



## CLIENT UPDATE- INSURANCE, SHIPPING AND TRANSPORT LAW

### Dispute relating to Ownership of a Unregistered Pleasure Yacht

The Admiralty Court in Ireland recently considered if there was jurisdiction to arrest an unregistered pleasure yacht in a dispute relating to ownership. A dispute as to ownership is a 'maritime claim', but under the 1952 Arrest Convention, a 'ship' must be "flying the flag" of a State to be susceptible to an arrest.

Certain academic writers have interpreted the phrase "Flying the flag of a contracting State" as denoting a requirement that, for a ship to be susceptible to arrest, it must be registered in a contracting state (or indeed in a "non-contracting" state).

The arresting party, however, argued that "flying the flag of a contracting state" was a requirement that a ship had assumed the nationality of a particular state and, in this regard, it was argued, that the flag is a symbol of the ship's nationality.

The 1982 United Nations Convention on the Law of the Sea provides that ships have the nationality of the State whose flag they are entitled to fly. That 1982 Convention also provides that it is a matter for each individual State to fix the conditions for the grant of nationality to ships, the registration of ships in its territory, and, for the right to fly its flag.

In Ireland, pursuant to the Mercantile Marine Act 1955, a 'ship' wholly owned by an Irish citizen or body corporate, of less than 50 tons, not engaged in trade and navigating solely in the waters of Ireland and UK, is exempt from the requirement to be registered. Importantly, however, under the Mercantile Marine Act 1955, such a 'ship' is still considered to be an "Irish Ship", and, is thus entitled to fly the Irish flag.

Under the UK Merchant Shipping Act 1995, there are similar exemption provisions for registering small pleasure craft in UK, which, nevertheless, would be "British Ships" and thus have the right to fly the British Red Ensign (less than 24 metres).

The substantive issue, which party owned the yacht, would determine the nationality of the yacht, and, whether it was entitled to fly the Irish flag or British ensign. However, for the arrest proceedings, the Admiralty Court held that it did not need to determine that ownership issue because, in either event, the unregistered yacht was a 'ship'. In both Ireland and the UK, the particular unregistered yacht clearly fell within the exemption criteria to be registered in both States but would nevertheless still be considered to be a 'ship' in either State. The pleasure yacht was therefore a 'ship' flying the flag of a contracting state, and, the Admiralty Court held that it had jurisdiction to maintain the arrest under the 1952 Arrest Convention.

This case would appear to be one of the first of its kind on the definition of the term "flying the flag of a contracting state" in 1952 Arrest Convention. This might be surprising, were it not the fact that both the Irish and British jurisdictions have relaxed rules relating to the registration of small vessels.

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