

TRANSFER OF DOMICILE FOR A VESSEL REGISTRATION

In the context of maritime law, domicile transfer refers to the process of changing the flag state under which a vessel is registered. This involves re-registering the ship in a different country, which may be motivated by various strategic, legal, or financial considerations. The new flag state provides the vessel with a new nationality, which governs its legal status, operational regulations, and compliance obligations.

Legal Framework for Vessel Registration in Malaysia

Legislation Governing Vessel Registration

In Malaysia, the primary legislation governing vessel registration is the Merchant Shipping Ordinance 1952. This ordinance outlines the legal framework for the registration of a vessel, which includes the requirements for ownership, documentation, and compliance with maritime safety standards.

Steps to Transfer Vessel Domicile to Malaysia

The transfer of a vessel's domicile is carried out by registering the vessel at the Malaysian Marine Department ("MARDEP") with the Registrar of Ships. Only vessels which possess the following criteria are exempted from registering with MARDEP:

- (a) Any vessel with a net tonnage of 15 tons or less used for navigation in Malaysia's rivers and coastal waters.
- (b) Any boat that plies at any port, river or place for trade, transportation or recreational activity which requires it to be licensed under Section 475 of the Merchant Shipping Ordinance 1952.
- (c) Any local fishing vessel with a gross tonnage of 500 tons or less, provided it is licensed under any applicable fisheries law.

Upon considering the change of domicile, the owner of the vessel would have to determine whether their vessel qualifies to be registered under the Malaysian Ship Registration (“**MSR**”) or Malaysian International Ship Registration (“**MISR**”).

Malaysian Ship Registration

The MSR applies to all (Port Klang, Penang, Kuching and Kota Kinabalu) ports of registry in Malaysia except Labuan and is considered the traditional qualification of registration as the vessel has to be owned by a Malaysian citizen. Alternatively, if the vessel is owned by a body corporate, the vessel would have to meet among others, the following conditions:

- (a) The body corporate is established in Malaysia;
- (b) Its headquarters is located in Malaysia; and
- (c) The majority of the company's directors and shareholders (including those in voting partnerships) are Malaysian citizens who are not bound by any trust or obligation. This majority is defined as 51%, subject to any adjustments made by the Minister.

Malaysian International Ship Registration

(a) The MISR can only be conducted in Labuan port of registry and acts as an alternative to the traditional MSR. In order to register a vessel through MISR, the following are several conditions which must be met:

- (i) The owner is a corporate body incorporated in Malaysia;
- (ii) The body corporate has an established office in Malaysia;
- (iii) The majority of its shareholders, directors, and partners are foreign nationals, where this majority is defined as 51%, subject to any modifications made by the Minister.; and
- (iv) The entity must have a paid-up capital of at least 10% of the ship's value or RM 1,000,000.00, whichever is greater.

(b) MISR would not require registration applications for vessels that are not fitted with mechanical means of propulsion, if it is less than 1600 gross tonnage and/or if the age of the ship is:

- (i) Tanker or Bulk Carrier: More than 15 years; or
- (ii) Other than Tanker or Bulk Carrier: More than 20 years.

(c) The MISR option allows foreign investors to register their vessels in Malaysia without the need to comply with the Malaysian majority shareholding requirement. Ships registered under this scheme are considered Malaysian ships and are entitled to sail under the Malaysian flag.[1] In other words, foreign investors who purchase a vessel in a country with stricter regulatory compliance can transfer the vessel's domicile to Malaysia to benefit from more favorable conditions and potentially less stringent shipping laws compared to the country where the vessel was initially purchased.

Provisional or Permanent Registration

The documents[2] required to register a vessel would depend on whether the vessel owner would prefer to apply for provisional registration or a permanent registration. This is ultimately a matter of preference on the part of the vessel owner. For example, a vessel owner can choose to apply for a PCOR if they have not yet decided on the flag for the vessel. Once the vessel owner is certain on the flag they can proceed to apply for a permanent registration from a country of their choice.

Advantages

When considering vessel registration, factors like tax incentives, ownership flexibility, geographical advantages, and reputation are crucial. Malaysia, particularly Labuan, offers a highly competitive choice compared to Panama, Singapore, and Malta. Labuan particularly stands out due to the following:

Tax Incentives

Malaysia (Labuan) offers an attractive tax structure, allowing shipping companies to choose between a 3% tax on net audited profits, provided the company meet the economic substance requirements.[3] To qualify for it, the company must: (i) employ an adequate number of full-time employees in Labuan; and (ii) incur an adequate amount of annual operating expenditure in Labuan.

The minimum number of employees and annual operating expenditure shall be those as prescribed in the Labuan Business Activity Tax (Requirements for Labuan Business Activity) Regulations 2021.[4] This flexibility provides a cost-effective solution for minimizing tax liabilities while ensuring regulatory compliance. Malaysia's lower tax rates and flat fee options provide greater flexibility and potentially lower overall tax liabilities compared to other countries such as Singapore. Malaysia does not impose capital gains tax, which can be particularly advantageous during the sale or transfer of vessels, allowing owners to retain more of their profits.[5]

Ownership Flexibility

Malaysia's MISR allows 100% foreign ownership of vessels, eliminating local shareholding requirements. This simplifies the registration process and enhances Labuan's appeal as a maritime hub.[6]

Geographical Advantages

Labuan's strategic location in the Asia-Pacific region provides excellent access to key shipping routes, enhancing logistical efficiency and positioning Labuan as a central hub in one of the world's busiest maritime corridors. For companies targeting the Asia-Pacific market, Labuan's proximity offers more direct advantages.[7] Despite there being other world class maritime infrastructures surrounding this region, Labuan's strategic location combined with competitive tax incentives presents a compelling case for choosing Malaysia.

Reputation Development

The MISR is governed under the Malaysian Merchant Shipping Ordinance 1952, ensuring compliance with international maritime standards. Registering under a reputable flag can enhance a vessel's credibility and operational acceptance in global shipping markets.[8]

Disadvantages

While transferring the domicile of a vessel from another country to Malaysia can offer several advantages, however, shipowners should consider its disadvantages before opting for such transfer.

Regulatory Compliance and Bureaucracy

The registration process for vessels in Malaysia can be lengthy and involves multiple regulatory requirements. Shipowners must submit various documents, including proof of ownership, compliance certificates, and registration applications to the Marine Department, which can be time-consuming and bureaucratic.

It is crucial for shipowners to ensure that their vessel is never left unregistered, particularly during the transfer of the vessel's domicile. Shipowners should not proceed with the deletion of the vessel from its previous registry until the registration process in Malaysia is fully completed.

The Marine Department is known for its strict adherence to regulations and does not allow any exceptions or leniency in the absence of any required documents for vessel registration in Malaysia. Therefore, it is essential for shipowners to strictly comply with all the Marine Department's requirements. Consulting the Marine Department in advance to verify that all relevant documents are in order can help prevent the rejection of the registration application.

If a shipowner is purchasing a vessel from another party, it is important to conduct due diligence beforehand to ensure that the vessel carries a valid permanent certificate of registration from the relevant registry, as the Marine Department will not register vessels carrying a provisional certificate of registration.

Additionally, any encumbrances (such as mortgages) on vessels are registered with the ship registry, making it paramount to maintain effective communication with mortgagees or financiers regarding any changes to the vessel's domicile.

Once registered, vessels must adhere to Malaysian maritime laws and regulations, which may differ significantly from the vessel's previous jurisdiction. This includes compliance with safety standards, inspections, and other operational regulations that could impose additional operational burdens on the owner.[9]

Market Limitations

While Malaysia provides access to Southeast Asian markets, the overall market may be

limited compared to larger maritime hubs in the region. This could affect the vessel's operational scope and profitability, particularly for international shipping routes. Besides that, certain types of vessels, such as offshore support vessels (OSVs), may face restrictions or lack benefits under the Malaysian registry, which could limit operational flexibility for companies involved in the oil and gas sector.

Legal and Liability Concerns

Transferring domicile may expose shipowners to different legal frameworks and liability issues. The legal environment in Malaysia may not provide the same protections or benefits those shipowners enjoyed under their previous jurisdiction, potentially increasing their legal risks.

Conclusion

In conclusion, while transferring a vessel's domicile to Malaysia offers several advantages, including favorable tax conditions, ownership flexibility, geographical benefits, and a developing maritime reputation, it also presents challenges such as regulatory compliance, costs, market limitations, and legal risks. Shipowners must carefully weigh these factors before proceeding with the transfer to ensure it aligns with their strategic, legal, and financial objectives. Appointing a legal advisor is advisable to navigate these complexities effectively.

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 2. *ibid*.
 3. Labuan Business Activity Act 1990, section 4.
 4. Siti Nafsiah Ahmad Shaffie. The Malaysia International Ship Registry and Shipping Business Through Labuan. (2019, March 21). IFC Review.
 5. Boat Registration in Malaysia. (2022, December 27) Lawofficemalaysia.com.<https://www.lawofficemalaysia.com/boat-registration-in-malaysia>.
 6. *ibid*.
 7. Joseph, J. (n.d.). Pros and Cons of Malaysian Flagging Ships.
 8. Pillai, M. (2014). Malaysia. Ship Finance in 18 jurisdictions worldwide.
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