the causes arising from acts related to the maritime commerce, transport and traffic, occurred within the territory of the Republic of Panama, in its territorial sea, the navigable waters of its rivers, lakes and those of the Panama Canal.

The Maritime Courts shall have exclusive competence to hear of the causes arising from acts referred to on the previous paragraph, occurred out of the scope pointed out on the previous paragraph, in the following cases:

- When actions are filed against the vessel or its owner and vessel is attached within the jurisdiction of the Republic of Panama as consequence of such actions;
- When the Maritime Court has attached other assets property of defendant party, even if he is not domiciled within the territory of the Republic of Panama;
- When the defendant party is within the jurisdiction of the Republic of Panama and has been personally served of any proceedings filed in Maritime Courts;
- When one of the vessels involved were under Panamanian flag, or the substantive law of Panama should result applicable by virtue of contract or due to what is provided by the Panamanian law, or when parties had submitted, expressly, or implied the jurisdiction of the Maritime Courts of Panama.

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

The action must be filed specifically against the vessel, cargo, freight, or the combination thereof.

The complaint must comply with the general provisions on pleadings and set forth the following:

1. The libel must be identified indicating that it is regarding to an action for the execution of preferred maritime liens;
2. 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;
3. The request for attachment of the properties subject to the lien.

After the complaint has been admitted and the properties subject to the preferred maritime lien has been duly attached, the action shall continue its course following the provisions applicable to regular proceedings.

Our Maritime Procedural Law establishes the Special Proceeding of Execution of Ship Mortgage, whereby the expedited execution of mortgage credits on vessels of any nationality is guaranteed.

2. Attachment

The attachment decreed by the Maritime Court shall have as purpose:

- To avoid that the proceeding may be illusory in its effects and prevent that the defendant party transpose, dispose of, deteriorate, encumber or otherwise cause a loss in value of the properties likely of such measure;
- To ascribed to the Panamanian Maritime Courts jurisdiction for the hearing of causes that might arise within or outside the national territory, as a consequence of facts or acts related to navigation, when the defendant were out of the jurisdiction.

The attachment constituted in accordance to what is set forth in this paragraph shall have the effects of personal notice to the defendant, being the plaintiff obliged in any case to send to the defendant, within a period of five (5) days, a copy of the respective complaint.

3. Cost and expenses for the attachment action

- An indemnity bond of US\$1,000.00, for possible damages that the attachment action might cause; plus an initial advance to the marshal not exceeding \$2,500.00 for the maintenance and custody of the property attached. If the property attached is a vessel,

the advance to the judge shall be \$2,500.00. The marshal may require additional advances.

- When the attachment is made for sole purpose of secure the proceeding results, the amount of bond shall be fixed by the Court, as the case might be, and shall not be less than 20% nor more than 30% of the complaint's amount.



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