

INDIAN SHIPS, REGISTRATION

A ship entitled to fly the flag of a country needs to be registered in that country. The object of registration is to ensure that persons who are entitled to the privilege and protection of the Indian flag get them. The registration affords evidence of title off the ship to those who deal with the property in question. It also gives protection to the members of the crew in case of casualties involving injuries and/or loss of life to claim compensation under the provisions of the Indian Acts in Indian courts.

Indian Merchant Shipping Act of 1958, for the first time, dealt with registration of ships. Earlier acts had lacked this aspect totally. Part V of this Act deals with exclusively with the registration of Indian ships, while Part XV deals with registration of sailing vessels and Part XVA deals with the registration of fishing boats. Ships which qualify to be registered are required to be registered only at ports designated as ports of registry. At present Mumbai, Calcutta, Madras, Cochin and Mormugao have been notified as ports of registry and principal officers of Mumbai, Calcutta & Madras and Surveyor in charge of Cochin and Mormugao have been notified as Registrar of Indian ships. In their capacity as registrar of Indian ships, the principal officers are required to maintain a complete record of Ships on register indicating status of the ship on a particular date. A central register is maintained by the Director General of Shipping, which contains all the entries recorded in the register books kept by the registrar at the port of registry in India. The Director General of Shipping, at the request of owners of Indian ships, desiring to be known at sea, allots signal letter & controls the series that may be so issued. Certain formalities are required to be complied with before a ship is registered as an Indian ship and these

are laid down in the Merchant Shipping (Registration of ships) rules 1960 as amended from time to time.

Part V of the Merchant Shipping Act, 1958 and Registration of ships rules, 1960 as amended from time to time, are concerned with the Registration of Indian ships.

Status of Indian Ships

The conferment of status of Indian ships is restricted to:

- i) Ships owned by a citizen of India.
- ii) Ships owned by a company or body established by or under any central or state Act which has its principle place of business in India.
- iii) Ships owned by a co-operative society which is registered or deemed to be registered under the Co-operative Society Act, 1912, or any other law relating to Co-operative Societies for the time being in force in any state.

Qualification required for registration as Indian ships:

Sea going ships fitted with mechanical means of propulsion of 15 tons net and above howsoever employed and those of less than 15 tons net employed otherwise than solely on the coasts of Indian qualify for registration under Part V of the Merchant Shipping Act, 1958. Ships so registerable are required to be registered only at ports designated as ports of registry.

In their capacity as Registrar of ships, the Principal officers and concerned Surveyors In-charge are required to maintain a complete record of ships on register indicating as on a particular date the person/persons, either in their individual capacity or as joint owners or

as a corporate body, who have a stake in the ownership of ships. Not more than 10 individuals are entitled to be registered as a owner of a fractional part of a share in a ship, but a maximum of 5 persons could be registered as joint owners of a ship or of any share and shares therein. Joint owners by reason of the position as such cannot, however, dispose off in severalty, any share or interest therein.

Formalities to be observed for registration as Indian ship :

The owner of a ship wishing to have it registered at a port in India has to submit to the concerned Register:

- a) A declaration of ownership - in one or the other prescribe forms, as may be applicable, depending upon whether he is a sole proprietor, joint owner or a company made before a Registrar, Justice of the peace or an Indian Consular Officer.
- b) A certificate signed by the builder (builder's certificate) of the ship containing a true account of the proper denomination and of the tonnage of the ship as estimated by him and the time, when and the place where the ship was built, (for new ship).
- c) The instrument of sale under which the property of the ship was transferred to the applicant who requires it to be registered in his name, (for secondhand ships).
- d) To give a minimum of 14 days notice to the Registrar of the name proposed for the ship. The Registrar before registering the vessel in the name of the applicant shall obtain prior approval of the name from the Director General of Shipping who will also allot an official number for the ship.

On being satisfied that the ship, on the strength of the evidence placed before him, is entitled to be Indian ship, the Registrar arranges for survey of the ship by a surveyor for the determination of her tonnage in accordance with the Merchant Shipping (Tonnage Measurement) Rules, 1987 as amended from time to time, for the purpose of issue of a Certificate of Survey.

After the formalities enumerated above have been gone through, the Registrar issues a carving and marking note. This note is to be returned to the Registrar after carving and marking have been duly carried out on the ship in the prescribed manner and certified by a Surveyor. The carving and marking involves the carving of the name of the ship conspicuously on each side of her bows as well as insertion permanently on her stern the name of the intended port of registry.

On completion of the preliminaries to registry as described in the preceding paragraphs, the Registrar enters the particulars of the ship such as :

- a) Name of the ship and the port to which she belongs.
- b) Details contained in the Surveyors Certificate.
- c) Particulars respecting her origin as revealed in the declaration of ownership.
- d) the name and description of her registered owner and, if there are more owners than one, the number of shares owned by each of them; and
- e) Name of the Master, in the Registry Book. The Registrar issues thereafter to the owners a certificate of registry retaining the Surveyor's

certificate, builders certificate, instrument of sale by which the ship was sold, and the declaration of ownership.

Formalities connected with registration of an Indian ship when acquired abroad.

When a ship is built or acquired out of India and becomes the property of a person qualified to own an Indian ship, the owner or the Master of the ship will have to apply to the Indian Consular Officer at the nearest port for the issue of a provisional certificate of Indian registry and such officer, on production of satisfactory proof of ownership, grant the same to the owner or the Master. Such a certificate has all the force of a certificate of registry. It is, however, valid for a period of 6 months from its date of issue or until the arrival of the ship at a port where there is a Registrar whichever first happens and on either of these events happening would cease to have effect. The provisional certificate so issued will have to be exchanged by the owner for a certificate of registry from the concerned Registrar.

Quite often a ship has to set sail from a port where she is built in India to a port where she has to be registered. The owner in such cases or where he has applied to the Registrar for registration but delay in the issue of certificate of registry is anticipated, the Registrar may, on the strength of the authority issued by the Director General of Shipping, issue a temporary pass to enable the ship to ply between the ports in India.

The Certificate of Registry has to be used only for the lawful navigation of the ship and is not to be detained by reason of any lien, mortgage of interest whatsoever claimed by any party.

Anybody having possession of the certificate of registry has to make it over to the person entitled to its custody as otherwise he becomes

liable for being summoned before a Magistrate and examined on the issue touching his refusal to surrender the certificate to the one entitled to it.

No change in the name already in the registry is permitted except in accordance with the procedure laid down in the M.S.(Registration of Ships) Rules, as amended from time to time.

Application for the registry of alterations to a ship will have to be made to the Registrar within one month of the alterations.

Where the alterations are material so as to affect the principal dimensions of a ship or the means of propulsion, a ship will have to be registered as new and, in that event, rules applicable for first registry will come into force.

Where a ship is registered under circumstances envisaged in paragraph immediately above this, the original certificate of registry stands cancelled and the existing entries in the registry, remain closed. The original official number allotted to ship, is however, retained.

Where transfer of a port of registry is desired by all the parties having a stake in the ownership or otherwise of the ship, they shall apply to the Registrar of her port of registry, who may, with the prior approval of the Director General of Shipping have no objection to such transfer subject to such formalities as has been laid down in the M.S. (Registration of Ships) Rules and on payment of the requisite fees prescribed thereof.

Whenever there is any change in the Master of an Indian ship, in whatever the way the change has come about, a memorandum of change has to be endorsed and signed on the Certificate of Registry by the Presiding Officer of a Marine Board or a Court if the change of

Master is brought about as a result of the findings of the Marine Board of Inquiry or the Registrar or any other officer authorized by the Central Government or the Indian Consular Officer depending upon whether the change has occurred in India or abroad.

In the event of an Indian Ship being either actually or constructively lost, taken by the enemy, burnt or broken up or ceasing for any reason to be an Indian ship, every owner of the ship or any share in the ship is required to give a notice thereof to the Registrar and thereupon the Registrar will make an appropriate entry in the Register Book and the entry of the ship in that book would then be deemed mortgage that lies unsatisfied on that date will, continue to remain in force. The Master of such a ship, if the event accrues in India, will immediately make over the Certificate of Registry to the Registrar or within a period of 10 days after his arrival in India if the event occurs elsewhere.

Transfer or acquisition of an Indian ship or interest therein :

As per amendment to Section 42 of the M. S. Act no prior permission from the Director General of Shipping is required for creation of any mortgage on a ship except during the period when the security of India or any part of the territory thereof is threatened by war or external aggression. Similarly the Director General of Shipping's prior approval for the sale of the ship is not required provided:

- a) all wages and other amounts due to seamen in connection with their employment on that ship have been paid in accordance with the provisions of this Act.
- b) the owner of the ship has given notice of such transfer or acquisition of the ship to the Director General.

Any such transfer can be effected only by an instrument in writing in the prescribed form and the instrument, as may be so drawn up, has to contain a full description of the ship as is generally contained in the Surveyors ' certificate sufficiency to identify the ship by the Registrar and be in the form (Registration Form No.9) prescribed in the M.S. (Registration of Ship's) Rules, 1960, as amended from time to time. The owner of an Indian ship or a share therein wishing to transfer it in favour of somebody else will have to apply to do so with full particulars of the transferee. Where the instrument of sale refers to a consideration other than money, and if the Registrar has any doubt as to whether that constitutes a good condition, a decision therein will lie on the Director General of Shipping to whom the matter may have to be referred.

If the transaction has been concluded in India, the instrument of Sale referred to above accompanied by a Declaration of Ownership and the prescribed fee thereof has to be produced by the transferee to the Registrar of the port where the ship has been registered who will make appropriate entries in the Register Book and also suitably endorse on the instrument the date and hour of the entry. The Registrar has also to make as soon as possible suitably endorsement on the Ship's Certificate of Registry. Every such transaction has to be reported to the Director General of Shipping.

Transmission of an Indian ship or interest therein :

Where the property in an Indian ship or share therein is transmitted to a person on the death or insolvency of the registered owner or by any lawful means other than a transfer described as above, it would be effected by an application made to the Registrar of the ship's port of registry accompanied by a declaration in the prescribed form identifying the ship and also a statement of the manner in which and the person to whom the property has been transmitted. In the case of

transmission consequent on insolvency, a declaration of transmission has to be accompanied by proof of such claim. In the case of transmission as a result of death, the declaration of transmission shall be accompanied by a Succession certificate, probate or letters of Administration, under the Indian Succession Act, 1925 or a duly certified copy thereof. The Registrar on receipt of the declaration of transmission will make appropriate entry in the register book to give effect to the change in the ownership.

Where as a result of the transmission of property in a ship or share there on death or insolvency or otherwise a ship ceases to be an Indian ship, the Registrar of Port of her registry will have to submit a report to the Central Government through the Director General of Shipping setting out the circumstances in which the ship has ceased to be an Indian ship. On receipt of such a report, Central Government can make an application to the High Court for a direction for the sale of such Ship to any Indian citizen or any Indian company. Such an application may have to be made to the High Court by the Government within 60 days from the date of receipt of the report.

Registry of Government ships

A ship owned by Government is also registered in the same manner as other Indian ships subject to the following modifications :

a) the application for registry has to be made by the Secretary of the Ministry concerned or the Head of the Department to whom the management of the ship is entrusted or any other officer nominated by the Central /State Government with the particulars, as detailed below:

i) name and description of the ships

ii) a statement of the time and the place where the ship was built and, if these particulars are not known, a statement to that effect, and of the former name, if any known:

iii) a statement of the nature of the title to the said ship; and

iv) The name of the Master.

b) No declaration of ownership is necessary.

c) The Registrar on receiving the application and on compliance with the necessary formalities will enter the ship in the registry book as belonging to Government, State or Central.

d) The transfer of a registered Government ship has to be made by an instrument of sale in the prescribed form from which should be omitted the portion relating to the covenant. The instrument will have to be signed on behalf of the transferee by an officer authorised by Government, Central or State.

At the request of the owners of Indian ships desiring to be known at sea, signal letters are allotted by the Director General of Shipping, who will control the series that may be so issued. The allotment of such signal letters are required to be noted in the Register Book and endorsed suitably on the Certificate of Registry. The allotment of signal letters will form subject matter of a communication by the Director General of Shipping to the Wireless Adviser, Ministry of Communication, New Delhi

There is no bar to re-registration of an abandoned or wrecked ship. In such cases the owner may have to specify whether he desires to retain the ship's previous name or have a change. The formalities to be observed in such cases are the same as are applicable to a ship on first

registry but subject to the condition that a ship so coming up for registration is required to be surveyed by a Surveyor and a certificate as to its seaworthiness obtained. All outstanding mortgage or other encumbrances on the ship will continue to be in force and may have to be brought forward in the new registry.

A certified copy of the entries appearing in the register book will be available to any interested party on application accompanied by prescribed fees laid down in the Registration of ships rules. The Registrar can entertain request accompanied by prescribed fees for issue of a new certificate on the plea that the original certificate has been defaced or mutilated. In that event, the certificate so issued will be marked "duplicate" in red ink.

The Director General of Shipping is required to :

(a) Maintain a Central Register which would contain not only the names of all ships but also entries relating to every Indian ship that stand recorded at the various ports of registry. Details of the Registry Of a ship as well as every subsequent entry relating to that ship recorded in the Register Book are required to be communicated to the Director General Of Shipping as and when the events occur. On or before the 15th January of each year, Registrars of each Port are required to submit to the Director General of Shipping a return showing the number of ships with their tonnage registered in the register book during the previous year.

(b) Executive Orders: The Director General of Shipping has assigned the work of maintaining the Central Register of Ships to the Nautical Adviser. All Principal Officers have been directed to send their returns, including the transcript of registry, to the Nautical Adviser so that he should be able to maintain the Central Register.

The following documents are admissible in evidence in respect of any proceedings that may come up in Court touching upon:

(a) Any registry on its production in custody of Registrar or any other person having the lawful custody thereof.

(b) A Certificate of Registry purporting to be signed by the Registrar or any other officer authorised in this behalf by the Central Government.

(c) an endorsement on the Certificate of Registry purporting to be signed by the Registrar or any other officer authorised in this behalf by the Central Government;

(d) Every declaration made in pursuance of provisions contained by Part V of M.S. Act 1958, in respect of an Indian ship.

(e) A certified copy of an entry in the Register book is admissible in evidence in any proceedings in a Court and have the same effect as the original entry in the Register book.