"The Case for a Second Register"

Peter Dawson

Peter Dawson is a Partner in Oceanlaw New Zealand, and holds a Masters degree in Shipping Law. He has a boutique specialty in vessel registration and flagging.

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The decline in Coastal Shipping industry in New Zealand is a topic well traversed in local publications including this one. It is apparent to me that the causes for the slump in national fleets, are by no means unique to New Zealand and the proffered solutions to the malaise, are solutions that have (and are) in implemented in a number of other jurisdictions.

The report of the Shipping Industry Review entitled "A Future for New Zealand Shipping" of December 2000", proffered a number of solutions, two of which are firstly the establishment of a "second register" and secondly the implementation of a scheme of taxation based on the tonnage of the vessels concerned. It is the first solution that I wish to examine in this article and perhaps offer some touchstones for future debate.

The worldwide nature of vessel ownership and flagging is complex and has its roots in both traditional maritime practice, and the legal protections that have been established against business and maritime risks. Fiscal and crew imperatives dominate and coastal cabotage will often be determinant of the vessel's ownership and chartering arrangements. Most open registries and some national registries offer a similar smorgasbord of costs, services, tax advantages, flagging-in and flagging-out and crew certification that give vessels a distinct competitive advantage to vessels flagged on a national register. The annual costs of operation of a 50 000 grt bulk carrier on an open register are estimated to be USD 1 million *less* than operating the same vessel on a national register. The playing fields are by no means level and have contributed significantly to the flight of tonnage from national registers. New Zealand and Australia are no exception.

As second registries are akin to open registries it behoves us to look around at what is on offer. There are many good registries but on the down side of the equation, the masking of sub standard vessel owners' identities has become an art form, to the extent that at the Fourth Annual Ship Registers Conference in London, held in February 2004, several of the speakers remarked that the very complexity of the matrix of ownership and chartering arrangements provides opportunities for international terrorists to utilise these companies, and vessels for their own nefarious purposes.

As a result transparency in vessel ownership and operating structures has become a sexy term in international registry parlance. This has partly been driven by ISM (the International Safety Management Code) which entered the picture some years ago, as an addendum to SOLAS and applies to vessels over 500 tonnes. The ISM Certificate and Document of Compliance has been described as a "licence to trade". More recently, a further amendment to SOLAS spawned the International Ship and Port Facility Security Code (ISPS). In a similar manner this code has a system of compliance verification and certification, which attempts to track a link between the vessel itself, the company that owns the ship, and the persons responsible for the day-to-day management of the vessel. Under the ISM code, the vessel must have a "designated person ashore" who must be easily identified and contactable and have

contact with the "highest level of management". The problem though with ISM and the more recent ISPS, is that its effectiveness can be watered down by paying lip service to their provisions whilst continuing to operate the vessel and the company as they always have done. Transparency is enhanced but still remains opaque for those operating sub standard vessels. Ultimately, transparency is aimed at identifying substandard operations and identifying and stopping terrorists and others from making use of vessels. The OECD has commented in various forums, that there are many mechanisms available by which an owner may legally hide his ownership of a vessel. The OECD, in characteristic fashion say that the existence of these mechanisms cause a lack of transparency and OECD regulation on IBC's and other offshore structures also narrows the field.

Thus there are a good vessel owners and bad vessel owners. There are good registries and less savoury registries. Where on this scale should a notional Second register for New Zealand be pegged? Clearly it should be a registry that enhances transparency without compromising the commercial integrity of the vessel owners or operators. It should have good internal compliance procedures to keep out the bad operators and be flexible and efficient enough to attract the good ones. In lawyer speak it is "common cause", that substandard registers attract substandard tonnage. This must be avoided. One has but to check the port state detention records of countries such as Australia and elsewhere in order to determine who the good guys and who the bad guys are. The international community has recognised the difficulty in tracking the ownership of vessels through the complex matrix of ownership and chartering arrangements, and has elected to utilise port state control as its most effective remedy in the fight against substandard flags and tonnage.

If it is accepted, that a second register is the panacea for the ills of the local shipping industry (whether on the coastal or international trade), it raises the question of the nitty gritty of the register itself and what imperatives would drive the construction and operation thereof.

In the development of a second register, there are several examples that can be looked at. The new kid on the block is the Madeira registry which, if its corporate profile is to be believed, offers a "Global Solution for the Shipping Industry". The attraction of the Madeira shipping register, as a second register to the Portuguese flag, is that it offers all the benefits of an advantageous tax regime along with comprehensive access to continental and Island cabotage within the European Union. Add to the mix flexible nationality requirements, the ability to fly the Portuguese flag and convenient and expeditious registration procedures, the register is already attracting beneficially owned Portuguese vessels (and others) back to the flag. In a presentation to the 2004 Ship Registers Conference entitled "Using an EU flag to Reduce Operational Costs: the CEO of the registry revealed that there were then 161 vessels registered in Madeira totalling 1 133 228 GRT and extending across the range of oil tankers, chemical tankers, container vessels passenger vessels etc. If a small EU country can succeed in setting up a Registry in the midst of the labyrinthine bureaucracy of the EU, then New Zealand should be able to do likewise.

Two other Second Registers that have been around for years are the German International Ship Register (GIS) and the Norwegian International Ship Register (NIS). Both of these registers have caused an about turn, in the flight of vessels from their domestic flags. The German Shipping industry has boomed in the past 10 years and the International Merchant Fleet, managed by German ship owners on the flag has risen by 58% and has tripled in tonnage terms. At present there are some 2200 vessels on the flag, of which 880 are container vessels. The average age of

the fleet is 5 years, which makes it one of the youngest worldwide. This has given rise to employment of approximately 17 000 people ashore, and another estimated 5000 people are employed by companies offering services to the shipping industry, including banks, classification societies, solicitors (of course) tax advisers etc. Makes you think doesn't it!

What about the nuts and bolts of the second register? In a recent speech by the director of a large German vessel management company, he cited three criteria that influence a vessel owner's decision to flag a vessel. These are:

- What are the costs involved with the register?
- How flexible and efficient is the register?
- Will the flag have a favourable effect on the trading area of the vessel?

The first requirement suggests that a second register must be cost effective and have a cost profile akin to other open registers. The second requirement speaks to the inter relationship between the register and the classification society and the "reachability" of the register. Thus if an officer has to leave a vessel due to illness and the vessel is ready to leave port, how quickly can the flag state/register give the required exemption in order to prevent delays to the vessel? Efficiency is self explanatory. The third requirement raises the spectre of cabotage. This is a burr under the saddle of the local industry, which I will examine in detail in my next article. Save to say that registration on the second register must allow the vessel access to the areas within which it should trade.

The attraction of a good second register is readily apparent. It has been done before in more complex environments than New Zealand and Australia and would make for a neat fit in New Zealand Shipping.

August 2004.