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WORLD MARITIME UNIVERSITY
Malmö, Sweden

**AN ANALYSIS OF THE BAREBOAT
CHARTERING PROGRAM OF THE
PHILIPPINES**

By

SONIA B. MALALUAN
Republic of the Philippines

A dissertation submitted to the World Maritime University in partial
fulfilment of the requirements for the award of the degree of

MASTER OF SCIENCE

in

SHIPPING MANAGEMENT
Commercial Stream

1998

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DECLARATION

I certify that all the material in this dissertation that is not my work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessarily endorsed by the University.

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ABSTRACT

Title of Dissertation: An Analysis of the Bareboat Chartering Program of the Philippines

Degree : Master of Science

This dissertation is an analysis of the existing bareboat charter registration policy of the Philippines with emphasis on the requirements, procedures and implications in relation to the development and maintenance of the Philippine merchant fleet.

Existing laws and regulations, both international and national are presented and carefully scrutinized. A parallel approach with selected countries was used to show that the country's policy is not isolated nor left behind by other countries.

The importance of the program was manifested by the benefits gained from the implementation of the temporary registration of foreign owned vessels under bareboat charter to Filipino nationals. These include the financial benefits to the national economy in terms of taxes, fees and foreign currency inflow in addition to the social benefits from the employment of thousands of Filipino seafarers. Positive effects to shipowners or charterers are also highlighted.

A comparative analysis of the benefits and the adverse effects of the policy was made in order to identify the important aspects of the program. The requirements and procedures in its implementation were dissected to specify areas which are detrimental to the development of the Philippine overseas merchant fleet.

The concluding chapter identifies possible measures or changes in the existing laws or policies in order to meet the need for a developed and modernized Philippine overseas fleet without prejudicing the integrity of Philippine-flag vessels nor losing one of the country's major sources of foreign earnings.

The recommendations presented in this paper are based on relevant international laws and regulations and partly on policies of other countries. These recommendations are hoped to help the Philippine government to amend existing policy on bareboat charter registration of foreign owned vessels, which is beneficial to the national economy and the shipping industry in general but also a policy that has taken into account some commercial aspects thus living up to the expectation of the private sector as a potent arm and partner towards the country's quest for global competitiveness.

KEYWORDS: Bareboat Charter, Maritime Policy, Ship Registration, Flagging out, Ships Flag, Philippines

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LIST OF ABBREVIATIONS

AFTA	ASEAN Free Trade Agreement
APEC	Asia Pacific Economic Cooperation
AOI	Article of Incorporation
ASEAN	Association of Southeast Asian Nations
BIMP	Brunei Darussalam, Indonesia, Malaysia, Philippines
BIR	Bureau of Internal Revenue
BOC	Bureau of Customs
BOI	Board of Investment
CB	Central Bank
CEPT	Common Effective Preferential Tariff
CVR	Certificate of Vessel Registry
DFA	Department of Foreign Affairs
DOTC	Department of Transportation and Communications
DWT	Dead weight tons
EAGA	East Asian Growth Area
EO	Enforcement Office
E.O.	Executive Order
FOC	Flag of Convenience
FSA	Filipino Shipowners Association
GRT	Gross Registered Tonnage
GT	Gross Tonnage
IACS	International Association of Classification Societies
ICC	International Chamber of Commerce
IMO	International Maritime Organization
IRR	Implementing Rule and Regulations
ISL	Institute of Shipping Economics and Logistics

ITF	International Transport Federation
MARINA	Maritime Industry Authority
MC	Memorandum Circular
MDO	Manpower Development Office
ME	Middle East
MLAO	Maritime Legal Affairs Office
MOA	Memorandum of Agreement
MOT	Ministry of Transport
MSIO	Management Services and Information Office
NIS	Norwegian International Register of Ships
NOR	Norwegian Ordinary Register
OAdm	Office of the Administrator
OBO	Oil Bulk Ore
OECD	Organization for Economic Cooperation and Development
OSO	Overseas Shipping Office
PCG	Philippine Coast Guard
PCPR	Provisional Certificate of Philippine Registry
PD	Presidential Decree
PHP	Philippine peso
PPA	Philippine Ports Authority
PPO	Planning and Policy Office
RA	Republic Act
RP	Republic of the Philippines
SE	South East
SEC	Securities and Exchange Commission
SOLAS	Safety of Life at Sea
SOP	Standard Operating Procedures
TC	Time Charter
TEU	Twenty-Foot Equivalent Unit

UFS	United Filipino Seafarers
UK	United Kingdom
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
WMU	World Maritime University
WSTS	World Sea Trade Services

CHAPTER 1

INTRODUCTION

1.1 Background of the Study

As the world enters the new millennium and in line with Philippine Maritime Visions 2000, the government together with the private sector of the industry have formulated plans to make the country, the Asia's maritime power by the year 2000. These plans include among others, the development of the Philippine Merchant Fleet which will be competitive both in the Asian region and in international market. The country, being considered as a seafaring nation and the world's number one provider of seafarers, has its comparative advantage over other maritime nations. Philippines 2000 has the national goal of sufficiency, modernization, global competitiveness and regional development and integration. It generally focuses on three (3) T's, namely, transportation, tourism and trade. Development of trade will always affect the development of the transport sector.

One major transport sector is shipping which is a vital component in the economic growth and development of the Philippines. The country being an archipelago, depends largely on sea transport for the movement of its goods and products. This mode of transportation is still considered the most economical way, and therefore, import and export activities are dependent on the strength and capability of the country's merchant fleet.

Today, one important shipping policy of the country is the Bareboat Chartering Registration pursuant to Presidential Decree (P.D.) No. 760 dated 31 July 1975, allowing foreign owned ships to be temporarily registered under the Philippine flag. This system has been used on an expanding basis by various developed and developing countries over the past quarter-century and has offered significant benefits in facilitating ship finance, in encouraging joint ventures and in promoting commercial maritime expansion, particularly in developing countries. (ICC, 1988) Bareboat charter is defined by Brodie (1997, 13) as:

The hiring or leasing of a ship for a period of time during which the shipowner provides only the ship while the charterer provides the crew together with all stores and bunkers and pays all operating costs.

The temporary registration of ships under bareboat charter agreement is recognized under Article 12 of the 1986 Convention on the Conditions for the Registration of Ships. Certainly, the registration under this program does not fall within the characteristics of Flag of Convenience(FOC) or Open Registry. An FOC or open registry system is difficult to define but it is usually characterized by requirements for registration which are not stringent such as the nationality of owners and/or crew, and lower taxes and other operating costs.

1.2 Objectives of the Study

Now, with the expiration of the effectivity of the policy in 1999 as set out in Presidential Decree No. 1711, which was extended until 2009 under Executive Order (E.O.) No. 438 dated 15 September 1997, the fact still remains that an analysis and study of said program is appropriate and opportune. As published in the *Seatrade Review* (1996, 109), Pundol said that "Time is running out for Manila's bareboat charterers". Pursuant to paragraph 2, Section 1 of P.D. 760, the effectivity of any

charter or lease contract entered into under said decree shall not extend beyond the year 1990, unless otherwise extended by the President of the Republic of the Philippines. Therefore, the President of the Philippines may extend the program any time by virtue of the power vested in him which was exercised in two instances, the issuance of PD 1711 and EO 438 in 1980 and 1997, respectively.

However, for the country to develop its merchant fleet, proper planning and policy should be formulated towards attainment of said objectives. The overseas shipping sector will suffer if it has no clear direction as to where the sector should be in the short and long term period. The industry cannot just rely on a policy that is always hanging on a thin line. Shipping executives will always be in a situation wherein they don't know what would be the next policy related to bareboat chartering. The program may end at the expiration of the lease contract period or the program may be extended for another 2 or 3 years depending on politics. What is necessary is to evaluate the program and to know if it is effective or has it been achieving the objective of the program and the mandate of the state. This pressing need and the present trend of deregulation and globalization prompted the author to analyze the coverage and policies under the program, as well as its effects in the country's shipping industry and the economy in general.

Therefore, this paper aims to present the existing bareboat chartering of the Philippines covering the existing legislation, administrative policies, procedures for its implementation and the profile of the Philippine overseas fleet as the result therefrom. Contrary to the characteristics of an FOC, stringent requirements imposed by the government will be discussed in detail in the next chapter. The effects of the program will be highlighted in terms of the benefits gained as contrasted by problems encountered in its implementation as well as problems of the sector in general. Further on, shipping policy or practices of other maritime nations

on bareboat chartering will also be presented. This presentation aims to assist in the analysis on the overall effectiveness of the program.

Additionally, this paper intends to analyze the present international trade, its effects on the international shipping, particularly, Philippine overseas shipping activities and lastly the potential of the Philippine fleet in the carriage of international trade. The main purpose of this study, therefore, is to recommend measures or actions to improve the existing bareboat chartering program or to recommend other options towards making the Philippine overseas fleet globally competitive with an end in view of making it a major component in the process of making the Philippines a maritime power in Asia by the year 2000.

1.3 Scope and Limitation of the Study

The study will focus mainly on the government policies and regulations as embodied in the governing Presidential Decrees, Executive Orders and Memorandum Circulars (MC) issued by the Maritime Industry Authority (MARINA). Analysis of the financial status of Philippine shipping companies as charterers or operators shall not form part of this paper. Lack of specific statistics and records also prohibit the author to present and analyze the trading structure or routes of the vessels temporarily registered in the Philippines and flying the country's flag.

1.4 Relevance of the Study

It is the role of the MARINA to study and review existing policies of the government and to recommend necessary measures or alternative courses of action to address whatever problems or loopholes there may be in the existing policies. The author

being part of the said organization and being required to prepare a paper for the fulfillment of the Masters Degree requirement at the World Maritime University(WMU) strongly believes that the topic and issues covered in this paper are relevant and timely both to the organization where she belongs and to the course she is taking- Shipping Management. As discussed by different professors in WMU, the external factors, namely: political, economic, social and technical are all essential aspects that affect shipping management.

Government policies are very important political factors. In today's trend of globalization and competitiveness, the government should look into its policies, rules and regulations and determine how each and every one of them affects the development and operations of ships under its flag. The end result will always have an impact on the economy and the progress of the nation. Therefore, it is fundamental that the policy on the bareboat chartering or temporary registration of ships be scrutinized.

1.5 Order of Presentation

This paper has six (6) more chapters. The next one presents the existing national legislation, administrative rules and regulations on bareboat chartering and temporary registration of ships. Chapter 3 shows the profile and development of the Philippine Overseas Fleet. Chapter 4 presents the shipping policies, specifically the bareboat chartering policy of other maritime nations. This is supported by Chapter 5 which shows the development of international trade focusing on world seaborne trade, as well as world's merchant fleet, the Philippine trade transported by sea and the prospects for the region. Further, Chapter 6 analyzes the effects of the bareboat chartering program by identifying its effects to the government, to shipowners / charterers and other sectors of the economy. Both the benefits gained

and adverse effects of the policy will be argued. Problems and issues confronting the overseas shipping sector, which is mainly bareboat chartering registration, shall also be discussed in the same chapter. Additionally, prospects for the RP flag vessels will form part of this Chapter. Lastly, Chapter 7 will present some conclusions. More importantly this chapter will contain the author's recommendations based on the analysis and conclusions made. Those recommendations are geared towards propelling the overseas sector of the Philippine shipping industry on its way to global competitiveness and development as a maritime power in Asia.

CHAPTER 2

THE BAREBOAT CHARTERING PROGRAM OF THE PHILIPPINES

The Philippine shipping industry being faced with fierce competition from the more advanced and developed maritime nations prompted the issuance of P.D. No. 214 in 1973, amending the Philippine Overseas Shipping Act of 1955. The Overseas Shipping Act of 1955 shows the government's effort to develop the overseas sector of the shipping industry, by providing much needed assistance for the expansion of the country's merchant fleet. Cognizant of this need for a well developed merchant fleet that will effectively assist in the development of the national economy, MARINA is then mandated under Presidential Decree No. 474 of 1974 to enhance the competitive position of the Filipino flag vessels in the carriage of foreign trade, improve the balance of payments position of the economy and to generate new and more job opportunities, among its objectives.

An innovative variation on the traditional perception, which limited a vessel to a single registry, is the bareboat charter registration. The clear-cut conclusion reached by the wide spectrum of expertise involved in a review process conducted by the Commission on Sea Transport of the International Chamber of Commerce (ICC) is that "Bareboat Charter Registration can be very advantageous for shipping

interests in developed and developing countries, provided that the legal and regulatory framework in the countries of registry are compatible, well designed, flexible and in accordance with the internationally accepted principles". (ICC, 1988) Therefore, this Chapter presents the relevant international law governing bareboat registration, as well as the existing national legislation, administrative policies and rules / regulations.

2.1 Relevant International Laws and Rules

Article 91 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and Article 5 of the 1958 Convention on the High Seas state that, "Each state shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the rights to fly its flag." Bareboat charter registration is explicitly recognized by the United Nations (UN) in the 1986 United Nations Convention on Conditions for the Registration of Ships (not yet in force) wherein Article 12 provides, inter alia, the following:

- Subject to the provisions of Article 11 on Register of Ships and in accordance with the laws and regulations a State may grant registration and the right to fly its flag to a ship bareboat chartered-in by a charterer in that State for the period of that charter;
- This Convention does not have the effect of providing for any ownership rights in the chartered ship other than those stipulated in the particular bareboat charter contract;
- A State should ensure that a ship bareboat chartered-in and flying its flag will be subject to its full jurisdiction and control;

- The state where the bareboat chartered-in ship is registered shall ensure that the former flag State is notified of the deletion of the registration of the bareboat chartered ship.

The ICC, who represents the interests of the international business community has undertaken a thorough review of the system of bareboat charter registration and came up with the recommendations for legal and regulatory framework for this system of ship registration. Those recommendations, which will be discussed later in Chapter 6 of this paper, resulted from an international symposium attended by shipowners, shippers, financial institutions, lawyers and maritime specialists from 37 countries and from extensive deliberations of a group of experts comprising the Committee on Bareboat Charter Registry of the ICC Commission on Sea Transport.

2.2 Existing National Legislation

A year after the inception of the MARINA, P. D. No. 760 was issued in 1975 which introduced the country's Bareboat Chartering Program. Prior to P.D. 760 vessels had to be owned by Filipino nationals to be registered under Philippine flag. Contrary to this, P.D. 760 allows the temporary registration of foreign owned ships under time charter / lease to Philippine nationals for use in the domestic trade in order to meet the increasing demand for ships to transport cargoes and passengers. Due to the lack of available financing for the replacement of uneconomic and overaged ships and the acquisition of new vessels with internally generated funds, this program became an alternative to outright ship acquisition. Certain conditions were imposed under the law. The vessel shall be exclusively used for coastwise trade and the contract shall be for a period of not less than five (5) years and shall not extend beyond 1990. It also provided that the operation of the vessel shall be

entirely in the hands of Philippine nationals and that it shall be manned completely by Filipino crew.

Philippine nationals are defined in Section 1(b) of the Rules and Regulations to Implement Presidential Decree No. 760 (IRR) as a citizen of the Philippines or a partnership or association wholly owned by and composed of citizens of the Philippines or of which at least sixty percent (60%) of the capital stock outstanding and entitled to vote is owned and held by Philippine citizens or a trustee of funds for pensions or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty percent (60%) of the funds will accrue to the benefit of the Philippine national: Provided, that where a corporation and its non-Filipino stockholders own stock in an enterprise, at least sixty percent (60%) of the members of the governing board of both corporations must be Philippine nationals. The Securities and Exchange Commission (SEC) implements measures to warrant compliance of nationality requirements before and even after incorporation.

Subsequently, Presidential Decrees No. 866 and 1711 were issued in 1976 and 1980 respectively, amending PD No. 760. PD 866 extends the coverage of the law to allow the use of foreign owned ships in the overseas trade while PD No. 1711 extends the effectivity of the Decree to 1999. Vessels which were issued temporary certificates of Philippine registration shall be entitled to all the rights, privileges and protection as well as be subject to the duties and obligations of vessels under permanent registration. Detailed rules and regulations for the implementation of these legislative acts were promulgated by the MARINA. The issuance of Republic Act (RA) No. 7471, otherwise known as the Philippine Overseas Shipping Development Act, shows the continuous efforts of the government to improve and further develop the overseas shipping sector of the industry.

Republic Act No. 7471 provides for more incentives to Philippine shipping enterprises in the acquisition and financing of vessels. These incentives include among others, the exemption from import and export duties and taxes. This applies not only to the vessel for registration under the Philippine flag but also to spare parts for the repair and/or overhaul of vessels provided such items are destined to a Philippine dry-docking or repair facility accredited by the MARINA or a registered bonded custom warehouse.

2.3 Administrative Policies, Rules and Regulations Governing the Bareboat Chartering Program

In line with all the existing legislation and as a supplement to other shipping rules and regulations, in general, the MARINA has issued several Memorandum Circulars(MC). These provide for the detailed guidelines in the implementation of several Presidential Decrees, particularly, P.D. 760/866/1711.

2.3.1 Accreditation of Overseas Shipping Companies

Memorandum Circular No. 33, as amended by MC No. 33-A, was issued for the Accreditation of Shipping Companies who want to engage in overseas shipping, either as shipowner or charterer. Accreditation of shipping companies is a pre-requisite for the approval of the acquisition of vessels either through bareboat chartering or outright purchase. Requirements under these Circulars, are among other things:

1. Corporations must be registered with the Securities and Exchange Commission (SEC), supported by the Articles of Incorporation and By-Laws reflecting overseas shipping as the primary purpose. For Joint

Ventures, foreign equity must not be more than 40% and it should be registered with the Board of Investments(BOI).

2. Paid-up capital of at least 7 million pesos for entities with no owned or chartered vessel
3. Directors or principal officers of the corporation must submit proof of shipping or shipping related experience or expertise.

2.3.2 Approval for Authority to Bareboat Charter Vessels

It is required under PD No. 760/866/1711 that any foreign-owned vessel under bareboat charter or lease to a Philippine national may be issued temporary registration under the Philippine flag upon prior approval of the Maritime Industry Authority. The charterer shall submit audited financial statement of the company for at least three years. If it is a new company, a feasibility or financial viability study shall likewise be submitted. If the company has existing chartered vessels, proof of payment of the 4.5% withholding tax for the existing vessels is required.

Further, limitations and restrictions on the charter or lease are also specified in PD No. 760/866/1711. A non-shipowning company shall be allowed to charter a maximum of five (5) vessels while a shipowning company may have seven (7) vessels for every vessel the company owns. The limitation on the charter period shall be a maximum of five (5) years for a non-shipowning company and for a shipowning company there will be no limit in the number of years provided it does not exceed 1999. It is not only the number of vessels and the charter period which are limited or restricted, but also the age of the vessel. Section 3, Rule IV of the Implementing Rules and Regulations(IRR) of PD No. 760/866/1711 provides that the vessel to be chartered shall not be more than fifteen(15) years old at the time of

application for authority to bareboat charter a vessel except in special cases which shall be determined by the MARINA.

Additionally, the following are required under Section 3, Rule V of the IRR:

1. the vessel must be classed by an internationally recognized classification society and the vessel classification shall be maintained throughout the duration of the charter party;
2. the bareboat charterer shall completely man the vessel with Filipino officers and crew and no foreign officer shall be allowed on board, except as supernumerary. Supernumerary as defined in Section 1(h) of the IRR means a person who is not a crew member, whose presence on board the vessel is merely tolerated and who has no power to interfere with the operation and management of the vessel.
3. the operation of the vessel shall be entirely in the hands of the Philippine bareboat charterer and shall be free from participation or interference by the foreign owner, except insofar as such acts shall be to directly protect his rights as owner.

In view of the current trends, deregulation in shipping is implemented in the Philippine domestic shipping sector as defined under the Department of Transportation and Communications (DOTC) Department Order No. 92-587. Taking this scenario into consideration and being aware of the shipowners/operators dilemma in the acquisition of vessels, MARINA Memorandum Circular No. 116, lifting the age restriction of vessels registered under PD 760/866/1711, was issued on 19 September 1996.

Application for authority to bareboat charter vessels should be filed by the charterer (Filipino national) with the MARINA. Documents which should be submitted by the charterer prior to and after approval of the authority to bareboat charter pursuant to its MC No.85 dated 05 August 1994 are listed below:

Pre-Approval Documents

1. Letter of Intent, including request for endorsement to the Department of Foreign Affairs (DFA) for the Issuance of Provisional Certificate of Philippine Registry (PCPR), if necessary
2. Bareboat Charter Party, duly signed (with printed names of the signatories)
3. Assignment of Bank Deposit (if applicable)
4. Duly notarized Resolution of the Company's Board of Directors, certified by the Board Secretary, authorizing the filing of the application and designating the officials/authorized representatives to represent the applicant company
5. Securities and Exchange Commission (SEC) Certification on the required paid-up capital, if not reflected in the Articles of Incorporation (AOI)
6. Consent by the State of the original registry to the bareboat charter registration in the Philippines
7. Certificate of Good Standing of the registered owners
8. Notarized Power of Attorney or Board Resolution authorizing the signatory to the bareboat charter party to act as such on behalf of the registered owners
9. Valid Certificate of Vessel Registry (for new application only)
10. Builders Certificate for new buildings
11. Classification Certificates and Class Survey Report
12. Proof of full management and operational control of vessels under charter

Post-Approval Document

1. Vessel's SOLAS / Safety Certificates
2. Duly authenticated/notarized bareboat charter contract
3. Certified true copy of the Protocol of Delivery and Acceptance
4. Proof of monthly payment of 4.5% withholding tax

5. Sworn statements of crew salaries and wages, indicating therein the names of the crew members and their respective position
6. Certificate of deletion or suspension of the vessel's original registry

2.4 Procedures for the Implementation of the Bareboat Chartering Program

Procedures for the implementation of the bareboat chartering program are not limited to MARINA's processes. It involves several government agencies. First is SEC, for the incorporation or registration of a shipping company like any other corporation or partnership. Registration and incorporation of a shipping company shall be effected after compliance with the nationality and capitalization requirements. For existing companies, sometimes there is the need to get a certification from SEC as to its paid-up capital particularly when it is increased to add more tonnage in the company's fleet. Application for accreditation under MC 33, as amended, shall be filed with MARINA. All the requirements mentioned in Section 2.3.1 above should be satisfied. Most of the time for a new company, applications for accreditation and authority to bareboat charter are submitted simultaneously. When authority to charter a vessel is issued, an endorsement letter is likewise issued addressed to the Department of Foreign Affairs for the issuance of the PCPR.

Prior to the implementation of Executive Order 125, as amended, the function of registration of ships was within the mandate of the Philippine Coast Guard (PCG). In that case, another endorsement to PCG was issued by MARINA for the registration of the chartered ship. However, starting 15 October 1994, the function of registering ships as well as the safety regulatory functions were transferred to MARINA by virtue of EO 125/125-A. For purposes of registration, the charterer should submit an application to the MARINA together with the post-

approval documents. MARINA will then issue the Certificate of Vessel Registry (CVR) valid for the bareboat charter period.

On the issue of statutory inspections and surveys of Philippine registered vessels, some members of the International Association of Classification Societies (IACS) signed an agreement with MARINA, for the delegation of said functions to the former. The Memorandum of Agreement (MOA) was signed in 1995 .

CHAPTER 3

PROFILE OF THE PHILIPPINE OVERSEAS FLEET

The Philippine-Registered Overseas Fleet

As a result of the government initiatives towards improving and developing the country's merchant fleet through the bareboat chartering program, the size of the Philippine registered fleet has been constantly increasing through the years. The number of vessels increased by more than 130% from 1979 to 1982 while the total deadweight capacity in 1982 was more than three (3) times the capacity in 1979. It can be said that the steady increase both in number and in deadweight as shown in Table 3.1 was the result of the Bareboat Chartering Program under PD 760/866/1711.

However, during the same period the International Transport Workers Federation (ITF) increased their vigilance against the Philippine flag with corresponding interdiction of RP-flagged vessels in foreign ports. Recognizing the need to protect the flag against being denominated as an FOC, MARINA implemented the bareboat chartering program with restrictions to ensure maximum government control on the social, technical and administrative operations of the ship. This also prompted the MARINA to closely monitor its implementation which leads to the implementation of more stringent policies. Among those are: a) restriction on the

age and tonnage of ships that can be chartered, b) strict enforcement of the capitalization and nationality requirements, and c) limitation of the number of ships that can be chartered by a company.

TABLE 3.1
Profile of Philippine Overseas Fleet
1975 - 1982

Year	Number of Vessels	Percentage Increase/(Decrease)	DWT ('000)	Percentage Increase/(Decrease)
1975	112	-	1,003	-
1976	114	1.79%	1,087	8.37%
1977	127	11.40%	1,279	17.66%
1978	147	15.75%	1,611	25.96%
1979	129	(12.24%)	1,850.4	14.86%
1980	154	19.38%	2,719.4	46.96%
1981	205	33.12%	3,601.9	32.45%
1982	258	25.85%	4,675.5	29.81%

Source: MARINA-OSO

In 1979, very few vessels were time chartered out as compared to 1982 when a majority of the Philippine registered overseas fleet was no longer under the management and control of Filipino nationals or bareboat charterers as shown in Table 3.2. The percentage of the total number of vessels time chartered out in 1979 was only 14% as compared to 47 % in 1982. Likewise, the percentage of the number of vessels time chartered out as compared to the number of bareboat chartered in increased from 16% in 1979 to 72.3% in 1982. From then on, there is a consistent increase both in number and percentage.

TABLE 3.2
Profile of Philippine Overseas Fleet by Type of Operation
1979-1982

	Owned Vessels		B/B in Vessels	
Year	Operated	T/C Out	Operated	T/C Out
1979				
Number	96	15	15	3
DWT('000)	1,542.7	176.9	105.8	25.0
1980				
Number	73	17	28	36
DWT('000)	1,518.5	266.1	258.2	676.6
1981				
Number	92	20	20	73
DWT('000)	2,048.0	302.1	150.6	1,101.2
1982				
Number	100	24	37	97
DWT('000)	2,084.0	347.3	403.2	1,841.0

Source: MARINA-OSO/MSIO

After 16 years of implementation, a downward trend in the number and tonnage of the Philippine Registered Overseas Fleet can be observed. The figures are shown in Table 3.3. The main reason of the present trend is the deadline set out in PD 1711, which provides that the effectivity of any charter or lease contract shall not extend beyond the year 1999. Most of the contracts which have expired are no longer renewed nor extended.

TABLE 3.3
Number and Tonnage of Philippine Registered Overseas Fleet
1991 -1996

Year	Number of Vessels	Percentage Increase (Decrease)	DWT (in million DWT)	Percentage Increase (Decrease)
1991	419	-	13.161	-
1992	416	(2.39%)	13.393	1.76%
1993	384	(7.69%)	13.452	0.44%
1994	389	1.30%	14.059	4.51%
1995	360	(7.46%)	12.425	(11.62%)
1996	349	(3.06%)	11.675	(6.04%)

Source: MARINA-OSO/ MSIO

FIGURE 3.1
NUMBER OF REGISTERED OVERSEAS FLEET

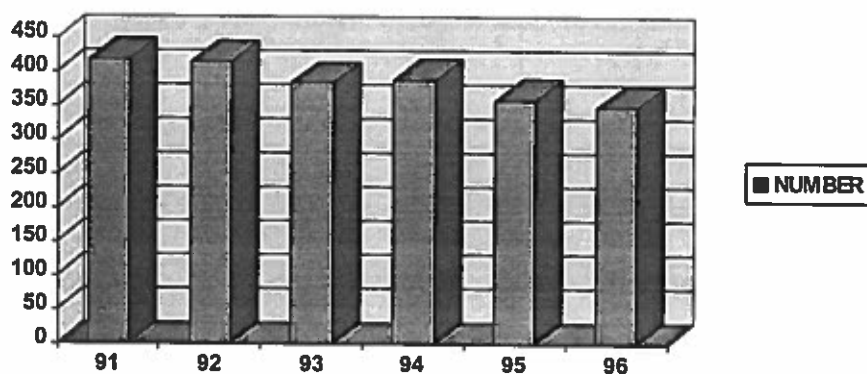


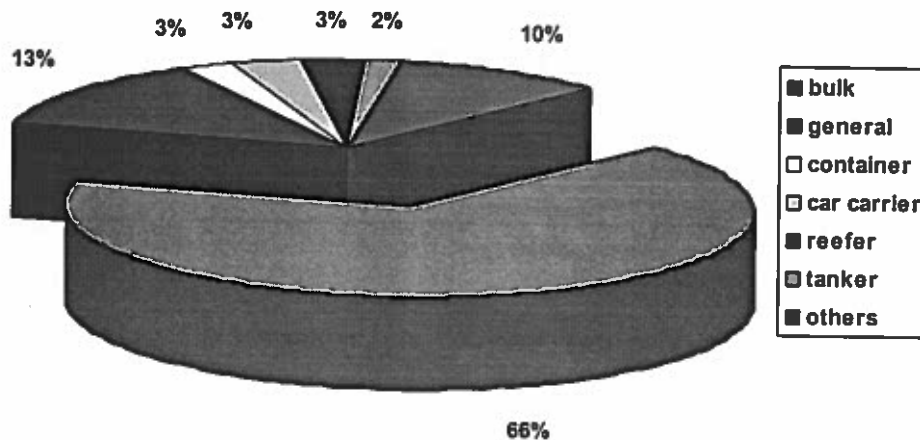
Table 3.4 shows the breakdown of the Philippine Registered Fleet in 1996 per type of vessel. It can be seen that bulk carriers represents the biggest number of vessels registered in the Philippines for overseas trade.

TABLE 3.4
Philippine Registered Overseas Fleet
By Type of Service, DWT and Average Age
1996

Type of Service	Number	Percentage	DWT (in'000)	Average Age
Bulk Carrier	232	66.48	10,320.36	7.84
General Cargo	45	12.89	670.65	12.38
Car Carrier	12	3.44	120.59	13.33
Livestock Carrier	13	3.72	43.96	23.08
Container / General Cargo	9	2.58	153.08	12.33
Reefer	10	2.86	59.67	15.70
Multi-Purpose	10	2.86	98.64	9.90
Tanker	6	1.72	54.23	18.00
RO-RO	5	1.43	36.85	9.20
LPG Carrier	3	0.86	12.19	4.00
Log Carrier	2	0.57	89.59	5.00
Passenger	1	0.29	8.71	44.00
Dry Cargo	1	0.29	6.50	13.00
TOTAL	349	100.00	11,675.01	9.84

Source: MARINA-OSO/ MSIO

FIGURE 3.2
VESSEL TYPES COMPRISING THE FLEET



The future of the Philippine Overseas Fleet was in question until the issuance of Executive Order No. 438 on 15 September 1997, extending the effectivity of any charter or lease contract pursuant to Presidential Decree No, 760, as amended. Under Section I of the said Executive Order, the effectivity of any charter or lease contract entered into under P.D. 760, as amended, is extended, provided it shall not extend beyond the year 2009, unless further extended by the President of the Republic of the Philippines. This extension should have been issued earlier since the number of the bareboat chartered vessels had started to decline as shown in Table 3.3 and Figure 3.1. (see page 20)

CHAPTER 4

BAREBOAT CHARTER REGISTRATION / SHIPPING POLICY AND MERCHANT FLEET PROFILE OF OTHER MARITIME NATIONS: GERMANY, JAPAN, NORWAY, PANAMA, AND UK

As capital became internationalized, registering under foreign flags was seen as a logical practice and became more and more common. (The International Trust Company of Liberia, 1975) The trend of deregulation or the policy of allowing the market to influence international trade and shipping has brought out the trend of flagging out. It becomes very difficult to balance out the cost difference among ships with different flags through higher productivity. The decision to change a flag is viewed as similar to any other strategic decision by a profit maximizing firm or shipping company. (Bergantino & Marlow, 1998, 157) Therefore, the change of flag becomes a vital factor for survival against competition.

Flagging out is then developed on the basis of charter agreements. This system is not based on bilateral agreements or international law but on the national law of states involved in the bareboat charter registration. Many developed and developing countries have used this system for more than a quarter-century now and it is being comprehended internationally and more and more countries are implementing the same system of registration. Existing legislation or policy of some of these countries will be discussed in this chapter.

4.1 GERMANY

4.1.1 Policy on Bareboat Charter Registration

For more than 15 years, German shipowners have been changing flag on the basis of bareboat charter agreements. The German Law of the Flag Act of 1951 provides for the regulation of both flagging-in and flagging out. This means that their law allows German vessel to fly a foreign flag on the basis of a bareboat charter agreement, only for a two-year period. It also allows a foreign ship to fly the German flag on bareboat charter arrangement without being deleted from the owner's and mortgage registry of the foreign state. However, bareboat chartering out is more significant than that of bareboat charter-in.

"The pre-conditions for 'bareboating -in' were and are: (ICC, 1988, 4)

- that a ship is chartered by a German owner on a bareboat basis,
- the German charterer is given the right to operate the vessel in his own name for a period of one(1) year;
- the ship should be crewed according to West German regulations with German captain and ship's officers;
- that the shipowner and the Federal Transport Ministry agree to the change of flag;
- and that the former flag law should not stand in the way of flying the German flag"

On the other hand the requirements for "bareboating out" are as follows:

1. A bareboat charter contract must be concluded with a third party who is not a German, or with a company which is not domiciled in the Federal Republic.
2. On the basis of the bareboat charter contract the ship must be operated by the Third Party in his own name for at least one, but at the most two years.
3. The agreement of the German responsible authorities must be obtained.

4. The law of the new flag must not stand in the way of the flag change.

"Article 7 of the German Flag Law, however, provides that the Federal Ministry of Transport, on application, may exempt the owner of a vessel from the obligation to have his vessel fly the German flag. This exemption is permitted only if the vessel is operated from another country and that other country (or a third country) grants the vessel the right to fly its flag for the period which it is operated from abroad." (Ibid. :5)

This system is based primarily on the national law of two states involved in the bareboat charter registration. The law of state A (original registry) must permit flagging out while State B (charterer) must allow flagging in or temporary registration of the ship based on the charter agreement. The German law does not prescribe the nationality of the bareboat charterer. It is the state, whose flag the ship shall temporarily fly, who will determine the nationality of the charterer. For example, if a German owned ship is to be registered in the Philippines under bareboat charter agreement, then it is required that the charterer must be a Filipino national. However, laws of other countries do not require the same. A good example is Panama, the law of which regarding bareboat charter registration shall be discussed in another section of this chapter.

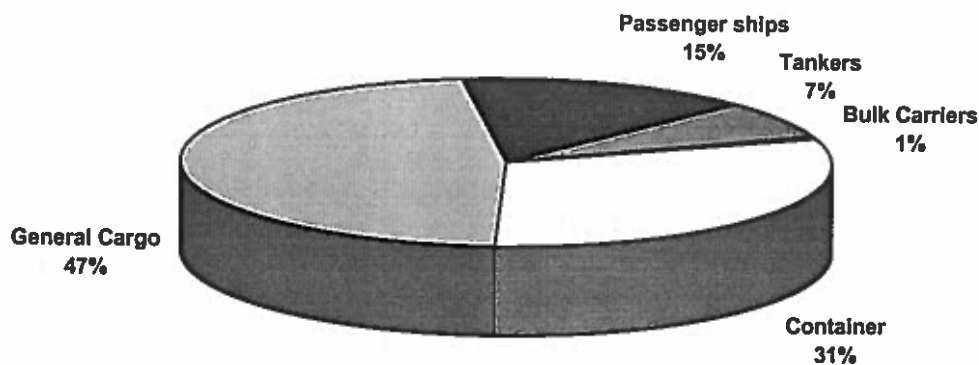
Further, the German law does not require the charterer to be independent from the shipowner. For instance, a German shipowner may establish a subsidiary in another country who can at the same time be the charterer. This subsidiary can either operate the ship itself or by another company or even to the German owner. The German owner could also have a time charter contract with the subsidiary company who is the bareboat charterer. Therefore, the bareboat charterer shall be responsible for taking officers and crew for the ship and setting out the conditions of their employment which, of course, must be in accordance with the rules and

regulations of the flag state. Under the Philippine regulations, the ship should be completely manned by Filipino officers and crew while most of the open registries do not have such restrictions.

4.1.2 Profile of the German Merchant Fleet

The total merchant fleet under German flag increased by 6.6 % in terms of total dead-weight as of 01 January 1997 compared to 6,368,000 dwt at the same time in 1996. However, the number of ships decreased from 613 to 592 ships within the same period. The container ships under the German flag represent 10.5% of the world container fleet in terms of TEU with a rank of number 2 with Panama in number 1 having a 17.8 % share or majority of the ships under German flag are general cargo ships, illustrated in Figure 4-1.

FIGURE 4 -1
German Fleet by Ship Type
as of 01 Jan. 1997



Source: ISL Shipping Statistics Yearbook, 1997

The number of German owned ships which are flagged out has been constantly increasing over the years. As of 01 January 1994, there were 404 German owned ships flying different flags, the majority of which are under the flag of Antigua & Barbados, Liberia, Cyprus, Panama, Singapore and other flags which are not identified. (Seatrade Review, 1994) Meanwhile ships of foreign registry which were temporarily registered under the German flag were decreasing in number. Table 4.1 shows the flagging in / out of the German owned fleet.

Table 4.1

Flagging in/out of German-owned Fleet

1985 - 1993

Year	Flag out		Flag in	
	No.	Grt (‘000)	No.	Grt (‘000)
1985	17	314	10	167
1986	88	1145	3	19
1987	52	340	-	-
1988	24	128	1	19
1989	7	25	12	159
1990	8	77	22	137
1991	27	142	6	13
1992	47	292	1	10
1993	52	499	-	-

(Source: Seatrade Review, Sept. 1994)

4.2 JAPAN

4.2.1 Shipping Policy of Japan

It was noted by Mr. Kisaburo Enomoto, (ICC, 1988) President of the International Ship Registration in Tokyo, during the 1987 ICC Symposium on Bareboat Charter Registration that Japanese laws do not permit shipowners to make use of bareboat registration. Japan is still a national register with notably restrictive requirements. (Osler, 1998, 33) This means that Japan does not allow foreign ships to be registered and fly the Japanese flag. However, the trend of flagging out does not spare the Japanese fleet. But the Japanese government has implemented a different system. In order to restore international competitiveness of Japanese vessels, to ensure Japanese flag vessels on a certain scale and to retain Japanese seamen, the Japanese government, public organs and labor and management of the shipping industry have been tackling the modernization of the seafarer's system by using the "Maru ship" formula, wherein Japanese flag vessels will be bareboat charter out for re-chartering purpose. (Yoo, 1992, 107-108) Considering that Japanese captains and officers are among the highest paid seafarers, it is very difficult for shipowners to be competitive with other vessels manned by seafarers from Southeast Asia who are paid at lower rates.

The system introduced by Japan includes the following as defined by the country's Ministry of Transport: (Ibid :118)

- *Tie in vessel* means a vessel ordered by a foreign shipping company to be built at a Japanese shipyard through the mediation of a Japanese shipping company with the proviso that the vessel so built must be time chartered in by the latter company on a long term basis;
- *Chartered back vessel* means a vessel which was originally owned by a Japanese shipping company or its subsidiary, but subsequently sold to a foreign shipping

company with the proviso that the same vessel, after having been registered as a foreign-flag vessel and manned by foreign crews, must be re-chartered by the same Japanese company, and

- *Maru ship* means a Japanese-flag vessel owned by a Japanese shipping company and which was bareboat chartered out to a foreign shipping company with a proviso that the same vessel, after having been manned as arranged by the same foreign company who chartered in, must be re-chartered by the same Japanese owner.

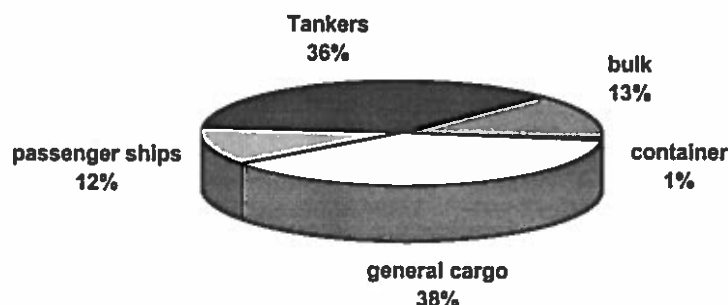
The practice of Japan with regard to chartering is more on time charter and not bareboat charter. That is the reason why they don't have bareboat charter registration. In order to reduce cost, particularly manning or crewing expenses, they make special arrangements as discussed above using the three systems of tie in, chartered back or maru ship.

4.2.2 Profile of Japan's Merchant Fleet

The Japanese merchant fleet represents 3.6% of the world total merchant fleet. Japan is one of the few flags, not FOC, which belongs to the top ten flags of the world merchant fleet. The number of ships decreased from 3571 on 01 January 1996 to 3551 in 1997. The deadweight capacity also decreased by 5.4 %. Japan ranked number 8 at the beginning of 1997 while in 1992 it occupied the number 5 position representing 5.6% of the world total deadweight. It was overtaken by the Bahamas, Cyprus, Malta and Singapore. The number of ships as well as the corresponding deadweight had decreased from 3,833 to 3,551 and 36,968,200 dwt to 25,721 dwt respectively. Today, as for type of ships in the fleet, general cargo ships represent 38 % of the country's total, followed by oil tankers with a 20%

share. The two other types with substantial numbers are the bulk carriers and chemical tankers.

Figure 4-2
Japanese Fleet by Ship Type
as of 01 Jan. 1997



Source: ISL Shipping Statistics Yearbook, 1997

4.3 NORWAY

4.3.1 Policy Relating to Ship Registration Under the Norwegian International Ship Register (NIS)

Another system which is gaining international popularity is the system of parallel registration or what is also called "second register" or international register, like the Norwegian International Ship Register (NIS) which dates back to 1987. NIS was the first second register to be established. (Osler, 1998, 33) Like flagging out, this system is motivated by the need of shipowners to reduce cost. This register is intended for ships which previously have not been registered in Norway as well as previously Norwegian registered ships. The general functions are similar to an

ordinary register but have some features characterizing open registers. (Falkanger, et.al., 1993, 67)

Registration under the NIS shall be effected upon request of the party concerned and after satisfying the requirements of said registry such as nationality requirements. For a limited company, 60% Norwegian capital is required and there are requirements as to nationality and domicile of the company's chairman and majority of the board. Otherwise, the owner shall be a limited partnership or company with a head office in Norway or a shipping partnership with managing owner who satisfies the requirements under the Norwegian Shipping Act or the owner may appoint a representative, who must be a Norwegian national or resident or a Norwegian corporate body, who is authorized to accept legal service on behalf of the owner. It is the owner who is entitled to register the ship in the NIS not the lessor or charterer.

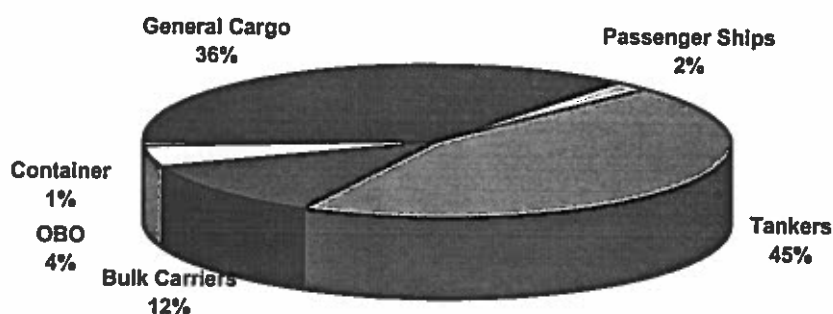
Another important issue is the manning requirement. A ship registered under NIS could be manned by other nationals except for the master, provided all seafarers other than the catering personnel should have undergone safety training and those required to satisfy the STCW provisions must do so.

4.3.2 Profile of NIS Fleet

Norway has been one of the traditional maritime nations. Now, it occupies the number 6 position in the world fleet, with its combined tonnages from the ordinary register (NOR) and its second register (NIS). The total number of ships registered under both registries have decreased over the period of five (5) years, 1992 to 1997. However, the number of ships registered under NIS has decreased from 849 at the beginning of 1992 to 647 in 1997 while those registered under NOR has increased

from 376 in 1992 to 491 in 1997. But in terms of deadweight, NIS represents 4.1% of the world fleet as compared to the 0.4% share of the ships under NOR at the beginning of 1997. A majority of the ships under NIS are tankers and general cargo ships while ro-ro passenger ships dominate the NOR. Figure 4.3 best illustrates the composition of the NIS by type of ship. Tanker category includes oil, chemical and liquid gas carriers.

Figure 4.3
NIS Ships by Type
as of 01 January 1997



Source: ISL Shipping Statistics Yearbook, 1997

4.4 PANAMA

4.4.1 Policy on Registration of Ships Under Bareboat Charter

From a legal point of view, Panama started its first activities relating to merchant marine based on the provisions of the country's Fiscal Code and Code of Commerce which both date back to 1916. The system was modified and improved through adoption and implementation of Law 8 of 1925 which established a more precise mechanism for the registration of ships. It provided for the registration, under special

conditions, of vessels of foreign registry chartered for a period of two years without the need to waive that registry, but provided that the foreign country allowed it. (Gonzales Solis, 1987, 52) This provision in Law 8 of 1925 was replaced by Law 11 of 1973. According to De Alba (1987, 13) this provision is one of the advantages of the Panamanian maritime law. A vessel which is registered under a foreign flag may also be registered in the Panama Bureau of Shipping, without the loss of the vessel's original registry for a two year period, which is renewable. The owner of the vessel and the government of the original registry shall give their consent for the Panama Bureau of Shipping to accept this registration. Once the vessel is registered, it will be subject to all legal and physical laws which are applied to vessels registered in the Panamanian Merchant Marine.

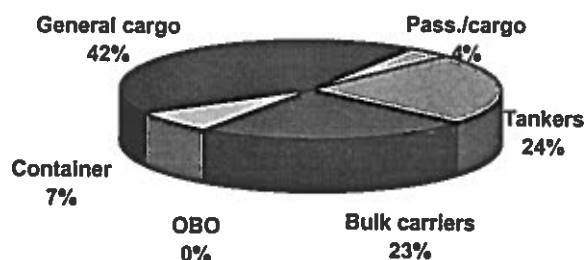
Law No. 11 of 1973 further provides that vessels registered in Panama, subject to Charter Parties for two years may be enrolled in the Special Foreign Registry, without resigning their Panamanian registration and, without losing their capacity as Panamanian National Vessels, provided that the Government of the country in which they seek to be enrolled follows a similar procedure to the one contemplated in this Article, and the Shipping Section of the Department of Treasury, upon prior approval of the Executive Body, gives its consent or permission to the special registration. During this special status, neither a Title Deed nor any ship mortgage may be recorded in the public Registry. The law of the country of original registration shall apply to any mortgage or liens entered in that foreign registry.

4.4.2 Panamanian Merchant Fleet Profile

Panama continuously expanded its fleet in 1997 by 12.5 % of 1996 capacity. Total deadweight capacity reached 120,950,000 dwt as of 01 January 1997 as compared to the 1996 capacity of 107,538,000 dwt. These figures almost doubled the tonnage

capacity of ships registered as of the beginning of 1991, although the number of ships did not increase at the same rate as the deadweight capacity. The number of ships increased only by 32 % compared to the 1991 total. Panama has surpassed Liberia, who used to rank number one in the early nineties. The largest category of the ships registered under the Panamanian flag are general cargo ships followed by bulk carriers. More details can be seen in the illustration below (Figure 4.4).

Figure 4.4
Panamanian Registered SHIPS by
Ship Type, as of 01 Jan. 1998



Source: ISL Shipping Statistics Yearbook, 1997

4.5 UNITED KINGDOM

4.5.1 Policy on Bareboat Charter Registration

Like other maritime nations British Law allows the registration of ships on the basis of a bareboat charter agreement. The rules and regulations are contained in the Merchant Shipping Act of 1995. Part II, Section 17 (1) states that this section applies to any ship which:

- (a) is registered under the law of the country other than the United Kingdom ("the country of original registration"),

- (b) is chartered on bareboat charter terms to a charterer who is a person qualified to own British ships, and
- (c) is so chartered in circumstances where the conditions of entitlement to registration prescribed under section 9(2)(b), read with the requisite modifications, are satisfied as respects the charterer of the ship.

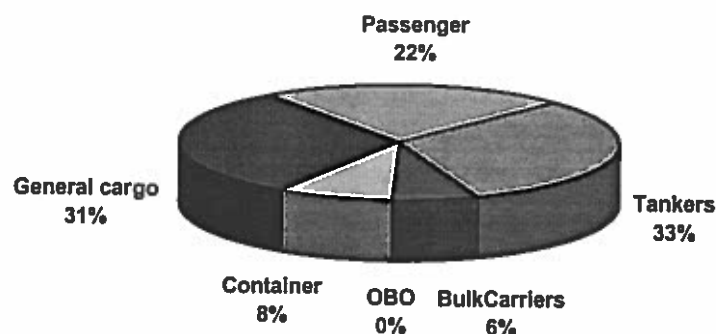
A ship which the abovementioned provision applies to, is entitled to be registered if an application for registration is duly made, but pursuant to Section 9(3) the registrar may, if registration regulations so provide, refuse to register or terminate the registration of said ship if, having regard to any relevant requirements of this Act, it is considered to be inappropriate for the ship to be registered. The registration of a ship under such agreement shall remain in force until the end of the charter period unless terminated earlier by virtue of the registration regulation and subject to any suspension thereunder. The authority responsible for registration of ships in the country of original registration should be notified of the registration of said ship as well as its termination at the end of the charter period or any earlier termination. Section 17(7) provides that the private law provisions for registered ships shall not apply to ships registered by virtue of this section and any matters or questions corresponding to those for which the private law provisions for registered ships make provision shall be determined by reference to the law of the country of original registration. The private law provisions for registered ships under this Act pertain to transfers of registered ships, mortgages of registered ships, their priority, transfer, protection and discharge of registered mortgages.

4.5.2 Profile of British Merchant Fleet

The UK fleet (including the crown dependency registers) represented 1.1 per cent of the total world gross tonnage at the beginning of 1997, slightly higher than a year earlier. Ten (10) years ago the UK flag accounted for 2 per cent of the world

tonnage and thirty (30) years ago for around 14 per cent. (Department of Transport, 1997, 4) It has constantly declined over the years. As Professor Alderton pointed out, 'In 1914, Great Britain owned and operated about 45% of the world merchant tonnage. In 1978 it was only in the region of 7.6% and by 1992, it was 1.35%. (Alderton, 1995, 147) If compared with the 1991 figures, it has decreased by around 16 percent in terms of number of ships. However, the deadweight capacity has gone the other way with an increase from 7,780,900 to 8,101,000 dwt. Composition of the UK fleet by type of ship is shown in Figure 4.5

Figure 4.5
UK Fleet by Ship Type
as of 01 January 1997



Source: ISL Shipping Statistics Yearbook

Foreign registers continue to expand their share of the world merchant fleet. The total tonnage registered under foreign flags in 1996 alone reached 357.9 million dwt while developed market economies continued to marginally decrease tonnage ownership. (UNCTAD, 1997:27) These figures show that the fleet of major open registers have surpassed that of the traditional maritime nations and open registry fleets have expanded at a faster rate than any other fleets in the world. (Bergantino and Marlow, 1998:157) With this present and continuing trends, many countries not only the developed ones but some of the developing nations as well, are trying to change their policies to meet this challenge.

CHAPTER 5

SUPPLY AND DEMAND FOR INTERNATIONAL MARITIME TRANSPORT

Shipping is undoubtedly one of the world's most international industries and seaborne trade is at the apex of the world activity. (Stopford, 1996: 2). Like any other industry the principle of 'supply and demand' is also very much applied in shipping. The structure and nature of any shipping service largely depend on the cargoes to be shipped. Ship operations relating to scheduling and routing all depend on the source and destination of cargoes. As international trade expands and increases, demand for maritime transport likewise increases. On the other hand, supply of shipping depends on the carrying capacity of ships. This is greatly affected by the changes in technology and communications. Development of a country's merchant fleet could be inspired by the demand for international shipping services as well as its own potential and comparative advantage over fleets of other nations.

5.1 Development in International Seaborne Trade (Demand for Shipping)

The world seaborne trade has been expanding over the years. The total cargo tonnage reached its twelfth consecutive annual increase in 1997 with 3.8 per cent change which is 1.5 per cent higher than 1996. The 1997 growth is higher than the average annual growth of 3.24 per cent for the period 1987 to 1996. Almost 56 per cent of the total cargo loaded represents dry cargo, which includes the main bulk commodities such as iron ore, grain, coal, bauxite/alumina and phosphate. Dry cargo

shows an increase of 5.1 per cent over the 1996 total. The growth of the five main bulk commodities, which represents around 41 per cent of the total dry cargo loaded, proves to be the strongest at 5.2 per cent. On the otherhand, the annual growth of tanker shipments for 1997 is lower than the 1996 growth of 3.8 per cent. (Refer to Table 5.1)

World oil production likewise increased in 1996 providing an increase in world supply by around 95 million tons more than 1995. Shipments of crude oil thus increased mainly from Latin America, the Middle East Gulf and North Africa. The main importers, United States and Japan increased their imports by 3.7 per cent and 2 per cent respectively. Corollary, imports of Southern Europe increased by around 15 per cent while Northern Europe had a decline of 4 per cent.

The overall volumes of the five major dry bulk commodities have increased at an average annual rate of 2.9 per cent over a ten year period 1987-1996. Annual figures are in Table 5.2. Both 1988 and 1995 registered a high growth rate of 7.4 per cent and 7.3 per cent, respectively. Only phosphate ended in 1996 with a figure lower than the 1986 volume. All others recorded an increase over the ten year period with the highest growth for the shipments of coal. The European Union, Northern Europe and Latin America's shares fell in 1996 while Asia, North America and Australia registered positive growth in the same year.

1997 figures likewise show positive growth rates for all commodities. Crude oil shipments show an increase in 1997 and is estimated to continue its growth for 1998 and 1999. Volume is calculated to increase from 1525 million tons 1997 to 1555 and 1600 million tons for 1998 and 1999, respectively. Shipments of the five main dry bulk commodities are expected to decrease from 1168 million tons in 1997 to 1157 million tons in 1998 before showing a moderate increase to 1179 million tons in 1999. (Fearnleys, 1998, 11) Fearnleys based their estimates for the next two years

on a scenario of lower oil prices than the recent years and a stable political climate between leading countries with substantial adjustments for the local set backs and financial crisis in Asia.

Table 5.1
Development of International Seaborne Trade
1986 - 1997

	Tankers		Dry Cargo		Total	
Year	Million of tons	Percent annual change	Million of tons	Percent annual change	Million of tons	Percent annual change
1986	1,514	3.8	1,945	1.1	3,459	2.3
1987	1,506	-0.5	1,999	2.8	3,505	1.3
1988	1,587	5.4	2,105	5.3	3,692	5.3
1989	1,692	6.6	2,199	4.5	3,891	5.4
1990	1,755	3.7	2,253	2.5	4,008	3.0
1991	1,790	2.0	2,330	3.4	4,120	2.8
1992	1,860	3.9	2,360	1.3	4,220	2.4
1993	1,945	4.6	2,385	1.1	4,330	2.6
1994	2,007	3.2	2,478	3.9	4,485	3.6
1995	2,049	2.1	2,602	5.0	4,651	3.7
1996	2,127	3.8	2,631	1.1	4,758	2.3
1997	2,177	2.4	2,764	5.1	4,941	3.8

Source: UNCTAD Review of Maritime Transport (various issues)

Table 5.2
World Seaborne Trade of Five Major Dry Bulk Commodities
(in million tons)

	Iron Ore	Coal	Grain	Bauxite & Alumina	Phosphate	Total	%
1986	311	276	165	41	41	834	
1987	319	283	186	45	42	875	4.9
1988	348	304	196	48	44	940	7.4
1989	362	321	192	49	41	965	2.6
1990	347	342	192	52	35	968	0.3
1991	358	369	200	53	31	1011	4.4
1992	334	371	208	48	29	990	-2
1993	354	367	194	51	27	993	0.3
1994	383	383	184	49	29	1028	3.5
1995	402	423	196	52	30	1104	7.3
1996	391	435	193	55	31	1105	-

Source: Fearnleys, 1998

Major exporters and importers of other dry bulk commodities in 1996 are as follows:

<u>Exporters</u>	<u>%</u>	<u>Importers</u>	<u>%</u>
North America	36%	Europe	40%
South America	20%	Asia	38%
Europe	18%	North America	17%
Asia	16%		

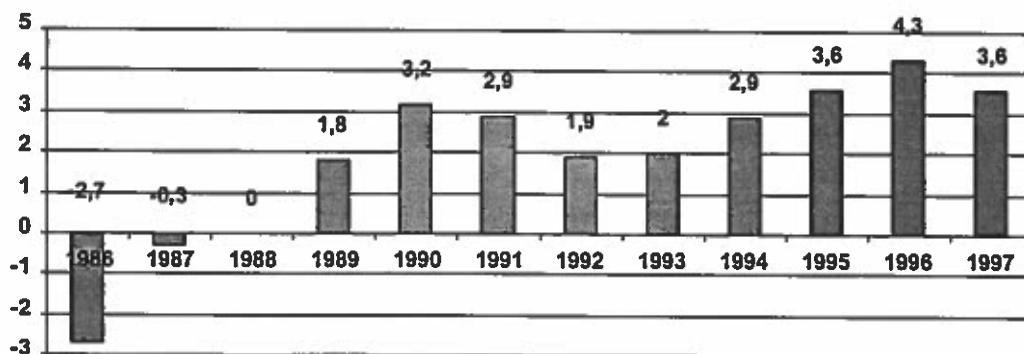
The great majority of bulk vessels employed in transportation of “Other Bulk Commodities” were below 50,000 dwt, due to comparatively small quantities of each commodity in the various trades as well as limitations on port facilities. (Fearnleys, 1998, 41)

World seaborne trade increased by 2.3 per cent in volume to 4,760 million tons in 1996 whereas the total shipping activities measured in ton-miles in 1996 increased by only 1 per cent to 20,545 billion ton-miles. (UNCTAD, 1997, 8) The World Sea Trade Services (WSTS) shared the same forecasts as those of Fearnleys. The only difference is that WSTS has provided an estimate for the next decade, i.e. until the year 2006. It was estimated that the trade will expand at an average rate of 3.9 per cent per year over the decade, reaching 5,675 million tons in 2006.

5.2 World Tonnage Supply

As international trade constantly expands the supply of the world’s tonnage is likewise growing over the years. There is an increase of 3.6 per cent in 1997 in terms of gross tonnage over the 1996 figures. This development is best shown in Figure 5.1.

Figure 5.1
World Merchant Fleet- Annual Tonnage Changes



The world merchant fleet is dominated by vessels under FOC. The first five major flags of registry are all FOCs except Greece. Details on the number of ships, gross tonnage, dwt and TEU capacity are available in Appendix 12. In 1996, developed countries continued to decrease their tonnage ownership while major open registries continued to expand their fleets. When it comes to fleet distribution by vessel types, developed market economy countries and major open registries decreased their share in the oil tanker sector. Contrary to this, developing countries increased their share with a substantial increase of the share of Asian developing countries.

A majority of the fleet of developed countries are oil tankers and bulk carriers, which represents around 70 percent of the total group fleet. The same is true with open registry fleets. On the other hand, fleets of developing nations are characterized by a high proportion of dry bulk carriers.

5.3 Philippine Seaborne Trade

Philippine trade transported by sea recorded a high growth in 1996, both in terms of exported and imported products. The volume of exports increased from 16.6 million tons in 1995 to 66.7 million tons in 1996. Although the rate of increase for imports was not as high as the growth rate of exports, it also recorded a relatively high figure. A majority of the products exported by the country are bulk commodities, number one of which is iron ore, followed by crude minerals and petroleum products. On the import side, crude oil, iron and steel and other containerized cargo dominates.

Table 5.3
Philippine Seaborne Trade
1992 - 1996

EXPORTS	Break Bulk	Bulk	Containerized	Total
1992	1 620 601	10212291	2 347 548	14 180 440
1993	6 752 974	36 462 314	7 473 460	50 688 748
1994	5 198 032	27 186 606	5 700 325	38 084 963
1995	2 230 905	11 701 640	2 720 281	16 652 826
1996	10 812 312	44 625 536	11 309 192	66 747 040
IMPORTS				
1992	4 243 784	26 292 073	4 328 831	34 864 688
1993	4 589 773	26 165 389	4 901 921	35 657 083
1994	7 425 169	36 657 483	8 574 759	52 657 411
1995	6 565 848	30 301 248	5 541 596	42 408 692
1996	8 264 658	35 344 266	7 573 388	51 182 312

Source: Philippine Ports Authority (PPA)

5.4 Prospects for the Region

'Pacific rim bulk and container trades have increased every year since the early 1980's and despite downturns in the economies of the major industrialized countries, trade into and out of the region has increased during the recession. Apart from the container trades, growth of wet and dry bulk trades is not expected to maintain the growth level's of 1980s, though volumes will expand and the area will increase significantly its role in world trade and, hence, shipping'. (Drewry Shipping

Consultants, 1993, 59) It is also forecasted by this group of experts that regional trades will increase faster than world trades. Over the period 1992 to 2000, it is estimated that regional trades will grow by 42%, which is double the expected growth of world trade.

Table 5.4
Regional Trade as a Percentage of the World Trade
1991, 1995 and 2000

	1991	1995	2000
Crude oil	24.6	26.9	28.3
Oil Products	25.9	22.7	17.3
LNG	73.3	76.4	65.8
Iron Ore	53.5	51.3	53.0
Coking Coal	57.3	60.3	58.1
Steam Coal	40.5	41.5	42.3
Grain	35.9	38.7	39.8
Forest products	39.0	41.0	43.9
Cement	55.6	54.5	53.5

Source: Drewry Shipping Consultants Ltd.

Table 5.4 provides the percentage share of regional trade to that of the world trade. It shows that the share of regional trade will increase in the trade of crude oil, coal, grain, and forest products, while a slight decrease is expected in the share for iron ore and a relatively high decrease for oil products.

5.4.1 Crude Oil and Products Trade

According to the Drewry Seaborne Trade and Transport publication in 1992 - The Tanker Market: Five Year Forecast of Demand, Supply and Profitability, the crude oil is expected to reach 1,740 million tons by the end of the year 2000. Middle East (ME) - Japan will remain as the route with highest shipments of crude oil. However, crude oil trade between ME and South East (SE) Asian countries will show a prolific growth. This includes increase in crude oil production and refineries. The addition to refinery capacity in SE, however, will mean a reduction in the shipment of refined products between ME and SE while being compensated by the increase in the import of crude oil.

5.4.2 Dry Bulk Trade

Dry bulk is expected to reach 1,858 million tons in the year 2000 while shipping demand will increase to 9,110 thousand million ton-miles. (Drewry Shipping Consultants, 1992) World production of iron ore and steel both decreased in 1996. According to Fearnleys' report on world bulk trades, Japan's imports of iron ore decreased by 1.2 million tons, whereas, those from other Far East countries increased by 3.1 million tons. On the export side, there was also a decrease in the Asian exports. However, developing nations in the Pacific rim will be the main consumers of steel and, therefore, will result in increased imports. Japan maintains its position as the world's most important market for iron ore but according to the experts at Drewry, the Asian economies will be the main growth markets for future iron ore exports.

Another important dry bulk cargo is coal. It could be seen in Table 5.2 that the volume of coal has not decreased in more than a decade now. It was also forecasted that this growth will continue to the year 2000. Australia is the major exporter of

coal while Asian countries, particularly Japan, are the main importing areas. When it comes to the world seaborne trade of grain, it is expected to be stable with demand coming mainly from China and supply from USA. Again as forecasted by Drewry Consultants, regional trade of grain will increase by nearly 13 percent up to 2000.

5.4.3 Containerized Trade

'The last decade or so has seen growth area shift from North Atlantic to the Pacific Rim. Out of the top ten container ports in 1994, eight are in the Pacific rim'. (Alderton, 1995, 119) The Asian Pacific rim countries have increased their share of container throughput from 30% to 40% during the period 1980 - 1990. The regional share of container activity against the world's total is expected to further increase. The regional share for 1995 reached about 43.7% and is forecasted to be 47% by the end of 2000.

CHAPTER 6

ANALYSIS OF THE BAREBOAT CHARTERING PROGRAM: BENEFITS, PROBLEMS AND PROSPECTS

The success or effectiveness of any policy could be gauged in different ways. Firstly, by weighing its benefits/ gains against its adverse effects and secondly, by the assessment as to whether the objectives or aims of the state or the government in formulating and implementing such policy have been achieved and if not what is the extent of its realization.

6.1 Benefits Derived from the Chartering Program

The bareboat chartering policy discussed in earlier chapters has had very positive effects particularly on the following : (1) economy through increase revenue for the national government in forms of taxes and other fees and foreign exchange generation from seafarer's remittances; (2) employment or shipboard labor opportunities; (3) means of acquiring technical and management expertise in the worldwide operation of vessels without much financial investments, (4) as an alternative to high cost ship acquisition; and (5) as a means of expanding the fleet to fill up the share of RP flaglines in the carriage of Philippine trade.

6.1.1 Revenue Generated by the National Government

Despite the recent declining trend in the number of ships and tonnage registered under bareboat charter program, it has provided significant contributions to the Philippine economy in terms of revenue generated both from taxes on charter hire and remittances from seafarers of RP flag vessels. MARINA is also collecting processing fees and other charges from bareboat charterers and in some cases, fines and penalties.

6.1.1.1 4.5% Withholding Tax Collection

As required under Section 5 of the Rules and Regulations to Implement Presidential Decree No. 760/866/1711, "Bareboat charterer shall be responsible for the payment of the 4.5% withholding tax on gross bareboat charter hire" and before any application for extension or new application from a charterer is processed, the company's records on the payment of withholding tax for any or all existing vessels under charter shall be verified. Failure to submit the proof of latest payment of withholding tax shall mean non-acceptance of the application. Table 6.1 below shows the revenue collected as withholding tax on bareboat charter hire by the Bureau of Internal Revenue (BIR) on behalf of the government.

6.1.1.2 MARINA Collection

In addition to the collection made by the Bureau of Internal Revenue(BIR) on taxes, other forms of fees or charges are also collected by MARINA which go directly to the national treasury and become available for national spending. These are processing fees for authority to bareboat charter / extension of authority, temporary registration, vessel inspection and issuance of safety and other statutory certificates. Revenue could also be derived in cases of violations of the provisions of PD Nos.

760/866/1711 in the form of fines and penalties. In 1996 alone, MARINA has collected processing fees and penalties in the exercise of its regulatory and supervisory functions in the amount of 3.589 million pesos and 0.105 million pesos, respectively. The amount collected for the last five (5) years are shown in Table 6.2.

TABLE 6.1
Withholding Tax Collection on Bareboat Charter Hire
(1987 - 1996)

YEAR	AMOUNT (in PHP)
1987	118,655,977.80
1988	130,736,421.79
1989	147,967,774.50
1990	138,475,651.06
1991	157,283,004.95
1992	144,019,876.65
1993	150,954,102.26
1994	137,681,306.60
1995	141,242,984.50
1996	124,831,189.35

Source: MARINA-OSO

TABLE 6.2
Annual Collection by MARINA
(in Million Pesos)

YEAR	FEES & OTHER CHARGES	FINES & PENALTIES
1991	2.279	1.527
1992	1.525	1.022
1993	2.780	1.335
1994	3.542	0.495
1995	2.369	1.663
1996	3.489	0.105

Source : MARINA-OSO

6.1.1.3 Remittances from Seafarers of RP Flag Vessels

The program has generated the much needed foreign currency remittances from Filipino seafarers employed on-board foreign owned vessels registered under Philippine Flag. Basic salaries of seafarers are comparatively higher than workers locally employed. Foreign exchange inflows remitted to families of those seafarers is equivalent to 80% of their basic salaries. For the last five years, remittances coming from this source has constantly increased. It has increased by 808 Million pesos from 1991 to 1993 and the 1995 figures show an increase of 253 million pesos as compared to 1993. Total remittances for 1996 reached almost 4 billion pesos with an increase of almost 1.5 billion pesos from the previous year.

6.1.2 Employment Opportunities

Benefits from the chartering program should not be counted only as economic and fiscal advantages but most importantly a social gain. The requirement under the law that "the registered vessel under the bareboat charter program shall be manned completely by Filipino crew", has provided the much needed employment to about 10,000 Filipino seafarers on board vessels as well as in other maritime service sectors like communications, shipping agencies, manning agencies, banking and ship repairs. Therefore, providing income to around 10,000 families for their food, housing and educational needs, more children are given the opportunities of better education and better living conditions. The salary level for seafarers aboard Philippine registered vessels is higher than locally employed personnel, which could be translated as a better quality of life for the families of seafarers.

6.1.3 Transfer of Shipping Technology

In consistency with what Professor Mottram has taught the shipping management class in WMU, assessment or evaluation of impacts should always take into consideration four aspects namely: political, economics, social and technical /technology. The chartering program also provided Filipino managers and shipping executives the opportunity to acquire the necessary expertise and modern technology in the management and operations of ships. It is required that management of the chartered vessel shall be under a Filipino national, as explained in Chapter II of this paper. This requirement enables Filipino ship managers/operators to improve their capabilities and expertise in the management and operation of ships. Mr. Carlos Salinas, President of the Filipino Shipowners Association (FSA) commented that:

"...the pursuance of a bareboat chartering program makes possible the acquisition of much-needed technical and management expertise in the increasingly sophisticated operation of ocean-going vessels at the barest

minimum financial risk. The positive aspect of having a technology transfer scheme of sorts in ship management is expected further to enhance the integrity and competence of Filipino seafarers in the increasingly competitive global manning markets." (ICC, 1988, 33)

6.1.4 Alternative to Outright Ship Purchase

A Filipino lawyer who was one of the speakers in the 1987 ICC Symposium on Bareboat Charter Registration explained that :

"The institution of bareboat charter registration in the Philippines was a purely pragmatic response of the Government to a very pressing need on the part of the shipowners in the mid- 1970's.the Government had recognized with keen interest the potential of bareboat charter registration in assisting shipowners and their fleets in an environment where there was little or no capital available..... (ICC, 1988, 15).

This is true not only in the Philippines but also in most developing countries. It is a well known fact that shipping is a highly capital-intensive business. In the case of developed countries, capital and wide ranging types of financing schemes might be available while at the same time, shipowners in developing nations do not have the privilege.

In cases, where there might be available financing, shipowners may not be able to survive because capital costs represent a high fixed cash cost when ships are purchased using debt finance. Today, the business of owning, operating and managing ships, always risky, is dominated by the balance sheet and the bottom line. (Farthing, 1996, 167) This statement is also supported by the statement of Martin Stopford in his Maritime Economics book which says that "cashflow is the most important factor driving the shipping market". Capital cost represents a major portion.

A good example is the cost composition for a bulk carrier financed on OECD terms as shown in Table 6.3. This table is taken from the Maritime Economics (Stopford, 1996:119) The OECD (Organization for Economic Cooperation and Development) export credit terms were a loan of 80% of the contract price, an interest rate of not less than 8% with repayments over 8.5 years from delivery in semi annual installments. (Mottram, 1998, 2) The increasing cost of vessels as well as the high prevailing interest on borrowed capital hinder Filipino shipping operators to purchase vessels whether new or second hand. However, with the bareboat charter policy, ships were put into operation with lesser capital cost which is around one third of the total annual cashflow.

Table 6.3
Operating, Voyage and Capital Cost for a Bulk Carrier
Financed on OECD Terms

	\$ million	% total
Annual Operating Costs	2.2	31%
Annual Voyage Costs	2.3	33%
Capital Costs		
Capital repayment	1.9	36%
Interest at 8%	0.6	
Total Annual Cash Flow	7.0	100%

6.1.5 Carriage of Philippine Trade by RP Flag Vessels

International shipping depends on international trade. It is worthwhile to know how the country's registered ships contributes to the national economy through participation in the carriage of the country's exports or imports. The seaborne

exports of the Philippines decreased by 9.85 % from 14.233 million tons in 1991 to 12.830 million tons in 1992 which gradually recovered in 1994 with an increase of 10.27% compared to 1992. The share of Philippine registered vessels in the carriage of the country's exports is constant at a very low level; only about 25% in 1991 which even decreased in 1994 to about 19.9%. Figure 6.1 illustrates the trend and performance of Philippine registered vessels in relations to the total seaborne exports.

On the other hand, Figure 6.2 shows the share of RP flag vessels in the carriage of the country's imports. It is very clear that the volume of imported products has constantly increased over the period 1991 to 1994, the volume carried by RP flag vessels has decreased from 2.718 million tons in 1991 to 2.200 million tons in 1993 and slowly recovered to 2.679 million tons in 1994. Therefore, based on these facts, the performance of the RP overseas fleet in the carriage of foreign trade has steadily dwindled particularly during the period 1991 to 1994.

FIGURE 6.1
SHARE OF PHILIPPINE REGISTERED VESSELS IN THE CARRIAGE OF THE
COUNTRY'S EXPORTS
(in million tons)

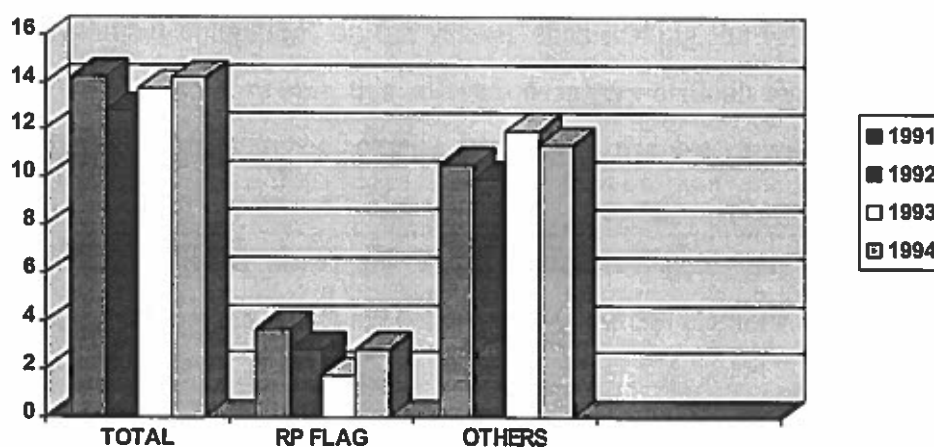
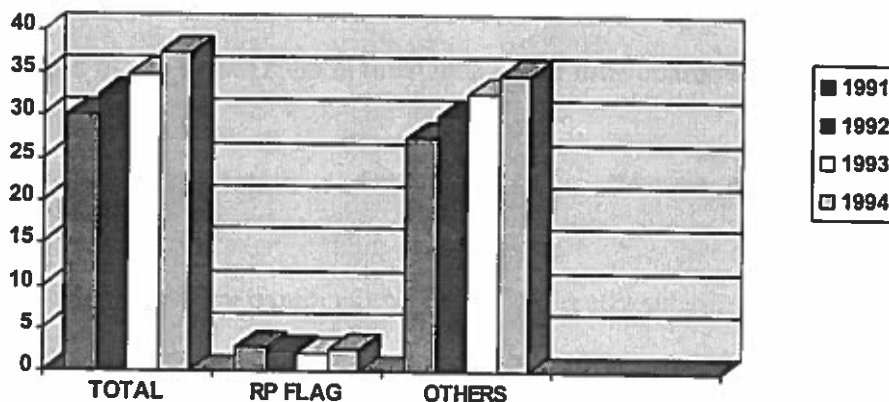


FIGURE 6.2
SHARE OF PHILIPPINE REGISTERED VESSELS IN THE
CARRIAGE OF THE COUNTRY'S IMPORTS
(In million tons)



6.2 Adverse Effects of the Policy

6.2.1 Effects on the Question of FOC

Philippine policy on bareboat chartering, if relaxed to the extreme, may create an FOC scheme. Foreign owners can transfer the flag under temporary RP registry and time charter it back for the pure purpose of cutting costs by escaping the fiscal, social and technical obligations on the vessel, thus making the Filipino charterers nothing but dummies. However, this allegation is very difficult to prove. Practice might be that after the bareboat charter agreement, the vessel will then be time chartered out again to the owner. The vessel will be registered under the RP flag and manned by Filipino crew and the Filipino managers may not have any responsibility at all for the vessel except collecting the net charter hire and the fees for manning services for using the name of the Filipino charterer.

If this is the case, this practice lacks the element of genuine link between the vessel and the registering state which is one of the requirements under Article 91 of the UNCLOS. The vessel is neither owned nor operated by a Filipino national. The responsibility over the crew is likewise exercised by the foreign owner/operator and the management of the vessel rests in the hands of the time charterer.

6.2.2 Effect on the Development of the Local Shipbuilding Industry

The question whether or not bareboat chartering is directly substitutable to local ship construction as alternative investment options has been raised and discussed in several fora over the years. This question explored the possibility of shipowners contracting local newbuildings if the bareboat chartering is stopped. The answer to this question is negative. The Philippine shipbuilding capability for quality oceangoing vessels is still far from being achieved. Even if they are capable, the investment cost is estimated to be more than the cost when the vessel is constructed abroad. The shipowner's decision will always be affected by financial, market and technical factors. As discussed in section 6.1.4 of this chapter, it is very difficult to acquire vessels, either newbuildings (local or foreign) or second hand vessels due to the capital costs involved.

In case a shipowner is financially capable of acquiring vessels, the probability is higher in getting the ship from the second hand market. The reasons for opting to buy second hand vessels are : (a) fixed price is often lower than newbuilding; (b) the vessel is immediately available; (c) it is often more attractive to financing institutions; and (d) performance of the vessel could be estimated based on previous operations. (Donner, 1998)

On the other hand, in terms of delivery schedules a vessel under bareboat charter is slightly ahead as compared to second hand ship purchase because there are no

financing negotiations to take place. Both options, bareboat charter and second hand purchase, envision the acquisition of existing vessels in terms of design and technical requirements. Therefore, the percentage of substitutability for second hand ship acquisition with bareboat chartering is more than newbuildings, particularly newbuildings by local shipyard.

6.3 Problems/Issues Confronting the Overseas Shipping Sector

6.3.1 Stringent Policies

Philippine bareboat charter registration is sometimes perceived as FOC. Vessels registered under this system are often interdicted by the International Transport Workers Federation (ITF). ITF has always regarded the Philippine bareboat chartering program with a suspicious eye. (Pundol, 1996, 109) As a consequence, MARINA has issued its MC No. 33-A providing more stringent guidelines for companies who may avail themselves of the program. The guidelines prescribed not only the nationality requirements but also the minimum paid-up capitalization and the experience of the principal officers in the field of shipping. The policy also includes the maximum number of vessels which a charterer may employ under this program. Surety or cash bonds are also required to ensure payments of fines, dues to MARINA, withholding taxes to the BIR and other penalties or obligations arising from the operations of the vessel. MARINA was even sued over these rules. The United Filipino Seafarers union has petitioned the Manila regional trial court to declare null and void the Circulars issued by MARINA. According to its President, Nelson Ramirez, MARINA virtually closes off the country's bareboat chartering program by imposing a host of conditions and requirements that are so burdensome as to discourage, if not prevent the majority of Philippine shipping companies from taking part in the program. (Fairplay, 1995, 8)

The main issues of contention are the required minimum paid - up capitalization and the ownership of at least one vessel of not less than 2,500 dwt before a company could be eligible to bareboat charter vessels. The UFS alleged that because of these policies a cartel of a handful of shipping groups has been able to monopolize the bareboat chartering business for almost a decade now. (Fairplay, 1995,8)

6.3.2 Poor Carriage Performance

One of the declared policies and objectives of the state is to enhance the competitive position of Philippine flag vessels in the carriage of foreign trade and to strengthen the balance of payments position by minimizing the outflow of foreign exchange and increasing dollar earnings. However, the said objective is far from being attained. The Philippine share in the carriage of the country's total trade continued to decline from 6.397 million tons in 1991 to 5.508 million tons in 1994. If the share of the Philippine flag vessels in the carriage of the country's trade or foreign trade could be higher then the outflow of foreign exchange could also be minimized and the balance of payments will be improved. The decline in the carriage of the country's trade by Philippine flag vessels may be due to the nature of deployment of these vessels. They are largely employed in specialized trading worldwide as tramp vessels. Most of them are cross traders which hardly call on Philippine ports which is why only an insignificant volume of Philippine cargoes are being carried.

6.3.3 Lack of Financing Support

The days when shipowners were able to finance their new tonnage from their own resources in part, let alone in full, are long gone. They inevitably have to seek financing packages from banks and other financial institutions. (Farthing, 1996,168) The Philippines, like other developing countries have very limited government resources. Even banking systems do not have the financial base to support the shipping and shipbuilding industries. Foreign borrowings, which could be a principal source of ship financing, is constrained by foreign exchange position and debt ceiling requirements. Additionally, foreign development aid is very seldom offered to the shipping sector engaged in overseas shipping, as it this would work against shipowners of the donor country.

6.3.4 Compliance with the IMO Safety Requirements

The stringent safety standards required by IMO led to the detention of several Philippine overseas vessels by maritime safety or port state control officers of other countries due to non-compliance with the prescribed safety standards. Further, most of the RP flag vessels are cross traders who do not call any port in the Philippines. It renders inspection by flag state administration to ensure compliance with such requirements very difficult or even impossible.

6.4 Prospects for RP Flag Vessels

6.4.1 Growing Economy of Asia

The importance of Asia's expanding economic activity in the world economy and the world trade has been felt since the start of the 90's. The dynamic economic growth has led to the continuous growth of the region's seaborne trade. Table 5.4 in Chapter 5 shows the increasing participation of the region in the world trade.

6.4.2 Regional and Bilateral Shipping Agreements

The ASEAN (Association of South East Asian Nations) Free Trade Agreement (AFTA) has already started working for the integration of the markets of the six ASEAN states, into a single market. The main tool for integration is the Common Effective Preferential Tariff (CEPT), wherein tariff rates in the ASEAN will be gradually reduced over a ten to fifteen year period until it become 0 in 2003. Similarly, the Asia Pacific Economic Cooperation (APEC), whose members include the Philippines, aims to promote trade and investment liberalization by enhancing the flow of services, capital and technical know-how. In this cooperation, the Philippines commits to reduce its tariff on all imported products by 5% by the year 2004. (MARINA, 1996:17) Another form of regional cooperation, which provides opportunities for RP flag vessels, is the creation of a growth polygon, i.e East Asian Growth Area (EAGA). Under this polygon, the country's fleet is given the opportunity to effectively compete and operate within lucrative trades between and among BIMP (Brunei Darussalam, Indonesia, Malaysia and the Philippines).

Consequently, all these regional and bilateral cooperation agreements mean more markets, more trade and more need for maritime transport. However, the

Philippines enjoys comparative advantages over the other countries, not only attributable to its strategic presence in the East Asian trading hemisphere but most importantly its unique national characteristics, like having an abundant supply of maritime manpower who are not only competent and qualified but with the advantage of English language skills. Another positive factor is the liberalized and deregulated industries such as telecommunications, shipping and air transport. When it comes to infrastructure and facilities, improving efficiency of existing ports is continuous while another major international port is targeted to be complete by the end of 1999. All these factors spell out the positive direction for the Philippine overseas shipping sector in the coming years.

CHAPTER 7

CONCLUSION AND RECOMMENDATIONS

It is a declared policy of the government to accelerate the expansion and modernization of the Philippine overseas fleet and further increase the generation of foreign exchange earnings as well as maritime employment. This is one of the objectives of PD 1711, amending PD 760 / 866. Based on the discussion and analysis made in this paper, it could be concluded that the said objective has been continuously achieved by the implementation of the bareboat chartering program in the Philippines. The increase in the size of the Philippine overseas fleet and the remittances of seafarers employed in these ships substantially support the author's statement. Not only the number of ships has increased but so has the deadweight capacity complemented by the downward trend in the age of said vessels. The national economy does not increase its foreign earnings solely from seafarer's remittances. Dollar earnings of over 150 shipping companies which are accredited by MARINA as of the end of 1996, likewise contribute to the national coffers.

However, other thrusts of the government, which are embodied in other legislation, may not be successfully attained. First is the enhancement of the competitive position of RP flag vessels in the carriage of foreign trade and second is minimizing the outflow of foreign exchange to improve the balance of payments. More and more participation of foreign flag vessels in the carriage of Philippine imports and

exports means more and more depletion of the country's foreign currency reserves. Over the years, the number, age and capacity of the overseas fleet may have improve dramatically, but their participation in the carriage of the country's trade continue its downward trend. This result clearly shows the failure of the bareboat chartering program to address this issue.

Despite the government's initiative to promote and assist Philippine shipping enterprises to acquire or purchase vessels without the burden of import duties and taxes, as well as income tax exemption for the first 10 years, shipowning was never successful. The reason is mainly the increasing cost of acquiring vessels and the absence of financing schemes to assist shipowners. Cognizant of these problems, the country cannot afford to stop the bareboat chartering registration policy. Total prohibition of the bareboat chartering scheme is detrimental to the development of the Philippine merchant fleet. This could be a major drawback in the economy taking into account the income derived from taxes and administrative fees or charges as well as fines and penalties. Socially, it won't be a wise decision either. Thousands of families would be deprived of income earned by seafarers on board RP flag vessels.

Contrary to the total prohibition of the bareboat charter registration is the complete relaxation of the policy making the Philippine registry an FOC. This move is also not advisable. More and more FOCs are coming to life. For sure, the government is not ready to face the consequences of being an FOC. It was alleged by the National Union of Seamen of Great Britain more than a decade ago that FOC is associated with unsafe ships, untrained crews, pollution of the environment, exploitation of seamen and private profit and public loss. The genuine link between the state and the ship is always missing in the case of FOCs. Once the RP flag vessels are categorized as FOC, ITF would be very eager to interdict these vessels in every port. Detention of ships, for whatever reasons, means loss of money.

Filipino seafarers stand to loss once the Philippine registry is declared as FOC. It would be difficult to require complete manning of ships by Filipino crew.

Therefore, neither phasing out of the bareboat chartering policy nor completely relaxing it would give the country or the shipping industry any gain. Bareboat charter registration is well accepted internationally. The author strongly agrees with the ICC experts when they said that:

“The clear-cut conclusion reached by the wide spectrum of expertise involved in this review process is that bareboat charter registration can be very advantageous for shipping interest in developed and developing countries provided that the legal and regulatory framework in the countries of registry are compatible with internationally accepted principles”. (ICC, 1988)

The existing program does not fall within the characteristics of an FOC. Instead it falls within the recommendations made by ICC. However, in order to meet the current trends in shipping and in line with the deregulation policy of the government, improvements and modification of the policy could be more appropriate, especially in the aspects of time limitation, restriction on the tonnage to be chartered, and paid-up capital requirements.

RECOMMENDATIONS

In view of the presentations, discussions and analysis made in this paper, there is only one major recommendation that is appropriate and perceived as a catalyst in the development of the Philippine merchant fleet with the benefits of improving the country's balance of payment position and generating more job opportunities for Filipino seafarers who are among the top dollar earners of the country.

Recommendations shall be the following:

- Further amendment of PD No. 760/866/1711 removing the limit on the effectivity of the charter or lease contract per Section 1, para. 2.
- Amendment of the Rules and Regulations for the Implementation of PD 760/866/1711 : Rule IV - Section 1. Number of Vessels

Section 2. Period of Charter

- Amendment of MARINA MC 33, as amended, on the paid-up capitalization
- Subsequent amendment of relevant MARINA MC after the approval of the amendment of PD 760/866/1711 and its IRR.

1. Removal of the Time Limit on the Effectivity of the Charter /lease Contract:

First and foremost, the time limit should be removed. There is no merit in having the effectivity of the program time bounded. If bareboat charter registration is allowed, then it is allowed. It is only in the Philippines that such limitation exists. Originally, the reason was to give Philippine shipping enterprises enough time to prepare and be capable of acquiring their own tonnage. The time lapsed from 1975 to present is more than enough to give shipping companies and executives time to prepare for the transition to shipowning business. However, after more than 20 years of its implementation, there is no sign that the overseas shipping sector is moving towards that direction.

Imposing a limit on the charter period should not be a government policy. It is a commercial policy that is affected by the market or the supply and demand in shipping. It was pointed out in the International Shipping Conference held in May 1977 in Yugoslavia (ICC, 1977, 35): 'In any point of interface between parties, who have direct interest in shipping, i.e. purchase of shipping services, purchase of

vessels or equipment, charter or lease of vessels, etc., the price is a cost to one and a revenue to the other. The commercial policy decision that must be made by each party is the limit he is prepared to put on the achievement of his minimization or maximization policy'.

Therefore, it is the role of each party or shipping executive / manager or owner to decide for how long their vessels should be chartered, which will give them maximum returns on their investments. Extension of the time frame for the bareboat chartering policy is not a good planning strategy. It may result in lost opportunities for charterers.

2. Amendment of Section 1 and Section 2, Rule IV, IRR for the Implementation of PD 760/866/1711, removing the limitation or quota on the number of vessels that could be chartered by a shipping enterprise and the limitation on the charter period particularly for non-shipowning companies.

It is likewise a shipping management decision to expand or add vessels to the company's fleet. This decision is usually based on the available resources or cash and the existing or future demand for shipping services or tonnage. It is a fact that every commercial enterprise aims to derive profit from their commercial operations. Additionally, it is a management strategy to conduct an economic feasibility study for every new project the company has to undertake.

The rationale for this tonnage quota, which is to encourage shipping enterprises to have their own tonnage, is understandable. However, the government should see clearly that despite additional incentives as provided in RA 7471, the Philippine overseas shipping sector could not afford the high cost of buying vessels and at the

same time operate and survive in an environment of stiff competition. It is very obvious that the efforts of the government in this area is not enough.

In the same context as the time limitation on the effectivity of the charter period, there should also not be any limitation on the charter period. The reasons are basically the same as those discussed in the first recommendation discussed earlier.

3. Removal of the paid-up capitalization requirements:

It is an inherent function of the Securities and Exchange Commission (SEC) to prescribe the required minimum paid-up capital for any overseas shipping company. This holds true with other businesses and industries. It is their role to set and approve the amount of capital any company prior and after its incorporation depending on the nature and scope of business which the company intends to pursue.

PROCEDURES / ACTION TO BE TAKEN TO IMPLEMENT THE RECOMMENDATIONS:

Taking into account that PD No. 760 and its amendments are all acts of legislation, modifying or changing any part thereof shall mean another legislative process. It will include proposal of a bill to the House of Representatives and Senate which will be followed by a series of public hearings and consultations as well as floor deliberation by both chambers. This process will take time. Therefore, implementation of any recommendation in this paper will need one hundred percent commitment from the executives of MARINA. And, in order to make stronger position in convincing the legislative group that these changes are essential to the

national economy and the shipping industry the private sector should be convinced of these proposals.

1. Submission of a Proposal Containing all these Recommendations to MARINA Management:

It was the initiative of the late Mr. Balloon, former MARINA Administrator, that people empowerment and participation was introduced in the organization as a form of motivation, and it is acceptable to submit any proposal for the improvement of the existing system or policy from any employee or staff. However, each proposal shall be submitted to the concerned sectoral committees for evaluation on its merits. In this case, the proposal should be submitted to the Overseas Shipping Sectoral Committee. The committee is chaired by the Director of the MARINA Overseas Shipping Office(OSO). Representatives from other Offices in MARINA, such as the Planning and Policy Office (PPO), Office of the Administrator (Oadm), Maritime Legal Affairs Office (MLAO), Enforcement Office (EO) and Manpower Development Office (MDO) are all members. The two Deputy Administrators - Operation and Planning - act as Advisers.

The proposal will be tabled for deliberation by the Committee, after which the Committee will submit its own recommendation on the merits of the proposal. This recommendation will then be submitted to the Administrator of the MARINA for approval.

2. Private Sector Consultation

'The MARINA has not only been recognized as a vital component of the government regulating the shipping industry of the country but more importantly, it

has been considered as a potent arm and partner of the private sector in the pursuit of the growth and development of the shipping industry'. (Salinas, 1994) Living up to this expectation, it has been the policy of the MARINA to conduct private sector consultation every time there is a proposed new policy or modification of existing ones.

Therefore, after the proposal is approved by the MARINA Administrator, a dialogue or consultation, not only with the private sector but also with other government agencies such as PPA, PCG, SEC, Central Bank (CB), BOI, Bureau of Customs (BOC), etc. will be conducted. Sometimes, this process also takes time. This aims at getting the feedback from the private sector and other agencies on the possible effects of the proposal on each sector of the industry.

3. Drafting of Proposed Bill for the Congress

It is the role of MARINA to draft the necessary bill, both for the Senate and the House of Representatives. Usually, the proposal will be submitted first to the Secretary of the Department of Transportation and Communications (DOTC) for endorsement to the Congress' Committee on Transportation. Sometimes it is difficult to find a Congressman or a Senator who will sponsor the proposed bill. Lobbying shall be made to the Chairman and Members of the Committee on Transportation. Another option is to submit the proposed bill to the Office of the President, requesting for certification that the bill is an urgent administrative bill.

4. Congress Deliberation, Hearings and Approval

It is Standard Operating Procedures(SOP) in the Congress to conduct public hearings on all proposed bill. Floor deliberation in the lower and upper house of the Congress is the main process in finding the legality, merits, etc. of any proposed

bill. A proposed bill which is not certified as an urgent administrative bill may take years before it passes each House. Numerous hearings and deliberations are required and it has to undergo several separate readings in each House before it is passed. It is also possible that in any of these readings the proposal will be disapproved. Once it passes the third reading in both Houses, then the last step would be the signature of the President of the Republic of the Philippines.

5. Issuance of MARINA Circulars

Once the proposal comes into law, MARINA as the administrative arm, will then formulate new or amendatory circulars to implement the new provisions of the law. The role and function of MARINA does not end in the issuance of the implementing rules and regulations. It is also responsible for effective enforcement and implementation. Subsequent review and assessment shall be part of MARINA's function until the objectives and mandates of the State are achieved.

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**MARITIME VISION 2000
MEDIUM TERM DEVELOPMENT PLAN
1994-1998**

**Transforming the MARITIME INDUSTRY Into a Developmental
Component of Philippines 2000**

GOAL To propel the MARITIME INDUSTRY as an effective and efficient logistics support and service sector to achieve national goals of sufficiency, modernization, global competitiveness, and regional development / integration as envisioned in PHILIPPINES 2000.

OBJECTIVES Modernize and expand the Philippine merchant fleet.
Enhance domestic capability for shipbuilding and repair and shipbreaking.
Develop/maintain adequate supply of qualified and competent maritime executives, professionals and manpower
Contribute to foreign exchange generation/improvement of balance of trade position

STRATEGIES Fostering favorable climate to encourage private sector investments
Liberalization / deregulation of government controls over industry
Strengthening of interagency coordination / consultation / cooperation / linkages
Optimization of foreign technical innovation in shipping and shipbuilding without compromising safety and the environment
Improving efficiency in the delivery of front-line services

ACTION PLANS

Implementation of:

- Policies to further deregulate/liberalize government controls over the industry
- Incentive Program
- Upgrading training programs for maritime manpower
- Streamlined systems and procedures

Further decentralization /devolution of functions to Maritime regional offices /local government Units

Conduct studies for the promotion /development of the Maritime Industry

**Malacanang
Manila**

PRESIDENTIAL DECREE NO. 760

ALLOWING THE TEMPORARY REGISTRATION OF FOREIGN-OWNED VESSELS UNDER TIME CHARTER OR LEASE TO PHILIPPINE NATIONAL FOR USE IN THE PHILIPPINE COASTWISE TRADE SUBJECT TO CERTAIN CONDITIONS.

WHEREAS, in the interest of the national economy, it is imperative that Philippine domestic shipping be expanded to meet the ever increasing inter-island cargo and passenger traffic;

WHEREAS, due to the heavy capital requirements of the shipping industry, local shipowners and operators cannot raise sufficient financial resources to acquire new tonnage to replace their uneconomic and over aged fleet; and

WHEREAS; in order to alleviate the present plight of domestic shipping, it is necessary to temporarily relax certain aspects of the restrictive and constrictive legal framework under which vessels may be registered in the Philippines;

NOW, THEREFORE, I FERDINAND E. MARCOS, President of the Republic of the Philippines, by virtue of the powers in me vested by the Constitution, do hereby order and decree the following as part of the law of the land;

SECTION 1. Any provision of law, decree, executive order, or rules and regulations to the contrary not with standing, any foreign-owned vessel under time charter or lease to a Philippine national, as the term is defined in Section 3 of Presidential Decree 474, may be issued a temporary certificate of Philippine registry by the Maritime Industry Authority: Provided, That the said charter or lease (1) has had the prior approval of the Maritime Industry Authority, (2) shall be valid and effective for a period of not less than five years, and (3) shall be used exclusively in the coastwise trade in the Philippines: Provided, further, That the operation of the vessel shall be entirely in the hands of Philippine nationals and free from any participation or interference from the alien owner, as owner thereof: Provided, finally, That the registered vessel shall be manned completely by Filipino crew, except in case of specialized fishing vessel.

The effectivity of any charter or lease contract entered into pursuant to this Decree shall not extend beyond the year 1990, unless otherwise extended by the President of the Republic of the Philippines.

Section 2. Any vessel issued a temporarily certificate of Philippine registry as provided for in section immediately preceding shall be entitled to all the rights and privileges of a vessel of Philippine registry, as well as the protection of Philippine law so long as its temporary certificate of registration is valid and subsisting. Correspondingly, the vessel shall also be subject to all requirements, limitations and all the duties and obligations imposed upon vessels of Philippine registry.

Section 3. The Maritime Industry Authority shall promulgate the rules and regulations, together with the procedures and guidelines, for the implementation of this Decree, subject to the approval by the Office of the President.

Section 4. Any provision of law, decree, executive order, or rules and regulations inconsistent with this Decree is hereby repealed, amended or modified accordingly.

Section 5. This Decree shall take effect immediately.

Done in the City of Manila, this 31st day of July, in the Year of Our Lord, Nineteen Hundred and Seventy-five.

(SGD.) FERDINAND E. MARCOS
President of the Philippines

By the President:

(SGD.) ALEJANDRO MELCHOR
Executive Secretary

**Malacanang
Manila**

PRESIDENTIAL DECREE NO. 1711

**FURTHER AMENDING PRESIDENTIAL DECREE NO. 760, AS AMENDED
BY FURTHER ENCOURAGING THE CHARTERING OF
SPECIALIZED OCEAN-GOING VESSELS AND BY EXTENDING THE
EFFECTIVITY OF THE DECREE UNTIL 1999.**

WHEREAS, it is the declared policy of the Philippine government to accelerate the expansion and modernization of the Philippine overseas fleet and further increase the generation of foreign exchange earnings as well as maritime employment,

WHEREAS, there is a recognized need to broaden the legal framework under the present law such that the incentive granted under P.D: 760 is extended to overseas shipping projects including the temporary registration of specialized vessels; and

WHEREAS, long term investment in shipping requires a corresponding long term incentive in the availment of temporary Philippine flag registration;

NOW THEREFORE, I, FERDINAND E. MARCOS, President of the Republic of the Philippines, by virtue of the powers in me vested by the Constitution, do hereby order and decree the further amendment of Presidential Decree No. 760, as amended, as follows:

SECTION 1. Section 1 of Presidential Decree No. 760, as amended, is further amended to read as follows:

“Section 1. Any provision of law, decree, executive order, or rules and regulations to the contrary notwithstanding, any foreign owned vessel under charter or lease to a Philippine national, as the term is defined in Section 3 of Presidential Decree No. 474, may be issued a temporary certificate of Philippine registry by the Philippine Coast Guard; Provided, that said charter or lease, (1) has the prior written approval of the Maritime Industry Authority, (2) shall be valid and effective for a period not less than one year; Provided, further, that the operation of the vessel shall be entirely in the hands of Philippine nationals and free from any participation or

interference from alien owner, except insofar as such action shall be to directly protect his rights as owner thereof, Provided, finally, that the registered vessel shall be manned completely by Filipino crew except in the case of specialized vessels and subject to rules and regulations MARINA may prescribe in relation thereto."

The effectivity of any charter or lease contract entered into pursuant to this Decree shall not extend beyond the year 1999 unless otherwise extended by the President of the Republic of the Philippines.

SECTION 2. The Maritime Industry Authority, in coordination with the Philippine Coast Guard, shall promulgate the rules and regulations together with procedures and guidelines, for the implementation of this Decree.

SECTION 3. Any provision of law, decree, executive order or rules and regulations inconsistent with this Decree is hereby repealed, amended or modified accordingly .

SECTION 4. This Decree shall take effect immediately.

Done in the City of Manila, this 15th day of August, in the Year of Our Lord, Nineteen Hundred and Eighty.

(SGD.) FERDINAND E. MARCOS
President of the Philippines

By the President:

(SGD.) JOAQUIN T. VENUS, JR.
Presidential Assistant

**MALACANANG
MANILA**

EXECUTIVE ORDER NO. 438

**EXTENDING THE EFFECTIVITY OF ANY CHARTER OR LEASE
CONTRACT PURSUANT TO PRESIDENTIAL DECREE NO. 760, AS
AMENDED**

WHEREAS, Presidential Decree No. 760, as amended, allows the temporary registration under Philippine flag of foreign-owned ships to met the ever-increasing demand for ships to move water-borne cargoes and passengers;

WHEREAS, chartering / leasing of ships pursuant to PD 760, as amended, has provided significant contribution to the socio-economic development of the country in terms of employment generation, foreign exchange earnings and shipping technology, among others;

WHEREAS, existing financing schemes for the capital-intensive shipping industry remain inadequate to encourage Filipino operators to acquire ships, thus necessitating the continuation of charter / leasing of ships pursuant to PD 760,

WHEREAS, PD No. 760, as amended, provides that the effectivity of any charter or lease contract entered into pursuant to the Decree shall not extend beyond the year 1999 unless otherwise extended by the President of the Republic of the Philippines.

NOW, THEREFORE, I FIDEL V. RAMOS, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

Section 1. Effectivity of any charter or lease contract pursuant to PD 760, as amended. The effectivity of the any charter or lease contract entered into under the said Decree is hereby extended, provided, however, it shall not go beyond the year 2009, unless otherwise further extended by the President of the Republic of the Philippines.

DONE, in the City of Manila, this 15th day of September in the year of our Lord, Nineteen Hundred and Ninety Seven.

(SGD.) FIDEL V. RAMOS
President of the Philippines

By the President:
(SGD.) RUBEN D. TORRES
Executive Secretary

MALACANANG
MANILA

PRESIDENTIAL DECREE NO. 866

AMENDING PRESIDENTIAL DECREE NO. 760 BY REDUCING THE TERM OF THE LEASE OR CHARTER PERIOD TO NOT LESS THAN ONE YEAR, DELETING THE WORD "TIME" IN THE TITLE AND BODY OF THE DECREE, AND ALLOWING OVERSEAS USE IN CERTAIN CASES.

WHEREAS, the use of the term "time charter" in the decree is too technical and restrictive as to exclude other forms of charter parties;

WHEREAS, the requirement of "not less than five years" for the charter or lease period has deterred many a shipowner and/or charterer from availing of the incentives under the decree;

WHEREAS, there is a need to give a certain degree of flexibility to the charterer or lessee in the use of the vessel;

WHEREAS, it is imperative to amend the decree accordingly so as to attain the objectives sought to be achieved by the same.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Republic of the Philippines, by virtue of the powers in me vested by the Constitution, do hereby order and decree:

SECTION 1. The title of Presidential Decree No. 760 is hereby amended to read as follows:

"ALLOWING THE TEMPORARY REGISTRATION OF FOREIGN-OWNED VESSELS UNDER CHARTER OR LEASE TO PHILIPPINE NATIONALS FOR USE IN THE PHILIPPINE COASTWISE TRADE SUBJECT TO CERTAIN CONDITIONS."

SEC. 2 Section 1 of Presidential Decree No. 760 is hereby amended to read as follows:

"SECTION 1. Any provision of law, decree, executive order, or rules and regulations to the contrary notwithstanding, any foreign-owned vessel under charter or lease to a Philippine national, as the term is defined in Section 3 of Presidential Decree

No. 474, may be issued a temporary certificate of Philippine registry by the Maritime Industry Authority: Provided, That the said charter or lease (1) has the prior written approval of the Maritime Industry Authority, (2) shall be valid and effective for a period of not less than ONE YEAR, and (3) shall be used exclusively in the coastwise trade in the Philippines, UNLESS OTHERWISE PERMITTED BY THE MARITIME INDUSTRY AUTHORITY TO BE USED FOR OVERSEAS TRADE SUBJECT TO TERMS AND CONDITIONS IT MAY IMPOSE; Provided, further, That the operation of the vessel shall be entirely in the hands of the Philippine nationals and free from any participation or interference from the alien owner, except insofar as such action shall be to directly protect his rights as owner thereof; Provided, finally, That the registered vessel shall be manned completely by Filipino crew, except in the case of specialized fishing vessel.

The effectivity of any charter or lease contract entered into pursuant to this Decree shall not extend beyond the year 1990 unless otherwise extended by the President of the Republic of the Philippines."

SEC. 3. This Decree shall take effect immediately.

Done in the City of Manila, this 2nd day of January, in the year of Our Lord, nineteen hundred and seventy -six.

(SGD.) FERDINAND E. MARCOS
President
Republic of the Philippines

By the President:

(SGD.) JACOBO C. CLAVE
Presidential Executive Assistant

H.No. 4251
S.No. 963

**Republic of the Philippines
Congress of the Philippines
Metro Manila**

Fifth Regular Session

Begun and held in Metro Manila, on Monday, the twenty-second day of July,
nineteen hundred and ninety-one.

(REPUBLIC ACT NO. 7471)

**AN ACT TO PROMOTE THE DEVELOPMENT OF THE PHILIPPINE
OVERSEAS SHIPPING**

*Be it enacted by the Senate and the House of Representatives of the Philippines in
Congress assembled:*

SECTION 1. Title. - This Act shall be known and cited as the " Philippine
Overseas Shipping Development Act."

SEC. 2. Declaration of Policy. - It is hereby declared the policy of the
Government of the Philippines to:

(a) Develop and maintain a Philippine Merchant Marine composed of well
equipped, safe and modern vessels most suited for Philippine requirements and
conditions, manned by qualified Filipino officers and crew, and owned and operated

under the Philippine flag by citizens of the Philippines, at least sixty percent (60%) of the capital of which is owned by citizens of the Philippines;

(b) Assist in the development, recovery and expansion of Philippine overseas shipping capable of meeting the requirements of the expanding international trade of the Philippines;

© Provide assistance to Philippine shipping enterprise and encourage the long range vessel acquisition, development, modernization and expansion through private investments without direct government financial assistance; and

(d) Create a healthy climate to attract private enterprises.

SEC. 3. *Definitions.* - As used in this Act:

(a) "Philippine overseas shipping" means the transport of goods and / or passengers by a ship owned and operated under the Philippine flag by a Philippine shipping enterprise, except when the ship is operated solely between ports in the Philippines;

(b) "Philippine shipping enterprise" means a citizen of the Philippines or an association or corporation organized under the laws of the Philippines, at least sixty percent (60%) of the capital which is owned by citizens of the Philippines and engaged exclusively in Philippine overseas shipping;

(c) "MARINA" means the Maritime Industry Authority;

(d) "Monetary Authority" means the Central Bank of the Philippines and any other agency in charge of foreign exchange controls; and

(e) "Regulations" means the rules and regulations promulgated pursuant to Section 10 hereof.

SEC.4. *Foreign Exchange Requirements.* - Foreign exchange requirements of Philippine shipping enterprises for the purchase of oceangoing vessels for registration under the Philippine flag, for repair or improvement of vessels, for importation of engines, spare parts, accessories, supplies, containers and for other expenses required for the operation of vessels in foreign ports or in the high seas,

when recommended by the MARINA, shall be made available to the Philippine shipping enterprise subject to the regulations,

SEC. 5. *Acquisition of Oceangoing Vessels.* - Philippine Shipping enterprises may likewise acquire oceangoing vessels for Philippine overseas shipping upon approval by the MARINA, subject to the guidelines prescribed in the regulations: *Provided, That:*

(a) The funds utilized in the acquisition of the vessel are financed from sources other than the Philippine banking system;

(b) No guaranty of the monetary authority or any Philippine government or private financial institution is granted or extended for the purpose;

(c) The vessel serves as the sole collateral for the financing of the vessel and no other asset of the Philippine shipping enterprise is pledged, mortgaged, or used as security in case of default;

(d) All foreign exchange requirements for the servicing of the loan, the operation maintenance and repair of the vessel, the purchase of supplies and related equipment shall be financed solely from earnings derived from the operation of the vessel and no foreign exchange shall be made available by the monetary authority and the Philippine banking system for these purposes;

(e) Mortgage documents and/or other financial agreements shall be filed with the monetary authority and such other government agencies in charge of such mortgage formalities; and

(f) Any excess foreign exchange earning shall be inwardly remitted and surrendered to the Philippine banking system.

SEC. 6. *Exemption from Import Duties and Taxes.* - The importation by a Philippine shipping enterprise of oceangoing vessels for registration under the Philippine flag shall be exempt from the payment of import duties and taxes. The spare parts for the repair and/or overhaul of vessels shall likewise be exempt from the payment of import duties and taxes; *Provided, That* such items are destined or consigned either to:

(a) A Philippine dry-docking or repair facility, accredited by the MARINA and registered as a customs-bonded warehouse, which will undertake the necessary repair and works on the vessel; and

(b) The vessel in which the items are to be installed: *Provided*, That, if such items are found in locations other than the two (2) aforementioned ones or in places not authorized by customs, the person or entity in possession of such items shall be subject to full duties and taxes, including surcharges and penalties.

Local manufacturers or dealers who sell machinery, equipment, materials and spare parts to a Philippine shipping enterprises shall be entitled to tax credits for the full amount of import duties and taxes actually paid thereon, or on spare parts or components thereof subject to the approval of the Secretary of Finance, upon the recommendation of the MARINA.

SEC. 7. *Exemption from Income Tax.* - A Philippine shipping enterprise shall be exempt from payment of income tax on income derived from Philippine overseas shipping for a period of ten (10) years from the date of approval of this Act: *Provided*, That:

(a) The entire net income, after deducting not more than ten percent (10%) thereof for distribution of profits or declaration of dividends, which would otherwise be taxable under the provisions of Title II of the National Internal Revenue Code, is reinvested for the construction, purchase, or acquisition of vessels and related equipment and/or in the improvement or modernization of its vessels and related equipment in accordance with the regulations; and

(b) The cumulative amount so reinvested shall not be withdrawn for a period of ten (10) years after expiration of the period of income tax exemption or until the vessel or related equipment so acquired have been fully paid, whichever date comes earlier.

Any amount not so invested or withdrawn prior to the expiration of the period stipulated herein shall be subject to the corresponding income tax, including penalties, surcharges and interests.

SEC. 8. *Registration and Deletion of Vessels.* - All vessels owned by Philippine shipping enterprises and availing of the incentives under this Act shall be registered under the Philippine flag. Said vessels can only be deleted from the Philippine registry after the MARINA has determined that:

- (a) No other Philippine shipping enterprise is interested in acquiring the vessel; or
- (b) The vessel has to be scrapped.

SEC. 9. *Requisition of Vessels.* - The President of the Philippines may, in times of war and other national emergency, requisition, absolutely or temporarily, for any naval or military purpose, any and all vessels of Philippine registry. The Government shall pay the owner or operator of the vessel, based on normal conditions at time of requisition:

- (a) The fair market value, if the vessel is taken absolutely; or
- (b) The fair market value, if the vessel is taken temporarily.

In case of disagreement, such fair value shall be determined by an arbitration committee composed of:

- (a) One (1) member to be appointed by MARINA,
- (b) One (1) member to be appointed by the owner or operator of the vessel; and
- (c) One (1) member to be appointed by the two (2) members so appointed:

The decision of the arbitration committee shall be final and binding on both parties.

SEC. 10. *Rules and Regulations.*- The MARINA, in consultation with the monetary authority and the Department of Finance, shall jointly formulate and promulgate the rules and regulations necessary for the implementation of this Act taking into consideration the policies and programs of the Government for the development of the Philippine overseas shipping.

SEC.11 *Annual Report* .- The MARINA, in coordination with the monetary authority and the Department of Finance, shall submit annual report to the President of the Philippines and the Congress of the Philippines on the implementation of this Act, which report shall include:

- (a) The amount of foreign exchange earned, acquired and spent by Philippine shipping enterprises;
- (b) The amount of income tax and import duties and taxes for which exemption have been granted;
- (c) The additional oceangoing vessels constructed, purchased or acquired; the improvements made thereon and the additional related equipment procured; and
- (d) Such other information as the MARINA may deem necessary or the President of the Philippines may require.

SEC.12. *Penal Provisions*.- Violations of the provisions of this Act or the rules and regulations promulgated to implement the same shall be punished by a fine of not more than Ten Thousand pesos (P10,000) or imprisonment for not more than five (5) years or both such fine and imprisonment, at the discretion of the Court.

If the violation is committed by the government official or employee, he shall, in addition to the penalties prescribed hereunder, be dismissed from the government service with all the administrative penalties accessory thereto.

SEC. 13. *Repealing Clause* .- All laws, executive orders, regulations, or parts thereof, inconsistent with the provisions of this Act are hereby repealed, amended and modified accordingly.

SEC. 14. *Effectivity Clause.*- This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved,

(SGD.) NEPTALI GONZALES
President of the Senate

(SGD.) RAMON V. MITRA
*Speaker of the House
of Representatives*

This Act, which is a consolidation of House Bill No. 4251 and Senate Bill No. 963 was finally passed by the House of Representatives and the Senate on December 12, 1991 and January 23, 1992, respectively.

(SGD.) ANACLETO D. BADOY, JR.
Secretary of the Senate

(SGD.) CAMILO L. SABIO
*Secretary General
House of Representatives*

Approved: May 05, 1992

(SGD.) CORAZON C. AQUINO
President of the Philippines

**RULES AND REGULATIONS TO IMPLEMENT PRESIDENTIAL
DECREE NO. 760/866/1711**

PURSUANT TO SECTION 3 OF PRESIDENTIAL DECREE NO. 760, AS AMENDED BY PRESIDENTIAL DECREES NOS. 866 AND 1711, THE FOLLOWING RULES AND REGULATIONS, PROCEDURES AND GUIDELINES ARE HEREBY PROMULGATED FOR THE BAREBOAT CHARTER OF OVERSEAS VESSELS FOR TEMPORARY PHILIPPINE REGISTRY

**RULE I
DEFINITIONS OF TERMS**

Section 1. For purposes of these Rules and Regulations:

- a) “MARINA” refers to the Maritime Industry Authority.
- b) “Philippine national” shall mean a citizen of the Philippines or a partnership or association wholly owned by and composed of citizens of the Philippines or of which at least sixty percent of the capital stock outstanding and entitled to vote is owned and held by Philippine citizens or a trustee of funds for pensions or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty percent of the funds will accrue to the benefit of the Philippine national: Provided, That where a corporation and its non-Filipino stockholders own stock in an enterprise, at least sixty percent of the members of the governing board of both corporations must be Philippine nationals.
- c) “Bareboat charter” means a contract for the lease of a ship for a stipulated period of time, by virtue of which the lessee has complete possession and control of the ship, including the right to appoint the master and crew of the ship, for the duration of the lease.
- d) “Lease-irrevocable-purchase” refers to a ship financing scheme as approved by the Central Bank
- e) “Temporary Certificate of Philippine Registry” shall mean the certificate issued to a foreign vessel under charter or lease to a Philippine national entitling the vessel so registered to all the rights and privileges of a vessel of Philippine registry as well as the protection of Philippine law for so long as the same is valid and subsisting.

- f) "Operation of the Vessel" shall mean those activities relating to the control, management and actual operation of the vessel as distinguished from the exercise by the foreign owner of his rights, or ownership over the same.
- g) "Crew" shall mean the officers and crewmembers of the vessel
- h) "Supernumerary" shall mean a person who is not a crewmember whose presence on board the vessel is merely tolerated and who has no power to interfere with the operation and management of the vessel.
- I) "Owned-vessel" refers to a Philippine-registered vessel acquired by Philippine nationals either through direct purchase or through a lease-irrevocable-purchase scheme wherein at least 50% of the price has been paid.

RULE II

GENERAL PROVISIONS

Section 1. MARINA Approval of Charter or Lease. - Any provision of law, decree, executive order, or rules and regulations to the contrary notwithstanding, any foreign-owned vessels under bareboat charter or lease to a Philippine national may be issued a Temporary Certificate of Philippine Registry upon approval by MARINA.

RULE III

APPLICATION FOR AUTHORITY TO CHARTER

Section 1. Who may apply. - only Philippine nationals duly accredited by MARINA in accordance with its Memorandum Circular may apply for authority to charter with MARINA.

Section 2. Supporting Documents. - The following documents shall be submitted to MARINA in support of the application:

- a) Particulars of the vessel/s
- b) Owner of the vessel / s and nationality
- c) Registry of the vessel /s
- d) Bareboat charter or lease-purchase agreement (pro-forma)
- e) Bareboat hire

- f) Nature of employment
 - f.1. Type of charter arrangement
 - a. Voyage / trip charter (copy)
 - b. Time charter (copy)
 - c. Others (copy)
- g) Time charter (pro-forma), if any
- h) Time charter hire
- I) Time charterer's profile / background
- j) Audited financial statement of proponent-company for the last three (3) years (certified true copy)
- k) Financial viability
 - k.1. Projected profit and loss statement
 - k.2. Cashflow statement
 - k.3. Basic assumptions used in k.1 and k.2
- l) BIR receipts as proof of payment of the 4 1/2% withholding tax broken down by vessel presently chartered by the company. Original receipt/s shall be verified against xerox copies by MARINA
- m) General Arrangement and Capacity Plan of the vessel/s
- n) Survey reports, Classification/SOLAS Certificates issued by a recognized classification society
- o) Authenticated copies of permanent residence and/or working visa of the expatriate personnel/officials of the company (Duplicate original/certified true copy)
- p) Duly authenticated resolution of the company Board of Directors authorizing the company, through its duly designated responsible officer, to file the request of application with MARINA, and to bareboat charter specific vessel/s

- q) Oath of undertaking that the charterer shall be liable to pay MARINA, as penalty, the amount equivalent to the balance of the withholding taxes due for the whole year if the charter party is terminated within one (1) year from the date of the delivery of the vessel.
- r) Other documents as may be deemed relevant by MARINA

Section 3. Filing Fee.- The applicant shall pay a filing fee of P10,000 per vessel for the first three (3) years and an additional P 2,000 for every year in excess thereof.

RULE IV LIMITATION / RESTRICTIONS ON CHARTER OR LEASE

Section 1. Number of Vessels. - The applicant may bareboat charter as many vessels as follows:

- a) if non-shipowning company, a maximum of five (5) vessels
- b) if a shipowning company, a maximum of seven (7) vessels for every owned vessel.

Section 2. Period of Charter. - The allowable period of charter shall be as follows:

- a) for non-shipowning companies, a maximum of five (5) years,
- b) for shipowning companies, no limit provided it will not go beyond the year 1999.

Section 3. Age of the Vessel. - The vessel to be chartered shall not be more than fifteen (15) years old, except in special cases as maybe determined by MARINA.

Section 4. Name of Vessel. - The name of the vessel to be chartered shall be subject to the MARINA approval.

Section 5. Class of Vessel. - The vessel must be classed by a internationally recognized classification society which shall be maintained throughout the duration of the charter party.

Section 6. Charter Provision. - The bareboat charter party must contain a provision that any amendment of the charter party shall not be valid and binding without the prior approval of MARINA.

RULE V
OBLIGATION / DUTIES OF THE BAREBOAT CHARTERER

Section 1. Submission of Documents. - The following documents shall be submitted to MARINA by the bareboat charterer within such period as herein below provided:

- a) Vessel's SOLAS certificates issued by a recognized classification society to the effect that the vessel's class is maintained, not later than sixty (60) days from date of delivery of vessel;
- b) Colored photographs (different angles) of the vessel showing the place of registry in the astern portion, not later than sixty (60) days from date of delivery of the vessel;
- c) Original copy of the duly authenticated / notarized lease-financing agreement, if applicable, not later than sixty (60) days after MARINA approval;
- d) Original copy of the duly authenticated / notarized bareboat and time charter parties not later than thirty (30) days from date of delivery of vessel and in no case beyond sixty (60) days from MARINA approval of charter;
- e) Certified true copies of the Certificate of Philippine Registry and Protocol of Delivery and Acceptance, not later than sixty (60) days from MARINA approval of charter;
- f) Copies of vessel's trading certificates under Philippine flag, not later than sixty (60) days from date of delivery of vessel;
- g) Oath of Undertaking binding the stockholders to be fully liable, jointly and severally, with the charterer, for the repatriation of vessel's crew, the payment of wages and taxes due the Philippine government.

Section 2. Removal of old certificates, display of flag and use of call sign. - The bareboat charterer shall, after Philippine registration of the vessel and after accepting delivery thereof, remove from the vessel all documents and / or other certificates issued to the vessel by the original flag of registry and the vessel shall immediately and at all times during the charter period utilizes the Philippine flag and call sign duly issued and authorized.

Section 3. Manning by Filipino Crew. - The bareboat charterer shall completely man the vessel with Filipino officers and crew and no foreign officer shall be allowed on board, except as supernumerary.

Section 4. Freedom from Foreign owners interferences. - The operation of the vessel shall be entirely in the hands of Philippine bareboat charterer and shall be free from participation or interferences by the foreign owner, except insofar as such acts shall be to directly protect his rights as owner thereof.

Section 5. Payment of withholding Tax. - The bareboat charterer shall be responsible for the payment of the 4.5% withholding tax on gross bareboat charter hire.

Section 6. Submission of Oath of Undertaking. - The bareboat charterer shall submit to MARINA not later than thirty (30) day from approval of the charter an oath of undertaking, in such form as may be prescribed, duly signed by its authorized representative to the effect that the bareboat charterer binds itself to comply with the foregoing provisions of Nos. 2, 3, 4 and 5 of this Rule failure in which shall warrant the imposition of the appropriate sanction hereinafter provided.

Section 7. Compliance with all pertinent laws. - The bareboat charterer shall comply with all laws, rules and regulations pertaining to Philippine flag vessels.

Section 8. Duty to maintain qualifications for accreditation. - The bareboat charterer shall maintain all qualifications for accreditation for the duration of the approved bareboat charter period.

Section 9. Other duties and obligations. - The bareboat charterer shall also comply with all the terms and conditions that maybe imposed by MARINA in approving the application for bareboat charter or lease-purchase agreement.

Section 10. Deletion from Philippine Registry. - The bareboat charterer shall not effect the deletion of the chartered vessel from Philippine registry without the prior endorsement and/or approval of MARINA.

RULES VI
SANCTIONS

Section 1. Violation of Sections 1, 6, 7, 8, and 9 of Rule V. - fines and sanctions, as follows:

- a) For the first violation, by a fine of not more than P 10,000.
- b) For the second violation, by a fine of not less than P 10,000 but not more than P 20,000.
- c) For the third violation, by a fine of not less than P10,000 but not more than P20,000 per month (or fraction thereof) of default and/or by revoking the approval of the bareboat charter and canceling the Certificate of Philippine Registry depending on the gravity of the violation.
- d) For repeated and willful violation, the bareboat charterer shall, in addition to the appropriate fine and other sanctions be barred from bareboat chartering under P.D. 866/1711 in the future and shall be stricken out from the list of MARINA accredited enterprises.

Section 2. Violation of Sections 2, 3, 4, 5 and 10 of Rule V.- Any violation of the obligations and duties of the bareboat charterer in Sections 2, 3, 4, 5 and 10 of the next preceding Rule shall be subject to an administrative fine of P200,000 and the bareboat charterer shall be barred from bareboat chartering under P.D. 866/1711 for a maximum period of five (5) years.

Section 3. Violation of other laws.- Violations of other laws, rules and regulations pertaining to Philippine flag vessels shall be subject to the same penalties and fines provided herein.

Section 4. Additional Penalty, consequences. - In addition to the penalties imposed for violations under Sections 1 and 3 above or in cases wherein the company is effectively barred from bareboat chartering and / or accreditation for bareboat chartering, the principal officers responsible for the commission of said violations shall be barred from engaging in bareboat chartering in the future, even if such principal officers were to organize a different and separate company.

Section 5. Due Process, hearing.- For purposes of imposing fines and penalties, or forfeitures, the MARINA through its Legal Office and the Office of the Overseas Shipping shall conduct a hearing to enable the shipping company to explain the circumstances of the violation. The said officers shall adopt their own rules of procedures provided sufficient notice is given to all parties concerned.

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Rules and Regulations: PD 760/866/1711

Section 6. Decision and appeal.- The findings and recommendations of the office concerned shall be forwarded to the Administrator who shall render the decision. Said decision shall become final and executory after the lapse of fifteen (15) days from the receipt of decision unless the same is appealed within the said period to the Ministry of Transportation and Communications.

All existing MARINA rules and Regulations and circulars not inconsistent herewith shall remain in full force and effect.

This Rules and Regulations shall take effect immediately.

Manila, Philippines, 29 May 1986.

(Sgd.) PHILIP S. TUAZON
Administrator

APPROVED:

(Sgd.) HERNANDO B. PEREZ
Minister of Transportation and
Communications

MEMORANDUM CIRCULAR NO. 33

TO : ALL OVERSEAS SHIPPING COMPANIES AND OTHER CONCERNED MARITIME ENTITIES

SUBJECT : REGISTRATION AND ACCREDITATION OF OVERSEAS SHIPPING COMPANIES FOR PURPOSES OF P.D. 866/1711

Henceforth, the following guidelines shall govern the registration and accreditation of overseas shipping companies, firms and entities, engaged in overseas shipping for purposes of availment of P.D. 866/1711, to wit:

I. Qualification requirements

1. Only Philippine shipping companies, firms and entities authorized to engaged principally in overseas shipping may apply for registration and accreditation in accordance with the provisions of this Circular; the corporate name of the applicant must be indicative of the principle purpose of the company as engaged in overseas shipping.
2. The applicant must have an owners equity and/or paid -up capital at least P2.5M for the charter of maximum of three (3) vessels and shall increase the same to P4.0M for the charter of additional vessels in excess of three, but not to exceed a total of five (5) vessels.
3. The chief executive and the chief operating officers of the applicant shall be citizens and permanent residents of the Philippines and at least two (2) of the principal officers (e.g., President, Vice President for Operations, General Manager, Freight/Chartering managers, or other equivalents) should have at least five (5) years experience in ship management, shipping operations and/or chartering; any change of principal officers shall be approved by MARINA.

II. Procedure of Accreditation

1. The applicant shall file with MARINA an application in writing, duly supported with the following documents:
 - a) Receipt of payment of filing fee
 - b) Certificate of registration with SEC
 - c) Articles of Incorporation and By-laws
 - d) List of Directors and Principal Officers
 - e) Personal Information Sheets or Bio-data of Principal Officers
 - f) BOI Registration Certificate, if applicable
 - g) List of vessels, if any, presently owned / operated /chartered with their size, type and present utilization
 - h) SEC Certificate of paid-up capital requirement
 - i) Such other documents as may be deemed necessary by MARINA

2. After compliance with the above requirements, MARINA shall issue a certificate of accreditation to the applicant valid for three (3) years only.
3. Companies Accredited under this Circular need not register under Memorandum Circular No. 9, Series of 1976.

Strict compliance herewith is hereby enjoined.

This Memorandum Circular shall take effect immediately.
Manila, Philippines, 29 May 1986.

(SGD.) PHILIP S. TUAZON
Administrator

APPROVED:

(SGD.) HERNANDO B. PEREZ
Minister of Transportation and Communications

MEMORANDUM CIRCULAR NO. 33-A

TO : ALL OVERSEAS SHIPPING COMPANIES AND OTHER CONCERNED MARITIME ENTITIES

SUBJECT : AMENDATORY GUIDELINES FOR THE ACCREDITATION OF OVERSEAS SHIPPING COMPANIES FOR PURPOSES OF P.D. 760/866/1711

The following amendatory guidelines shall govern the registration and accreditation of shipping companies, firms and entities engaged in overseas shipping for purposes of availment of PD 760/866/1711:

1. Only Philippine shipping companies, firms and entities authorized to engaged principally in overseas shipping may apply for registration and accreditation in accordance with the provisions of this Circular; the corporate name of the applicant must be indicative of the principle purpose of the company engaged in overseas shipping, specifically, the following are qualified:
 - a. Companies that shall apply for renewal of subsisting charter contracts-- Shipping companies currently accredited under MC No. 33 which have existing chartered vessels or which are intending to replace their previously deleted vessels shall be required to comply with the minimum P 7.0 Million paid-up capital requirement upon filing of applications for the extension / renewal of bareboat charter contracts or for replacement of deleted vessels.
 - b. Companies that shall apply for acquisition through outright purchase / lease irrevocable-purchase (LIP) arrangement of a vessel of at least 2,500 DWT documented primarily for overseas shipping operations to be registered under Philippine flag and
 - c. Affiliate companies that shall absorb any or part of the quota of chartered vessels that may be allocated by a shipowning company.
2. The applicant company must have a paid -up capital at least P7.0 Million.
3. The Chief Executive and the Chief Operating Officers (or if they are one and the same person, the next ranking Operating Officer also) shall be citizens and permanent residents of the Philippines and at least two (2) of the principal officers (e.g., President, Vice President for Operations, General Manager, Freight/Chartering managers, or other equivalents) should have at least five (5) years experience in ship management, shipping operations and/or chartering; any change of principal officers shall be approved by MARINA.

II. Documentary Requirements

The following documents (original or certified true copy) shall be submitted in support of the application for accreditation:

1. Certificate of Registration with SEC, if joint venture with foreign equity of 40% and over registration with BOI
2. Articles of Incorporation and By-laws
3. Latest list of Directors and Principal Officers
4. Personal Information Sheets or Bio-data of Principal Officers

5. SEC Certificate of Paid-up Capital
6. Receipt of payment of filing fee of P 4,000
7. ACR for foreign corporate officers/managers; and work permit from DOLE
8. Other documents as may be required by MARINA (e.g., project application to own a vessel/enter into LIP arrangement)

For shipowning companies, Certificate of Ownership over the vessel or a loan agreement shall be submitted.

In case of affiliated companies, proof that they belong to the same management by way of a management contract or any other document acceptable to MARINA shall be submitted.

III. Procedure for Accreditation

1. The applicant company shall file with the MARINA an application in writing duly supported by the above mentioned documents;
2. Incomplete applications/requirements shall not be accepted. Mailed applications that are incomplete shall be immediately returned to applicant;
3. The Certificate of Accreditation shall be issued upon fulfillment of the qualification requirements and supporting documents. Accreditation shall be renewed every three (3) years; and
4. Companies accredited under this Circular need not be registered under MC No. 9, s of 1976.

IV. Submission of Reports and Other Documents

A MARINA-accredited enterprise under this Circular shall submit the following reports and/or documents as indicated below;

1. Amendment of Articles of Incorporation or By-Laws within 30 days from the date of registration of said amendment with the SEC;
2. Replacement of any director or any principal officer within 30 days from date of replacement; and
3. Audited annual financial statements to be submitted on or before 15 May of the next following or succeeding year.

The foregoing reports and /or documents shall be either in original or true copy forms duly attested by a responsible officer of the registered enterprise independent auditor, or proper government agency.

V. Suspension/Cancellation of Accreditation and Penal Provisions

1. The MARINA shall, after due investigation, suspend/cancel the accreditation of MARINA accredited enterprise for the following grounds, upon a prima facie violation of any of the following conditions;
 - 1.1 Failure to maintain the qualification requirements for accreditation;

- 1.2 Willful or gross violation of any rule/regulation and of any of the general and specific terms and conditions of accreditation and other related certificates;and
 - 1.3 Willful or gross violation of any law, rule or regulation pertinent to bareboat chartering and the shipping industry.
2. Companies which have been dormant with respect to bareboat chartering operations for the entire 3-year validity period of the immediately preceding accreditation under MC#33 or under this Circular shall not be allowed to be re-accredited.

VI. Exception Clause

The Board upon recommendation of the MARINA Management may approve applications which are considered highly meritorious and/or for the interest of the public notwithstanding the foregoing provisions.

VII. Repealing Clause

Memorandum Circular No. 33 is hereby repealed.

VIII. Effectivity Clause

This Memorandum Circular shall take effect fifteen (15) days after its publication once in a newspaper of general circulation.

Manila, Philippines, 29 March 1990.

(SGD.) PHILIP S. TUAZON
Administrator

(SGD.) ARTURO CORONA
Chairman of the Board

MEMORANDUM CIRCULAR NO. 33-B

**TO : ALL OVERSEAS SHIPPING COMPANIES AND OTHER
MARITIME ENTITIES CONCERNED**

SUBJECT : AMENDMENT OF MEMORANDUM CIRCULAR NO. 33-A

MARINA Memorandum Circular No. 33-A is hereby amended as follows:

1. Section 1 shall incorporate the following provision:

 (d) Those which are currently accredited under MC No. 9 and are intending to replace previously deleted vessels, Provided that, the vessels are deleted after December 1985.
2. Paragraph 2 Section V which states that "companies which have been dormant with respect to bareboat chartering operations for the entire 3-year validity period of the immediately preceding accreditation under MC No. 33 or under this Circular shall not be allowed to be re-accredited" shall be deleted in too.

Effectivity Clause

This Circular shall take effect fifteen (15) days after its publication in a newspaper of general circulation.

Manila, Philippines, 19 September 1996.

(Sgd.) RADM PIO H GARRIDO JR AFP (Ret)
Administrator

SECRETARY'S CERTIFICATE

This is to certify that Memroandum Circular No. 33-B has been approved in the meeting of the Maritime Industry Authority Board held on 19 September 1996.

(Sgd.) PURITA CENTENO
Corporate Board Secretary

Published on 27 September 1996 at Malaya Newspaper copy filed with UP Law Center on 27 September 1996.

MEMORANDUM CIRCULAR NO. 116

**TO : ALL OVERSEAS SHIPPING COMPANIES AND
OTHER MARITIME ENTITIES CONCERNED**

**SUBJECT : LIFTING OF AGE RESTRICTION OF VESSELS
REGISTERED UNDER P.D. 760/866/1711**

Pursuant to the policies and objectives stated under P.D. 474 and EO 125/125 A, the following guidelines are hereby promulgated:

Section 1: Henceforth, the age restriction under Mc 27-C Section 11(7) for any type of vessel bareboat chartered under P.D. 760/866/1711 to be operated for overseas trade is hereby repealed; Provided, that the vessel is classed by an internationally recognized classification society and is class maintained; Provided further, that in case a vessel is found by MARINA or any international recognized classification society as unseaworthy, the vessel shall, after notice, be withdrawn from Philippine registration.

Section 2: Any provisions of other circulars inconsistent herewith are repealed.

Section 3: EFFECTIVITY. This Circular shall take effect fifteen (15) days after its publication in a newspaper of general circulation.

Manila, Philippines, 19 September 1996.

(Sgd.) RADM PIO H GARRIDO JR AFP (Ret)
Administrator

SECRETARY'S CERTIFICATE

This is to certify that Memorandum Circular No. 116 has been approved in the meeting of the Maritime Industry Authority Board held on 19 September 1996.

(Sgd.) PURITA CENTENO
Corporate Board Secretary

Published on 27 September 1996 at Malaya Newspaper copy filed with UP Law Center on 27 September 1996.

I 1.1 TOTAL MERCHANT FLEET

ISL

1.1.6 By flag as of January 1st, 1996 and 1997

Ships of 300 gt and over

Flag	January 1st, 1996				January 1st, 1997				dwt	dwt
dwt-rank 97	January, 1st (96)	1000 gt	1000 dwt	1000 TEU	No	1000 gt	1000 dwt	1000 TEU	%-share of total	%-change over prev. year
1 (1) Panama	4335	70668	107538	634	4579	79581	120950	710	16.7	12.5
2 (2) Liberia	1579	58866	96034	346	1574	58137	94803	372	13.1	-1.3
3 (3) Greece	1408	29070	51439	101	1308	27184	47582	106	6.6	-7.5
4 (5) Bahamas	1019	22930	35407	204	1031	23873	37062	230	5.1	4.7
5 (4) Cyprus	1571	23995	39256	247	1552	23081	36761	278	5.1	-6.4
6 (6) Norway (Total)	1119	20609	32423	110	1138	21089	32864	114	4.5	1.4
- Norway (NIS)	660	18597	29791	106	647	18774	29792	110	4.1	0.0
- Norway (NOR)	459	2012	2631	5	491	2315	3072	4	0.4	16.8
7 (7) Malta	1060	17044	28561	92	1171	19058	31614	116	4.4	10.7
8 (10) Singapore	784	13030	20082	177	875	16393	25788	217	3.6	28.4
9 (8) Japan	3571	18356	27200	79	3551	17570	25721	75	3.6	-5.4
10 (9) China, PR of	1968	15741	23700	153	2061	15785	23739	153	3.3	0.2
11 (11) Hong Kong	324	8832	15125	93	304	8033	13752	92	1.9	-9.1
12 (13) Philippines	868	8663	13603	45	907	9768	13687	45	1.9	0.6
13 (12) US *	395	10773	14775	222	380	9992	13400	215	1.9	-9.3
14 (14) Russia	1958	10013	12968	99	1874	9036	11283	79	1.6	13.0
15 (15) India	384	5638	11120	23	392	5590	10980	29	1.5	-1.3
16 (17) Korea Rep of	670	5201	9874	90	722	6835	10512	125	1.5	5.5
17 (16) Turkey	958	6069	10081	22	882	6253	10302	25	1.4	2.2
18 (19) Saint Vincent	743	5473	8506	52	793	6259	9713	58	1.3	14.2
19 (18) Taiwan	239	5939	9136	174	233	6002	9206	179	1.3	7.8
20 (23) UK *	435	5799	7273	101	447	6216	8101	92	1.1	11.4
21 (26) Marshall Islands	82	3093	5134	57	112	4695	7923	72	1.1	54.4
22 (20) Italy	579	6246	9319	55	547	5131	7910	59	1.1	4.9
23 (22) Denmark (Total)	527	5632	7487	172	513	5712	7600	186	1.1	1.5
- Denmark (DIS)	407	5127	7232	155	386	5157	7307	176	1.0	1.0
- Denmark (DIR)	120	505	255	7	127	555	293	9	0.0	15.0
24 (21) Brazil	245	4763	8022	31	237	4379	7189	29	1.0	10.4
25 (24) Germany, FR of	513	5349	6368	353	592	5721	6789	420	0.9	6.6
26 (31) Iran	181	2647	4604	9	186	3469	6151	11	0.9	33.6
27 (25) France *	208	3845	5863	45	217	4096	6068	48	0.8	3.5
28 (30) Malaysia	378	3149	4636	34	432	4031	6007	42	0.8	29.6
29 (29) Netherlands	532	4175	4724	135	590	4570	5331	146	0.7	12.8
30 (28) Bermuda	70	3035	4790	12	77	3377	5070	33	0.7	5.3
31 (33) Indonesia	945	2392	3417	15	1001	2542	3611	11	0.5	5.7
32 (32) Romania	244	2263	3418	13	245	2300	3440	14	0.5	0.6
33 (27) Ukraine	493	3788	4865	53	449	2897	3381	29	0.5	30.5
34 (34) Australia	126	2427	3375	12	123	2291	3226	11	0.4	4.4
35 (37) Thailand	381	1626	2532	14	417	1983	3204	16	0.4	25.5
36 (35) Kuwait	63	2026	3235	9	61	1978	3161	9	0.4	2.3
37 (36) Poland	161	2151	3072	12	164	2105	3022	10	0.4	1.6
38 (38) Antigua & Barbuda	485	1824	2389	130	508	2171	2837	158	0.4	18.8
39 (39) Sweden	259	2834	2302	28	273	2878	2360	31	0.3	2.5
40 (40) Vanuatu	118	1727	2145	7	99	1482	1856	5	0.3	13.5
41 (41) Egypt	218	1224	1818	7	212	1185	1757	7	0.2	3.4
42 (42) Bulgaria	115	1103	1600	9	111	1107	1613	9	0.2	0.8
43 (44) Spain	218	1062	1465	13	210	1159	1602	14	0.2	9.4
44 (45) Saudi Arabia	97	1091	1340	21	94	1118	1408	21	0.2	5.1
45 (43) Honduras	646	909	1487	3	657	853	1365	3	0.2	-8.2
46 (50) UAE	105	767	1212	11	108	788	1235	11	0.2	1.8
47 (49) Mexico	78	893	1280	11	77	863	1233	11	0.2	3.6
48 (48) Luxembourg	41	873	1293	13	33	855	1206	6	0.2	-6.7
49 (65) Belize	215	368	571	2	348	774	1169	3	0.2	104.6
50 (71) Cayman Islands	23	307	441	8	46	766	1167	14	0.2	164.5
51 (52) Finland	132	1418	1128	16	133	1418	1132	17	0.2	0.4
52 (51) Libya	39	697	1203	2	41	649	1122	2	0.2	6.7
53 (53) Algeria	82	956	1085	3	84	968	1102	3	0.2	1.6
54 (47) Portugal	92	783	1334	5	101	565	914	7	0.1	-31.5
55 (59) Burma, PR of	55	518	717	5	61	651	902	5	0.1	25.8
56 (58) Qatar	21	465	761	9	23	543	894	9	0.1	17.5
57 (54) Korea, PR of	102	644	1081	0	120	577	879	0	0.1	-18.7
58 (60) Israel	30	580	701	34	30	670	798	44	0.1	13.9
59 (61) Viet Nam	264	431	676	1	304	517	786	2	0.1	16.2
60 (46) Iraq	34	734	1334	0	30	443	775	0	0.1	-41.9

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