



# The Luxembourg Maritime Flag

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# 1. Introduction

## *Trends and Developments*

Companies operating in the transport & logistics sector face many challenges. Chief among these, perhaps, is the growing demand for cross-border services, which is compelling the various players to increasingly operate on a pan-European or even global scale. But other pressing issues also need to be addressed in the transport & logistics market. These include the relationship between capital and labour, the increase in cargo operations and the need to expand storage capacity.

## *The Luxembourg Maritime Flag*

The Luxembourg Maritime Flag is growing very fast. It is one of the most famous maritime flags in the world. At present, 150 ships are registered in Luxembourg. One of the keys to its success is the unique balance that its laws strike between regulation and flexibility. Indeed, Luxembourg's Government has installed the Maritime Registry which allows Shipping Companies from all over the World to apply for a serious quality flag whilst not being offshore.

## *About NautaDutilh's sector team*

NautaDutilh has for centuries been a leading name in transport & logistics. Our lawyers, civil law notaries and tax advisors combine their multi-disciplinary strengths to support and assist a wide variety of businesses and institutions active within this sector. Key to our success is our finger-on-the-pulse approach. That way, we are always in tune with the latest developments - both in the specialised field of regulatory compliance and in the wider context of trends and new developments. Such up-to-the-minute insight is crucially important to give organisations the optimal advice they need to achieve their objectives.

## *Experience*

Within our multi-disciplinary sector team, knowledge about different sectors is pooled and exchanged, enabling us to come up with inventive solutions to new challenges. We have an excellent track record as advisors on complex financing arrangements and liability and environmental issues, but also as facilitators of mergers, acquisitions and alliances.

Our customers include shipping companies, airlines, transport companies, container operators, ports, rail service providers and storage firms. We also provide services to organisations who play an indirect role in this sector, such as government agencies and banks.

## 2. The Luxembourg Maritime Flag

### 2.1. General

The Maritime business in Luxembourg is governed by the Act of 9 November 1990 establishing a Luxembourg public maritime registry (the "1990 Maritime Act").

The following ships can be registered in the Luxembourg maritime registry: ships for more than 50% owned by a EU citizen or by commercial companies having their registered office in a EU Member State, the bareboat chartered ships and the ships operated by the above mentioned persons under the condition that all or part of the ship management is carried out in Luxembourg.

### 2.2. The authorised maritime company

Maritime companies shall have as corporate object the buying and the selling of the seagoing ships, the chartering in and the chartering out of such ships, as well as the financing and commercial operations directly or indirectly related to such activities.

The companies doing business in the maritime sector must be authorised to do so by the Ministry of Economy and Foreign Trade.

### 2.3. The authorised shipping manager

The company must, by contract, secure the services of a shipping manager. The shipping manager must be authorised by the Ministry of Economy and Foreign Trade and must be resident in Luxembourg. He must provide for satisfactory evidence of probity and professional experience.

### 2.4. The ships

In order to qualify for registration, ships shall be of at least 25 tons and less than 15 years old. They must carry out commercial shipping activities.

In order to be registered, ships must be certified by one of the following authorised classification companies:

- American Bureau of Shipping
- Bureau Veritas
- Det Norske Veritas
- Germanischer Lloyd
- Lloyd's Register
- NKK
- RINA

Before being registered, the ship must undertake a preliminary inspection by the Luxembourg maritime supervisory authority, another European authority or by one of the above mentioned authorised classification companies.

## 2.5. The crew

The captain must be a citizen of an EU Member State. However, the Ministry may grant derogations to such requirement.

The captain and all the officers must obtain a Luxembourg endorsement of their shipping licence.

A social security cover must be provided to all crew members.

## 2.6. Mortgages over a ship

### *The registration of a mortgage*

The general Luxembourg law governing mortgages over real properties is normally applicable to mortgages over ships, unless otherwise stated in the 1990 Maritime Law. The mortgage must be registered at the Luxembourg bureau de la conservation des hypothèques. A mortgage over a ship registered in Luxembourg is created by agreement between the parties. However, only a person who has the right to alienate a ship may validly create a mortgage over it.

A mortgage may be validly created (i) over a clearly defined ship and (ii) for a determined amount. It may be created over a ship under construction. In case of several mortgages over the same ship, the ranking is determined by the date of registration, and, if registered on the same date, by the registration number. The mortgage is valid as for ten years starting from the date of its registration.

### *The enforcement of the mortgage*

As most of the ships registered in the Luxembourg Maritime Register are not located in Luxembourg, the enforcement of the mortgage shall take place outside of Luxembourg. The enforcement is indeed governed by the laws of the jurisdiction where the ship is located at the time of the enforcement. In order to enforce a mortgage deed validly registered in Luxembourg, exequatur in another jurisdiction will therefore be required.

In case the debtor is in default under his obligations set out in the financing documents, a court order is required. In such a scenario, either (i) a court order could be rendered by a Luxembourg Court; or (ii) a foreign judgement could be declared enforceable in Luxembourg on the basis of exequatur proceedings to be initiated before a Luxembourg Court.

Moreover, when setting up the financing and security documents, it should also be kept in mind that under Luxembourgish law, certain legal mortgages (hypothèques légales), as for instance the legal mortgage of the tax authorities and of social security, rank above any contractual mortgages. Such claims may not be known on the day of registration of the contractual mortgage.

## 2.7. Ship finance

For financing purposes, the agreements usually entered into include, amongst others: a credit loan agreement, the mortgage over the vessel, security assignments of charters, insurance policies, a pledge over the shares of the owning company, guarantees and cross-guarantees (for instance, in case of a fleet, by the ship-owning companies).

Ship construction financing is quite risky because the security over the future ship is unlikely to be worth much during the construction of the ship unless the mortgagee is willing to complete the construction. Construction loans are therefore often supported by various security arrangements until completion. Consequently, due to the important risk related to it, ship construction finance is often viewed as similar to project finance.

If the builder is being financed, the security package generally comprises the benefit of the building contract (in particular, the right to payment from the buyer) together with any accompanying guarantees, and, if the title in the uncompleted vessel remains with the builder until delivery, a mortgage on the unfinished vessel and materials on site. If the buyer is being financed, the security shall comprise the same elements except that the main rights assigned under the building contract shall be the right to delivery, any damages for failure to perform and the benefit of the builder's warranties. The availability of a mortgage over the unfinished vessel depends upon whether title is passed to the buyer whilst the vessel is under construction. It is recommended that a guarantee is issued by a bank covering the obligations of the builder to refund advance instalments of the contract price if the vessel is rejected.

## 2.8. Tax law aspects

Luxembourg law provides for a lump sum taxation of non resident seafarers that are employed by a Luxembourg shipping company in international traffic.

### *Corporate income tax*

A Luxembourg shipping company is subject to tax on its worldwide income. Corporate income tax ("IRC") rate ranges from 20% to 21% depending on the income level. In addition, a surcharge of 4% is payable to the unemployment fund. A Luxembourg shipping entity is thus subject to IRC at a rate of 21.84% on its net taxable profits. Income from the exploitation of vessels as well as the renting of vessels used in international traffic are not subject to municipal business tax.

### *Net worth tax*

Luxembourg net worth tax is levied annually at a rate of 0,5% on the adjusted net asset value of Luxembourg resident companies. The tax base of the company (unitary value) could be defined as the difference between the assets of the company and its third party debt. The third-party debt includes the provisions recorded by the Luxembourg shipping company and in particular the provision for large-scale repairs and maintenance work on ships. Provided certain conditions are met, the net worth tax due may be reduced by a tax credit to the extent a special five year reserve is created.

### *Indirect tax (VAT)*

In principle, supplies of goods and services in relation to seagoing vessels effectively used for transport, industrial or commercial activities are exempt from VAT.

### *Fixed registration duty*

A fixed registration duty of EUR 75 is payable upon (i) the formation of a civil or commercial company with its corporate seat or place of central management in Luxembourg, (ii) the amendment of the articles of association of such a company, or (iii) the transfer to Luxembourg of the corporate seat or place of central management of civil or commercial company.

### *Investment tax credit*

Luxembourg shipping companies may benefit from two specific incentives for investments in shipping vessels operated in international traffic put to use in Luxembourg. They are referred to as global investment tax credit ("Bonification d'impôt pour investissement global") and complementary investment tax credit ("Bonification d'impôt pour investissement complémentaire"). Both incentives take the form of a tax credit to be offset against Luxembourg corporate income tax:

- The global investment tax credit is based on the acquisition price of the eligible assets acquired during the year for which the tax credit is applied for. The tax credit amounts to 6% of the first EUR 150,000 and to 2% on the exceeding balance.
- The complementary investment tax credit base is the difference between the book value of the eligible assets at the end of the year and the average of the book value of eligible assets over the five preceding years. This difference is increased by the amounts of the depreciation on eligible assets acquired during the same year. The tax credit amounts to 12% of this figure.

The investment tax credit not used during a given year can be carried forward for 10 years.

### *Tonnage tax*

There is no tonnage tax system in Luxembourg.

## Contact

*We hope you found this publication useful and welcome the opportunity to answer any questions or address any concerns you may have with respect to its content.*

*For any matters in relation with this memorandum, please contact:*

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