



MSIG
SPECIALTY MARINE



FLAG & CLASS

CIRCULAR

Any merchant vessel or yacht needs a flag for that craft to be able to trade and be employed. In addition, most commercial vessels nowadays need to be classified by a Classification Society recognised by the flag state. Both flag and class are fundamental to how the global maritime and yachting industries operate. That is why, MSIG Specialty Marine would like to remind their clients of the importance of these two factors which play a crucial role in ensuring the safe and secure maritime world.

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I. FLAG AND FLAG STATES

Introduction

The national flag (ensign) is usually found on the stern of a vessel. This is the largest flag when compared to other signal and communication flags that could be seen on board a ship.

According to international law, every state – whether coastal or landlocked – has the right to sail ships flying its national flag on the high seas.¹ Every state can choose their own conditions and requirements for the registration of ships and for granting the right to fly its flag.² Once a vessel has been registered in a flag state, it will acquire a Certificate of Registry, which is the most important legal document carried on board. The Certificate is comparable to a passport for the ship and is evidence of registration.

Nationality of ships

When hoisted on a vessel or yacht, the flag signifies the nationality of that craft. The concept of ship nationality is crucial in the context of regulating maritime affairs and the sea.

¹ United Nations Convention on the Law of the Sea (UNCLOS) Article 90 (Right of navigation).

² UNCLOS Article 91 (Nationality of ships).

By acquiring a certain nationality, vessels become subject to the laws applicable within the jurisdiction of that state. Thus, the nationality of a vessel indicates:

- ◆ the rights and the obligations to which the ship is subject, and
- ◆ which state is responsible for the exercising of the flag state jurisdiction over that vessel.

Ships must follow all relevant legislation and regulations enforced by the country that they are registered with. For example, any ship registered with the Netherlands will fly the Dutch flag. This means that Dutch jurisdiction will dictate regulatory matters and issues as regards safety, crew, pollution prevention, etc.

Role of the flag state

The flag state of a vessel is the country where the vessel is registered. The flag state assumes the primary responsibility over vessels flying that state's flag, and the various rights and obligations include:

- ◆ exercising exclusive jurisdiction and control over the ship;
- ◆ registration and certification of the ship;
- ◆ regulatory oversight and enforcement of international maritime conventions (e.g., SOLAS, MARPOL, STCW, MLC);
- ◆ ensuring compliance with safety and environmental standards.

To this end, the flag state will conduct regular inspections of each of their ships to make sure that regulatory requirements are met, particularly, to ensure safety and pollution prevention, and to certify the crew and ensure labour compliance. The flag state is also responsible for collecting taxes from vessels flying its flag.

Can a vessel have more than one national flag?

Under international law, every ship must sail under one flag only (save in exceptional cases). A ship sailing under two or more flags may be considered stateless, that is, it may be assimilated to a ship without nationality.³ As an exception, there are states which accept dual flagged ships. This may happen, for example, when a bareboat charterer decides to temporarily register the chartered vessel under a flag of its choice, resulting in the vessel becoming dual flagged.

³ UNCLOS Article 92 (Status of ships).



Flag of Convenience

The United Nations Convention on the Law of the Sea (UNCLOS) prescribes that there must exist a “genuine link” between a ship and the state whose flag that ship is flying.⁴ However, international law provides no official definition of “genuine link”, nor is there a universal agreement between the Member States of the International Maritime Organisation (IMO) about the meaning of that term.

That is why, in practice, ship owners are not obliged to register their vessel in the country where they live or are incorporated. Often, to register a ship with a flag state, the ship must in some instances only pay taxes and costs of labour to that state. Basically, ship owners can quite literally buy the “genuine link” with the flag state. This creates some serious problems as we will see further below.

Some states, even landlocked ones, offer open registries to ship owners, which allows those states to have one of the biggest fleets in the world, and for which they have been often labelled as Flag of Convenience states. The term can be said to indicate several types of “convenience” for both a ship owner and for the respective flag state.

First, ship owners may want to change the flag of their ship with a flag of convenience to reduce costs (i.e., tax and financial purposes) and/or to circumvent the law and/or be subject to a more lenient legal regime. Secondly, there is convenience for flag states who often are states that do not have or barely have shipping companies incorporated on their territory. So, registering ships means extra income. For this reason, such states may provide financial benefits to those vessels, such as lower taxes and fees and lighter regulatory requirements and law enforcement. Thirdly, Flag of Convenience states have many vessels under their flag and, therefore, have more power at the IMO. This is because, when a new convention is to be passed by the IMO, not only the number of votes matters but also the gross tonnage of the registered vessels that are behind each vote.

Challenges and considerations

In summary, the absence of a universally precise definition of the term “genuine link” has, in certain cases, provided flexibility for various maritime stakeholders. While this flexibility can support commercial efficiency,

it may also present challenges related to maintaining consistent regulatory oversight and the uniform application of international standards. In some instances, this has been associated with variations in ship quality, regulatory enforcement, and operational practices. In other instances, however, some flag states specialise in certain vessel types and offer high standards, meaning registering under them can ensure quality, reliability, and fewer operational disruptions. As a result, “flags of convenience” can reflect a spectrum from lower to higher quality depending on the registry.

It is important to note that these dynamics are not isolated. According to data from the United Nations Conference on Trade and Development (UNCTAD), approximately 73% of the global fleet operates under a flag different from that of the vessel’s ownership. This widespread practice reflects the globalized nature of the shipping industry. While many flag states effectively meet their international obligations, some may face capacity or resource constraints that can affect the consistent implementation and enforcement of IMO regulations, as well as the exercise of jurisdiction and oversight over their fleets.

Future policies

To counter the abovementioned problems, the IMO has recently adopted new guidelines aiming at more transparency in ship registration and avoiding misuse of flags. These particularly encompass practical measures for flag states to strengthen their verification and due diligence processes, ensure accurate ownership records, and improve oversight of registration procedures.

⁴ UNCLOS Article 91.1 (Nationality of ships).



II. CLASS AND CLASSIFICATION SOCIETIES

What is a Classification Society?

Ship Classification Societies are non-governmental organisations which develop, apply and maintain technical standards for the design, construction and operation of ships. They also carry out surveys and inspections on board ships to certify that vessels comply with these standards in accordance with the mandate they have from the flag state as Recognised Organisation. A Classification Society will inspect the vessel and then issue a certificate. This is the Class Certificate. It attests that the vessel has been inspected and gives an indication of the actual state of the vessel. Mind, however, that attesting compliance with the rules of the Classification Society does not guarantee that a vessel is seaworthy. The latter is an exclusive responsibility of the shipowner.

Historically, the concept originates in London and is designed by insurers (Lloyd's of London). Classification Societies are very old and they appeared even before the emergence of P&I clubs in their modern form. At the time, traders and shipowners used to come together to discuss maritime risks and the particulars of a vessel. Later, they would write down all these details into unofficial lists, and this practice was more or less the beginning of the first Classification Society.

Role and objective of the Classification Society

Classification Societies have a uniquely dual role in the maritime industry. They act simultaneously as standard-setting entities and also as regulatory enforcers authorised by governments and national administrations. This hybrid role can be described as follows:

1) Classification of the vessel (classification services done on behalf of the shipowner): the objective of a ship classification is to verify the structural strength and integrity of essential parts of the ship's hull and its appendages, and the reliability and function of the propulsion and steering systems, power generation and those other features and auxiliary systems which have been built into the ship in order to maintain essential services on board.

2) Inspection and certification of the vessel

(statutory services done on behalf of the flag state): to enforce all its laws and regulations, a flag state can inspect the vessels flying its flag. Normally, however, flag states will not do this themselves but will hire a

company to perform these inspections. These companies entrusted by the flag state with inspection, are in practice Classification Societies.

International Association of Classification Societies (IACS)

Worldwide there are more than 50 classification societies that operate as marine classification societies, but only 11 classification societies are presently recognised by the EU. They are grouped together in an association known as the International Association of Classification Societies (IACS).⁵ This recognition allows them to act as Recognised Organisation on behalf of EU Member States. EU Member States can only authorise a Classification Society recognised by the European Commission to perform statutory services on board vessels flying that Member State's flag.

IACS covers over 90% of the world's cargo-carrying tonnage. The aim of IACS is to standardize the different rules of its members through the implementation of minimum requirements. If a vessel has a Classification Society which is a member of IACS, this shows that the vessel complies with a high threshold of safety standards. Furthermore, IACS established a general procedure for shipowners who intend to change their Classification Society, which attempts at avoiding the phenomenon of "class hopping" by ensuring that all Classification Societies comply with certain minimum standards.

Link between Flag and Class

In practice, the activities of classification and certification are so intertwined that it can be said that these two services are two faces of the same medal. Classification visits and certification inspections are often performed by the same inspector at the same time. In addition, flag and class are linked in several ways. First, in the context of statutory services, the flag state (regulator) dictates the standards and requirements, while class (surveyor) must oversee that they are met by the shipowners. Secondly, the Safety of Life at Sea Convention (SOLAS) and the International Convention on Load Lines (CLL) require classification. Finally, class and flag state requirements are also linked through the fact that class cannot be valid if the various maritime convention certificates (i.e., statutory certification) are not valid.

⁵ At the time of writing this circular, IACS consists of 12 members, and 11 of them are recognised by the EU as a Recognised Organisation for statutory maritime services.

Conclusion

Today, flag selection and maintenance of class can have a significant impact on many commercial relations and stakeholders as well as on the vessel's reputation and regulatory credibility. In particular, flag and class can have a substantial effect on Port State Control (PSC) inspections and compliance procedures, and thus on whether the vessel can enjoy unrestricted access to international ports and shipping routes. Flag and class may affect exposure to sanctions investigations, as well as regulatory due diligence and scrutiny by financial regulators. Furthermore, they are among the first benchmarks for the operational credibility of the vessel and for the vessel's acceptance by charterers and cargo interests. Lastly, marine insurance arrangements are greatly impacted by the selection of flag and class.

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