

# Maritime Law Handbook

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# Philippines

*Domingo G. Castillo*

## Part I. Arrest of Vessels

*Updated to 28 March 2011*

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PHILIPPINES

*Domingo G. Castillo*

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Mr Castillo has handled various cases involving vessel arrest, collisions, oil pollution, cargo claims, personal injury, and insurance claims.

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List of Abbreviations

AUTHORIZED LAW REPORTS

SCRA	Supreme Court Report Annotated
Phils.	Philippine Reports
OG	Official Gazette

OTHER ABBREVIATIONS

PD	Presidential Decree
BP	Batas Pambansa
MARINA	Philippine Maritime Industry Authority
PCG	Philippine Coast Guard
POEA	Philippine Overseas Employment Administration
RA	Republic Act

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# Part I. Arrest of Vessels

## INTRODUCTORY NOTE

The Philippines is considered a maritime country: more than 7,100 islands are scattered throughout its national territory. It is separated from its Asian neighbours by big bodies of water. Travel through its waters is one of the cheapest and principal modes of transporting passengers and goods to the major islands of the country, as well as serving as a vital link to international trade. As such, the Philippines has its fair share of maritime cases, such as collisions, sinking, salvage, piracy, hijacking, and arrest of ships.

The law and procedure relating to the arrest of vessels may be found in Presidential Decree (PD) No. 1521 (otherwise known as the ‘Ship Mortgage Decree of 1978’) and in the general provisions of the 1997 Rules of Civil Procedure on attachment. Under BP Blg. 129, the Regional Trial Court exercises exclusive original jurisdiction in all actions in admiralty and maritime jurisdiction where the demand or claim exceeds PHP 300,000.00 (approximately USD 6,923.00) or, in Metro Manila, where such a demand or claim exceeds PHP 400,000.00 (approximately USD 9,231.00). (sections 19(3), BP 129, as amended by Republic Act (RA) No. 7691.)

### 1. SOURCES OF PHILIPPINE MARITIME LAW

Philippine maritime law is not covered by a single body of law but by various statutes. These are the Philippine Code of Commerce of 1888, New Civil Code of 1952, Carriage of Goods by Sea Act, Insurance Code of 1981 on marine insurance, 1997 Rules of Civil Procedure, and PDs (notably PD 1521) and rules and regulations promulgated by Philippine administrative agencies, such as the Philippine Maritime Industry Authority (MARINA), the Philippine Overseas Employment Administration (POEA), and the Philippine Coast Guard (PCG), which are also tasked by Philippine law to administer maritime and maritime-related work.

### 2. APPLICABLE INTERNATIONAL CONVENTIONS

The Philippines has not adopted the International Convention Relating to the Arrest of Sea-Going Ships, signed at Brussels on 10 May 1952. Neither has it adopted the International Convention for the Unification of Certain Rules Relating to the Immunity of State-Owned Vessels.

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None of the international conventions on maritime liens and mortgages has been ratified by the Philippines.

### 3. COMPETENCY OF COURTS OR OTHER AUTHORITY

The Regional Trial Courts are the competent courts to issue an order of arrest of vessels to enforce a civil claim by an action in rem, should the demand or claim exceed PHP 300,000.00 or, in Metro Manila, where such a demand or claim exceeds PHP 400,000.00. In the event that the demand or claim does not exceed PHP 300,000.00 or, in Metro Manila, where such a demand or claim does not exceed PHP 400,000.00, the Metropolitan Trial Courts shall have exclusive jurisdiction (RA 7691, as amended by Circular No. 21-99 dated 15 April 1999 of the Office of the Court Administrator).

However, vessels can be ‘detained’ in circumstances where a civil action is not involved. Examples of these circumstances are: vessels found in Philippine territorial water with contraband goods or engaged in smuggling pursuant to the provisions of the Tariff and Customs Code of the Philippines of 1978; a foreign-flag vessel found fishing illegally in Philippine territorial waters; and a vessel which has not obtained the required permits or licenses prescribed by the MARINA and the PCG.

#### *3.1. Territorial extent of the jurisdiction of the Regional Trial Courts or the Metropolitan Trial Courts*

The jurisdiction of the Regional Trial Courts or, when appropriate, the Metropolitan Trial Courts, may be exercised by the implementing Sheriff in arresting a vessel within Philippine territorial waters.

#### *3.2. Choice of forum: arbitration and jurisdiction clauses*

In the Philippines, it may be difficult to arrest a vessel to obtain security in a contract dispute where said contract explicitly provides for arbitration in another jurisdiction, in view of the decision of the Philippine Supreme Court in the case of *National Union Fire Insurance Co. of Pittsburgh v. Stolt-Nielsen Philippines, Inc.* (184 SCRA 682), which upheld an arbitration clause by suspending an action commenced in the lower court in breach of an arbitration agreement and referred the parties to arbitration in New York, ruling that:

Even a cursory reading of the subject Bill of Lading, in relation to the Charter Party, reveals the Court’s patent lack of jurisdiction to hear and decide the claim.

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Arbitration, as an alternative mode of settling disputes, has long been recognized and accepted in our jurisdiction (Chapter 2, Title XIV, Book IV, Civil Code). Republic Act No. 876 (The Arbitration Law) also expressly authorizes arbitration of domestic disputes. Foreign arbitration as a system of settling commercial disputes of an international character was likewise recognized when the Philippines adhered to the United Nations 'Convention on the Recognition and the Enforcement of Foreign Arbitral Awards of 1958', under the 10 May 1965 Resolution No. 71 of the Philippine Senate, giving reciprocal recognition and allowing enforcement of international arbitration agreements between parties of different nationalities' within a contracting state. x x x

It has not been shown that the arbitral clause in question is null and void, inoperative, or incapable of being performed. Nor has any conflict been pointed out between the Charter Party and the Bill of Lading.

In fine, referral to arbitration in New York pursuant to the arbitration clause, and suspension of the proceedings in Civil Case No. 13498 below, pending the return of the arbitral award, is, indeed called for.

### 4. IMMUNITY OF STATE-OWNED VESSELS

The Philippines is not a signatory nor has it adopted the International Convention for the Unification of Certain Rules Relating to the Immunity of State-Owned Vessels. Likewise, the Philippines has no legislation to implement the aforesaid Convention. Hence, the matter of the question on the arrest of State-owned vessels is still unsettled and has not been squarely ruled upon by Philippine courts.

### 5. TYPES OF CLAIMS FOR WHICH ARREST CAN BE REQUESTED

Article 1(2) of the 1952 Arrest Convention defines 'arrest' as the 'detention of a ship by judicial process to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment'. Using this definition, there is a wide right of arrest in the Philippines, namely, that any monetary claim against an owner of a vessel can be pursued by way of an arrest. However, there are only two cases in which a vessel can be arrested in respect of a claim which does not lie against the true owner of the vessel – namely, mortgages and necessities.

### 6. OTHER SPECIFIC PRECONDITIONS TO AN ARREST

The preconditions to an arrest depend upon the nature of the claim in question.

The details are set out below.

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### 6.1. *Foreign ship mortgages*

Section 15 of PD 1521 requires that the:

mortgage, hypothecation, or similar charge has been duly and validly executed in accordance with the laws of foreign nation under the laws of which the vessel is documented and has been duly registered in accordance with such laws in a public register either at the port of registry of the vessel or at a central office, . . . provided, however, that such preferred mortgage lien in the case of a foreign vessel shall be subordinate to maritime liens for repairs, supplies, towage, use of drydock or marine railway, or other necessities, performed or supplied in the Philippines.

### 6.2. *Domestic ship mortgages*

The applicant of the arrest of a vessel should show the following:

- (a) that the mortgagee is a citizen of the Philippines, or a corporation 60% of the capital of which is owned by citizens of the Philippines;
- (b) that the purpose of financing was for the construction, acquisition, or purchase of the vessel or the initial operation of the vessel;
- (c) that the mortgage is registered in the registry of vessels to be known as 'Register of Philippine Vessels' which shall be kept in the office of the MARINA in the homeport for vessels of domestic ownership and at the MARINA Central Office for vessels for overseas trade;
- (d) that the Register of Philippine Vessels shall contain the name of the vessel; the names of the parties; the time and date of the recording of the instrument; the ownership of the vessel so mortgaged; the amount and date of maturity of the mortgage; the name, citizenship, nationalities and residence of owners, and any material change of circumstances in respect of any of the preceding items; and
- (e) that a copy of the mortgage has been furnished to the Central Bank of the Philippines.

### 6.3. *Claims for necessities*

Section 21 of PD 1521 requires that any person furnishing necessities to any vessel, whether foreign or domestic, should prove that he has done so 'upon the order of the owner of such vessel or of a person authorized by the owner' and it shall be necessary to prove that credit was given to the vessel. Claims for necessities constitute a maritime lien under Philippine law.

However, in the case of *Crescent Petroleum Ltd. v. M/V Lok Maheshwari, et al.* (G.R. No. 155014, 11 November 2005), the Philippine Supreme Court denied a

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foreign corporation's claim of a maritime lien on a foreign vessel docked in the Philippines for the satisfaction of unpaid supplies it furnished to the vessel in a foreign port.

The court held that PD 1521 was enacted primarily to protect Filipino suppliers and was not intended to create a lien from a contract for supplies between foreign entities delivered in a foreign port. The court further ratiocinated that extending the benefit of a maritime lien to foreign vessels and foreign suppliers of necessities would not promote the public policy behind the enactment of the law to 'accelerate the growth and development of the shipping industry' and 'to extend the benefits accorded to overseas shipping under Presidential Decree No. 214 to domestic shipping'.

### 6.4. *Other monetary claims against the owner of a vessel*

To obtain an arrest in respect of a general monetary claim, it is necessary for the claimant to show that the defendant is non-resident in the Philippines and that he has no other property, apart from the vessel to be attached, against which the claim may be satisfied in the event of a final judgment in favour of the plaintiff (section 1(f), Rule 57, 1997 Rules of Civil Procedure).

In all cases, the complaint and any accompanying affidavit will be subject to judicial scrutiny prior to the issuance of the arrest order. Before the arrest of the vessel, the applicant must post a bond in favour of the adverse party, in an amount fixed by the court in its order granting the issuance of the Writ of Arrest, which may be equal to the applicant's demand or to the value of the vessel to be arrested. The bond provides that the applicant will pay all the costs which may be adjudged to the adverse party and all damages which he may sustain by reason of such an arrest, if the court shall finally adjudge that the applicant was not entitled thereto (section 4, Rule 57, 1997 Rules of Civil Procedure). The applicant must advance custodial expenses to the sheriff implementing the arrest order of the court.

## 7. DEFINITION OF 'VESSEL'

Under Philippine law, the term 'vessel' serves to designate every kind of craft by whatever particular or technical name it may now be known or which nautical advancement may give it in the future. (Justice Ramon Aquino, *Philippine Transportation, Admiralty, Customs and Aviation Laws*, p. 92.) In the case of *Yu Con v. Phil.* (41 Phil. 770), a vessel was broadly referred to as any kind of craft, considering only the hull. And in the subsequent cases of *Lopez v. Dureulo* (52 Phil. 229) and *Madrigal Shipping Co. v. Gancayco* (50 OG (No. 5) 2083), the words 'ship' (*nave*) and 'vessel' (*buque*), in their grammatical sense, were applied to designate every kind of craft, large or small, merchant vessels or war vessels, a designation which does not differ essentially from its juridical meaning,

according to which, for purposes of the Mercantile Registry, vessels are considered to include not only those engaged in navigation, whether coastwise or on the high seas, but also floating docks, pontoons, dredges, scows, and any other floating apparatus destined for the service of the industry or maritime commerce.

#### 8. EVIDENCE REQUIRED TO SUPPORT AN ARREST APPLICATION

In the event that the arrest of the vessel is based on a default in the mortgage, the verified petition or complaint must be accompanied by an affidavit from the petitioner or any person who personally knows the facts, that a default in the mortgage has occurred, or that the petitioner has a maritime lien on the vessel. In addition, Section 5, Rule 7 of the 1997 Rules of Civil Procedure mandates that the plaintiff or principal party shall execute a certification against forum shopping.

In particular, section 11 of PD 1521 states:

*Arrest of Vessels* – Upon the filing of the petition for the judicial foreclosure of a Preferred Ship Mortgage, or immediately thereafter, the applicant may apply *ex parte* for an order for the arrest of the mortgaged vessel or vessels and the judge shall immediately issue the same, provided that it is made to appear by affidavit of the applicant, or of some other person who personally knows the facts that a default in the mortgage has occurred and that applicant files a bond executed to the adverse party in an amount to be fixed by the judge, not exceeding the applicant's claim, conditioned that the latter will pay all the costs which may be adjudged to the adverse party and all damages which he may sustain by reason of such arrest, if the court shall finally adjudge that the applicant was not entitled thereto.

If the arrest is based on a claim against the owner of the vessel, the plaintiff must execute an affidavit stating that he has a valid claim, and that the defendant is a non-resident and has no other property in the Philippines other than the vessel to be arrested.

In view of the usual urgency in the filing of a petition for the issuance of an arrest order, a non-resident petitioner may authorize a Philippine lawyer to file the petition or complaint on behalf of said non-resident petitioner. In the case of the execution of the certification against forum shopping, a special power of attorney authorizing a Philippine lawyer to sign the same on behalf of the petitioner or complainant is necessary due to the decisions of the Philippine Supreme Court that a certification against forum shopping signed by counsel in that capacity is a defective certification and constitutes a valid cause of dismissal of the petition or complaint. (*Marine Pilots Association v. Philippine Ports Authority*, G.R. No. 130150, 1 October 1998.)



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### 9. SISTER SHIPS

The Philippines has not adopted nor is it a signatory to the International Convention to the Arrest of Sea-Going Ships of 10 May 1952. Therefore the Philippines does not recognize the arrest of vessels other than the one in connection with which the case arose.

However, under the rules of attachment in the 1997 Rules of Civil Procedure, an attachment against a sister ship or an associated ship may be made, provided that the ship seized is shown or alleged to be also owned by the same defendant owner, whether he be unknown or disclosed (sections 2, 7, and 14, Rule 57, 1997 Rules of Civil Procedure).

This recourse in the arrest of sister ships is possible even if the other vessels are not directly owned by the debtor but owned by him through a corporation. Philippine courts can invoke the doctrine of ‘piercing the corporate veil’ if it can be shown that the fiction of corporate personality is being used as a shield to further an end subversive of justice, or as an *alter ego*, adjunct or business conduit for the sole benefit of the stockholder. (*McConnell v. Court of Appeals*, 1 SCRA 722.)

### 10. DEMISE- OR TIME-CHARTERED VESSELS

To charge a vessel for repairs or supplies, they must have been furnished to and made for the benefit of the vessel and, more importantly, ordered by someone authorized by the owner to contract on behalf of the vessel. PD 1521 authorizes both the owner of the vessel and the charterer to procure repairs, supplies, and towage to enable the supplier thereof to have a maritime lien on the vessel which will authorize him to arrest the same. PD 1521, however, requires that ‘no person tortiously or unlawfully in possession or charge of the vessel shall have authority to bind the vessel’ and neither when the furnisher knew, or by exercise of reasonable diligence could have ascertained, that because of the terms of the ‘charter party, agreement for sale of the vessel, or for any other reason, the person ordering the repairs, supplies or other necessities was without authority to bind the vessel therefor’. (sections 22 and 23, PD 1521.)

### 11. FORM OF APPLICATION

In order to have the right to arrest a vessel, the following requirements must be complied with:

- (a) Affidavit of the applicant, or of some other person who personally knows the facts which would be the basis for the arrest of the vessel, for example, default in the ship mortgage, or circumstances regarding the furnishing of

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- the repairs, supplies, or towage to the vessel and by whom ordered, or the circumstances of the monetary claim against the owner of the vessel.
- (b) Verified petition containing the precise statement of the material facts on which the applicant relies.
  - (c) Execution by the plaintiff or principal party of a certification against forum shopping.
  - (d) Applicant files a bond executed to the adverse party in an amount to be fixed by the judge, not exceeding the applicant's claim, on condition that the latter will pay all the costs which may be adjudged to the adverse party and all damages which he may sustain by reason of such arrest, if the court shall finally adjudge that the applicant was not entitled thereto.

An order of arrest is then issued by the Philippine court *ex parte*, that is, without a hearing by a Judge, but the writ of arrest may not be enforced unless preceded or contemporaneously accompanied by service of summons. It would normally take one to three working days from the filing of the petition or complaint to obtain the arrest order.

### 12. MUST THE ARRESTING PARTY PUT UP SECURITY?

Yes. As stated above, a Philippine court will issue the Order of Arrest even without a hearing upon filing of a bond in an amount to be fixed by the court (but not exceeding the amount of the applicant's claim) and on condition that the latter will pay all costs and all damages which the adverse party may sustain if the court shall finally adjudge that the applicant was not entitled to arrest the ship. The security may be in the form of cash or surety bond issued by a local bonding company which will often charge a premium from 1% to 2-1/2% of the amount covered by the bond.

### 13. REPRESENTATION BY COUNSEL, POWER OF ATTORNEY

Generally, special powers of attorney are not required by lawyers or by the courts for the purposes of commencing actions or arresting a vessel, except for the execution of the certificates against forum shopping, where the plaintiff or principal party specifically authorizes the local lawyer to sign for and on its behalf.

Although it is not mandatory, a personal claimant usually retains the services of a local lawyer to prepare and file the affidavit or a verified petition or complaint and to deal with the Sheriff. However, it is advisable for a foreign claimant to retain a local lawyer to ensure that the action is properly constituted and the arrest of the vessel carried out with a minimum of delay.

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### 13.1. *Movement of ship while under arrest*

An arrest immobilizes the ship at the place where it was arrested, and it cannot be moved without a court order or the consent of all interested parties. If consent is not given or available, the court will usually grant an order authorizing the ship to be moved if the judge is satisfied that the proposed new location is no less safe than the ship's location when arrested, the ship will not be in any jeopardy during the proposed move and that she will not be considered a navigable hazard to other seacraft in the area. The order may include terms to ensure that reasonable precautions are taken for the safety of the ship, including having a pilot conduct the ship during the move, providing for assisting tugs, and so on, and for marine insurance coverage.

## 14. COURT HEARING

As stated earlier, the court shall *ex parte* grant the Order of Arrest upon the filing of the affidavit, verified petition or complaint, execution and the certification against forum shopping, and the posting of a bond in favour of the adverse party in an amount to be fixed by the court in an amount not exceeding the applicant's claim.

## 15. PROVISION ON COUNTERBOND BY DEFENDANTS

An order of arrest may be discharged/lifted on the following grounds: (i) the posting of a counterbond or cash deposit in an amount double the value of the claim to secure the payment of any judgment that the petitioner or plaintiff may recover in the action; or (ii) the order of arrest was improperly or irregularly issued. Sections 12 and 13 of PD 1521 provide:

*SEC. 12. Discharge of Order of Arrest; Counterbond* – At any time after an order of arrest has been granted, the party whose vessel or vessels had been arrested, or the person appearing in his behalf, may, upon reasonable notice to the applicant, apply to the judge who granted the order, or to the judge of the court in which the action is pending, for an order discharging the order of arrest. That judge shall order the discharge of the arrest if a cash deposit is made, or counterbond executed to the creditor is filed, on behalf of the adverse party, with the clerk or judge of the court where the application is made in an amount double the value of the claim to secure the payment of any judgment that the creditor may recover in the action. Upon the filing of such counterbond, copy thereof shall forthwith be served on the creditor or his lawyer. Upon discharge of the order of arrest, the property arrested or seized shall be delivered to the party making the deposit or giving the

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counterbond, or the person appearing in his behalf, the deposit or counterbond aforesaid standing in place of the vessel or vessels released. Should such deposit or counterbond for any reason be found to be, or become insufficient, and the party furnishing the same fails to file an additional counterbond, the attaching creditor may apply for a new order of arrest or seizure.

SEC. 13. *Discharge of Order of Arrest for Improper or Irregular Issuance* – The party whose vessel has been arrested may also, at any time either before or after the release of the arrested vessel, or before any arrest or seizure has been effected, upon reasonable notice to the creditor, apply to the judge who granted the order, or to the judge of the court in which the action is pending, for an order to discharge the order of arrest or seizure on the ground that the same was improperly or irregularly issued. After hearing, the judge shall order the discharge of the order of arrest or seizure if it appears that it was improperly or irregularly issued and the defect is not cured forthwith.

In practice, however, the arrest or attachment is not automatically lifted until the counterbond is approved by the attaching creditor. If the counterbond is objected to, the judge has to rule on the sufficiency and validity of the counterbond.

### 16. PROCEEDINGS FOR MAINTAINING AN ARREST

There are no separate proceedings required to maintain an arrest. If a plaintiff unreasonably delays the prosecution of his action, it is possible for a defendant to apply for the action to be dismissed for want of prosecution and for the release of the vessel from arrest.

### 17. COSTS AND ADVANCES FOR COURT PROCEEDINGS AND CUSTODY

The expenses of the sheriff and/or his deputies are initially shouldered by the petitioner or plaintiff, and are charged as costs of suit. The allowances of the sheriff and/or his deputies are usually agreed upon by the petitioner or plaintiff.

Generally, the expenses to be incurred in arresting a vessel in the Philippines are:

- (i) filing fees (approximately 0.5% of the claim);
- (ii) sheriff's fees;
- (iii) guards on board the vessel;
- (iv) premium for the bond; and
- (v) lawyer's fee ranging from 5% to 10% of the amount involved, although this is negotiable.

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### 18. ENFORCEMENT OF THE ORDER OF ARREST

Service of the Order of Arrest on the master of the vessel to be arrested implements the order of the court to detain the same. Any movement of the vessel thereafter without the consent of the parties or pursuant to an order of the court would subject the person responsible to prosecution for contempt of court.

### 19. SERVICE OF ORDER OF ARREST

The court sheriff shall thereupon serve the Order of Arrest on the master of the vessel (being the owner's representative on board the vessel) and/or the ship agent (under Article 586 of the Philippine Code of Commerce considering that the ship agent represents the vessel in the port in which she happens to be), and detain the vessel until further orders from the court. The sheriff shall thereupon render a Sheriff's Return, giving a report on the manner of his arrest of the vessel, and giving a detailed inventory of the equipment on board under his custody. The court sheriff shall be responsible to the court for the condition and maintenance of the vessel during the proceedings which he does through the sheriff's guards placed on board the vessel during the arrest.

To ensure that the vessel will not leave Philippine waters except upon lawful orders of the court taking cognizance of the case, the MARINA, the PCG, the local Bureau of Customs, and the local port authority or harbour master must be served with a copy of the arrest order. In practice, these authorities are often impleaded as nominal defendants. This is to ensure that the court's order of arrest is binding on these agencies directly and not as a matter of notice. In this manner, the vessel will not be cleared for departure unless the court issues another order lifting the arrest order.

### 20. TIME ELEMENT

It is necessary to serve the Order of Arrest upon the vessel to effect an arrest. An arrest can usually be effected within a few days of the receipt by the court of the complaint or petition together with the documents listed in Chapter 11 above. Like Court officers, Sheriffs are available during office hours to effect service.

### 21. APPEAL BY DEFENDANT

Appeal procedures are available against any judgment or order, whether interlocutory or final, relating to the subject matter of the litigation in which the vessel is arrested, but otherwise no direct appeal against the arrest itself is

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possible. As mentioned above, the defendant may challenge the issuance of the warrant and apply to the court, with notice to the plaintiff, to set aside the arrest.

### 22. FORCED SALE IN THE ARREST PROCEDURE

If after trial the court finds the petitioner's cause meritorious, judgment shall be rendered for the sum due and an order issued that the same be paid into court within a period of not less than 90 days nor more than 120 days from the entry of judgment, and that in default of such payment the property be sold to realize the mortgage debt and costs (section 2, Rule 68, 1997 Rules of Civil Procedure). However, in the enforcement of a maritime lien, the vessel may be the subject of judicial sale as soon as the judgment becomes final.

The procedure in the judicial sale of a vessel in the Philippines is the same as in the sale of any item which was the subject of foreclosure. Before the sale of the vessel on foreclosure, notice of the sale must be posted in three public places in the municipality or city where the sale is to take place, for not less than five nor more than ten days. The sale must be made at public auction to the highest bidder. In the event of a Philippine flag vessel, a foreign mortgagee or foreign national whose country has diplomatic relations with the Philippines, or whose country grants reciprocal rights to Filipino citizens, is qualified to bid in said foreclosure sale (section 20, PD 1521). In case the purchaser of a Philippine flag vessel is a foreign individual or entity, the MARINA shall, upon presentation of the certificate of sale, cancel the Philippine registration of the vessel and issue a deletion certificate to that effect upon request (*ibid.*).

It must be stressed that under Philippine law, upon the judicial or extrajudicial sale of a vessel, all pre-existing claims in the vessel are terminated. In other words, the vessel becomes free from pre-existing claims. The pre-existing claims will be satisfied from the proceeds of the sale and consequently the vessel is 'sold free from all pre-existing claims thereof'.

### 23. CLAIMS FOR DAMAGES BY THE OWNER OF THE ARRESTED VESSEL

Damage sustained by the owner of the arrested vessel may be claimed for on the bond filed by the applicant since the bond was purposely filed in the case to answer all costs and damage which the adverse party may sustain if the court shall finally adjudge that the applicant was not entitled to arrest the ship.

### 24. SPECIAL REMARKS

#### 24.1. *Forum Non Conveniens*

An admiralty action in rem against the vessel may be filed before any court having jurisdiction over said vessel, since the action is against the vessel herself.

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However, one controversial issue which is often raised in Philippine courts is the question of *forum non conveniens*.

It is normal in maritime practice that claims are filed by one party of a certain nationality against the property of another party located in a third country, based on the principle that a vessel may be arrested to enforce a maritime lien wherever she may be. However, in the Philippines, some courts tend to look at a number of points or 'contacts' in deciding whether to exercise its jurisdiction over the action, that is, accessibility of sources of proof, availability of compulsory process for attendance of willing witnesses, and all other practical issues that make trial of a case easy, expeditious, and inexpensive. If the court finds that Philippine law is inapplicable due to a lack of sufficient contacts with the nationalities of the contending parties, the court may, in its discretion, dismiss the case on grounds of *forum non conveniens* even though it has jurisdiction over the case. (Paras, 'Philippine Conflict of Laws' (1996 ed.) p. 36.)

### *24.2. Treatment of foreign and national vessels*

There is no difference in the treatment of foreign vessels and national vessels insofar as arrest of a vessel is concerned.

CASTILLO



# Philippines

*Domingo G. Castillo*

## Part II. Flag and Registration of Vessels Mortgages on Vessels

*Updated to 28 March 2011*

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*Domingo G. Castillo*

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Mr Castillo is a member of the Philippine Bar, Past President of the Maritime Law Association of the Philippines, a Director of the Integrated Bar of the Philippines (Makati Chapter) in 1991–1995 and Chairman of the Inter-Pacific Bar Association (IPBA), 2009–2011. He delivered a paper on ‘Obtaining Security in Maritime Cases’ before the International Bar Association’s Section on Business Law in Hong Kong in 1991 and a paper on the ‘Current Operating and Liability Issues in the Pacific Rim Passenger Cruise Trade’ in 1995 in San Francisco, California, before the IPBA. He has attended a number of maritime conferences, notably the Maritime Law Association of the United States – Fall Meetings held in Orlando, Florida, Scottsdale, Arizona, and Bermuda and Palm Desert in 1989, 1991, 1993, and 1997, respectively, and the Second Annual Conference of the IPBA held in Sydney, Australia in May, 1992. In October 2000, he was invited by the China Maritime Law Association to deliver a paper on ‘Maritime Fraud and Scams’ in Shenzhen, People’s Republic of China. He delivered a paper on the ‘Limitation of Liability of Shipowners’ before the 4th International Conference in Maritime Law in Piraeus, Greece, on 8 June 2001.

Mr Castillo has handled various cases involving vessel arrest, collisions, oil pollution, cargo claims, personal injury, and insurance claims.

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List of Abbreviations

PD	Presidential Decree
BBC	Bareboat Charter
BP	Batas Pambansa
BRL	Bay and River License
CN	Certificate of Number
CPR	Certificate of Philippine Registry
CSR	Continuous Synopsis Record
CO	Certificate of Ownership
COLREG	International Regulations for Preventing Collisions at Sea
CVR	Certificate of Vessel Registry
CWL	Coastwise License
DOC	Document of Compliance
DOLE	Department of Labor and Employment
EO	Executive Order
GT	Gross Tonnage
ITC	International Tonnage Measurement Certificate
MARINA	Maritime Industry Authority
MC	Memorandum Circular
MCO	MARINA Central Office
MR	Motion for Reconsideration
MRO	Maritime Regional Office
LL	International Convention on Load Line
LOSC	Law of the Sea Convention
PCG	Philippine Coast Guard
PCPR	Provisional Certificate of Philippine Registry
PMMRR	Philippine Merchant Marine Rules and Regulations of 1997
PO	Permit to Operate
RA	Republic Act
SCI	Special Certificate of Inspection
SEC	Securities and Exchange Commission
SMC	Safety Management Certificate
SOLAS	Safety of Life at Sea
STCW	International Convention on Standards of Training, Certification and Watchkeeping for Seafarers
SPN	Special Permit to Navigate
TCPR	Temporary Certificate of Philippine Registry
OILPOL	International Convention for the Prevention of Pollution of the Sea by Oil

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## Part II. Flag and Registration of Vessels and Mortgages on Vessels

### *A. Flag and Registration of Vessels and Vessels under Construction*

#### 1. SOURCES OF LAW AND THE PRINCIPAL RULES ARISING THEREFROM

##### *1.1. Importance of nationality and/or domicile of owners*

The Philippine system of ship registration appears at first blush to be fairly rigid and restrictive. However, on closer examination and taking into account Philippine law on bareboat registry under Presidential Decree (PD) No. 760, as amended by PD 866 and PD 1711, the practical effect is that of a moderately relaxed system.

The basic rule in the Philippines is that only vessels of Domestic Ownership are entitled to a Certificate of Vessel Registry. By 'Domestic Ownership' is meant ownership vested in citizens of the Philippines or corporations or associations organized under Philippine law, where at least 60% of the capital stock are wholly owned by Philippine citizens and, in the case of vessels engaged in coastwise trade, the president or managing directors shall be Philippine citizens and the members of the crew of the vessel, except specialized vessels, shall all be citizens of the Philippines.

The controlling interest of the corporation or association shall not be considered as held by Philippine citizens:

- (a) if less than 60% of the capital or capital stock is held by such citizens or such capital or capital stock is subject to any trust or fiduciary obligation in favour of any person not a citizen of the Philippines;
- (b) if less than 60% of the capital or capital stock in said association or corporation entitled to vote is in the hands of citizens of the Philippines;
- (c) if by means of any contract or agreement, more than 40% of the capital or capital stock can be voted directly or indirectly in favour of any person not a citizen of the Philippines; or
- (d) if by any other means, the control of more than 40% of the capital or capital stock of the association or corporation is conferred upon or allowed to be exercised by any person not a Philippine citizen.

The fact that a ship-owning company has alien shareholders does not, by itself, prevent that corporation from being treated as a domestic corporation

qualified for a Philippine Registry of its vessels, provided that the alien ownership does not exceed 40% of its capital stock.

The flexibility of the Philippine system of vessel registration was recently introduced by the Bareboat Registry Scheme, which is more fully discussed *infra*. Under this scheme, a foreign-owned vessel bareboat chartered to a Philippine company would be entitled to fly a Philippine flag temporarily, coterminous with the existence of the bareboat charter, whose effectiveness has been extended indefinitely unless otherwise revoked by the President of the Philippines (Executive Order (EO) No. 667, 11 October 2007).

### 1.2. *Links between registration and flag*

Philippine-registered vessels are entitled to fly the Philippine flag. There are no provisions for Philippine vessels to fly the flag of another country. However, under PD 760, as amended, a foreign-owned vessel bareboat chartered to a Philippine company would be entitled to fly the Philippine flag temporarily.

To strengthen the integrity of Philippine-registered overseas vessels, the Philippine Maritime Industry Authority (MARINA) has formulated stringent requirements for companies seeking to avail themselves of the country's bareboat chartering program under Memorandum Circular (MC) No. 181 (22 January 2003, dealing with the accreditation for purposes of acquiring/operating Philippine-registered ships for international voyages) and MC 182 (22 January 2003 providing the rules in the acquisition of ships under PD 760, as amended). This bareboat chartering program has been extended indefinitely unless revoked by the President of the Philippines.

All these stringent measures imposed by the MARINA through the afore-cited memorandum circulars were aimed at compliance with the provisions on 'genuine link' under the Law of the Sea Convention (LOSC). The MARINA has been fearful that in the absence of a 'genuine link', the Philippine flag may be considered by other countries as a Flag of Convenience. 'Genuine link' has been defined by the 1986 UNCTAD Convention on Conditions for Registration of Ships to include such key elements as effective national maritime administration, identification and accountability of owners or operators, manning by nationals, management by nationals or persons domiciled in the state of registry, and a register of ships.

## 2. REGISTRATION OF A VESSEL: PROCEDURE, COSTS, AND SO ON

### 2.1. *Type of register*

The MARINA is the agency vested with the exclusive authority over the registration and documentation of Philippine vessels. (EO Nos 125 and 125-A.)

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Pursuant to this, contracts or transactions which provide evidence of ownership or which affect the title of registered vessels have to be approved first by the MARINA (section (F), PD 474). The registration of a vessel for domestic trade is to be effected at its homeport, which is either a port of entry or the port of entry of the MARINA Regional Office (MRO) of the vessel's homeport, while registration of a vessel for overseas trade shall be effected only at the MARINA Central Office (MCO) (section V(3), MC 90).

### *2.2. Types of vessels eligible for registration*

All types of motorized ships of domestic ownership and of more than 3 GT, all ships of domestic ownership engaged in towing/pushing or carrying goods and/or passengers for hire regardless of tonnage, and all vessels acquired under PD 760 as amended by PD 866 and 1711 must be registered. Every ship used in Philippine waters which is not a transient of foreign registry, shall be registered with MARINA. Ships owned by Philippine nationals to be used in international waters shall be registered with MARINA. Pursuant to the foregoing, MARINA shall grant a Certificate of Philippine Registry (CPR) as evidence of registration, provided that such vessels as are not entered in the Philippine registry of ships shall be required to secure a vessel identity certificate (Certificate of Number). (Regulation XV/3, Philippine Merchant Marine Rules and Regulations of 1997 (PMMRR)).

### *2.3. Rules regarding the legal form under which owners of registered vessels may be organized*

Individuals who are Philippine citizens may own Philippine-registered vessels. Under PD 761, only vessels of domestic ownership are entitled to a Certificate of Philippine Registry, that is, any vessel which is owned by a citizen of the Philippines. The term 'domestic ownership' means ownership vested in citizens of the Philippines, or corporations or associations organized under the laws of the Philippines, and, in the case of a corporation, this means a corporation organized under Philippine laws and at least 60% of whose capital stock is wholly owned by Philippine citizens.

The fact that a corporation is partly owned by a non-Filipino citizen does not by itself prevent that corporation from being treated as a domestic corporation under PD 761, provided the alien controlling interest in the corporation does not exceed 40% of its capital stock.

Philippine law further defines 'controlling interest' to forbid direct or indirect alien control through trusts or other fiduciary obligations, exercise of voting power by non-citizens, contract or agreement, or by any other means.

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### 2.4. *Particulars recorded*

In the Register of Ships, the following facts concerning each vessel registered shall be entered in such form and detail as may be prescribed:

Name of Ship  
Former Names and registry (if applicable)  
Type of Ship  
Call sign  
Official Number  
IMO number (for passenger ships and 100 GT and above and for all cargo ships of 300 GT and above)  
Hull Material  
Principal Dimensions  
Tonnage (Gross/Net/Deadweight)  
Classification society  
Horsepower (KW)  
Main engine  
Builders/Place built  
Year built  
Name, nationality and business address/residence of owner/operator  
Homeport  
Date of issuance of Certificate of Philippine Registry; and  
Any material change of condition in respect to any of the preceding items including records of encumbrances (Regulation XV/9, PMMRR).

### 2.5. *Costs*

MARINA MC No.172 providing for the permanent implementation of the 'pro-poor' reduced fees was amended by MARINA MC No. 2005-001. This was further amended by MARINA MC No. 2008-06, thus:

- |   |      |
|---|------|
| 1. Below 3 Gross Tonnage (GT) Fishing Boats to cover the issuance of: | P250 |
| – Certificate of Number (CN)  |      |
| – Permit to Operate (PO)  |      |
| – Motor Boat Operators License (MBOL)                                 |      |
| – Builder Certificate   |      |
| – Vessel Name Clearance   |      |
| 2. Below 3 GT Passenger Cargo Vessels to cover the issuance of:       | P500 |
| – Admeasurement   |      |
| – Special Certificate of Inspection (SCI)                             |      |
| – Inspection Fee  |      |



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- Bay and River License (BRL)
- Certificate of Public Convenience (CPC)/Provisional Authority (PA)/Special Permit (SP) filing fee
- Accreditation of Domestic Shipping Enterprises/Entities
- Vessel Name Clearance
- 3. 3 GT and below to cover the issuance of: P300
  - Certificate of Ownership (CO)
  - Certificate of Vessel Registry (CVR)
- 4. 3-15 GT Passenger/Cargo/Vessels to cover the issuance of: P750
  - Admeasurement
  - Builder Certificate
  - Relevant Safety Certificates
  - BRL
  - Marine Diesel Mechanic/Boat Captain (as applicable)
  - Survey Inspection Fee
  - Plan Approval
  - Certificate of Public Convenience / Provisional Authority/Special Permit filing fee (if applicable)
  - Accreditation of Domestic Shipping Enterprises/Entities
  - Vessel Name Clearance
- 5. 3.01 GT to 14.99 GT Passenger/Cargo/Vessels to cover the issuance of: P600 + P3/GT
  - CO
  - CVR
- 6. Boatbuilders of Vessels 15 GT and below to cover the issuance of: P500
  - License Certificate
  - Inspection Fee

The schedule of fees imposed by MARINA for the domestic shipping sector is embodied in MARINA MC No. 2005-001 as amended by MARINA MC No. 2008-06, as follows:

**A. ON DOMESTIC SHIPPING**

1. Vessel Acquisition/Bareboat Charter (BBC)/Extension/Renewal of BBC/Importation/Exercise Option to Purchase/Lease Purchase of Vessel
  - Vessels ten years old and below P10,300.00/vessel
  - Vessels over ten years old P20,590.00/vessel

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– High-Speed Craft	P31,200.00/vessel
– Fishing Vessels	
– Vessels ten years old and below	P10,300.00/vessel
– Vessels over ten years old	P20,590.00/vessel
– Authority to acquire ship through local construction	P10,300.00/vessel
2. Permanent Conversion of Vessel(s) Trading Status from Overseas to Domestic	P20,590.00/vessel
3. Sub-Charter of BBC Vessel	P20,590.00/vessel
4. Local Sale / Local Purchase	
a. Imported Vessel	P20,590.00/vessel
b. Local Vessel	
> Steel-hulled/Aluminum-hulled/ Fiberglass-hulled Vessels or combination of both or any other type of hull	P6,500.00/vessel
> Wooden-hulled Vessels	
– 35GT and above	P2,600.00/vessel
– below 35GT	P650.00/vessel
5. Importation/Renewal of authority to import vessel spare parts	1.8% of the invoice value or a minimum of P4,120.00/invoice to a maximum of P9,360.00/ invoice
6. Importation/Renewal of authority to import marine engines	P470.00/engine
7. Authority to Export/Renewal of authority to export vessels	P3,900.00/vessel
8. Extension of validity of MARINA authority to acquire/export vessels, including fishing vessels	P2,340.00/vessel/month
9. Extension of validity of MARINA authority to import marine engines and spare parts	P390.00/invoice
10. Accreditation under MC. No. 186	P6,500.00
11. Accreditation under MC No. 79/79-A	
– Corporation	P8,580.00
– Partnership	P5,150.00
– Single Proprietorship	P780.00
12. Endorsements	
– Board of Investments (BOI) Endorsement for Company's Registration	P780.00
– Endorsement to Department of Finance (DOF) for availment of VAT exemption of ship's importation under Republic Act (RA) 9295	P3,120.00/ship

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- Department of Foreign Affairs (DFA)	P390.00
Endorsement for Issuance of Provisional Certificate of Philippine Registry (PCPR)	
- Endorsement to DOF for availability of VAT exemption for marine engines and ship's spare parts under R.A. 9295	P780.00/application
- Endorsement to Department of Labor and Employment (DOLE) for issuance of AEP	P4,680.00/foreign crew (per person)
- Other Endorsements to other government agencies	P780.00/application
13. Amendment of any provision of Charter Contract under PDs 760-866	P1560.00/vessel
14. Pre-termination of BBC of Vessel	P780.00/vessel
15. Amendment of SP/Exemption Permit (EP)	P470.00/vessel
16. Special Permit/Exemption Permit/Renewal of SP/EP for foreign-owned/registered vessel and Philippine overseas vessel to temporarily operate in the domestic trade	
- Philippine-registered overseas vessel	P15,600.00 minimum/issuance/vessel or P156.00/50GT or fraction thereof, whichever is higher
- Foreign-registered vessel	P120,000.00 minimum/month/vessel or P500.00/50 GT or fraction thereof, whichever is higher
17. Employment of Supernumerary	P5,070.00/expatriate or supernumerary with duration not exceeding six months
18. Surcharge for the late renewal of accreditation under MC 79 and 79-A	
- Corporation	P470.00/day from date of expiry or a maximum of P47,000.00
- Partnership	P230.00/day from date of expiry or a maximum of P23,000.00

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<ul style="list-style-type: none"> <li>- Single Proprietorship</li> <li>- For Motorbanca Operators, etc.</li> </ul>	<p>P80.00/day from date of expiry or a maximum of P8,000.00</p> <p>P15.00/day from date of expiry or a maximum of P750.00</p>
19. Issuance of Certificate of Insurance or Other Financial Security in respect of Civil Liability for Oil Pollution (CLC 1992)	P1,560.00/vessel
20. Reissuance of Certificate of Accreditation due to Change of Corporate/Company Name	P780.00/company
21. Approval in principle to acquire vessel	
- one-ten years old	P10,390.00/vessel
- Above ten years old	P20,590.00/vessel
- High-Speed Craft	P31,200.00/vessel
22. Amendment of BBC Hire/Monthly Lease Payments/Acquisition cost	P1,560.00/vessel
23. Transfer of rights and obligations over a vessel	
- one-ten years old	P10,300.00/vessel
- Above ten years old	P20,590.00/vessel
- High-Speed Craft	P31,200.00/vessel
24. Amendment of mode of acquisition of vessel	P1,560.00/application
25. Amendment of MARINA approval by deleting or inserting word(s) or phrase(s) and/or Deletion of post-approval condition imposed by MARINA	P1,560.00/application
26. Ship Marking Plates (one-time)*	P1,000.00/plate
*subject to change in supplier's price of brass	
27. Annual Ship Validation Receipt	P1.00 per GT but not lower than P150.00

**B. ON SHIPYARD REGULATIONS**

1. Licensing of Shipbuilders, Ship Repairers, Afloat Repairers, Boat Builders, and Shipbreakers	
a. LICENSE FEES / RENEWAL	
Shipbreaker	P31,200.00
Shipbuilding and Ship Repair (SBSR) A	P31,200.00
SBSR B	P23,400.00
SBSR C	P15,600.00
Afloat Repairers (AF)/SR C	P6,000.00
Boatbuilder	P860.00

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b. Annual Shipyard Inspection Fees of registered firm	
Shipbreaker	P11,260.00
SBSR A	P11,260.00
SBSR B	P8,440.00
SBSR C	P5,660.00
AF/SR C	P4,840.00
Boatbuilder	P2,580.00
2. Issuance of approval for Shipyard Development Fund (SDF) Disbursement	P4,680.00
3. Filing fee for processing of application for exemption under PD No. 1221	P4,680.00
4. Application for Authority to import capital equipment, machinery, spare parts, life-saving, navigational equipment, steel plates, and other metal plates under RA 9295	1% of the pro-forma invoice value or P10,000, whichever is lower
5. Authority to sell, dispose, or transfer articles imposed under RA 9295	P5,000.00
6. Application for Endorsement to BOI	
- For registration	P410.00
- For availability	P1,560.00
7. Admeasurement/Re-admeasurement Fee	
- 3.00GT and below (applies to passenger carrying vessels only)	P390.00
- 3.01GT-14.99GT	P470.00
- 15.00GT-34.99GT	P620.00
- 35GT-99.99GT	P1,170.00
- 100GT-249.99GT	P4,060.00
- 250GT-499GT	P5,460.00
- 500GT & above	P5,460.00 plus P4.00/GT in excess of 500GT
8. Approval of Vessel Plans	P160.00 / section
Conversion/Alteration of Vessel	160.00 / section
9. Authentication	
- Loading Certificate	P310.00/certificate
- Stability Certificate	P310.00/certificate
- Grain Loading Booklet	P22.00/page
- Approval of Stability Calculation	P22.00/page
10. Accreditation of Maritime Surveying Companies	
- Appointment as Loadline Assignor	P7,800.00/3 years
- Appointment as Inclining Experiment and Stability Calculation	P7,800.00/year
- Examination for Loadline Assignor	P1,560.00/year
- Renewal of Appointment	P15,600.00
Loadline	P7,800.00/year
Inclining/Stability	P3,900.00/year

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11. International Tonnage Measurement Certificate (ITC)	
– Below 50.00GT	P390.00
– 50GT to 99.99GT	P780.00
– 100GT to 249.99GT	P1,560.00
– 250GT to 499.99GT	P2,340.00
– 500GT to 999.99GT	P3,120.00
– 1,000GT to 1,499GT	P3,900.00
– 1,500GT & above	P4,680.00
12. Supervision of Inclining Experiment and Approval of Stability Calculation	
– 50GT or less	P470.00
– Over 50GT to 500GT	P470.00 + P1.60/GT in excess of 50GT
– Above 50GT to 1,00GT	P1,250.00 + P1.60/GT in excess of 500GT
– Above 1,500GT	P4,370.00 + P1.50/GT in excess of 1,500GT
13. Vessel Inspection in compliance with PD 1069	P1,170.00
14. Issuance of Ship Construction Certificate	P310.00/certificate
15. Supervision Fee for Underwater Survey (MC 152)	
499.99 and below	P3,120.00
500GT and above	P4,680.00 or the equivalent of the hull fees, whichever is higher, provided that the actual travel expense of the MARINA ship inspector(s) shall be borne by the applicant
16. Re-issuance of Certificate	P310.00/certificate
17. Issuance of Authority to acquire vessel(s) for scrapping purposes (MC 162)	
a. Below 1000GT	
Less than ten years old	P7,800.00
eleven–fourteen years old	P11,700.00
fifteen–twenty years old	P15,600.00
above twenty years old	P21,840.00
b. 1000GT & above	
Less than ten years old	P10,920.00
eleven–fourteen years old	P16,380.00
fifteen–twenty years old	P21,840.00
above twenty years old	P27,300.00

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18. Issuance of Authority to acquire floating docks (MC 162)	
a. Below 1000GT	
Less than ten years old	P7,800.00
eleven–fourteen years old	P11,700.00
fifteen–twenty years old	P15,600.00
above twenty years old	P21,840.00
b. 1000GT & above	
Less than ten years old	P10,920.00
eleven–fourteen years old	P16,380.00
fifteen–twenty years old	P21,840.00
above twenty years old	P27,300.00

**C. ON MARITIME SAFETY**

1. Ship Survey/Inspection Fee (Domestic & International)
  - a. If survey/inspection conducted within the MCO/MRO workstation/location

**Hull/Structural, LSA/FF Equip., & Navigational/Comm. System Sections**

– 3.00GT and below	
– 3.01GT-14.99GT	
– 15.00GT-34.99GT	P160.00
– 35.00GT-99.99GT	P260.00 + P1.00/GT in excess of 3GT
– 100.00GT-249.99GT	P460.00 + P1.00/GT in excess of 15GT
– 250.00GT-499.99GT	P590.00 + P1.00/GT in excess of 35GT
– 500.00GT-999.99GT	P980.00 + P1.00/GT in excess of 100GT
– 1000.00GT-1499.99GT	P1,300.00 + P1.00/GT in excess of 250GT
– 1500.00GT-1999.99GT	P1,950.00 + P1.00/GT in excess of 500GT
– 2000.00GT-2999.99GT	P2,600.00 + P1.00/GT in excess of 1000GT
– 3000.00GT-4999.99GT	P3,250.00 + P1.00/GT in excess of 1500GT
– 5000.00GT and above	P3,900.00 + P1.00/GT in excess of 2000GT P5,200 + P1.00/GT in excess of 3000GT

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<b>For Liquid Cargo</b>	P7,200.00+P1.00/GT in excess of P5000 GT
<b>Machinery and Electrical System Sections</b>	1.5 times the rate of the above fees
<ul style="list-style-type: none"> <li>- 15KW and below</li> <li>- Over 15 KW</li> <li>- 100KW and below</li> <li>- Over 100KW</li> </ul>	<p style="text-align: right;">P65.00</p> <p>P65.00 + P4.00/KW in excess of 15KW P195.00</p>
<b>Boilers including Donkey Boilers</b>	P195.00 + P3.00/KW in excess of 100KW
<ul style="list-style-type: none"> <li>- 3,000 sq. ft. of heating surface and below</li> <li>- Over 3,000 sq. ft. of heating surface</li> </ul>	<p style="text-align: right;">P110.00</p>
<b>Air Compressor</b>	P110.00 + P5.00/sq. ft. In excess of 3,000 sq. ft.
<b>Refrigeration or Machinery &amp; Chambers</b>	P95.00
<ul style="list-style-type: none"> <li>b. Additional charges for Survey/Inspection within jurisdiction of the Central Office or MRO (per inspector per inspection) <ul style="list-style-type: none"> <li>- Within 10 km radius from work station</li> <li>- Beyond 10 km</li> </ul> </li> </ul>	<p style="text-align: right;">P95.00</p> <p style="text-align: right;">P500.00</p> <p style="text-align: right;">P500.00 + P50/km in excess of 10 km</p>
2. Processing Fee for the Thickness Gauging of Fishing Vessels prior to Registration	P8,580.00
3. Lay-up of Vessels (MC 156)	In peso equivalent of USD 91/day
<ul style="list-style-type: none"> <li>- 50,000 DWT and below</li> <li>- Above 50,000 DWT to 150,000 DWT</li> <li>- Above 150,000 DWT</li> </ul>	<p style="text-align: right;">In peso equivalent of USD 104/day</p> <p style="text-align: right;">In peso equivalent of USD 117/day</p>
4. Issuance/Re-issuance of CPR	P310.00
<ul style="list-style-type: none"> <li>- 3GT and below</li> </ul>	<p style="text-align: right;">P310.00</p>



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- 3.01GT to 14.99GT	P620.00
- 15GT to 34.99GT	P940.00 + P8.00/GT in excess of 15GT
- 35GT to 99.99GT	P1,100.00 + P7.00/GT in excess of 35GT
- 100GT to 249.99GT	P1,500 + P5.00/GT in excess of 100GT
- 250GT to 499.99GT	P2,200.00 + P4.00/GT in excess of 250GT
- 500GT and above	P2,980.00 + P3.00/GT in excess of 500GT
5. Issuance/Re-issuance of CO	P310.00
- 3GT and below	P310.00
- 3.01GT to 14.99GT	P620.00
- 15GT to 34.99GT	P940.00 + P8.00/GT in excess of 15GT
- 35GT to 99.99GT	P1,100.00 + P7.00/GT in excess of 35GT
- 100GT to 249.99GT	P1,500 + P5.00/GT in excess of 100GT
- 250GT to 499.99GT	P2,200.00 + P4.00/GT in excess of 250GT
- 500GT and above	P2,980.00 + P3.00/GT in excess of 500GT
6. Pleasure Yacht Registration	
a. Powered	
- 15GT and below	P4,680.00
- 15GT to 49.99GT	P6,240.00
- 50GT to 99.99GT	P7,800.00
- 100GT and above	P9,360.00
b. Without Power	
- 15GT and below	P160.00
- 15GT to 49.99GT	P310.00
- 50GT to 99.99GT	P470.00
- 100GT and above	P620.00
c. With Sail and Emergency Power	
- 15GT and below	P2,340.00
- 15GT to 49.99GT	P3,900.00
- 50GT to 99.99GT	P5,460.00
- 100GT and above	P7,020.00
7. PO/SCI	
3GT & below	
PO	P160.00
SCI	P230.00

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8. Annotation of Ship Mortgages	
- below P5,000.00	P2,500.00
	P2,500.00 + P0.72/P1,000 in excess of P5,000.00
- P5,000.00-P25,000.00	
- Over P25,000.00	P3,000.00 + P0.60/ P1,000.00 in excess of P25,000.00
9. Special Permit to Navigate (SPN) for Drydocking/Conduction Purposes	P620.00
10. Dispensation Permit for Seafarers on board vessels operating in the domestic trade (MC 138)	
- New Issuance	P7,800.00
- First Renewal	P12,480.00
- Second Renewal	P15,600.00
11. Issuance of Certificate of Exemption for Fishing Vessel (from Safety of Life at Sea (SOLAS))	P310.00
12. Certificate of Deletion from Philippine Registry Domestic	P1,560.00
13. Record of Changes	
a. For Registered Vessels	
- Deed of Sale/Construction Certificate	P470.00
- Deed of Sale/Construction Certificate	P470.00
- Change of Trading Status	P310.00
- Change of Service Type	P310.00
- Change of Engine	P310.00
- Change of Homeport	
Ships 35GT and above	P1,300.00
Ships below 35GT	P650.00
- Change of name of Vessel	
Steel-Hulled Ships	P2,600.00
Aluminum-Hulled Ships or Fiberglass- Hulled Ships or combination of both or any other type of hull	P2,600.00
Wooden-Hulled Ships	
Ships 35GT and above	P650.00
Ships below 35GT	P650.00
b. Change of Ownership	
Ships 35GT and above	P1,300.00
Ships below 35GT	P650.00
c. Change of company name	P520.00
d. For undocumented vessels	
Change of Homeport	P160.00

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Change of name of vessel	P200.00
Deed of Sale/Change of Ownership	P160.00
Change of Trading Status	P200.00
Change of Engine	P200.00
14. CN	
1.00GT or less	P160.00
1.00GT to 3.00GT	P160.00
3.00GT to 4.99GT	P230.00
5.00GT to 9.99GT	P310.00
10.00GT to 14.99GT	P390.00
15. Ship Safety Certificates	(rates for ship safety certificates shall be added to the corresponding inspection fee)
a. Passenger Ship Safety Certificates	P300.00
b. Cargo Ship Safety Certificate	P1,500.00
c. Cargo Ship Safety Construction Certificate	P1,500.00
d. Cargo Ship Safety Equipment Certificate	P1,500.00
e. High-Speed Craft Safety Certificate	P300.00
f. Exemption Certificate (P/C)	P300.00/P1,500.00
g. Fishing Vessel Safety Certificate	P1,500.00
h. Certificate of Fitness	P1,500.00
i. Re-issuance of Certificates	P250.00
j. Annual Endorsement of Certificates	P250.00
16. Registration of Engine and Deck Logbook/ Roll Book and other books	P310.00/book
17. Accreditation of Manufacturer of SOLAS Appliances and Equipment	P9,360.00
18. Special Permit to Load Dangerous Cargoes	P260.00
19. Other certification and Documentation Fees	P310.00

**TRADING LICENSES**

20. Coastwise License (CWL)	
– Power-Driven vessels	P18.00/NT
– Non-power-driven (barges, etc.)	P16.00/NT
21. BRL	
– Power-driven vessels	P16.00/NT
– Non-power-driven (barges, etc.)	P13.00/NT
22. Pleasure Yacht license (This is separate from the energy tax collected annually on motorized speedboats, yachts, launches, and other watercraft used for pleasure and recreation, whether operated for profit	P310.00

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or non-profit pursuant to PD 845)	
23. MBOL	P310.00
24. Energy Tax	
– More than five (5) meters	P3,120.00
– More than 5 metres but not more than 15 metres	P7,800.00
– More than 15 metres but not more than 25 metres	P12,480.00
– More than 25 metres but not more than 35 metres	P17,160.00
– More than 35 to 55 metres	P26,520.00
– More than 55 metres	P40,560.00
25. Surcharge for the late renewal of expired certificates	
– Certificate of Inspection	Total fees + 50%
– SCI	Total fees + 50%
– Short International Voyage	Total fees + 50%
– Manning Certificate	Total fees + 50%
– Exemption Certificate	Total fees + 50%
– PO	Total fees + 50%
– BRL	Total fees + 50%
– CWL	Total fees + 50%
– Pleasure Yacht License	Total fees + 50%
– Dispensation Permit	Total fees + 50%
– Motor Boat Operator’s License	Total fees + 50%
– Loadline Certificate	Total fees + 50%
26. Implementation of International Safety Management (ISM) Code in Domestic Shipping (MC 143)	P6,240.00 / document
a. Full-Term Document of Compliance (DOC) issued by the MARINA/Interim DOC issued by MARINA	P6,240.00 / certificate
b. Full-Term Safety Management certificate (SMC)/Interim SMC issued by MARINA	
c. Audit (conducted by MARINA)	

**Company**

Category I – Small (with 20 employees and below)	P24,960.00 per complete Audit
Category II – Medium (between 21 and 50 employees)	P37,440.00 per complete Audit
Category III – Large (more than 50 employees)	P37,440.00 per complete Audit

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**Ship**

Category I	P24,960.00 per complete Audit
– Oil tankers, gas carriers, bulk carriers, and other cargo ships of 500GT and above; and	
– Passenger ships and high-speed craft carrying less than 300 passengers	
Category II	P24,960.00 per complete Audit
– Passenger ships and high-speed craft carrying 300 up to 1,499 passengers; and	
– Chemical tankers	
Category III	P37,440.00 per complete Audit
– Passenger ships carrying 1,500 passengers and above	
d. Additional charges for audit conducted outside work station of the Auditor(s)	P3,900.00 /day + amount of air fare ticket (economy) per Auditor
27. ISM Certification (applicable only to those who will avail of the MARINA audit) (MC 146)	
a. DOC / Interim DOC	P6,240.00 / document
b. SMC / Interim SMC	
c. Verification/Audit	P6,240.00 / document

**Company**

Category I – Small (with 20 employees and below)	
Category II – Medium (between 21 and 50 employees)	P24,960.00
Category III – Large (more than 50 employees)	P37,440.00

**Ship**

Category I	P37,440.00
– Oil tankers, gas carriers, bulk carriers, and other cargo ships of 500GT and above; and	P24,960.00
– Passenger ships and high-speed craft carrying less than 300 passengers	

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Category II	
- Passenger ships and high-speed craft carrying 300 up to 1,499 passengers; and	P24,960.00
- Chemical tankers	
Category III	
- Passenger ships carrying 1,500 passengers and above	P37,440.00
28. Adoption of NSM Code in Domestic Shipping	
a. NSM Manual	P1,560.00
b. Certificates	
- Interim NSM DOC	P1,560.00
- Full-term NSM DOC	P4,680.00
- Short-term NSM SMC	P1,560.00
- Interim NSM SMC	P1,560.00
- Full-term NSM SMC	P4,680.00
c. Certification Process	

**For companies operating ships 250GT and above**

- Document Review	P4,680.00
Within Working Station	
- Initial Visit (for new company)	
Within Working Station	P1,560.00
Outside Working Station	P54,600.00
Central Office/MRO	P46,800.00
- Company Audit	
Within Working Station	P15,600.00
Outside Working Station	P70,200.00
Central Office/MRO	P62,400.00
- Ship Audit	
Within Working Station	P12,480.00
Outside Working Station	P70,200.00
Central Office/MRO	P62,400.00

**For companies operating ships 150 to 249.99 GT**

- Document Review	
Within Working Station	
- Initial Visit (for new company)	
Within Working Station	P3,510.00
Outside Working Station	
Central Office/MRO	
- Company Audit	
Within Working Station	P1,170.00

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Outside Working Station	P40,950.00
Central Office/MRO	P35,100.00
- Ship Audit	
Within Working Station	P11,700.00
Outside Working Station	P58,500.00
Central Office/MRO	P52,650.00
<b>For companies operating ships 50 to 149.99 GT</b>	P9,360.00
- Document Review	P52,650.00
Within Working Station	P46,800.00
- Initial Visit (for new company)	
Within Working Station	
Outside Working Station	
Central Office/MRO	
- Company Audit	P2,340.00
Within Working Station	
Outside Working Station	
Central Office/MRO	P780.00
- Ship Audit	P27,300.00
Within Working Station	P23,400.00
Outside Working Station	
Central Office/MRO	P7,800.00
<b>For companies operating ships 15 to 49.99 GT</b>	P39,000.00
- Document Review	P34,320.00
Within Working Station	
- Initial Visit (for new company)	P6,240.00
Within Working Station	P35,100.00
Outside Working Station	P31,200.00
Central Office/MRO	
- Company Audit	
Within Working Station	
Outside Working Station	
Central Office/MRO	P1,400.00
- Ship Audit	
Within Working Station	P470.00
Outside Working Station	P16,380.00
Central Office/MRO	
<b>For companies operating ships less than 15GT</b>	
- Document Review	P14,040.00
Within Working Station	P24,180.00

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- Initial Visit (for new company)	P21,060.00
Within Working Station	
Outside Working Station	P3,740.00
Central Office/MRO	P21,060.00
- Company Audit	
Within Working Station	
Outside Working Station	
Central Office/MRO	
- Ship Audit	
Within Working Station	
Outside Working Station	P470.00
Central Office/MRO	
	P160.00
	P5,460.00
	P4,680.00
	P1,560.00
	P7,800.00
	P7,020.00
	P1,250.00
	P7,020.00
	P6,240.00
29. Issuance of Certificate of Accreditation to Classification Societies and Entities for the purpose of Classification of ships in the domestic trade (MC 165)	P39,000.00 valid for three years
30. Minimum Safe Manning Certificate (MC 179)	
a. Issuance / Renewal of Minimum Safe Manning Certificate	
Over 1,600GT	P1,950.00/ship
Over 1,000GT to 1,600GT	P1,630.00/ship
Over 500GT to 1,000GT	P1,300.00/ship
Over 250GT to 500GT	P980.00/ship
Over 100GT to 250GT	P650.00/ship
Over 35GT to 100GT	P330.00/ship
35GT and below	P130.00/ship
b. Re-issuance of Minimum Safe Manning Certificate	P130.00/ship
31. Cancellation of Registered Mortgages	P1,560.00
32. Expedite Processing of Applications	Additional 50% of existing fees



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**D. ON FRANCHISING**

1. Application for issuance of Company CPC
  - a. New/Renewal of Company CPC
    - Steel-hulled vessels
  - New
    - a. Liner (Passenger & Cargo/Purely Cargo) P11.00/GT or minimum of P7,800/vessel
    - b. Tramp P12.50/GT or minimum of P9,360/vessel
  - Renewal
    - a. Liner (Passenger & Cargo/Purely Cargo) P10.00/GT or minimum of P7,000/vessel
    - b. Tramp
      - P11.50/GT or minimum of P8,580/vessel
      - Aluminum-Hulled/Fiber Glass-Hulled Vessels or Combination of Both or Any other Type of Hull (for Fastcraft Vessels) P11.00/GT or minimum of P7,800/vessel
      - Wooden-Hulled Vessels
        - For Vessels 35GT and Less P4.50/GT or minimum of P1,560/vessel
        - For Vessels above 35GT up to 500GT P6.50/GT or minimum of P3,120/vessel
        - For Vessels above 500GT P8.00/GT or minimum of P4,680/vessel
- b. Amendment of Company CPC
  - Permanent Addition or Deletion of a Route/Port/Link
    - a. Steel-Hulled Vessels P4.50/GT per route/port/link or minimum of P4,680 per application
    - b. Aluminum-Hulled or Fiber Glass-Hulled Vessels or Combination of Both, or Any other type of Hull P4.50/GT per route/port/link or minimum of P4,680 per application

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<ul style="list-style-type: none"> <li>c. Wooden-Hulled Vessels               <ul style="list-style-type: none"> <li>For vessels 35GT and above</li> <li>For vessels below 35GT</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>P3.00/GT per route/ port/link or minimum of P2,340 per application</li> <li>P3.20/GT per route/ port/link or minimum of P780 per application</li> </ul>	
<ul style="list-style-type: none"> <li>- Permanent Addition/Reduction/ Replacement of Ship/Fleet           <ul style="list-style-type: none"> <li>a. Steel-Hulled Vessels</li> <li>b. Aluminum-Hulled or Fiber Glass-Hulled Vessels or Combination of Both, or Any Type of Hull</li> <li>c. Wooden-Hulled Vessels               <ul style="list-style-type: none"> <li>- For vessels 35GT and above</li> <li>- For vessels below 35GT</li> </ul> </li> <li>- Change in the Legal Personality of the Grantee of the CPC</li> <li>- Change in the Name of the Entity/ Corporation/Partnership/Cooperative</li> <li>- Change of vessel name               <ul style="list-style-type: none"> <li>a. Steel-Hulled Vessels</li> <li>b. Aluminum-Hulled or Fiber Glass- Hulled Vessels or Combination of Both, or Any Type of Hull</li> <li>c. Wooden-Hulled Vessels                   <ul style="list-style-type: none"> <li>- For vessels 35GT and above</li> <li>- For vessels below 35GT</li> </ul> </li> </ul> </li> </ul> </li> </ul>		<ul style="list-style-type: none"> <li>P4,680/vessel</li> <li>P1,560/vessel</li> <li>P780/vessel</li> <li>P3,900.00</li> <li>P1,560.00</li> <li>P2,340/vessel</li> <li>P2,340/vessel</li> <li>P1,560/vessel</li> <li>P780/vessel</li> </ul>
<ul style="list-style-type: none"> <li>2. Special Permit           <ul style="list-style-type: none"> <li>- Steel-Hulled Vessels</li> <li>- Aluminum-Hulled or Fiber Glass-Hulled vessels or combination of both or any other type of hull</li> <li>- Wooden-Hulled Vessels               <ul style="list-style-type: none"> <li>- for vessels 35GT and above</li> <li>- for vessels below 35GT</li> </ul> </li> <li>- SP outside the basic/original application has been applied, or based on the amended application (e.g., Amendment of time or day of schedules); or based on the amended application (e.g., amendment of routes)</li> <li>- SP for peak season/fiesta/festival or any other special occasion</li> </ul> </li> </ul>		<ul style="list-style-type: none"> <li>P2,340.00/vessel</li> <li>P2,340.00/vessel</li> <li>P1,500.00/vessel</li> <li>P625.00/vessel</li> <li>P3,120.00/vessel</li> <li>P3,900.00 per vessel per extension</li> <li>P3,120.00/vessel</li> </ul>

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- SP outside the recent amended application whether amendments of time/days of schedules or routes P4,320.00/vessel
- SP under PD 474
- All other types of SP not included above
- 3. Filing of Complaints Regarding Any Matter Involving Violations of the Provisions of RA 9295 or the Implementing Rules and Regulations (IRR)
  - For Vessels 500GT and Above P1,560.00/vessel
  - For Vessels Less than 500GT P3,120.00/vessel
- 4. Filing of Motion for Reconsideration (MR) on the Order/Decision/Ruling P3,120.00 filing fee  
P780 filing fee
- 5. Filing of Administrative Appeal on the Order/Decision/Ruling Relative to the CPC Application P1,000.00
- 6. Penalty of Late Filing/Surcharge for the Renewal of Company CPC P1,000.00
  - Vessels below 35GT P160/day of operation but not to exceed P7,800.00
  - Vessels below 35GT to 100GT P310/day of operation but not to exceed P15,600.00
  - Vessels 101GT to 500GT P470/day of operation but not to exceed P31,200.00
  - Vessels above 500G P780/day of operation but not to exceed P39,000

**E. ON PERMANENT IMPLEMENTATION OF THE PRO-POOR VESSEL FEES FOR THE FIRST INSTANCE COVERING THE ENUMERATION EXCLUSIVELY**

On Permanent Implementation of the Pro-Poor Vessel Fees (section MC 172)

- 1. Below 3 GT Fishing Boats P250.00
  - CN
  - PO
  - Builder Certificate
  - Vessel Name Clearance
- 2. Below 3 GT Passenger/Cargo vessels to cover the issuance of: P500.00
  - Certificate of Ownership (CO)

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CVR	
Admeasurement	
SCI	
Inspection Fee	
BRL	
CPC/PA/SP filing fee	
Accreditation of Domestic Shipping Enterprises/Entities	
Vessel Name Clearance	
3. 3-15 GT Passenger/Cargo Vessels to cover the issuance of:	P750.00
CO	
CVR	
Admeasurement	
Builder Certificate	
Relevant Safety Certificates	
BRL	
Marine Diesel Mechanic/Boat Captain (as applicable)	
Survey Inspection Fee	
Plans Approval	
CPC/PA/SP filing fee (if applicable)	
Accreditation of Domestic Shipping Enterprises/Entities	
Vessel Name Clearance	
4. Boatbuilders of Vessels 15 GT and below to cover the issuance of: License Certificate	P500.00

**F. MARITIME LEGAL AFFAIRS**

1. Endorsements	P390.00
Securities and Exchange Commission (SEC)	P390.00
POEA/DOLE	P1,560.00
DOF	P390.00
Other government agencies	P160.00
2. Certification	

**G. ON MANAGEMENT INFORMATION SYSTEMS**

1. Vessel Name Clearance	P80.00/vessel
2. Diskette copy of existing database	P160.00/topic (including cost of diskette)

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**H. ON ENFORCEMENT FUNCTION**

1. Filing Fee for adoption of deregulated passenger rates for Reclining Seat Accommodation	P4,320.00/ship
2. Issuance or re-issuance of COC	P310.00
3. Inspection Fees	
a. Within Metro Manila or Area of Jurisdiction for Regional Offices	
- 35 to 100GRT	P2,600.00
- Above 100 to 250GRT	P4,680.00
- Above 250 to 350GRT	P6,240.00
- Above 350 to 500GRT	P7,800.00
- 500 to 1000GRT	P10,920.00
- Above 1000 to 5000GRT	P12,480.00
- Above 5000GRT	P15,600.00
b. For inspection outside Metro Manila or Area of Jurisdiction for Regional Offices	
- 35 to 100GRT	P6,240.00
- Above 100 to 250GRT	P7,800.00
- Above 250 to 350GRT	P9,360.00
- Above 350 to 500GRT	P10,920.00
- Above 500 to 1000GRT	P12,480.00
- Above 1000 to 5000GRT	P15,600.00
- Above 5000GRT	P20,280.00
4. Filing of marine protest/incidence report	P390.00

**I. GENERAL**

Certification of all types of documents	P250.00/certification
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The schedule of fees imposed by the MARINA for the overseas shipping sector is embodied in MARINA MC No. 2006-002 as amended by MARINA MC No. 2008-06, as follows:

**OVERSEAS SHIPPING**

1. Vessel Charter/Extension of Charter Period/Notation of BBC Contract	P24,800.00/vessel for the first three years and additional P5,300.00 for every year thereafter
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2. Amendment of any provision of charter contract under PD 760/866/1711 and EO No. 438	P1,650.00/ship
3. Extension of validity period of MARINA approval on importation/bareboat chartering projects	P2,450.00/month
4. Change of original registry of BBC ships	P24,800.00/ship
5. CPR/CO	P2,650.00 + P1.15/GT in excess of 500 GT
6. Extension of vessel's CPR for less than one year	P24,800.00/ship
7. Re-issuance of CPR/Full-term CPR	P1,650.00
8. Manning Certificate	
– Initial issuance/reissuance upon request of company/for SP in the (overseas trade)	P1,650.00
– Full term	P8,050.00
– Reissuance for compliance with new International Maritime Organization (IMO) Regulations	P600.00
9. Employment of Expatriate Officer under PD 1711/Supernumerary	P5,300.00/ supernumerary
10. SP for temporary utilization of domestic ships in overseas trade/operation	
– Duration of SP	

## TRAMPING OPERATION

– Three months or less	P8,050.00
– Over three months but not more than six months	P16,100.00
– Over six months	P23,850.00

## LINER OPERATION

– Six months but not to exceed one year	P39,700.00
– Over six months but not to exceed one year	P66,150.00
11. Amendment of SP	P600.00/ application
12. Accreditation of Overseas Shipping Companies under MC No. 181	P10,350.00
13. Re-issuance of Certificate of Accreditation due to amendment during the validity of Certificate	P2,300.00

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14. Accreditation under MC No. 186 based on the following categories:	
– Single proprietorship	P6,350.00
– Partnership/Corporation	P9,200.00
– Cooperatives	P9,200.00
– Amendment of Certificate	P2,300.00
– Change of company name	P2,300.00
15. Change of Vessel Name	P600.00
16. Accreditation under MO No. 6	\$190/ship
17. Importation/purchase of vessel for overseas use	P8,050.00/ship
18. Authority to sell ships from Filipinos to foreign nationals	P4,050.00/ship
19. Deletion from Philippine Registry	P1,650.00
20. Re-filing of application for deletion of vessel from the Philippine registry	P1,650.00/application
21. Endorsement to authorized agent banks AAB's of the Monetary authority for foreign exchange requirements of Shipping companies (section 6.01(a) R & R of RA No. 7471)	P780.00
22. Endorsement to the Secretary of Finance for availability of Import Duties & Taxes (section 6.02(d) of R&R of RA No. 7471)	
– Vessel importation	P3,120.00
– Spare parts	P780.00
23. Endorsement to BOI for registration	P780.00
24. Endorsement to the Secretary of Finance for availment of supplier's tax credit (section 6.02(d) R & R of RA No. 7471)	P780.00
25. Endorsement to the Bureau of Internal Revenue (BIR) for issuance of Certificate of Income Tax Exemption (section 6.02(e) R & R of RA No. 7471 and RA 9301)	P780.00
26. Registration of Engine and Deck Logbook/ Rollbook and Other books	P300.00/quarter
27. Other Ship's Books	P300.00/book
28. Dispensation Permit	P1,650.00
29. Annotation of Ship Mortgage	
– P5,000.00-P25,000.00	P550.00 + P0.60/ P1,000 in excess of P5,000.00
– Over P25,000.00	P1,650.00 + P0.40/ P1,000 in excess of P25,000.00
30. Letter authorization to recognize organizations for statutory/ISM certifications	P1,750.00

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31. Reservation of vessel's name	P200.00/ship/month
32. Registration of Cautionary Notice of Mortgages	P23,850.00/ship
33. Change of officer and stockholders accredited overseas shipping companies	P1,000.00
34. Permanent conversion of vessels from domestic to overseas	P8,050.00
35. Application for the Issuance of Certificate for Oil Pollution Damage	P1,650.00
36. Issuance of Continuous Synopsis Record (CSR):	
- Initial issuance	P1,650.00
- Re-issuance due to change in the CSR	P1,650.00
37. Certified True Copy	P70.00/document
38. Letter Approval for the Termination of Assignment of Bank Deposit/Withdrawal of Surety Bond	P300.00/ship
39. Letter of consent for the registration of the ship under Philippine Flag	P1,650.00
40. Exemption Certificate	P1,650.00
41. Other Certifications	P250.00/certification
42. Expedite Processing of Applications except issuance of Seafarer's Identification and Record Book (SIRB)	Additional 100% on processing/application fee

The fees payable to MARINA for registry are based on gross tonnage, as follows:

**PERMIT TO OPERATE/SPECIAL CERTIFICATE OF INSPECTION FOR DOMESTIC VOYAGE**

- 3 GT and below
  - a. PO     P160.00
  - b. SCI     230.00

The applicant shall pay the following fees to MARINA on the bareboat of vessels under PD760 as amended and MARINA MC No. 2006-002:

- a. BBC – P21,550.00 for the first three years plus P4,600.00 for every year thereafter:
- b. CPR
  - i. initial (good for three months) – P2,300.00 for the first 500 GT plus P1.00 per GT in excess of 500GT
  - ii. Full Term     – P1,400.00
  - iii. Re-issuance   – P1,400.00



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### *2.6. Errors in the Register: Legal effect, correction, and so on*

Errors made in recording documents shall be rectified in the following manner:

- (1) Slight errors not affecting the substance of the document, such as misspelled words, shall be corrected by the responsible officer of the MARINA by writing the correction above the errors and by affixing his initials beside the correct entry or notation.
- (2) Any mistake which might affect the meaning of the documents may be corrected upon petition or upon notice to the party concerned by rewriting the entire line or lines right below where the error occurred. Said correction, together with a statement of the circumstances, shall be signed by the officer-in-charge of the record.
- (3) Errors made in copying shall not be erased. Instead, all required changes shall be made as directed above. (Regulation XV/9, PMMRR.)

## 3. DOCUMENTATION REQUIRED FOR REGISTRATION

### *3.1. Generally*

MARINA MC No. 90, provides for the following requirements which must be complied with prior to registration of a vessel, if applicable:

- (1) Existing vessels:
  - (i) Plan approval
  - (ii) Admeasurement
  - (iii) Presentation of photocopies of valid trading certificates
- (2) New buildings:
  - (i) MARINA approval to acquire vessel
  - (ii) Approval of complete plans of hull and machineries
  - (iii) Authority issued to a classification society to inspect/supervise the construction of the vessel.

### *3.2. Differences between registration for a new building (first registration) and a ship previously registered in another country*

Ships constructed and acquired abroad shall, before being brought to the Philippines, secure a PCPR. Application therefore shall be filed with the MARINA together with the following documents:

- (a) Articles of Incorporation duly certified by the Philippine SEC if owned by a Company or Corporation.

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- (b) Board Resolution authorizing the person to represent the Corporation or Letter of Authority.
- (c) Affidavit of citizenship of the corporation or individual owner.
- (d) Memorandum of Agreement of the transfer of ownership of the ship.
- (e) Particulars of the ship.
- (f) Application for Assignment of Name.
- (g) Application for Official Number.
- (h) Deletion Certificate issued by the country of the vessel's previous registration.

If the application is found to be in order, the MARINA shall endorse it to the Department of Foreign Affairs with the request that it be transmitted to the Philippine Embassy/Consulate nearest to where the vessel is located so that the certificate can be issued for conduction purposes.

Within fifteen days after arrival of the ship in the Philippines, the master, owner, or agent of the ship shall apply to MARINA. The following documents are required:

- (a) PCPR.
- (b) Bill of Sale or Builder's Certificate.
- (c) Protocol of Delivery and Acceptance.
- (d) Protocol of Inventory of the Ship.
- (e) Certificate of Admeasurement, including Calculation Sheets for tonnage measurement, as performed by the official admeasure, of the country where the ship is built or acquired.
- (f) Provisional Loadline Certificate issued by the authorized Classification Society under whose rules the vessel is constructed or acquired.
- (g) Certificate of Inspection or equivalent Certificate pursuant to the SOLAS 1960 Convention issued by the government of the country where the ship was built or acquired.
- (h) Inclining test experiment with calculations and trim and stability calculations for all service loading conditions.
- (i) Ship Safety Radio Telephony Certificate (if applicable).
- (j) Ship Safety Radio Telegraphy Certificate.
- (k) All documents from sub-paragraphs (a) through (d) executed outside the Philippines will have to be authenticated by the Philippine Consulate. Provided, however, that sub-paragraph (h) may be duly authenticated at a later date if it is not available at the time of purchase or acquisition.
- (l) Consular invoice.
- (m) Permit to deliver imported goods (Philippine Bureau of Customs formal entry).
- (n) Documents mentioned above as applicable.
- (o) Deletion Certificate issued by the country of the vessel's previous registration in the event of previous registration in another country.

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### 3.3. *When vessel was sold in an enforced sale procedure in another country*

The Order for Sale of the foreign court should be presented, identifying the purchaser, as well as notarised evidence by affidavit that by the law of that foreign country the sale by the court operated so as to erase any liens or encumbrances existing prior to the sale. Thereafter, said documents should be authenticated before the Philippine Consulate.

## 4. DEREGISTRATION (CLOSING THE REGISTER)

### 4.1. *On a sale*

When a ship of domestic ownership is sold or transferred to a foreign national, notice must be given to the MARINA which thereafter closes the Registry and deletes the CPR of the vessel. The seller/transferor must cause the deletion of the ship from the Philippine Port of Registry within fifteen days from the transfer.

### 4.2. *After an actual or constructive total loss*

In the event that the ship of domestic ownership is deleted or de-registered from the Philippine Registry where the vessel suffers actual or constructive total loss.

### 4.3. *Is mortgagee's consent required?*

If registered mortgagees do not consent to the discharge of all mortgages, any unsatisfied mortgages will remain on the register until discharged.

### 4.4. *Are permissions from governmental agencies required?*

Provided that the proper notice is given confirming the reason for closing the register, no governmental permission is required, provided all fees and charges have been paid and all radiotelegraphy fees of the Philippine National Telecommunications have been paid. In the event of sale of vessels owned by Philippine nationals to foreign-owned or foreign-controlled enterprises, MARINA approval is required (section 12(h), PD 474).

## 5. LEGAL EFFECT OF REGISTRATION UNDER CIVIL LAW OF THE COUNTRY

Although the person in whose name a vessel is registered has legal title thereto, such registration is not always conclusive as to ownership over the

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vessel against the real owner. The circumstances of each case will determine whether registration is conclusive or not. It should, however, be remembered that the registry authorities conduct investigations before registering a vessel, considering that no application for a CPR shall be approved until the MARINA is satisfied from an inspection of the vessel that it is engaged or destined to be engaged in legitimate trade and that it is of domestic ownership.

### 6. RATIFICATION OF OR ADHERENCE TO THE INTERNATIONAL CONVENTIONS FOR THE UNIFICATION OF CERTAIN RULES RELATING TO MARITIME LIENS AND MORTGAGES OF 1926 AND/OR 1967

The Philippines has not ratified or incorporated either of the Conventions into its national law.

### 7. FLAGGING IN OF VESSELS WHICH REMAIN REGISTERED IN ANOTHER COUNTRY

As previously mentioned, under PD 760, as amended, any foreign-registered vessel bareboat chartered to a Philippine national for at least one year may qualify for registration under the Flag of the Philippines without losing her permanent registration under the foreign flag.

PD 760, as amended by PD 866 and PD 1711, reads:

Section 1. Any provision of law, decree, executive order, or rules and regulations to the contrary notwithstanding, any foreign-owned vessel under charter or lease to a Philippine National, as the term is defined in Section 3 of Presidential Decree No. 474, may be issued a Temporary Certificate of Philippine Registry by the Maritime Industry Authority: Provided, That the said charter or lease (1) has the prior written approval of the Maritime Industry Authority, (2) shall be valid and effective for a period of not less than one (1) year: Provided, Further, That the operation of the vessel shall be entirely in the hands of Philippine nationals and free from any participation or interference from alien owner, except insofar as such action shall be to directly protect his rights as owner thereof, provided, finally, that the registered vessel shall be manned completely by a Filipino crew except in the case of specialised vessels and subject to rules and regulations MARINA may prescribe in relation thereto. (As amended by EO No. 125/125-A, Series 1987.)

The effectivity of any charter or lease contract entered into under the said Decree is hereby extended indefinitely, unless otherwise revoked by the President of the Republic of the Philippines.

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Issued in 1975, PD 760 allows the temporary registration of foreign-owned ships under charter or lease to Filipino nationals for use in the country's coast-wise trade for a period of not less than five years.

As a way to expand the domestic fleet without the capital-intensive method of outright purchase, domestic shipping firms were permitted to charter ships until the year 1990. PD 866, issued six months later, amended PD 760 by expanding its scope to include the charter of foreign-owned ships to be used for overseas shipping operations. Because it would be costly to charter for a period of five years, the lease period was reduced to only one year during which the ship can be temporarily registered under the Philippine flag.

In 1980, the two decrees were further amended by PD 1711 which allowed the chartering of specialized ocean-going ships, lengthened the duration of the two previous decrees' effectiveness until 1999, and transferred the issuance of Temporary Certificate of Philippine Registry (TCPR) to MARINA. EO No. 438, S.1997, extended the chartering system until 2009. EO No. 667, S.2007, extended the chartering system indefinitely unless revoked by the President of the Republic of the Philippines.

These decrees have been welcomed by Filipino shipowners since acquiring ships through importation under lease-purchase agreements or outright purchases has become prohibitively expensive due to the rising cost of money and lack of foreign exchange in the Philippines.

### *7.1. Permissions required, by whom?*

Approval by the MARINA is necessary for the flagging-in of vessels. The bareboat charterer filing the application for the flagging-in of the vessel with the MARINA should be a Philippine shipping company, firm and entity principally engaged in overseas shipping and complying with MC 181 and 182, both of 22 January 2003.

### *7.2. Time for which Permission can be granted; Possibilities of Prolongation*

PD 760, as amended, expressly provides that the charter must have a term of at least one year which may be extended indefinitely unless revoked by the President of the Republic of the Philippines, per EO No. 667, Series 2007.

### *7.3. Conditions to be fulfilled to receive permission*

MARINA issued MC No. 182 on the conditions governing applications for the flagging-in of vessels, as follows:

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A. Only companies which have complied with the following requirements may bareboat charter ships under PD 760, as amended:

- A1. The company is accredited under MC No. 181, provided that such accreditation shall be maintained for the period that it has a bareboat chartered ship.
- A2. Ship-owning companies must have a paid-up capital of Seven Million Pesos (P7 M) and companies without owned ships must have a paid-up capital of Ten Million Pesos (P10 M);
- A3. The company shall have the following management profile:
  - a. The Chief Executive and Chief Operating Officer (but if he is one and the same, the next ranking Operating Officer) shall be a citizen and resident of the Philippines; and
  - b. Two (2) principal officers of the company shall have at least five (5) years experience in ship management, shipping operations and/or chartering.

B. A ship shall be registered under this Circular for a period of not less than one (1) year.

C. Extension of the registration of the ship for less than one (1) year for the purpose of finalizing documentation for the extension of the bareboat charter party or the eventual deletion of the ship from the Philippine Registry shall be allowed for a period not to exceed ninety days, provided that the registration shall be under the same company.

D. If the bareboat charter party is pre-terminated within one (1) year from the date of delivery of the ship, the charterer shall be liable to pay the MARINA as penalty the amount equivalent to six (6) months of withholding tax or the balance of the withholding taxes due for the whole year, whichever is higher. For purposes of this provision, a ship which has continuously been registered for more than one (1) year under the Philippine flag under the same group of companies shall be deemed to have complied with Regulation V.2 hereof.

E. Any change in the terms and conditions of the charter party shall be approved by the Administration.

F. Ships registered under this Circular shall be completely manned by Filipino crew except in cases as may be determined by the Administration. For this purpose, Filipino crew onboard Philippine-registered ships shall be covered by prescribed Shipping Articles which shall be submitted for notation by the Administration.

G. A Philippine-registered ship may, under circumstances to be determined by the Administration, have on board supernumeraries, provided that they shall not perform any of the functions of the crew nor interfere with the operation/management of the ship.

H. Crew onboard Philippine-registered ships are required to be certified in accordance with the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 as amended.

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I. Ships registered under this Circular shall, when calling for the first time at a Philippine port, be inspected by authorized MARINA surveyors.

J. All ships registered under this Circular must be class-maintained by an internationally recognized classification society. Any change in the classification of a Philippine-registered ship shall be immediately communicated to the Administration.

K. Philippine-registered ships shall comply with the requirements of the International Safety Management (ISM) Code for the safe operation of ships and for pollution prevention.

L. Companies and ships covered by this Circular shall at all times comply with national rules and regulations as well as with international conventions, codes and standards on safety and marine environmental protection.

M. The bareboat charterer shall ensure that payment of the 4.5% withholding tax on gross charter hire is remitted to the Bureau of Internal Revenue.

N. Companies with bareboat chartered ships shall deposit, in favor of the MARINA, with any reputable commercial bank the amount equivalent to One Hundred Thousand Pesos (P100,000.00) per ship to answer for the payment of the 4.5% withholding tax, fines and penalties due the government in the event that the company fails to settle the amount due upon deletion of the ship from the Philippine Registry. In addition, companies shall also post a surety bond per ship in an amount equivalent to the cash bond. After the deletion of the ship from the Philippine Register of Ships, the amount of (P100,000.00) may be withdrawn, provided that proof of payment of all taxes/penalties due to the government by reason of the registration of the ship under the Philippine flag had been submitted. Ship-owning companies shall be exempted from this requirement for their bareboat chartered ships.

O. All ships registered under this Circular shall not be deleted from the Philippine Registry or reverted to its foreign flag or registry without the prior approval of the Administration.

P. The company shall comply with all laws, rules and regulations pertaining to Philippine flag ships.

### *7.4. Documents required*

- (1) The following documents shall be submitted upon filing of an application:
  - (a) Letter of Intent.
  - (b) Duly signed BBC Contract (with names printed below the signatures), provided that the document, duly notarised in the State where it was

- executed and authenticated by the Philippine Embassy/Consulate concerned, shall be submitted within sixty days from approval of the application.
- (c) Copy of a certificate of Deletion or Suspension of the original registry or consent to the BBC registration in the Philippines by the State of original registry, provided that the original copy of the document shall be submitted within thirty days from approval of the application.
  - (d) Copy of certificate of Good Standing of the registered owners recently issued by the State of Registry, provided that the original copy of the document shall be submitted within thirty days from approval of the application.
  - (e) Power of Attorney/Board Resolution authorizing the signatory to the BBC party to act as such on behalf of the registered owners, provided that the document, duly notarised in the State where it was executed and authenticated by the Philippine Embassy/Consulate concerned, shall be submitted within sixty days from approval of the application.
  - (f) Copy of the ship's subsisting certificate of Original Registry, provided that the document, duly certified to be a true copy of the original by the State of original registry or by the Philippine Embassy/Consulate concerned, shall be submitted within sixty days from approval of the application.
  - (g) Board Resolution/Secretary's Certificate duly notarized, certified by the Board Secretary, authorizing the filing of the application and designating the officials/authorized representatives to represent the applicant-company.
  - (h) Assignment of Bank Deposit (cash bond of One Hundred Thousand Pesos).
  - (i) Builders Certificate (For New Buildings).
- (2) For bareboat sub-charter applications, the following additional documents shall be submitted:
- (a) Copy of the consent of Registered Owners to the Bareboat Sub-Charter Agreement entered into by and between the disponent owners and bareboat sub-charterers, provided that the document, duly notarised in the State where it was issued/executed and authenticated by the Philippine Embassy/Consulate concerned, shall be submitted within sixty days from approval of the application.
  - (b) Power of Attorney or Board Resolution authorizing the person who issued the consent to act as such on behalf of the bareboat charterers, provided that the document, duly notarised in the State where it was issued/executed and authenticated by the Philippine Embassy/Consulate concerned, shall be submitted within sixty days from approval of the application.
  - (c) A copy of the certificate of Good Standing of the bareboat sub-charterers recently issued by the State of Registry, provided that the



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- original copy of the document shall be submitted within thirty days from approval of the application.
- (3) The following post-approval documents, if applicable, shall be submitted within the prescribed period as stipulated in the MARINA approval:
    - (a) Coloured photographs (different angles) of the ship showing the place of registry in the stern portion.
    - (b) Certified true copy of the ship's Protocol of Delivery and Acceptance.
    - (c) Sworn statement of crew salaries and wages (on an annual basis), indicating therein the names of all crew members, their respective positions, and corresponding salaries/wages.
    - (d) Ship's drydocking schedule and list of survey status.
    - (e) Proof of monthly payment of the 4.5% withholding tax with a breakdown of payments by ship (original copy of BIR receipts shall be presented for verification purposes).
    - (f) Original copy of a document issued by the State of original registry providing details of the ship's name, ownership, and registered mortgages.

### 8. ESSENTIAL LAWS AND REGULATIONS APPLYING TO PHILIPPINE VESSELS IN RESPECT OF MANNING, EMPLOYMENT, SOCIAL SECURITY, AND SO ON

#### 8.1. *International Conventions*

The Philippines through the PMMRR adheres to the following International Conventions, as amended, including relevant resolutions and recommendations:

- (1) International Convention for the Prevention of Pollution to the Sea by Oil (OILPOL) (London, 12 May 1954).
- (2) The International Convention on Load Line (LL), 1966.
- (3) The International Tonnage Convention, 1969.
- (4) The International Regulations for Preventing Collisions at Sea (COLREG), 1972.
- (5) The International Convention for the Prevention of Pollution from Ships (MARPOL), 1973/1978.
- (6) The International Convention for Safety of Life at Sea (SOLAS), 1974/1978.
- (7) The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978/1995.
- (8) The United Nations Convention on the Law of the Sea, 1982.
- (9) International Convention Civil Liability for Oil Pollution Damage, 1992.
- (10) ISM Code, effective July 1998.
- (11) High-Speed Craft Code adopted by the IMO on 20 May 1994.
- (12) Any related international maritime conventions in force.

8.2. *National laws and regulations – other than those arising from the afore-mentioned conventions – in respect of:*

- (i) Number of officers and crew  
The number of officers and crew are governed by MARINA, whose rules must be complied with. The PCG is the agency tasked by Philippine law to strictly enforce these rules.
- (ii) Nationality of officers and crew and immigration laws to be observed when hiring foreigners  
Philippine immigration and employment laws generally prohibit a non-Filipino from being employed on a Philippine vessel unless previously exempted by MARINA.
- (iii) Certificates of masters and officers/ratings  
The certificates of competency of masters and officers are issued by the Professional Regulatory Commission (PRC) under R.A. 8544, and the ratings are issued Certificates of Competency by the Technical Education and Skills Development Authority (TESDA).
- (iv) Rules in respect of minimum wages/hire, vacation, social security, insurance, etc.  
Conditions of employment and social security applicable to seamen are governed by Philippine labor laws. For example, Philippine seamen are usually covered by Workers' Compensation statutes, whereby a worker receives guaranteed compensation for illness and injury caused by his employment. Employee benefits and working conditions are also dealt with in union agreements.

9. ESSENTIAL LAWS AND REGULATIONS APPLYING TO PHILIPPINE VESSELS WITH RESPECT TO SAFETY OF SHIPS AND ENVIRONMENTAL PROTECTION

9.1. *International conventions*

The Philippines is a signatory to the International Convention for SOLAS, 1974. The Philippines is also a signatory to the International Convention on LL, 1966, International Convention on Tonnage Measurements, 1969 and MARPOL, 1973/1978 and the Annexes thereto, and the Fund Convention Protocol of 1992.

The Philippines adheres to the major international conventions relating to oil pollution, namely, the OILPOL 1954 which entered into force on 26 July 1958, the Convention on Prevention of Marine Pollution by Dumping of Wastes and Other Matters (1971), as modified by the Amendment of 1978 to Annexes (Incineration Amendment), the Amendment of 1980 (List of Substances), and the International Convention for the Prevention of Pollution from Vessels, 1973) and the MARPOL 1973/1978.

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### 9.2. *National laws and regulations*

Numerous regulations have been enacted in respect of safety of vessels which are principally embodied in the PMMRR and enforced by the Philippine Coast Guard (PCG).

#### 10. FLAGGING OUT OF VESSELS THAT REMAIN REGISTERED IN THE COUNTRY

Such a procedure is not available in the Philippines.

#### 11. DOES THE LAW OF THE COUNTRY REQUIRE THE OBSERVATION OF LAWS AND REGULATIONS IN RESPECT OF MANNING, EMPLOYMENT, SOCIAL SECURITY, AND/OR IN RESPECT OF SHIP SAFETY AND ENVIRONMENTAL PROTECTION AFTER THE VESSEL IS FLAGGED OUT BUT STILL REGISTERED IN THE COUNTRY?

Such a procedure is not available in the Philippines.

#### 12. REGISTRATION OF RIGHTS IN RESPECT OF VESSELS UNDER CONSTRUCTION

##### 12.1. *Type of register*

The Philippines has no regulations for rights to a vessel which is about to be built or equipped in the Philippines. Philippine law covers a situation where the vessel has been completely built.

##### 12.2. *Content of record*

Such a procedure is not available in the Philippines.

##### 12.3. *Inspection and search of record book*

Such a procedure is not available in the Philippines.

##### 12.4. *Registration and fees*

When the vessel's construction is completed, the MARINA shall require all the documents referred to in A3.1 and fees for registry referred to in A2.5, except

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vessels of 3 GT and below, wherein a CN will be issued by the PCG pursuant to MC 139, S. 1998, whereby the MARINA delegated some of its functions to the PCG.

In the case of a foreign-built vessel, particulars concerning the vessel's building and a bill of sale or other documents establishing title are required.

### *12.5. Type of vessel which may be registered*

The same vessels as those described in A2.2, *supra*.

### *12.6. At what stage during the construction can a vessel be registered?*

Construction of the vessel must be completed and the vessel must have been measured by an appointed surveyor before registration may occur.

### *12.7. Which type of rights can be registered?*

Such a procedure is not available in the Philippines.

### *12.8. Restrictions as to the nationality of the purchaser of the vessel under construction*

Such a procedure is not available in the Philippines.

### *12.9. Ownership of vessel under construction*

Such a procedure is not available in the Philippines.

## *B. Registration of Mortgages on Vessels and Vessels under Construction and Legal Nature of Mortgages*

## 13. SOURCES OF LAW

### *13.1. Sources of national law and general characterization of mortgages within the legal system of the country*

Philippine law on ship mortgage is principally embodied in PD 1521, otherwise known as the Ship Mortgage Decree of 1978. PD 1521 is patterned

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closely on the provisions of the US Ship Mortgage Act of 1920 and on Liberian Maritime Law relating to preferred mortgages.

### *13.2. Different types of vessel mortgages*

PD 1521 covers both domestic and foreign mortgages.

### *13.3. Applicable international conventions*

The Philippines is not a party to the International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages of 1967 or the 1926 Convention Relating to Maritime Liens and Mortgages, nor has the Philippines incorporated the rules of either Convention into its national law.

## 14. REGISTER

### *14.1. Description if separate from vessel's register*

Every mortgage of a ship which is registered in the Philippines shall be registered in the Record of Transfer and Encumbrances of Ships. However, no Philippine vessel shall be mortgaged to non-Filipinos or foreign corporations without approval from MARINA and the Central Bank of the Philippines (section 19(d), PD 1521). In contrast, mortgages to Philippine citizens or corporations need not have approval from MARINA or the Central Bank of the Philippines.

### *14.2. Documents and their legal form required for registration of mortgages*

Section 4 of PD 1521 provides, thus:

#### SEC. 4. Preferred Mortgages:

- (a) A valid mortgage which at the time it is made includes the whole of any vessel of domestic ownership shall have in respect to such vessel and as of the date of recordation, the preferred status given by the provisions of Section 17 hereof, if:
  - (1) The mortgage is recorded as provided in Section 3 hereof;
  - (2) An affidavit is filed with the record of such mortgage to the effect that the mortgage is made in good faith and without any design to hinder, delay, or defraud any existing or future creator of the mortgagor or any lien of the mortgaged vessel;

- (3) The mortgage does not stipulate that the mortgagee waives the preferred status thereof;
- (b) Any mortgage which complies with the above conditions is hereafter called a 'preferred mortgage'. For purposes of this Decree, a vessel holding a provisional Certificate of Philippine Registry is considered a vessel of domestic ownership such that it can be subject of preferred mortgage. The Maritime Industry Authority is hereby authorized to enter a vessel holding a Provisional Certificate of Philippine Registry in the Registry of Vessels and to record any mortgage executed thereon. Such mortgage shall have the preferred status as of the date of recordation upon compliance with the above conditions.
- (c) There shall be endorsed upon the documents of a vessel covered by a preferred mortgage:
- (1) The names of the mortgagor and mortgagee;
  - (2) The time and date the endorsement is made;
  - (3) The amount and date of maturity of the mortgage; and
  - (4) Any amount required to be endorsed by the provisions of paragraphs (e) or (f) of this Section.
- (d) Such endorsement shall be made by the MARINA Regional Office of the port of documentation of the mortgaged vessel.  
 In the case of a vessel holding a provisional certificate of Vessel Registry, the endorsement shall be made by the Philippine consul abroad upon direction by wire or letter from the MARINA at the request of the mortgagee and upon tender of the cost of communication of such direction. A certificate of such endorsement, giving the place, time and description of the endorsement, shall be recorded with the records of registration to be maintained at the Philippine Consulate.
- (e) A mortgage which includes property other than a vessel shall not be held a preferred mortgage unless the mortgage provides for the separate discharge of such property by the payment of a specified portion of the mortgage indebtedness. If a preferred mortgage so provides for the separate discharge, the amount of the portion of such payment shall be endorsed upon the documents of the vessel.
- (f) If a preferred mortgage includes more than one vessel and provides for the separate discharge of each vessel by the payment of a portion of mortgage indebtedness, the amount of such portion of such payment shall be endorsed upon the documents of the vessel. In case such mortgage does not provide for the separate discharge of a vessel and the vessel is to be sold upon the order of a district court of the Philippines in a suit in rem in admiralty, the court shall determine the portion of the mortgage indebtedness increased by 20 per centum (1) which, in the opinion of the court, the approximate value of all the vessels covered by the mortgage, and (2) upon the payment of which the vessel shall be discharged from the mortgage.

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In contrast, 'ordinary mortgages' (i.e., those which are not preferred and which do not comply with section 2 of PD 1521) may be annotated with MARINA pursuant to Regulation XV/25 of the PMMRR which provides:

- (1) the name of the ship;
- (2) the name and postal address of the parties to the mortgage;
- (3) the time and date of reception of the instrument;
- (4) the interest of the mortgagor in the ship being mortgaged;
- (5) the date of the mortgage contract;
- (6) the amount and date of maturity of the mortgage;
- (7) name, nationality, and residence of the owner of the ship; and
- (8) any material change of condition in respect to any of the preceding items.

Annotation of the mortgage shall be reflected on the reverse side of the CPR and CO, or CN, whenever applicable.

### 14.3. *Costs of registration*

Fees to be paid on the registration of a mortgage are payable to the MARINA, as follows:

For the Domestic Shipping Sector, pursuant to MARINA MC No. 2005-001:

– below P5,000.00	P2,500.00
– P5,000.00–P25,000.00	P2,500.00 + P0.72/P1,000 in excess of P5,000.00
– Over P25,000.00	P3,000.00 + P0.60/P1,000.00 in excess of P25,000.00

For the Overseas Shipping Sector, pursuant to MARINA MC No. 2008-06:

– P5,000.00–P25,000.00	P550.00 + 0.60/P1,000.00 in excess of P5,000.00
– Over P25,000.00	P1,650.00 + 0.40/P1,000 in excess of P25,000.00

## 15. DEFINITION OF VESSELS WHICH MAY BE MORTGAGED

All vessels qualified to be registered as stated in A2.2 herein may be mortgaged.

## 16. WHO CAN BE A MORTGAGEE

Any citizen of the Philippines, or any association or corporation organized under the laws of the Philippines, at least 60% of whose capital is owned by

citizens of the Philippines may, for the purpose of financing the construction, acquisition, purchase of vessels or initial operation of vessels, freely constitute a mortgage or any other lien or encumbrance on his or its vessels and its equipment with any bank or other financial institutions, domestic or foreign (section 2, PD 1521).

17. KIND OF RIGHTS AND/OR CLAIMS FOR WHICH  
A MORTGAGE CAN BE REGISTERED

*17.1. Existing rights/claims for definite amounts*

Preferred ship mortgages can only be granted for purposes of financing the ‘construction, acquisition, purchase or initial operation’ of a vessel. The vessel to be mortgaged may be the same vessel which was financed when constructed, purchased or acquired or it may be another vessel belonging to the mortgagor. Should a Philippine Court rule that a particular mortgage was not given in connection with the construction, acquisition, purchase, or initial operation of the vessel, the mortgage would not be a preferred ship mortgage at all and would not be entitled to the protection afforded to it by the Ship Mortgage Decree. Such a ruling would not, however, be a formidable barrier to foreclosure. The mortgage could still be foreclosed as an ordinary chattel mortgage under Act 1508, otherwise known as the Chattel Mortgage Law.

*17.2. Future rights/claims and/or for indefinite amounts*

Such a procedure is not available in the Philippines.

*17.3. As security for a guarantee*

Such a procedure is not available in the Philippines.

*17.4. As security for revolving debts*

Such a procedure is not available in the Philippines.

*17.5. Currency in which the mortgage can be registered*

The mortgage can be registered in any currency.



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### 18. CLAIMS FOR INTEREST AND COSTS

Claims for interest are secured by the terms of the statutory form of a principal sum and interest mortgage. In the event of default and if the mortgagee exercises his right to foreclose on and sell the vessel, the mortgagee is entitled to deduct the costs of the sale from the proceeds and proceed against the mortgagor by an action in personam for any deficiency between the mortgage debt and interest and the net proceeds (sections 17(a) and 18, PD 1521).

### 19. PARTICULARS RECORDED IN RESPECT OF A MORTGAGE

#### 19.1. *In respect of a mortgage on a vessel registered in the country*

Section 3(b) of PD 1521 provides:

The MARINA shall record mortgages delivered to him, in the order of their reception, in books to be kept for that purpose and indexed to show:

- (1) The name of the vessel;
- (2) The names of the parties to the mortgage;
- (3) The time and date of reception of the instrument;
- (4) The interest in the vessel so mortgaged;
- (5) The amount and date of maturity of the mortgage;
- (6) Name, citizenship, nationality and residence of owner, and
- (7) Any material change of condition in respect to any of the preceding items.

#### 19.2. *In respect of a mortgage on a vessel which is flagging in*

As previously mentioned in Chapter 7 above, the vessel which is flagging in is issued a TCPR by the MARINA coterminous with the term of the BBC. Due to the temporary nature of the Philippine registry issued to the vessel which is flagging in, the registration of the mortgage may not be necessary. Section 15 of PD 1521 provides that a foreign mortgage shall be deemed a preferred mortgage in the Philippines and may be foreclosed in the event of default if the same has been:

duly and validly registered in accordance with the laws of the foreign nation under the laws of which the vessel is documented and has been registered in accordance with such laws in a public registry either at the port of registry or at a central office

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### 20. FURTHER PRECONDITIONS FOR THE CREATION OF A VALID CHARGE

A copy of the mortgage should be furnished to the Central Bank of the Philippines and, if the mortgagee is a foreigner, MARINA approval is also needed.

### 21. PRIORITIES OF REGISTERED MORTGAGES *INTER SE*

Mortgagees are entitled to be in priority as between themselves according to the time and date on which each mortgage is accepted for entering with the MARINA and not according to the date of the mortgages (section 17(a)(7), PD 1521).

### 22. PRIORITIES BETWEEN MORTGAGES AND OTHER REGISTERED ENCUMBRANCES UNDER NATIONAL LAW

The preferred mortgage lien shall have priority over all claims against the vessel, except the following claims in the order stated:

- (1) expenses and fees allowed and costs taxed by the court and taxes due to the (Philippine) Government;
- (2) crew's wages;
- (3) general average;
- (4) salvage, including contract salvage;
- (5) maritime liens arising prior in time to the recording of the preferred mortgage;
- (6) damages arising out of tort; and
- (7) preferred mortgage registered prior in time (section 17(a), PD 1521).

### 23. RELATION OF REGISTERED MORTGAGES TO UNREGISTERED PREFERENTIAL RIGHT

#### 23.1. *Recognized right of retention*

Not applicable.

#### 23.2. *Recognized possessory lien*

Examples of possessory liens are a repairer's claim for repairing a vessel, a vessel owner's claim for freight, a cargo owner's claim for general average

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contribution, and a claim for salvage. The lien holder must remain continuously in possession of the vessel. The holder of a possessory lien has priority over a mortgagee regardless of whether or when the mortgage is registered.

### 23.3. *Recognized maritime liens*

Maritime liens, including claims for salvage (including contract salvage), crew's wages, general average, damages arising out of tort, any person furnishing repairs, towage, use of drydock or marine railway or other necessities, to any vessel, whether foreign or domestic, upon the order of the owner have priority over a mortgage (sections 17(a) and 21, PD 1521).

## 24. WHAT A REGISTERED MORTGAGE ATTACHES

The registered mortgage attaches to a vessel of domestic ownership (section 4(a), PD 1521).

## 25. EFFECT OF PAYMENT OF DEBTS SECURED BY MORTGAGES

Priority between the number of subsequent mortgages does not alter as the debts secured by earlier mortgages are reduced. The priority of the earlier registered mortgages is maintained until such time as the mortgage debt is completely satisfied and the mortgage discharged. In case of a new advance by a mortgagee with a high priority, his priority for that advance comes after those mortgages registered prior to the advance.

## 26. ASSIGNABILITY OF MORTGAGES

The mortgage can be assigned by the mortgagee by executing a deed of assignment which should be notarized to comply with Article 1625 of the New Civil Code which provides that 'an assignment of a credit, right or action shall produce no effect as against third persons unless it appears in a public instrument'. The transfer is then recorded following production of the original mortgage to the MARINA.

## 27. EFFECT OF CHANGE OF OWNERSHIP OF VESSEL

In the case of change of ownership, the mortgagee's security remains the same and can be fully enforced without re-registering the mortgage. However,

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the new owner does not by operation of law assume personal liability for the mortgage debt.

### 28. PROTECTION OF MORTGAGEES AGAINST SEIZURE, AND SO ON

When a vessel is forfeited to the State because the owners have engaged in illegal activities with the use of a vessel such as smuggling, protection of an innocent mortgagee can be obtained by application to the Regional Trial Court. However, the forfeiture of the vessel shall not be effected if it is established that the owner thereof or his agent in charge of the means of conveyance used as aforesaid has no knowledge of or participation in the unlawful act; provided, however, that a prima facie presumption shall exist against the vessel under any of the following circumstances:

- (1) if the conveyance has been used for smuggling at least twice before;
- (2) if the owner is not in the business for which the conveyance is generally used; and
- (3) if the owner is not financially in a position to own such a conveyance (section 2531, Tariff and Customs Code of the Philippines).

### 29. MORTGAGE PROTECTION IN CASE OF DEREGISTRATION OF VESSEL

#### 29.1. *Into the register of another country*

When a vessel is transferred into the register of another country, the Philippine register will be closed except as to any unsatisfied mortgages, which will remain on the register.

#### 29.2. *Into another register of the country*

The permission of a mortgagee is required before the registry of a vessel is transferred to another port of registry in the Philippines. Fees are likewise payable to the MARINA.

#### 29.3. *In case of loss or constructive total loss of vessel*

No protection is afforded to the mortgagee in the case of a total loss or constructive total loss of the mortgaged vessel, apart from the right to claim against the mortgagor for payment in accordance with the terms of the mortgage. It is normal for a mortgagee to provide in a collateral loan agreement

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for insurance against total loss of the vessel to be carried by the mortgagor with the mortgagee as a named insured, or with an assignment to the mortgagee from the mortgagor of the mortgagor's rights as owner under the insurance policy on the vessel.

### 30. LIABILITY OF MORTGAGEES

#### 30.1. *In tort*

A mortgagee who is not in possession of the vessel is usually not liable to any third party in tort.

#### 30.2. *In contract*

A mortgagee is not usually liable to third parties in contract. Where the charterer does not impair the security of the mortgagee, the mortgagee is not entitled to interfere with the performance of the charter. Unless the mortgagee is shown to have agreed to assume the owner's contracts with the master, crew or shippers, he will not be held liable for any of their claims.

#### 30.3. *In possession of the vessel*

A mortgagee in possession may employ the vessel but will be held liable if his imprudent use of the vessel while in possession results in a loss in the value of the vessel. He cannot use the vessel in a speculative or hazardous operation; if he does so, and loss or damage occurs, he will be liable.

A mortgagee in possession expressly or impliedly authorizing a master to order supplies for the vessel, can be held liable to pay for the supplies (sections 21 and 22, PD 1521).

### 31. SUBMISSION TO ENFORCED EXECUTION UNDER THE MORTGAGE

Such a procedure is not available in the Philippines.

### 32. RECORDING OF MORTGAGES ON VESSELS UNDER CONSTRUCTION

#### 32.1. *Type of mortgages*

Such a procedure is not available in the Philippines.

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32.2. *Precondition for recording of a mortgage under construction*

Such a procedure is not available in the Philippines.

32.3. *Documentation required for recording of a mortgage on a vessel under construction*

Such a procedure is not available in the Philippines.

32.4. *Evidence of a duly recorded mortgage*

Such a procedure is not available in the Philippines.

32.5. *Who can legally hold a mortgage?*

Such a procedure is not available in the Philippines.

32.6. *In which way can a valid charge be created on a vessel under construction?*

Such a procedure is not available in the Philippines.

32.7. *Legal effects of a valid mortgage on a vessel under construction*

Such a procedure is not available in the Philippines.

32.8. *To what a registered mortgage of a vessel under construction attaches?*

Such a procedure is not available in the Philippines.

32.9. *Effect of payment of a mortgage*

Such a procedure is not available in the Philippines.

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32.10. *Can a mortgage be assigned?*

Such a procedure is not available in the Philippines.

32.11. *Effect of change of ownership of a vessel under construction*

Such a procedure is not available in the Philippines.

32.12. *Procedure on delivery of the vessel*

Such a procedure is not available in the Philippines.

32.13. *Enforcement of mortgage on a vessel under construction*

Such a procedure is not available in the Philippines.

32.14. *What other security will normally be given for financing a vessel under construction if a mortgage cannot be recorded*

Such a procedure is not available in the Philippines.

CASTILLO



# Philippines

*Domingo G. Castillo*

## Part III. Judicial Sales of Vessels and Priority of Claims

*Updated to 28 March 2011*

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*Domingo G. Castillo*

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Mr Castillo has handled various cases involving vessel arrest, collisions, oil pollution, cargo claims, personal injury, and insurance claims.

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List of Abbreviations

Blg	Bilang
BP	Batas Pambansa
MARINA	Maritime Industry Authority
PCG	Philippine Coast Guard
PMMRR	Philippine Merchant Marine Rules and Regulations
PD	Presidential Decree
RA	Republic Act

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## Part III. Judicial Sales of Vessels and Priority of Claims

### *A. Judicial sales*

#### 1. SOURCES OF LAW

##### *1.1. National law*

The law and procedure relating to judicial sales of vessels are found in Presidential Decree (PD) 1521 (otherwise known as the ‘Ship Mortgage Decree of 1978’), and in the general provisions of the 1997 Rules of Civil Procedure dealing with attachment. Under Batas Pambansa (BP) Bilang (Blg) 129, as amended by Circular No. 20-99 dated 15 April 1999 issued by the Office of the Court Administrator, jurisdiction in admiralty and maritime matters where the demand or claim exceeds three hundred thousand pesos PHP 300,000 (USD 6,923.00) or, in Metro Manila, where such a demand or claim exceeds PHP 400,000 (approximately USD 9,231.00) is allocated to the Regional Trial Courts (section 19(3), BP 129; Republic Act (RA) 7691).

##### *1.2. Applicable international conventions*

The Philippines is not a party to either the 1926 or 1967 Brussels Conventions on maritime liens and mortgages.

#### 2. PRECONDITIONS TO A JUDICIAL SALE

##### *2.1. General position*

Before a sale order will be made in respect of a vessel, an action in rem must be issued out of a Philippine court by the party seeking the sale order; the summons and a copy of the complaint must have been served upon the vessel and the vessel must be under arrest in that action. The court will issue a sale order only in respect of a vessel which is under arrest in an action commenced by the plaintiff or by the party seeking the sale order. A vessel which is under arrest may be allowed by the court to trade through a receiver (section 16, PD 1521).

Once a vessel has been arrested, there are two procedures by which it may be sold:

- (i) sale order *pendente lite*; and
- (ii) sale order upon judgment.

## 2.2. *Sale pendente lite*

Sale prior to judgment may be ordered either if the vessel under arrest is a 'wasting asset' or if such a sale would be in the interest of all the parties to the action. Section 11 of Rule 57, of the 1997 Rules of Civil Procedure, provides:

Whenever it shall be made to appear to the court in which the action is pending, upon hearing after notice to both parties if practicable, that the property attached is perishable, or that the interests of all the parties to the action will be subserved by the sale thereof, the court may order such property to be sold at public auction in such manner as he may direct and the proceeds to be deposited in court to abide the judgment in the action.

Under Philippine law, the term 'perishable' ordinarily means subject to speedy and natural decay, but where the time contemplated is necessarily long, the term may embrace material depreciation in value from causes other than such decay.

When a vessel is arrested in respect of a claim, it is the responsibility of the shipowner to provide security for the claim so that the vessel may then be released from arrest. The security may be in the form of a counterbond issued by a Philippine surety or bonding company, or a cash deposit in an amount that is double the value of the claim, in order to secure the payment of any judgment that the plaintiff may recover in the action. If a shipowner is unable to provide security, that inability may be regarded as showing that the shipowner is insolvent and likely to be unable to pay for the vessel's continuing costs (such as, but not limited to, port charges, crew salaries and wages, insurance and watchmen).

## 2.3. *Foreign judgments*

The Regional Trial Court shall exercise exclusive original jurisdiction to make a sale order only in actions in admiralty and maritime jurisdiction where the demand or claim exceeds three hundred thousand pesos (PHP 300,000) (approximately USD 6,923.00) or, in Metro Manila, where such a demand or claim exceeds PHP 400,000 (USD 9,231.00). In the event that the demand or claim does not exceed PHP 300,000 or, in Metro Manila, PHP 400,000, the Metropolitan Trial Courts shall have exclusive jurisdiction. In any event, a sale order will be made only in respect of a vessel which is at that time under arrest by a Philippine court which issued said arrest order. A claimant who has obtained a judgment abroad or who has had a foreign arbitration award made in his favour, usually has two choices. First, he may begin again by issuing a new or fresh complaint or proceedings in rem in respect of his claim out of the Philippine court and by applying to arrest the relevant vessel in those proceedings. In such

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cases, the foreign judgment or arbitration award will be accepted as conclusive judgment upon the title to the vessel or, in the case of a judgment against the person, the judgment is presumptive evidence of a right as between the parties and their successors-in-interest by a subsequent title. Thus, section 48 of Rule 39 of the 1997 Rules of Civil Procedure provides:

Effect of Foreign judgment. - The effect of a judgment or final order of a tribunal of a foreign country, having jurisdiction to render the judgment or final order is as follows:

- (a) In case of judgment or final order upon a specific thing, the judgment or final order is conclusive upon the title to the thing;
- (b) In case of a judgment or final order against a person, the judgment or final order is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title.

In either case, the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud or clear mistake of law of fact.

Second, he may seek to enforce his existing arbitration award, because the Philippines is a signatory to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. However, a foreign arbitral award is not directly enforceable in the Philippines. The claimant who is seeking to enforce the foreign arbitral award must likewise file a new or fresh complaint or proceedings in rem in respect of his claim with the Regional Trial court.

### 2.4. *Mortgage title*

Philippine law does not have the concept of an 'enforceable title' or 'mortgage title'. Mortgages are enforced by ordinary court actions pursuant to PD 1521 (if the mortgage is a 'preferred ship mortgage' under said decree) or foreclosed in accordance with the provisions of the Philippine Chattel Mortgage Law (Act No. 1508) (if the mortgage is one that is an ordinary mortgage and not a preferred ship mortgage).

### 2.5. *Possessory liens*

A vessel may be arrested while it is in the possession of a party entitled to a possessory lien and the court may then direct the sheriff to take possession of the vessel, notwithstanding the fact that the vessel is in the possession or under the control of a person claiming a possessory common law lien (section 16, PD 1521). An arrest in such instances terminates the rights of the possessory lienor because, under section 17(A) of PD 1521, all pre-existing claims over the vessel, including any possessory common law lien, shall be held terminated and shall

thereafter attach in like amount and in accordance with the ranking of priorities listed in Chapter 8, below.

### 3. CUSTODY AND MAINTENANCE OF THE VESSEL PENDING SALE

#### 3.1. *The sheriff*

Arrest orders issued by Philippine courts are enforced by the implementing sheriff of that court, who is considered an officer of the court. The sheriff is in all cases responsible for the arrest, custody, sale and release of vessels pursuant to orders made by that Philippine court. The duties of the sheriff as ‘custodian’ of a vessel are quite narrowly defined and do not extend to an all-embracing responsibility for the welfare of the vessel. The sheriff’s responsibilities do not supplant those of the shipowner. The sheriff’s fundamental duty is to keep the vessel under arrest and take steps to try and ensure that the vessel will not be able to depart unlawfully. This may be done by notifying the Maritime Industry Authority (MARINA), Philippine Bureau of Customs and the Philippine Port Authority together with the Philippine Coast Guard (PCG). If the circumstances demand it, the sheriff may also take steps to ensure that the vessel is securely moored or berthed. If the vessel has her own crew on board, the sheriff may be prepared to rely upon them to attend to the moorings and act as watchmen. Alternatively, a lay-up crew may be supplied by the vessel’s mortgagees, if the ship owner is insolvent. But if the vessel would otherwise have no crew, the sheriff may employ one or more watchmen to keep the vessel safe. The sheriff does not take out insurance over the vessel under arrest for the benefit of the claimants. The claimants generally take out their own insurance over the vessel. The sheriff will not incur expense in maintaining, refitting, repairing, or renovating a vessel. In general, the sheriff will incur the least possible expenditure consistent with the performance of his duties, otherwise he might be criticized for unnecessarily depleting the net sales proceeds of the vessel. However, the court may order the sheriff to incur certain expenditures if necessary to enable the vessel to be sold at a higher price.

#### 3.2. *The sheriff’s costs*

The only funds available to the sheriff are those supplied to him by the arresting party or those incurred by the claimant on behalf of the sheriff. As soon as the sheriff begins to incur expenditure, he may call either the plaintiff or the plaintiff’s counsel to make a progress payment to him. A further undertaking must be given in relation to any court sale expenses, after the sale order is issued. By the time a vessel is sold by the court, substantial expenditure may have been incurred in respect of the vessel’s arrest, custody, and sale. To the extent of such expenditure as may be advanced to the sheriff by the plaintiff, the plaintiff is entitled to recover the sum in

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question from the sales proceeds based on the ranking of priorities provided in section 17(A) of PD 1521 – see Chapter 8, below.

### *3.3. Insurance aspects*

It is always possible that a vessel may suffer damage while under arrest. For example, heavy weather may cause a vessel to break her moorings and to damage other vessels or fixed objects before going aground. Third parties who suffer damage as a result of such an event will be entitled to pursue claims against the vessel and those claims may take priority over the claim in respect of which the vessel was originally arrested. Damage to the vessel herself may result in her sales proceeds being smaller than would otherwise have been the case. Parties with substantial claims against the vessel should always consider insuring against such eventualities. Mortgagees may often have the benefit of insurance by being the assignees of the shipowner's insurance.

## 4. PREPARATIONS FOR SALE

### *4.1. Appraisal and reserve price*

When a sale order is issued, the sheriff is instructed by the court to carry out the sale and all such arrangements are thereafter in his hands. The plaintiff's role would be in filing the motion to sell the vessel, where the terms and conditions of sale are usually enumerated. During the hearing on the plaintiff's motion to sell, Philippine courts would generally require the defendant-shipowner or the bareboat charterer to file his comment or opposition thereto within the period of five to ten days from said hearing. Generally, Philippine courts would require the plaintiff to procure an appraisal report issued by a competent surveying firm to determine the 'floor price'. The appraised value is intended to be a realistic estimate of the vessel's current commercial value, taking into account such factors as: her age, type, and condition; the fact that she would be sold 'as is - where is' in a forced sale; and the current state of the market for vessels of the type in question. In arriving at the appraisal report, no regard is given to the value of the claims or judgments existing against the vessel. The appraisal report is usually attached to the motion to sell, to enable the defendant-shipowner to either agree or impugn the same. Afterwards, the court sets the 'floor price' of the vessel.

### *4.2. Advertisements and sale conditions*

As soon as the surveyor's report on the appraised value of the vessel is available, Philippine courts usually require the plaintiff to advertise the sale of the vessel once a week for three consecutive weeks in a newspaper of general

circulation. In said advertisements, the terms and conditions of the sale of the vessel will be enumerated, such as: the time and date of the sale of the vessel; the need to have a cash bond of approximately 10%–20% of the floor price to encourage willing and earnest buyers to participate in the bidding; how the bids will be submitted (i.e., either sealed or open bidding); the currency which the court will accept; the person to contact to obtain the necessary boarding passes to enable interested parties to inspect the vessel; and such other terms and conditions which the court may deem necessary to safeguard the rights of all parties in the action.

It must be stressed that in the case of a foreclosure sale of a mortgaged vessel, section 20 of PD 1521 provides:

Sec. 20. Who May Bid in the Foreclosure Sale - The following persons are qualified to bid in the foreclosure sale of the mortgaged vessel:

- (A) Citizens of the Philippines or corporations 60% of the capital of which is owned by Filipino citizens
- (B) A foreign mortgagee or foreign national whose country has diplomatic relations with the Philippines or whose country grants reciprocal rights to Filipino citizens.

A Philippine court generally includes the above-mentioned section in the advertisement to inform prospective bidders whether they are qualified to bid under Philippine law in the event of a foreclosure of a mortgaged vessel.

#### 4.3. *Time element*

The actual date of sale is usually fixed by the Philippine court to take place on the fourth week after the publication of the last of the three advertisements referred to in Chapter 4.2, above.

#### 4.4. *Miscellaneous*

Prospective purchasers are free to inspect the vessel to be sold, but they must obtain the required boarding passes from either the sheriff or the claimant. Bidders are not required to file or lodge any 'good faith' deposit in advance, as a pre-condition to being entitled to bid. However, it has been the practice of many Philippine courts to require each bidder to place at least a 10% to 20% bidder's bond (usually a manager's or cashier's check payable to the Philippine Court ordering the sale) to deter nuisance bidders, who are not genuinely interested in buying the vessel, from participating in the bid. The bidder's bond is given and considered part of the bidding price if said bidder is the winning bidder, while the losing bidders get back their bonds after the declaration of the winning bidder.

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### 5. THE SALE PROCEDURE

#### 5.1. *Bidding and reserve price*

Generally, Philippine courts determine the terms and conditions of the bidding procedure having due regard to the best interests of all the parties in the action. Usually, many Philippine courts employ a sealed bidding method to abbreviate the proceedings. The sealed bids are opened by the sheriff at the appointed time in the presence of the Presiding Judge of that court together with all representatives of the parties to the action. If the highest bidder is above the floor price, the court will declare him as the winning bidder, appropriate his cash bond, and order him to pay the remaining balance within seventy-two hours counted from the time he is declared the winner by the court. If the highest bidder pays the remaining balance within the required period, the court will issue a certificate of sale to him. In the event that said bidder fails to pay, his cash bond is forfeited and a date will be fixed for another round of bidding. Moreover, section 20 of Rule 39 of the 1997 Rules of Civil Procedure provides that when a winning bidder fails to pay, the sheriff may thereafter refuse any subsequent bid from that person.

#### 5.2. *Currency aspects*

Philippine courts usually require that bids be denominated in either Philippine pesos or in United States (US) dollars. Sales proceeds which are received by the court in Philippine pesos are usually placed in an interest-bearing account, usually with the Land Bank of the Philippines. If the sales proceeds are received in US dollars, the court may either convert them to Philippine pesos at the current exchange rate or open a Foreign Currency Deposit Unit, usually with the Land Bank of the Philippines (this commercial bank is the depository of the Philippine government and the courts), in an interest-bearing account. In any case, the lawyers acting for the claimants should make a positive check to determine whether the funds are placed in an interest-bearing account as large losses may accrue if they are not.

#### 5.3. *Bidding by claimants*

The sales proceeds are regarded as entirely separate and distinct from any claims or judgments existing against the vessel. The sheriff's duty is to sell the vessel at the highest price possible and account to the court for the entire proceeds. There is no procedure available under Philippine law by which a judgment creditor or claimant who buys the vessel may set off the amount of his judgment or claim from the sale price. The buyer of the vessel generally pays the full price; if he does not, his bidder's bond of 10% to 20% of the floor price may

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be forfeited by the court. The exception to this rule is found in section 19(c) of PD 1521 which provides:

Upon the sale of any vessel of the Philippines covered by a preferred mortgage in any extrajudicial sale or by order of a District Court of the Philippines in any suit in rem in admiralty for the enforcement of a maritime lien other than a preferred maritime lien, the vessel shall be sold free from all pre-existing claims thereon; but the court shall, upon the request of the mortgagee, the plaintiff, or any intervenor, require the purchaser at such sale to give and the mortgagee to accept a new mortgage of the vessel for the balance of the term of original mortgage. The conditions of such new mortgage shall be the same so far as practicable as those of the original mortgage and shall be subject to the approval of the court. If such new mortgage is given, the mortgagee shall not be paid from the proceeds of the sale and the amount payable as the purchase price shall be held diminished in the amount of the new mortgage indebtedness.

### 6. POST-SALE ARRANGEMENTS

#### 6.1. *Appeal*

The sale of the vessel by the sheriff may be set aside on the grounds that the sale price is too low or that the bid was not duly advertised or that the terms and conditions of the sale issued by the court were not complied with.

#### 6.2. *Registration*

Under the Philippine court's terms and conditions of sale, all bidders must present their bidder's bond of at least 10% to 20% of the floor price of the vessel for the sealed bid to be considered. Once the sheriff opens all sealed bids and awards the vessel to the highest bidder, the latter's bidder's bond is appropriated by the court and he is obliged to pay the remaining balance within the time prescribed by the court, which is usually from 48 to 72 hours. Upon the payment of the remaining balance, the court will issue an order formally awarding the vessel to the highest bidder, and thereafter the sheriff will issue a certificate of sale to the effect that a public auction was conducted and that the highest bidder was awarded the vessel. The sheriff will then hand over to the winning bidder the vessel's registration documents and other certificates found on board the vessel. The consequences of a sheriff's sale for the registration of a vessel are set out below.

##### 6.2.1. Philippine-flag vessel

If, prior to the sale, the vessel was registered under the Philippine flag, the MARINA will accept the sheriff's certificate of sale as a valid transfer of title.



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If the buyer is qualified to continue the Philippine registration and wishes to do so, then the transfer of ownership of the vessel will be registered in the usual way as set out in the Philippine Merchant Marine Rules and Regulations (PMMRR). If the buyer is qualified to own a Philippine-flag vessel, but in fact wishes to register the vessel elsewhere, the buyer could first register the transfer with the MARINA and then delete the vessel from there. This has the advantage of getting the buyer's name registered with the MARINA before deletion and may make registration elsewhere more straightforward. A Philippine buyer who intends to register the Philippine flag vessel elsewhere has first to obtain the approval of the MARINA permitting him to register the vessel under another flag or registry. In the event, however, of a foreclosure sale of a Philippine flag vessel mortgaged under the provisions of PD 1521, the foreclosure sale shall not require MARINA approval (section 19(e), PD 1521). Alternatively, if the buyer is not qualified to own a Philippine-flag vessel, he may simply produce the sheriff's certificate of sale to the foreign registry authority. If the sheriff sells a Philippine-flag vessel to a buyer who is not qualified to continue the Philippine registration, the MARINA shall, upon presentation of the certificate of sale, cancel the registration of the vessel, and issue a certificate to that effect upon request (section 20, PD 1521).

### 6.2.2. Foreign-flag vessel

If, prior to the sale, the vessel was registered under the foreign flag, the consequences of a sale by the Philippine court are as follows. The Philippine buyer will be provided with a certificate of sale executed by the sheriff after the necessary Philippine customs tax and duties are paid. This is necessary because the foreign-flag vessel will be considered as being imported into the Philippines if the buyer is a Philippine citizen who wishes to register, or to transfer registration, under the Philippine flag. In the case of a vessel with a foreign registry, no payment of taxes and duties is required if the buyer is a foreigner, that is, not a Philippine citizen. Experience shows that the foreign buyer will be able to register the vessel in another registry simply by showing the certificate of sale executed by the sheriff. It is usually helpful to have the sheriff's signature authenticated by a notary public and in some cases an affidavit or sworn declaration from a Philippine lawyer describing the effects of a sheriff's sale under Philippine law will also assist. Difficulty sometimes arises when there are arrears of registration fees owed by the former owners to the pre-existing registration authority. In such a case, the former registration authority may refuse to issue a deletion certificate unless the arrears are paid by the buyer. Often, the buyer will succeed in registering the vessel in a new registry of his choice without a deletion certificate simply by showing the sheriff's certificate of sale.

6.3. *The fund in court*

When the sheriff receives the sale proceeds of the vessel, and any bunkers and lubricants which were on board, he pays all these proceeds into court. The court will thereafter order the sale proceeds to be deposited in any Philippine commercial bank, usually the Land Bank of the Philippines, in an interest-bearing account in the name of said court, to prevent any of the parties from having control over the funds.

6.4. *Priorities and payment out*

Once the sales proceeds have been deposited in any commercial bank in the name of the court, any party who has obtained a judgment in rem against the vessel may apply to the court for payment out. Notice of any such application (in the form of a motion), must be served on all parties to the action. If there is serious opposition to the motion to withdraw the funds, the Judge may either resolve it immediately or issue orders for all parties to present evidence on their respective claims and thereupon rule on the priorities thereof.

7. NATIONAL AND INTERNATIONAL RECOGNITION OF JUDICIAL SALES

7.1. *Effect of court sales under Philippine law*

In the Philippines, upon the sale of any mortgaged vessel in an extrajudicial sale or by order of any Regional Trial Court in the Philippines in a suit in rem in admiralty for the enforcement of a preferred mortgage lien thereon, all pre-existing claims against the vessel, including any possessory common-law liens, shall be terminated and shall thereafter attach to the proceeds of sale in the following order of priority, as provided in section 17(A) of PD 1521:

(A) Upon the sale of any mortgaged vessel in any extrajudicial sale or by order of a district court of the Philippines in any suit in rem in admiralty for the enforcement of a preferred mortgage lien thereon all pre-existing claims in the vessel, including any possessory common-law lien of which a lienor is deprived under the provisions of Section 16 of this decree shall be held terminated and shall thereafter attach, in like amount and in accordance with the priorities established herein to the proceeds of the sale. The preferred mortgage lien shall have priority over all claims against the vessel, except the following claims in the order stated:

- (1) expenses and fees allowed and costs taxed by the court and taxes due to the government;

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- (2) crew's wages;
- (3) general average;
- (4) salvage, including contract salvage;
- (5) maritime liens arising prior in time to the recording of the preferred mortgage;
- (6) damages arising out of tort; and
- (7) preferred mortgage registered prior in time.

### *7.2. Recognition abroad of Philippine court sales*

The Philippines is not a party to any maritime law convention which requires reciprocal recognition of admiralty court sales. Philippine law has long recognized the validity of admiralty sales conducted by foreign courts. The basis of such recognition is the doctrine in international law of 'international comity'. It is in practice rare for a vessel which has been sold by a court exercising its admiralty jurisdiction to be arrested subsequently in respect of a claim pre-dating the court sale. In those cases where such an arrest has taken place, the writer's experience has been that the vessel has always been released unconditionally once the foreign court has been informed of the Philippine court's sale and of the effect under Philippine law of such sale.

### *7.3. Documentation*

When a Philippine-flag or a foreign-flag vessel is sold by a Philippine court, the buyer is issued simply with a sheriff's certificate of sale and/or the court order awarding the vessel to the highest bidder. If the buyer wishes to retain or transfer to Philippine registry and is qualified to do so, the sheriff's certificate of sale and/or the court order will be accepted by the PCG as if it were a bill of sale issued by the previous owner of the vessel. As regards other requirements for registration of vessels under the Philippine flag, see Part II of this handbook.

If the buyer of the vessel wishes to retain or transfer to a foreign flag, it is a question for the foreign jurisdiction as to what documentation will be required, but the only official documentary evidence of the transfer which the Philippine court will provide to the buyer is the sheriff's certificate of sale.

## *B. Priority of Claims*

### 8. PRIORITIES: SOURCES OF LAW

The ranking of priorities according to Philippine law is found in section 17(A) of PD 1521 which provides:

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### Sec. 17. Preferred Maritime Lien, Priorities Other Liens:

(A) Upon the sale of any mortgaged vessel in any extrajudicial sale or by order of a district court of the Philippines in any suit in rem in admiralty for the enforcement of a preferred mortgage lien thereon all pre-existing claims in the vessel, including any possessory common-law lien of which a lienor is deprived under the provisions of Section 16 of this decree shall be held terminated and shall thereafter attach, in like amount and in accordance with the priorities established herein to the proceeds of the sale. The preferred mortgage lien shall have priority over all claims against the vessel, except the following claims in the order stated:

- (1) expenses and fees allowed and costs taxed by the court and taxes due to the government;
- (2) crew's wages;
- (3) general average;
- (4) salvage, including contract salvage;
- (5) maritime liens arising prior in time to the recording of the preferred mortgage;
- (6) damages arising out of tort; and
- (7) preferred mortgage registered prior in time.

Section 17(A) was substantially copied from section 953 of the US Ship Mortgage Act.

## 9. CLAIMS AND POSSESSORY RIGHTS FALLING OUTSIDE THE PRIORITIES SYSTEM

### 9.1. *Introduction*

Section 17(B) of PD 1521 provides that if the proceeds of sale are insufficient to pay all creditors included in one number or grade, the residue will be divided among them pro rata. All claims not paid, whether fully or partially, shall subsist as ordinary credits enforceable by personal action against the debtor. Section 18(A) provides that upon the default of any term or condition of a preferred ship mortgage, the mortgagee may, in addition to all other remedies granted by PD 1521, bring a suit in personam in admiralty in the Regional Trial Court against the mortgagor for the amount of the outstanding mortgage indebtedness secured by such a vessel or any deficiency in full payment thereof.

As may be gleaned from these two sections of PD 1521, all claims which are not fully satisfied out of the sales proceeds of the vessel shall subsist as an ordinary credit, and the unpaid claimant may attempt to recover the deficiency by bringing an action in personam against the shipowner.

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### 9.2. *Possessory liens*

Under Philippine law, a party who carries out services to a vessel has the right to retain possession of the same until the debt for the services is discharged. In the case of a suit in rem in admiralty for the enforcement of a preferred mortgage lien, section 16 of PD 1521 authorizes a Philippine court to direct the sheriff to take possession of the mortgaged vessel, notwithstanding the fact that the vessel may be in the possession, or under the control, of any person claiming a possessory common law lien.

### 10. PRIOR CHARGES ON THE GROSS SALE PROCEEDS

Under Philippine law, the only recognized costs and charges relating to the arrest, custody, and sale of the vessel are those which are explicitly provided for under section 17(A) of PD 1521 which was cited in Chapter 8 above. Section 17(A)(1) states that expenses and fees allowed and costs taxed by the court and taxes due to the government have not been explicitly defined by the Philippine Supreme Court since the promulgation of PD 1521 in 1978. However, this writer's experience with the Regional Trial Courts has been that the following would fall under this category:

- customs tax and duties to be paid to the Philippine Bureau of Customs for foreign flag vessels which are brought into the country;
- the port and berthing charges assessed by the Philippine Ports Authority during the arrest and detention of the vessel; and
- the fees and expenses of the sheriff and the upkeep of the vessel while under arrest.

### 11. PRECONDITIONS TO PARTICIPATION IN THE PRIORITIES CONTEST

When a vessel has been sold by a sheriff, the sale proceeds are generally paid into court by depositing these with a commercial bank in the name of said court. The only exception to this rule is in the case of a sale of a Philippine-flag vessel covered by a preferred mortgage. Under section 19(c) of PD 1521 (quoted in Chapter 5.3 above), the buyer is required to give and the mortgagee to accept a new mortgage over the vessel for the balance of the term of the original mortgage. In all other cases, any party who wishes to be paid out of the sale proceeds may intervene in said case, giving a clear statement of his claim and the amount which he seeks to recover. If the court is initially convinced as to the rights of the intervenor, the court will allow the intervention upon the payment of the necessary filing fees. Thereafter, the intervenor-claimant will present his evidence to obtain part of the sales proceeds based on any of the priorities set out

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in section 17(A) of PD 1521. If the intervenor-claimant is successful in presenting his evidence and the court is convinced, the claimants will then be ranked by the court according to their priorities under section 17(A) of PD 1521.

### 12. MARITIME LIENS

#### 12.1. Introduction

Section 17(A) of PD 1521 provides that the preferred ship mortgage is superior to all other claims against the vessel except the following claims in the order stated:

- (1) expenses and fees allowed and costs taxed by the court and taxes due to the Government;
- (2) crew's wages;
- (3) general average;
- (4) salvage, including contract salvage;
- (5) maritime liens arising prior in time to the recording of the preferred mortgage;
- (6) damages arising out of tort; and
- (7) preferred mortgage registered prior in time. (section 17(A), PD 1521)

To determine whether a maritime lien exists, the Philippine Supreme Court held in the case of *Crescent Petroleum, Ltd. v. M/V 'Lok Maheshwari,' et al.* (474 SCRA 623) that the various tests used in the US are applicable, thus:

P.D. No. 1521 or the Ship Mortgage Decree of 1978 was enacted 'to accelerate the growth and development of the shipping industry' and 'to extend the benefits accorded to overseas shipping under Presidential Decree No. 214 to domestic shipping.' It is patterned closely from the U.S. Ship Mortgage Act of 1920 and the Liberian Maritime Law relating to preferred mortgages. Notably, Sections 21, 22 and 23 of P.D. No. 1521 or the Ship Mortgage Decree of 1978 are identical to Subsections P, Q, and R, respectively, of the U.S. Ship Mortgage Act of 1920, which is part of the Federal Maritime Lien Act. Hence, U.S. jurisprudence finds relevance to determining whether P.D. No. 1521 or the Ship Mortgage Decree of 1978 applies in the present case.

The various tests used in the US to determine whether a maritime lien exists are the following:

One. 'In a suit to establish and enforce a maritime lien for supplies furnished to a vessel in a foreign port, whether such lien exists, or whether the court has or will exercise jurisdiction, depends on the law of the country where the supplies were furnished, which must be pleaded and proved.' This principle was laid down in the

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1888 case of *The Scotia*, reiterated in *The Kaiser Wilhelm II* (1916), in *The Woudrichem* (1921) and in *The City of Atlanta* (1924). Two. The Lauritzen-Romero-Rhoditis trilogy of cases, which replaced such single-factor methodologies as the law of the place of supply.

Two. The Lauritzen-Romero-Rhoditis trilogy of cases, which replaced such single-factor methodologies as the law of the place of supply.

In *Lauritzen v. Larsen*, a Danish seaman, while temporarily in New York, joined the crew of a ship of Danish flag and registry that is owned by a Danish citizen. He signed the ship's articles providing that the rights of the crew members would be governed by Danish law and by the employer's contract with the Danish Seamen's Union, of which he was a member. While in Havana and in the course of his employment, he was negligently injured. He sued the shipowner in a federal district court in New York for damages under the Jones Act. In holding that Danish law and not the Jones Act was applicable, the Supreme Court adopted a multiple-contact test to determine, in the absence of a specific Congressional directive as to the statute's reach, which jurisdiction's law should be applied. The following factors were considered:

- (1) place of the wrongful act;
- (2) law of the flag;
- (3) allegiance or domicile of the injured;
- (4) allegiance of the defendant shipowner;
- (5) place of contract;
- (6) inaccessibility of foreign forum; and
- (7) law of the forum.

Several years after *Lauritzen*, the US Supreme Court in the case of *Romero v. International Terminal Operating Co.* again considered a foreign seaman's personal injury claim under both the Jones Act and the general maritime law. The Court held that the factors first announced in the case of *Lauritzen* were applicable not only to personal injury claims arising under the Jones Act but to all matters arising under maritime law in general.

*Hellenic Lines, Ltd. v. Rhoditis* was also a suit under the Jones Act by a Greek seaman injured aboard a ship of Greek registry while in American waters. The ship was operated by a Greek corporation which has its largest office in New York and another office in New Orleans and whose stock is more than 95% owned by a US domiciliary who is also a Greek citizen. The ship was engaged in regularly scheduled runs between various ports of the US and the Middle East, Pakistan, and India, with its entire income coming from either originating or terminating in the US. The contract of employment provided that Greek law and a Greek collective bargaining agreement would apply between the employer and the seaman and that all claims arising out of the employment contract were to be adjudicated by a Greek court. The US Supreme Court

observed that of the seven factors listed in the Lauritzen test, four were in favour of the shipowner and against jurisdiction. In arriving at the conclusion that the Jones Act applies, it ruled that the application of the Lauritzen test is not a mechanical one. It stated thus:

[t]he significance of one or more factors must be considered in light of the national interest served by the assertion of Jones Act jurisdiction. (footnote omitted) Moreover, the list of seven factors in Lauritzen was not intended to be exhaustive... [T]he shipowner's base of operations is another factor of importance in determining whether the Jones Act is applicable; and there well may be others.

The principles enunciated in these maritime tort cases have been extended to cases involving unpaid supplies and necessities such as the cases of *Forsythe International U.K., Ltd. v. M/V Ruth Venture*, and *Comoco Marine Services v. M/V El Centroamericano*.

Three. The factors provided in Restatement (Second) of Conflicts of Law have also been applied, especially in resolving cases brought under the Federal Maritime Lien Act. Their application suggests that in the absence of an effective choice of law by the parties, the forum contacts to be considered include:

- (a) the place of contracting;
- (b) the place of negotiation of the contract;
- (c) the place of performance;
- (d) the location of the subject matter of the contract; and
- (e) the domicile, residence, nationality, place of incorporation, and place of business of the parties.

In *Gulf Trading and Transportation Co. v. The Vessel Hoegh Shield*, an admiralty action in rem was brought by an American supplier against a vessel of Norwegian flag owned by a Norwegian Company and chartered by a London time charterer for unpaid fuel oil and marine diesel oil delivered while the vessel was in US territory. The contract was executed in London. It was held that because the bunker fuel was delivered to a foreign flag vessel within the jurisdiction of the US, and because the invoice specified payment in the US, the admiralty and maritime law of the US applied. The US Court of Appeals recognized the modern approach to maritime conflict of law problems introduced in the Lauritzen case. However, it observed that Lauritzen involved a torts claim under the Jones Act while the present claim involves an alleged maritime lien arising from unpaid supplies. It made a disclaimer that its conclusion is limited to the unique circumstances surrounding a maritime lien as well as the statutory directives found in the Maritime Lien Statute and that the initial choice of law determination is significantly affected by the statutory policies surrounding a maritime lien. It ruled that the facts in the case call for the application of the Restatement (Second) of Conflicts of Law. The



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US Court gave much significance to the congressional intent in enacting the Maritime Lien Statute to protect the interests of American supplier of goods, services, or necessities by making maritime liens available where traditional services are routinely rendered. It concluded that the Maritime Lien Statute represents a relevant policy of the forum that serves the needs of the international legal system as well as the basic policies underlying maritime law. The court also gave equal importance to the predictability of result and protection of justified expectations in a particular field of law. In the maritime realm, it is expected that when necessities are furnished to a vessel in an American port by an American supplier, the American Lien Statute will apply to protect that supplier regardless of the place where the contract was formed or the nationality of the vessel.

The same principle was applied in the case of *Swedish Telecom Radio v. M/V Discovery I* where the American court refused to apply the Federal Maritime Lien Act to create a maritime lien for goods and services supplied by foreign companies in foreign ports. In this case, a Swedish company supplied radio equipment in a Spanish port to refurbish a Panamanian vessel damaged by fire. Some of the contract negotiations occurred in Spain and the agreement for supplies between the parties indicated Swedish company's willingness to submit to Swedish law. The ship was later sold under a contract of purchase providing for the application of New York law and was arrested in the US. The US Court of Appeals also held that while the contacts-based framework set forth in *Lauritzen* was useful in the analysis of all maritime choice of law situations, the factors were geared towards a seaman's injury claim. As in *Gulf Trading*, the lien arose by operation of law because the ship's owner was not a party to the contract under which the goods were supplied. As a result, the court found it more appropriate to consider the factors contained in section 6 of the Restatement (Second) of Conflicts of Law. The US Court held that the primary concern of the Federal Maritime Lien Act is the protection of American suppliers of goods and services.

The same factors were applied in the case of *Ocean Ship Supply, Ltd. v. M/V Leah*.

The above ruling is consistent with the rule of Philippine Statutory Construction to the effect that the foreign court's construction of a foreign statute will have a persuasive effect on our courts. Thus:

The construction of foreign statutes is a question for the court. Where a foreign statute has been construed by the courts of the state or country where enacted, such construction will be followed by the courts of other states or countries. The rule, however, rests merely upon the principle of comity. The opinions of text writers and the evidence of persons skilled

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in the foreign law may be resorted to in construing the foreign statute. Where a foreign statute has not been construed in the state of enactment, the courts of the state where the cause is on trial will construe it as they would like a statute of their own state. (59 CJ sec 565 p 946.)

### 12.2. *Sister ships*

The Philippines has not adopted, nor is it a signatory to, the International Convention to the Arrest of Sea-going Ships of 10 May 1952. Consequently, the Philippines does not permit the arrest of sister ships other than the one in connection with which the claim arose.

## 13. MORTGAGES

### 13.1. *Recognized types of mortgages*

Section 17(A)(7) PD 1521 does not distinguish among the priority of liens according to whether the mortgages are domestic or foreign. What is significant is the date of registration of the mortgage in the registry of ships and that the mortgage was indeed registered and was duly and validly executed in accordance with the laws of the foreign nation under which the vessel was documented. Section 15 of PD 1521 thus provides:

Sec 15. Foreign Ship Mortgages - As used in Sections 10 to 18 hereof the term 'preferred mortgage' shall include in addition to a preferred mortgage made pursuant to the provisions of this decree, any mortgage hypothecation, or similar charge which has been duly and validly executed in accordance with the laws of the foreign nation under the laws of which the vessel is documented and has been duly registered in accordance with such laws in a public register either at the Port of Registry of the vessel or at a central office; and the term 'preferred mortgage lien' shall also include the lien of such mortgage, hypothecation or similar charge.

Section 17(A)(7) explicitly provides that priority should be given to the preferred mortgage registered prior in time. Philippine law does not give any priority to unregistered mortgages.

## 14. NON-PREFERRED CLAIMS IN REM

Philippine law does not recognize any non-preferred claims in rem. In accordance with section 17(B) of PD 1521, if the proceeds of sale are not sufficient to pay all creditors included in one number or grade, the residue shall

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be divided among them pro rata. If a balance remains after paying out all of the priorities enumerated in section 17(A) of PD 1521, it follows that all third priority claims will be paid pro rata. To the extent that any such creditor remains unpaid, he is permitted to enforce his claim by personal action against the defendant.

### 15. NON-RANKING CLAIMS

In most cases, when a vessel is sold by a court, sale proceeds are insufficient to pay all claimants in rem as enumerated in section 17(A) of PD 1521. Occasionally, however, cases arise where funds are left over. These surplus funds belong, in law, to the shipowner. Unless there is good reason to the contrary, they will therefore be paid out to the shipowner upon the filing of the necessary motion in court. If, however, the shipowner has other creditors whose claims do not qualify as claims in rem, those creditors may, pursuant to sections 17(B) and 18(A) of PD 1521, satisfy themselves in whole or in part from the funds remaining in court.

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