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Cambodia Maritime Law

1. Introduction

1.1. Until recently¹, media articles drew the attention of national and international professionals to cases relevant to Cambodian maritime law, to be more specific, cases of fishing vessels flying Cambodian flags. In the legal arena, there have been certain cases of maritime liens and of vessel transfers as well.

1.2. In general, maritime activities, transactions and cases are of a very particular nature, often requiring in-depth analysis of all related elements. Unfortunately, Cambodia's maritime legal framework is still far from being comprehensive; it is very much in its early stages of development which opens a path to research - but which does not enable us to undertake such an in-depth analysis at the moment.

This newsletter highlights some recent topics of: classification of vessel, ship registration, ship transfer and maritime lien.

2. Classification of vessel

2.1. Classification of vessel is not the most debated topic. But if we look a little more carefully, it is the first key question in the way that determination of applicable law starts with providing a satisfactory answer to whether a vessel is movable or immovable property. Some ships navigate, some others do not.



1 Early December 2013, there have been certain newspapers reporting issues on European Union putting ban on seafood imports from Cambodia. One of those news is accessible here: http://www.cambodiadaily.com/news/private-ship-registry-did-not-monitor-compliance-48532/?utm_source=rss&utm_medium=rss&utm_campaign=private-ship-registry-did-not-monitor-compliance

2.2. Despite the fact that there are at least six applicable laws and regulations in this area, those laws often time do not provide for an undoubted classification of the vessels. Using unclear language, some laws tend toward the classification of "movable", while some others have a tendency toward the classification of "immovable" for vessels. As an example, the 1992 Land Law considers ships with capacity of more than 30 tons as immovable, while a 2003 Prakas² stipulates that vessels constitute a particular class of movable.

2.3. With such uncertainty, there is a need to weigh both sides. Time-wise, the 2007 Civil Code is the latest legal text applicable (being implemented in 2012). While this code does not provide for a clear distinction, it tends to apply immovable rules on the vessels.

3. Ship registration

3.1. The presence of ISROC was at the heart of the debate on authority to register. ISROC stands for International Ship Registry of Cambodia. It is a privately operated institution which claims itself to be the Flag State Administration of the Royal Government of Cambodia with all powers and qualifications and which received Sole and Exclusive authorization by the Office of the Council of Ministers of Cambodia³.

3.2. The 2003 Prakas on Resolution for Registration of Merchant Vessels requires that registration must be made with the ISROC. In order to register a vessel legally according to this Prakas, certain pieces of information are required: name of vessel, gross and net tonnage, place of where it was built, the year built, the name and residence of owner. The application for registration can be submitted by owner. It can also be submitted by a representative with a proper authorization letter (Power-of-Attorney).

Other required documents are not found in the available laws and regulations. On the contrary, those documents to be prepared and submitted can be found on the ISROC's webpage⁴.

2 Prakas is a term referring to a regulation issued at ministerial level.

3 <http://isrocam.com/what-is-isroc/>, link accessible on 5th February 2014.

4 <http://isrocam.com/regular-registration/>, link accessible on 5th February 2014.

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3.3. There are two types of registration: provisional registration and permanent registration. It is claimed that the registration for a provisional certificate can be performed within only 24 hours, if all necessary requirements and conditions are met. The provisional certificate issued would be valid for a period of 6 months. The registration for a permanent certificate, on the other hand, would be valid for a period of 5 years. However, the timeframe for its registration is not specified. It is important to note that this distinction between provisional certificate and permanent certificate does not hold much importance when the main Prakas is unclear in its provisions by using the term "Certificate of Registry". For the reason that the legal and regulatory provisions do not provide further clarification on such distinction, it is highly possible to get things confused since the Certificate of Registry can mean, at the same time, either a Provisional Registration Certificate or a Permanent Registration Certificate.

Out of this uncertainty, questions are raised. One of these questions involves the date of registration and the ship transfer.

4. Ship Transfer and the question of registration date

4.1. In certain cases where vessels flying Cambodian flag are being transferred, the question is when is the ownership being transferred? Would it be the date of registration of the purchaser (or new owner)? If yes, would it be the date of registering for provisional or permanent certificate? If not, could it be the date of the physical transfer instead?

These questions are very important when the case requires determining the date of transfer of liability over the ship. That is because it is instantaneous to physically transfer the ship from the seller to the purchaser. But the registration with the ISROC is not instantaneous as time is needed for the issuance of the Permanent Registration Certificate. And an unpredicted liability over the ship may easily occur in between the date of physical transfer and the date of Permanent Registration Certificate.

For example, a transfer by sale is required, by the 2003 Prakas, to register anew. Since there is a requirement to register anew, there is a reasonable assumption that only after the requirement (registration) is satisfied that the ownership of the vessel is seen legally as "transferred". However, this provision by the 2003 Prakas does not seem to accord with provision of the 2006 Code of Civil Procedure which, on the contrary, stipulates that "the purchaser acquires the vessel at the time of payment of price⁵". When the new owner acquires the vessel upon payment, it means the date of transfer is the date of payment.

⁵ However, the law does not specify whether it is full payment or partial payment.

However, when we consider the fact that vessels are immovable under the 1992 land law.

(see above) and that the laws and regulations stress on the importance of registering for a permanent certificate, there is another plausible assumption that the date of the permanent registration certificate is the date of the transfer rather than the date of payment.

To date, there is still no new law or regulation to clarify this issue.

5. Maritime Lien

5.1. The last question we address is what constitutes a maritime lien. The applicable laws and regulations do not - unlike other types of encumbrance over other types of property - use registration/filing of a lien document as the first requirement to constitute a valid lien over a ship. For example, a pledge over a land parcel (a type of encumbrance that some people call "mortgage") is effective between the contractual parties but can be effective against third parties only after being properly registered with cadastral office. On the contrary, no such legal requirement is found for the case of maritime lien. Therefore, a maritime lien does not need to register in order to have full effect against third parties.

5.2. For the above reason, any transaction or event or cost that fall under the list of Article 52 of the 2003 Prakas can constitute maritime lien without having to be registered. As an example, constitutes a maritime lien any amount owed by reason of obligations incurred to supply, maintain and operate the vessel.

6. Latest information from ISROC

Often, maritime cases involve vessels of foreign origin which are registered for flying Cambodian flags. Most of those cases, if not all, occur outside the territory of Cambodia. The most recent case, back in early December 2013, was the case of illegal fishing activities carried out by vessels flying Cambodian flag. ISROC responded that it was not monitoring their observance of international maritime laws and that it was their (ship owners') own responsibility to ensure compliance.

In response to this issue, ISROC issued one document called "Circular No.53" on 20 December 2013 on disciplinary actions against ship's illegal activities and published it on its website. According to this Circular when a Cambodian flagged vessel is found to commit any of the violation against the international and/or national regulations, ISROC as the Flag State Administration must be on absolute policies to take disciplinary actions, inclusive of immediate de-registration from the ship register⁶.

⁶ <http://isrocam.com/wp-content/uploads/2013/12/ISROC-Circular-No.53.pdf>

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As a final note, the above presented topics are recent, but are not the only issues under Cambodian maritime law. This area of law is still lacking many necessary provisions to fully govern vessels.

Additional to our team

Mr. Benjamin K. Wagner

Legal Counsel

Benjamin Wagner is a Legal Counsel at BNG Legal. He is a licensed US attorney and is a member of the US state bars of Hawaii and Minnesota. Benjamin holds a Juris Doctor degree from the University of Hawaii at Manoa, where he focused on international law and commerce. Benjamin was also a fellow at the East-West Center in Honolulu where he participated in the Asia Pacific Leadership Program (APLP).

Benjamin comes to BNG with over 15 years' experience in Asia. Prior to practicing law, Benjamin worked in banking in South Korea during the industry's reconstruction period following the currency crisis of 1997. As an attorney, he has handled international arbitration and employment discrimination cases as well as advised on international insolvency, intellectual property, criminal extradition and international adoption matters. Benjamin was an assistant professor of law at Kyung Hee University Law School from 2007 to 2012. He published on international law issues and provided pro bono legal counsel and representation for international cases before United Nations commissions. Benjamin has appeared as foreign counsel before the Constitutional Court of Korea.

Benjamin is member of BNG's Myanmar team in Yangon. His practice areas include international investment, intellectual property, market entry and business law.

He is fluent in English and proficient in Korean.

Ms. Seakkeang Lim

Legal Advisor

Ms. Seakkeang Lim is a Legal Advisor in the Family Law Practice Group. Keang holds a Master of Private Fundamental Law and a Master I of Notary Law from Jean Moulin Lyon III University, a Bachelor of Law from Lumière Lyon II University and a Bachelor of Law from the Royal University of Law and Economics. She is specialized in civil law, in particular marriage, family and property law.

Before joining BNG Legal, Keang was a lecturer of legal methodology at the Royal University of Law and Economics and was trained at the Royal Academy for Judicial Professions. She also worked as an interpreter of French for Avocats Sans

Frontières for various academic seminars.

Keang speaks Khmer, English, and French.

Ms. Puthkarona Seng

Legal Advisor

Ms. Puthkarona Seng is a Legal Advisor in the Intellectual Property and Technology Practice Group. Karona holds a Master of Intellectual Property Law from Lumière Lyon 2 University, a Bachelor of Comparative Law from Lumière Lyon II University and a Bachelor of Law from the Royal University of Law and Economics. Her Master's thesis analyzed the issues of well-known trademark protection under Cambodian and French law.

During her time in France, Karona completed an internship at LAMY & Associates law firm, located in Lyon.

Karona speaks Khmer, French and English.