

MAYER | BROWN

Guide to Shipping Register and Shipping Tax Regime in Hong Kong





Contents

The Hong Kong Shipping Register	1
Taxation of Shipping Profits in Hong Kong	8
Schedule	12



The Hong Kong Shipping Register

Until 3 December 1990, the United Kingdom Merchant Shipping Acts (the “Acts”) (except for the Merchant Shipping Act 1988) applied to registration of ships and to mortgages of ships in Hong Kong. A ship registered at the Port of Hong Kong was, therefore, a British ship.

Hong Kong reverted to Chinese sovereignty on 1 July 1997 and became a Special Administrative Region of the People’s Republic of China. Section VIII of Annex I to the Sino-British Joint Declaration which relates to the transfer of sovereignty states that:

“The Hong Kong Special Administrative Region shall maintain Hong Kong’s previous systems of shipping management and shipping regulation, including the system for regulating conditions of seamen. The specific functions and responsibilities of the Hong Kong Special Administrative Region Government in the field of shipping shall be defined by the Hong Kong Special Administrative Region Government on its own.

Private shipping businesses and shipping-related businesses and private container terminals in Hong Kong may continue to operate freely. The Hong Kong Special Administrative Region shall be authorised by the Central People’s Government to continue to maintain a shipping register and issue related certificates under its own legislation in the name of ‘Hong Kong, China.’”

The Hong Kong Government appointed a Steering Committee in 1987 to advise the Government on the establishment of an independent shipping registry. The result was enacted as the Merchant Shipping (Registration) Ordinance (Cap 415) (the “Ordinance”), which came into effect on 3 December 1990.

Flag and Port

Ships registered on the register (the “Register”) established by the Ordinance should fly the flag of the People’s Republic of China above the flag of the Hong Kong Special Administrative Region, except when calling at a port in Taiwan.

Ownership

NATIONALITY AND/OR DOMICILE OF OWNERS

A ship may be registered under the Ordinance, provided a majority interest in the ship is owned by one or more qualified persons or the ship is operated by a qualified person under a demise charter. There is no requirement that a ship owned by a qualified person must be registered in Hong Kong.

Qualified persons include:

- An individual who is a resident of Hong Kong and holds a valid Hong Kong identity card
- A company incorporated in Hong Kong and
- A company incorporated outside Hong Kong, but which has established a place of business in Hong Kong and has registered under the Companies Ordinance in Hong Kong as a “non-Hong Kong company” with a place of business in Hong Kong.

There are no restrictions on the ownership of shares in a company owning a Hong Kong ship or on the persons who may be directors of such company.

For the purposes of registration, a ship may be divided into any number of shares or undefined parts and any number of persons may be registered as joint owners of the ship or of a share in or part of the ship. The effect of this provision is that a ship may be owned by a combination of qualified and unqualified persons.

For example: 51% of a ship may be owned by a Hong Kong company and the remainder by a company incorporated outside Hong Kong, which need not register itself as a company with a place of business in Hong Kong. Moreover, a company incorporated outside Hong Kong can own the whole of a ship, provided it registers itself in Hong Kong as a “non-Hong Kong company” with a place of business in Hong Kong under Part 16 of the Companies Ordinance.

A ship subject to a demise charterparty may be registered in Hong Kong if the demise charterer or lessee of that ship is a qualified person. A foreign company (e.g., a subsidiary of a Japanese leasing company) could therefore, without establishing a place of business in Hong Kong, be the owner of a Hong Kong registered ship provided it leases the ship to a company which is a qualified person. In that event, the ship is registered on the Register in the name of that foreign company “as owner”, and that qualified person “as demise charterer”.

Representative Person

A representative person must be appointed for each ship on the Register.

The representative person may be the owner or a part owner of the ship, provided such person is a qualified person, or the representative person may be a ship manager or ships’ agent incorporated in Hong Kong.

The representative person will represent the owner with the Registrar in respect of all matters over which the Registrar has jurisdiction.

Service of legal proceedings against the owner or demise charterer in respect of matters with which the Registrar is concerned may be served on the representative person or as otherwise permitted by law in Hong Kong.

Fees

Charges are imposed in respect of the registration and maintenance of the registration of all ships on the Register. Details of the charges are set out in Schedule 1 on page 13. Readers should be aware that, at present, the exchange rate between Hong Kong dollars and United States dollars is pegged at, approximately, HK\$7.80 : US\$1.00. Fees for registration are calculated on the gross registered tonnage and not net registered tonnage of a ship, but the annual tonnage charge is calculated on the net registered tonnage. The charges are comparable to the charges applicable in registers such as Panama, Liberia, Marshall Islands, the Norwegian International Ship Registry (NIS) and Bermuda.

RIGHTS OF REGISTRATION AND TRANSITIONAL PROVISIONS

Right to Register

There is no obligation for a Hong Kong company to register a ship owned by it in Hong Kong. Further, if such a person registers a ship under the Ordinance, it may at any time terminate the registration and register the ship elsewhere.

Demise Charter Registration

Although a ship may be registered as a Hong Kong ship in the name of a demise charterer, it is not intended that the ship be registered elsewhere. A ship may not be registered on the Hong Kong Register in the ownership of one person and in another register in the disponent ownership of another person. So-called "dual flag" registration is not permitted.

The demise charter registration in Hong Kong is similar to the system which applies to aircraft. It recognises both that the "operator" of the ship should be entitled to register the ship under the flag of its choice and the need to have all details of ownership and mortgages recorded in the same register.

Transitional Provisions

When the Ordinance came into effect, every ship that was then registered in Hong Kong was automatically re-registered as a Hong Kong ship on the Register. All entries in the 'old' register (including existing mortgages) have been entered in the Register, except those which are not considered essential by the Registrar for the purpose of registration.

REGISTRATION

The Registry

The Registry office is located on the 3rd Floor of Harbour Building, Pier Road, Hong Kong.

Web: <http://www.mardep.gov.hk>; telephone: +852 2852 4387; fax: +852 2541 8842;
email: hksr@mardep.gov.hk; telex: 64553 MARHQ HX

The Registrar is the Director of Marine of the Hong Kong Government and such other persons as he appoints for that purpose.

The Registry is open during normal office hours from Monday to Friday. The Registry is ready to open outside such times for all services relating to registration.

The registration procedures can be completed in two hours as long as the documents are in order.

The Registry provides a one-stop shop service. All the applications relevant to the shipping register (i.e., registration of a ship, Minimum Safe Manning Certificate, Exemptions, Certificate of Insurance or Other Financial Security in respect of Civil Liability for Oil Pollution Damage, Certificate of Insurance or Other Financial Security in respect of Civil Liability for Bunker Oil Pollution Damage, Certificate of Equivalent Competency and seafarers' certificates/licences) can be submitted and collected at the Registry itself.

Type of Ships Eligible for Registration

For the purposes of the Ordinance a "ship" includes all vessels capable of being navigated in water, other than ships propelled by oars. Hovercraft and similar air-cushion vehicles are deemed to be ships. The Director of Marine has power to deem new categories of seagoing objects as ships.

Particulars Recorded in the Register

The Register is available for inspection during the normal office hours of the Registry. The following information appears on the Register:

- The name of the ship
- Such survey details as the Registrar considers necessary for registration
- The details of the ship's origin that were provided when the application for registration was made
- The name, address and description of each owner, together with details of the shares each owner has in the ship
- The name and address of the representative person and
- Details of all mortgages registered.

In the case of a demise chartered ship, in addition to the foregoing information, the following also appears on the Register, namely:

- The name and description of the demise charterer
- The period of the demise charter as specified in the charterparty
- The name and description of the owner of the ship and
- The details of any mortgage granted by the owner of the ship.

It is not possible to record details of any beneficial owner where the ship is held on trust by a trustee.

Name of the Ship

The name by which it is proposed to register a ship must be approved by the Registrar before registration.

All names will be recorded in Roman alphabetic characters but may include numerals in Arabic or Roman form. A ship may also have a Chinese name, but in such a case both names must appear in the Register and on the ship.

The ship's name must be marked on the bows of the ship, and its name and port of registry must also be marked on the stem.

The marking of the name on a ship must be confirmed to the Registrar by a Marine Department surveyor or a surveyor of a recognised classification society or by the Master of the ship making a statutory declaration.

Tonnage

When a ship is first registered its gross and net tonnage must be calculated and confirmed in accordance with tonnage regulations, made in accordance with the International Convention on Tonnage Measurement of Ships, 1969.

The tonnage will be calculated by either a surveyor from the Marine Department of Hong Kong or by a surveyor appointed from one of the approved classification societies (ABS, BV, CCS, DNV GL, KR, LR, NK, RINA and RS).

The major classification societies are the only societies currently approved.

Documentation Required for Registration

An application for registration is made to the Registrar on a prescribed form (all the forms can be downloaded via the web: <http://www.mardep.gov.hk/en/forms/home.html>), which includes the consent of the representative person. Completion of the application form requires particulars of the ship, its owners and demise charterers (if any) and details of their qualifications to own a ship, such as evidence of incorporation of a company. In the case of a demise chartered ship, the application will include:

- The consent of the owner of the ship
- A declaration by both the owner and demise charterer that the demise charterer is qualified to register the ship as a demise charterer in Hong Kong, that the demise charterer will have possession and control of the vessel, and that the vessel will not be registered elsewhere and
- A certified true copy of the demise charterparty.

At registration, the following should be produced to the Registrar:

- Evidence of the proposed owner's title by way of the builder's certificate, bill of sale, or court order vesting title to the ship in the owner
- Proof of free of encumbrance and evidence of deletion of the ship from its previous registry (if any) or, if the ship was last registered concurrently in more than one place, from the registry of each such place
- The certificate of survey confirming the tonnage and major particulars of the ship and
- Evidence of marking the name on the ship.

If it is not possible to produce the original title documents at the time of registration, the ship can be provisionally registered for a period of one month during which the original title documents should be submitted to the Registrar. Provided adequate reasons for delays are given, it will be possible to renew provisional registrations for a further period of one month for any one application at a time.

MORTGAGES

Form and Registration

Once a ship is registered (whether provisionally or permanently) a mortgage can be recorded in the Register. However, when a ship is provisionally registered, the mortgagee is also required to produce a "Confirmation by Mortgagee" to the Registrar in a specified form acknowledging that the mortgagee has seen the original title document and knows that the original title document will not be produced to the Registrar at the time of registration. A mortgage may be created to secure any obligation of the shipowner. The mortgage form is prescribed. Particulars of each mortgage will be entered in the Register and the date and time of registration will be endorsed on the mortgage itself. But it is not necessary for any endorsement of the mortgage to be made on the certificate of registry carried on board the ship.

Current legal practice requires a mortgage to be supplemented by a collateral deed of covenants which spells out the detailed obligations of the owner. Such a deed of covenants may not be registered in the Register, but both it and the mortgage must be registered as a charge with the Registrar of Companies, if the mortgage and deed of covenants are granted by a company incorporated in Hong Kong or which is a "non-Hong Kong company" registered in Hong Kong.

The mortgage and deed of covenants must be registered at the Hong Kong Companies Registry within one month of the date of the mortgage or deed, failing which the security created may become unenforceable. The rules of the International Convention for Unification of Certain Rules relating to Maritime Liens and Mortgages of 1967 have not been incorporated into Hong Kong law.

Priorities

Priorities among registered mortgages are governed by the time at which they were registered, and not the order in which they were created.

Transfer and Release

A mortgage may be transferred or assigned to another person.

Discharge of a mortgage is effected by execution of a separate memorandum of discharge in prescribed form.

Enforcement and Validity

A ship mortgage registered in the prescribed form will be recognised by the Hong Kong courts as a statutory lien which will attach to the ship, entitling the mortgagee to arrest the ship in enforcement of its rights and to exercise the other remedies available, including the right to take possession and to have the ship sold privately, by public auction or through the courts.

DE-REGISTRATION

Voluntary De-Registration

If the owner or the demise charterer of a registered ship wishes the ship's registration to be closed, it must first obtain the consent of all registered mortgagees (if any) to the closure and then give notice in writing to the Registrar that it wishes to close the ship's registration, together with evidence of the mortgagee's consent to closure. The Registrar will issue a deletion certificate as directed by the owner on receipt of such application. Such a certificate may be issued whether the ship is sold or is transferred by its owner to another register.

Involuntary De-Registration

The Registrar has power to close the Register for any ship for various reasons, including the non-payment of fees, the failure of the owner or the representative person to comply with the requirements of the Ordinance, or if it appears to the Registrar that the ship may have ceased to be registrable. A demise charterer has an obligation to notify the Registrar within seven days of the termination of the demise charter, following which the ship is no longer entitled to be registered.

The closing of the registration of a ship by the Registrar does not affect any existing entry in the Register as regards any undischarged mortgage. The mortgagee will also receive from the Registrar 30 days' notice, so as to allow time for the mortgagee to request that a new mortgage be registered under a new register.

Closure of Register Where Ship is Lost

If a ship is lost, by reason of it being taken in war or if the ship is broken up or is a total loss, the owner should advise the Registrar and the Register will be closed.

Government Consent to Voluntary Closure

No export licence or other governmental consent is required for the sale of a Hong Kong registered ship or the closure of the Register. Following de-registration, the certificate of registry should be returned to the Registrar.

MANNING AND CERTIFICATION

General

There are no nationality or residential requirements in respect of officers and crew employed on Hong Kong ships. The Registrar accepts Hong Kong, UK, Republic of Ireland and certain other Commonwealth countries' certificates. Certificates issued by some other countries have been recognised for the issue of Hong Kong licences which are equivalent to certificates of competency. These countries include People's Republic of China, Denmark, France, Republic of Korea, Liberia, Netherlands, Norway and Sweden. The Hong Kong minimum safe manning scale is based on the principles for safe manning established by IMO Guidelines. Schedule 2 on page 14 lists certain conventions applicable to the manning of Hong Kong ships.

Safety Equipment and Marine Pollution

Hong Kong is an Associate Member of the International Maritime Organisation (IMO) and has accepted the international conventions relating to safety and protection of the marine environment. These conventions are implemented through regulations made under the Hong Kong Merchant Shipping (Safety) Ordinance and Merchant Shipping (Prevention and Control of Pollution) Ordinance. The regulations are in line with the standards required by the international conventions. Ships complying with the conventions will be deemed to have met Hong Kong standards. Schedule 3 on page 15 lists certain conventions applicable to ship safety and pollution for Hong Kong ships.

Whilst the Hong Kong regulations stipulate performance standards and specifications for material and equipment used on board Hong Kong ships, the Marine Department will accept material and equipment complying with the test procedures/standards and performance specifications published by IMO. In general, material and equipment manufactured in a convention country to IMO performance specifications, and approved/certified by its Maritime Administration for use on its registered ships are acceptable for Hong Kong ships.

Accommodation

Hong Kong requirements are aligned with the International Labour Organisation (ILO) Convention requirements. An existing ship complying with ILO Conventions is accepted without modifications. Any proposals in variance with the M.S. (Seafarers) (Crew Accommodation) Regulation are considered sympathetically provided the same are in compliance with ILO Conventions.

Ship Safety

Hong Kong has adopted a flag state quality control system to monitor the quality of ships on the Register and the performance of recognised organisations to carry out surveys and certification work. At present, all statutory surveys and related certificates for cargo vessels have been delegated to nine classification societies (ABS, BV, CCS, DNV GL, KR, LR, NK, RINA and RS) who will ensure that Hong Kong registered ships comply fully with the requirements of IMO and ILO Conventions. Exemptions continue to be handled by the Marine Department, and surveys of passenger ships are handled by the Passenger Ship Safety Section, Marine Department, tel: +852 2852 4500, fax: +852 2545 0556.

SERVICES

Consular and Other Assistance

The assistance of Chinese Consuls is available to all Hong Kong ships.

Hong Kong Marine Department

The Marine Department has a substantial body of highly skilled technical and other advisers from whom help and assistance with respect to the Register can be obtained. The assistance of the Marine Department in the preparation of this memorandum is gratefully acknowledged.

Facilities in London

The Hong Kong Government Office in London is able to provide information and additional services to facilitate the registration of ships and mortgages with the Hong Kong Shipping Registry, tel: +44 207 499 9821; fax: +44 207 495 5033.



Taxation of Shipping Profits in Hong Kong

TAX REGIME

The profits tax regime for shipping in Hong Kong is principally regulated by Section 23B of the Inland Revenue Ordinance (Cap.112) and may be summarised on the following basis:

- Profits derived from the operation of an ocean going ship registered in Hong Kong are not taxable in Hong Kong, regardless of the source of revenue
- Revenue derived by an owner of a ship under a charterparty is exempt from tax in Hong Kong, unless the charterparty is in respect of a ship trading solely in Hong Kong waters or in the River Trade (as defined below) or is for less than the whole of the ship
- Profits earned by a shipowner from ships not registered in Hong Kong from the carriage of cargo uplifted in Hong Kong, or the carriage of passengers embarking in Hong Kong, or towage commencing in Hong Kong are taxed in Hong Kong under the formula described below.

THE BASIS OF TAXATION

Assessable Profits

The assessable profits of a shipowner carrying on business in Hong Kong equal the Relevant Sums multiplied by worldwide shipping profits divided by worldwide shipping revenue or, put another way, the proportion that its Hong Kong income bears to its worldwide income.

Relevant Sums

Relevant Sums are defined to include:

- All sums attributable to relevant carriage shipped in Hong Kong
- All sums attributable to a towage operation which commences in Hong Kong
- All sums attributable to dredging in Hong Kong
- Any charterhire earned in respect of a ship which is operated (navigated) solely or mainly within Hong Kong waters or earned under a charterparty where one of the parties to the charterparty is a limited partnership which came into existence before 2 December 1990
- One half of the charterhire earned by a ship navigating between Hong Kong and another port in the River Trade waters (i.e., the Pearl river estuary) which is roughly the sea and all navigable waterways in Guangdong and Guangxi provinces to which access can be obtained from the Pearl river estuary having as its eastern and western co-ordinates 114°30' East and 113°31' East and the southern limit being 22°09' North and
- Charterhire earned under a charterparty for less than the whole of a ship, where the charterhire is attributable to a voyage which commences in Hong Kong.

Worldwide Shipping Profits

The worldwide shipping profits of a shipowner are the profits of the shipowner from all of its shipowning operations (excluding interest and other non shipowning revenue items) and taking into account all deductions which can be made under Hong Kong tax rules. (In particular, the shipowner could deduct all expenditure incurred in the production of such profits including interest (with some exceptions), wages, provisioning, and charterhire paid to a third party where the ship is held as disponent owner).

Worldwide Shipping Revenue

Worldwide shipping revenue includes all shipping revenue of the shipowner derived from its worldwide shipping operations.

Exempt Sums

Exempt sums are specifically excluded from Relevant Sums and are those sums which are earned by way of relevant carriage on, or from towage by, a ship registered in Hong Kong which is proceeding to sea from Hong Kong. This effectively excludes from the calculation of assessable profits and this taxation, all freight and passage moneys earned by an ocean going Hong Kong registered ship on cargo and passengers uplifted in Hong Kong and on any towage which commences in Hong Kong. However, in order to receive exempt sums, the ship concerned must be proceeding to sea from Hong Kong. This excludes Hong Kong registered ships trading in Hong Kong waters or in the River Trade.

Charterhire

Charterhire is excluded from the calculation of assessable profits by the absence of a reference to charterhire as one of the categories of Relevant Sums, other than the reference to charterhire earned by vessels trading solely in Hong Kong waters or in the River Trade. If the sole revenue of a shipowner is charterhire which falls outside those categories of charterhire defined as relevant sums, the relevant sum becomes zero and there are no assessable profits.

TAXABLE OWNERS

If a shipowner is:

- i. Incorporated in Hong Kong or
- ii. A shipowner whose business is normally managed or controlled in Hong Kong or
- iii. A shipowner to whom the provisions of (i) and (ii) above do not apply, but its ship calls at any location in Hong Kong waters,

then the shipowner concerned is deemed to be carrying on business in Hong Kong and is liable for profits tax.

NON-REGISTERED OCEAN GOING VESSELS

The owner of an ocean going vessel, which is not normally managed or controlled or incorporated in Hong Kong will have assessable profits only if:

- The ship calls at Hong Kong
- The ship earns freight from cargo uplifted in Hong Kong or passage moneys from passengers embarking in Hong Kong
- The ship commences a towage in Hong Kong or
- The ship is engaged in the business of dredging in Hong Kong.

Such an owner will not be at risk of being taxed on charterhire. Also, provided the owner does not receive payment of freight in Hong Kong, any freight earned on transit cargo or on cargo shipped into Hong Kong, is excluded from the Relevant Sums and is thus not taxable.

REGISTERED OCEAN GOING VESSELS

The owner of a Hong Kong registered ocean going ship will not be taxed on freight, charterhire, passenger moneys or towage moneys earned by that ship if that ship goes to sea from Hong Kong. A ship trading in the River Trade from Hong Kong is not going to sea from Hong Kong. There is no exemption from taxation of Hong Kong ships which are engaged in the River Trade from Hong Kong.

VESSELS TRADING IN HONG KONG WATERS

The owner of a ship, wherever registered, trading solely or mainly in Hong Kong waters will be taxable on all profits it derives from shipping, regardless of the nature of the profits.

RIVER TRADE VESSELS

The owner of a ship, wherever registered, which trades between ports in the River Trade waters and Hong Kong will be taxable in Hong Kong on one half of the charterhire derived from a charterparty of the ship, regardless of where the owner is organised. All freight, passage moneys and towage moneys earned by the owner to the extent they arise from the carriage of goods uplifted in Hong Kong, passengers embarking in Hong Kong or towages which commence in Hong Kong are taxable as part of the Hong Kong revenues or relevant sums accruing to such owner.

DREDGING

The owner of a dredger operating in Hong Kong will be taxed on profits attributable to dredging in Hong Kong on the basis that all revenue derived from dredging will be relevant sums.

CASUAL CALLS

An owner is not assessable for profits tax if its ship calls at Hong Kong on a casual basis only. Such owner is deemed not to be carrying on business in Hong Kong.

TRANSIT CARGO

Freight earned on cargo which transits Hong Kong is not Hong Kong source revenue and is excluded from Relevant Sums.

PROFITS TAX ASSESSED ON GROSS REVENUE

If the Commissioner of Inland Revenue is satisfied that the formula described above cannot be satisfactorily applied to the owner of a ship, he may fix a prescribed percentage of the Hong Kong source revenue or Relevant Sums of that owner as the amount of profits tax payable in Hong Kong.

For example, if the owner of a ship deemed to be carrying on business in Hong Kong did not file a tax return, the Inland Revenue may fix a percentage of freight earned as the profits tax payable by such owner. In such case the owner may within two years of assessment elect to have its profits tax liability recomputed based on the formula.

LOSSES

Because Hong Kong ocean going registered ships are exempt from profits tax, it follows that the owner of such a ship should not be able to generate tax losses from its ocean going operations and should either carry those losses forward or set them off against other profits for which it is assessable for tax.

Section 23B(7) provides that during any basis period (which is the tax year of the owner) only losses derived from trading such a ship, while it was not a Hong Kong ship, will be available for set off against the assessable profits of the owner. Losses incurred while it was a Hong Kong ocean going ship cannot be carried forward or set off against the assessable profits.

This provision would apply to a vessel, which, without change of ownership, changes flag during the course of the financial year of the owner. If the owner incurs losses under the formula during the whole year, only those losses attributable to the period the ship was not a Hong Kong registered vessel can be offset against the other profits of the owner assessable for tax.

DEPRECIATION AND BALANCING CHARGES

Section 23B(7) also deals with the adjustment of profits or losses of a shipowner by depreciation allowances and balancing charges. If a ship changes flag from Hong Kong to another flag or vice versa in any basis period, and the earnings of the ship as a Hong Kong ship are exempt from profits tax, the owner may claim depreciation allowances for the period the ship was not a Hong Kong ship, but no depreciation allowances for the period the ship was a Hong Kong ship and earning sums exempt from tax. For example, if a ship is registered for 180 days in a basis period in Liberia and then, without change of ownership, it is registered in Hong Kong for the remainder of the tax year, the owner will be entitled to claim 180/365ths of the depreciation allowances available for the year concerned. Likewise if a ship registered in Hong Kong traded worldwide for 280 days in a basis period and was engaged in dredging activities in Hong Kong for the remaining 85 days of the basis period, the depreciation allowances available would be allocated pro rata to the period it was engaged in dredging activities in Hong Kong.

In the event of a sale of a ship for which depreciation allowances are claimed, there is a balancing charge made whereby the amount by which the sale price (excluding any profit) exceeds the written down value of the vessel is written back as profits which are assessable for tax.

If an ocean going ship changes flag without change of ownership so that part of a tax year it is Hong Kong registered and part elsewhere and the depreciation allowances are apportioned as described above, the balancing charges arising on the sale of the vessel will be that sum which bears the same proportion to the total balancing charges that would ordinarily be available as the amount of depreciation allowances claimed by the owner bears to the aggregate amount of depreciation allowances that could have been claimed, had the ship been registered outside Hong Kong for the full period of ownership.

Section 23B(8) sets out the basis for calculating depreciation allowances for a ship which changes flag without change of ownership. If the ship changes flag during its second or subsequent year of ownership, the depreciation allowances available shall be calculated taking into account any initial allowance made to the owner and on the basis that annual allowances have been made for each previous year of ownership as if the shipowner had been assessed for profits tax in the previous periods of ownership.

CHARTERPARTY OF LESS THAN THE WHOLE SHIP

If charterhire payable under a charter of less than the whole of a ship can be attributed to a voyage commencing in Hong Kong, then that charterhire is deemed to be a Relevant Sum and profits derived therefrom will be assessable profits. This provision appears to be an anti-avoidance provision, to prevent a shipowner from selling space on a vessel by entering into a time charter for that space rather than concluding contracts of carriage by the issue of bills of lading for the purpose of avoiding tax.

DOUBLE TAXATION

Hong Kong has entered into double taxation relief agreements with major trading partners (such as Denmark, Germany, Mainland China, Netherlands, Norway, Russian Federation, United Kingdom and USA) for income derived from the international operation of ships. Additional arrangements with further partners are expected.



Schedule

Schedule 1

REGISTRATION FEES

Registration Charges	
For registration of a ship	
• up to 500 gross registered tons	HK\$3,500
• over 500 gross registered tons	HK\$15,000
Annual Tonnage Charges	
In respect of a registered ship	
• up to 1,000 net registered tons	HK\$1,500
<i>plus</i>	
• for each additional net registered ton or part thereof	
» between 1,000 to 15,000 net registered tons	HK\$3.50
» over 15,000 net registered tons subject to a maximum charge of HK\$100,000	HK\$3.00
Provisional Registration	
For provisional registration of a ship	35% of the fees for full registration (1/12 of annual tonnage charge is also payable for each one month period of provisional registration)
For changing from provisional to full registration	75% of the fee for full registration
Documents	
Registration of a transfer of mortgage, transfer by bill of sale, transmission, mortgage or discharge of mortgage	HK\$440.00
Survey Fees	
<p>The charges to be levied by the authorised classification societies are set out in their individual tariffs published from time to time. For chargeable inspections and passenger ship surveys by a government surveyor, the fees will be charged according to the Merchant Shipping (Fees) Regulations, according to a ship's tonnage.</p> <p>If a survey is to be carried out by a Hong Kong Government surveyor outside Hong Kong, the up-to-date position on fees for travelling overseas should be checked with the Marine Department.</p>	

Schedule 2

This schedule lists certain conventions applicable to the manning of Hong Kong ships.

Manning and Certification

International Maritime Organisation Convention

International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1995 (STCW)

International Labour Organisation Conventions

No.8 Unemployment Indemnity (Shipwreck), 1920

No.16 Medical Examination of Young Persons, 1921

No.22 Seamen's Articles of Agreement, 1926

No.23 Repatriation of Seamen, 1926

No.74 Certification of Able Seamen, 1946

No.92 Accommodation of Crews (Revised), 1949

No.108 Seafarers Identity Documents, 1958

No.133 Crew Accommodation on Board Ship (Supplementary Provisions), 1970

No.138 Minimum Age, 1973

No.147 Merchant Shipping (Minimum Standards), 1976

Local Legislation

Merchant Shipping (Seafarers) Ordinance (which contains subsidiary legislation adopting certain requirements of the Maritime Labour Convention 2006)

Merchant Shipping (Certification & Watchkeeping) Regulations 1984

Merchant Shipping (Navigational Watch Ratings) Regulations 1985

Merchant Shipping (Engine Room Watch Ratings) Regulations 1985

Merchant Shipping (Tankers - Officer's & Ratings) Regulations 1984

Merchant Shipping (Certificates of Proficiency in Survival Craft) Rules 1984

Merchant Shipping (Certificates of Competency as A.B) Rules 1985

Merchant Shipping (Certification of Officers) Regulations 1990

Merchant Shipping (Safety) (Minimum Safe Manning Certificate) Regulation 1992

Schedule 3

This schedule lists certain conventions applicable to ship safety and pollution for Hong Kong ships.

Ship Safety and Environmental Protection
International Maritime Organisation Conventions Safety of Life at Sea, 1974 as amended, and 1978 Protocol (SOLAS)
Convention on the International Regulations for Preventing Collisions at Sea, 1972 as amended (COLREG)
International Load Line Convention, 1966 as amended
International Convention on the Prevention of Pollution from Ships, 1973 and Protocol of 1978, including amendments (MARPOL), Annex I, II, III & IV
Facilitation of International Maritime Traffic, 1965 as amended
International Convention on Tonnage Measurements of Ships, 1969
International Convention on Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 and 1973 Protocol
International Convention on Civil Liability for Oil Pollution Damage, 1969, 1976 Protocol and 1992 Protocol
Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, 1976 Protocol and 1992 Protocol
Special Trade Passenger Ships Agreement, 1971 and 1973 Protocol
Carriage of Passengers and Their Luggage by Sea, 1974 and 1976 Protocol
Convention on the International Maritime Satellite Organisation (INMARSAT), 1976 and Operating Agreement
International Convention on the Limitation of Liability for Maritime Claims, 1976
International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1995
International Convention on Maritime Search and Rescue, 1979
International Convention on the Prevention of Marine Pollution by Dumping of Waste and Other Matter, 1972 as amended

Local Legislation
Merchant Shipping (Safety) Ordinance (Cap.369)
Merchant Shipping (Prevention and Control of Pollution) Ordinance
Merchant Shipping (Safety) (Navigational Equipment and Safety of Navigation) Regulation

(Details available <http://www.mardep.gov.hk/en/publication/home.html>)



Mayer Brown is a leading international law firm positioned to represent the world's major corporations, funds and financial institutions in their most important and complex transactions and disputes.

Please visit mayerbrown.com for comprehensive contact information for all our offices.

Mayer Brown is a global services provider comprising associated legal practices that are separate entities, including Mayer Brown LLP (Illinois, USA), Mayer Brown International LLP (England & Wales), Mayer Brown (a Hong Kong partnership) and Tauil & Chequer Advogados (a Brazilian law partnership) and non-legal service providers, which provide consultancy services (collectively, the "Mayer Brown Practices"). The Mayer Brown Practices are established in various jurisdictions and may be a legal person or a partnership. PK Wong & Nair LLC ("PKWN") is the constituent Singapore law practice of our licensed joint law venture in Singapore, Mayer Brown PK Wong & Nair Pte. Ltd. Details of the individual Mayer Brown Practices and PKWN can be found in the Legal Notices section of our website. "Mayer Brown" and the Mayer Brown logo are the trademarks of Mayer Brown.

© 2024 Mayer Brown. All rights reserved.

Attorney Advertising. Prior results do not guarantee a similar outcome.