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## REGISTRATION OF VESSELS IN THE POLISH REGISTER OF SHIPS

### Abstract

The article is an attempt of providing basic information on the Polish Register of Ships – (*rejestr okrętowy*), its legal principles, construction and mode of operation. The text is by no means a comprehensive legal analysis of this institution – such a study would have necessitated much more time and effort, but it is rather a synthetic guidance on how the register is designed, how it works, or at least how it should have worked and what sort of purposes it primarily serves. The publication reflects a present status of legislation in Poland, i.e. the respective regulations of the Polish Maritime Code enacted in 2001. It should be noted that a draft of a new Polish Maritime Code has recently been prepared, that designs the Polish Register of Ships in a slightly different, more flexible and up-to-date, mode. However, at the moment, we are not able to predict when the new regulations might be enacted and become applicable. Polish maritime hypothecation and mortgage are subject to a separate study that shall be presented in the near future.

**Keywords:** Polish Register of Ships, registration of vessels

### INTRODUCTION

The registration of vessels and the vessels under construction in the Polish Register of Ships (hereinafter: “PRS”) is governed by the 2001 Polish Maritime Code<sup>1</sup> (hereinafter: “PMC”) and the 2003 Order of the Ministry of Infrastructure

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<sup>1</sup> Journal of Laws of 2016, item 66.

on Ship Register and Registration Procedure<sup>2</sup> (hereinafter: “SRRP”). Additionally, in issues that are not directly regulated by SRRP, the Polish Maritime Chambers - bodies which run PRS, conduct proceedings in accordance with provisions of Articles 506 - 694 (8) of the 1964 Polish Civil Procedure Code<sup>3</sup> (hereinafter: “CPC”) applied accordingly<sup>4</sup>. Moreover, the Perpetual Land and Mortgage Register Act<sup>5</sup> (hereinafter: “PLMRA”) contains important provisions pertaining to the legal effect of registration.

## 1. SOURCES OF LAW AND THE PRINCIPAL RULES ARISING THEREFROM

The PRS is made up of the register books kept separately for vessels which:

- 1) are either of Polish ownership or deemed to be of Polish ownership - permanent (underlying) register;
- 2) have acquired a temporary Polish nationality - temporary register;
- 3) are under construction - register of vessels under construction.

Thus, nationality and domicile of the owner(s) and vessel’s operator determine whether the vessel is eligible for registration in the permanent register or in the temporary register. Moreover, Polish ownership of the vessel, results in the obligation of the owner to register the vessel in the permanent register of PRS. The nationality and domicile of the owner(s) are irrelevant as regards the registration of a vessel under construction in the PRS register of the vessels under construction.

### 1.1. A VESSEL OF POLISH OWNERSHIP

Under the PMC, a vessel is regarded as the vessel of Polish ownership, if she is owned by:

- 1) the Polish State Treasury;
- 2) a body corporate (legal person) having its seat in Poland;
- 3) a Polish citizen domiciled in Poland.

A vessel is also regarded as the vessel of Polish ownership if she is owned by the commercial partnership registered in the register of entrepreneurs of the National Court Register.

<sup>2</sup> Journal of Laws of 2003 No 47, item 400.

<sup>3</sup> Journal of Laws 2016, item 1822 as amended.

<sup>4</sup> *Leksykon prawa morskiego. 100 podstawowych pojęć*, ed. D. Pyć and I. Zużewicz-Wiewiórowska, C.H. Beck, Warsaw 2013, p. 517.

<sup>5</sup> Journal of Laws of 2017, item 1007.

## 1.2. A VESSEL DEEMED TO BE OF POLISH OWNERSHIP

By virtue of the provisions of the PMC, a vessel deemed to be of Polish ownership is a vessel which is either:

- owned in at least one half by entities mentioned above in items 1, 2, 3, if the vessel's operator has either the domicile or seat of its main or branch office in Poland and the vessel, upon the motion of all joint owners, has been entered into the permanent register of PRS, or
- owned by a corporate company having its seat abroad where any of the entities mentioned above in items 1, 2, 3 has any share in the equity of such a company if the vessel's operator has either the domicile or seat of its main or branch office in Poland and the vessel, upon the owner's motion, has been entered into the permanent register of PRS .

As it was mentioned above, a vessel of Polish ownership and a vessel deemed to be of Polish ownership may be registered in the permanent register of PRS. However, only a vessel of Polish ownership must be registered in the said permanent register.

## 1.3. A VESSEL WHICH ACQUIRED A TEMPORARY POLISH NATIONALITY

Apart from the legal definitions of 'a vessel of Polish ownership' and 'a vessel deemed to be of Polish ownership', the PMC introduces the definition of 'a vessel which acquired the temporary Polish nationality'. It is a vessel which does not fall within the above-mentioned definition of 'a vessel of Polish ownership' and that of 'a vessel deemed to be of Polish ownership'. It is a vessel which acquired the temporary Polish nationality upon fulfilment of certain conditions specified by Polish national law. The vessel which acquired the temporary Polish nationality may be registered in the temporary register of PRS.

All the following: (i) 'a vessel of Polish ownership', (ii) 'a vessel deemed to be of Polish ownership' and (iii) 'a vessel which acquired the temporary Polish nationality' are regarded as 'vessels of Polish nationality'. The vessels of the Polish nationality are bound to fly the Polish flag and generally are subject to Polish law. This also applies to a vessel which acquired the temporary Polish nationality under the provisions of Council Regulation (EEC) No 613/91 of the 4<sup>th</sup> of March 1991 on the transfer of ships from one register to another within the Community<sup>6</sup>, which is regarded as a vessel of Polish nationality by virtue of Article 10 § 1 item 2a of the PMC<sup>7</sup>.

<sup>6</sup> OJ L 068, 15.03.1991, p. 1.

<sup>7</sup> *Leksykon prawa morskiego, 100 podstawowych pojęć*, ed. D. Pyć and I. Zużewicz-Wiewiórowska, C.H. Beck, Warsaw 2013, p. 490: *Każdy statek morski posiada przynależność państwową, której*

Besides, a vessel which is owned, wholly or partially, by a citizen of the EU or the corporate body (legal person) having its seat in the EU may also be registered in PRS, under the same terms and as if she was owned by a Polish citizen or a corporate body having its seat in Poland. She may then fly the Polish flag (Article 24 § 1, § 2 and Article 73a of the PMC). This is the rule which should be borne in mind when reading the below contents of this paper.

The vessel which is registered in the permanent register of PRS or in the temporary register of PRS is bound to fly a Polish flag. During the period of suspension of the Polish nationality, the vessel may not fly the Polish flag.

A vessel entered into the foreign underlying register may be entered into the temporary register of PRS only after suspension of her previous nationality. The Polish nationality of a vessel of the Polish ownership may be suspended upon the motion of her owner and in connection with her registration in a foreign register.

## 2. REGISTRATION OF A VESSEL – PROCEDURE AND COSTS

The Polish Registers of Ships are located in two port cities: Gdynia and Szczecin. In fact, the PRS is kept by two separate Maritime Chambers, one situated in Gdynia and the other in Szczecin. The Maritime Chambers are attached to the local Courts of Justice and thus, in the Polish legal theory, are regarded as “*quasi-judicial bodies*”<sup>8</sup>.

The decisions concerning the records in PRS are taken by professional judges. The direct supervision over the Chambers is exercised by the Presiding Judge of the District Court in Gdansk - with respect to the Maritime Chamber in Gdynia, and the District Court in Szczecin - as regards the Maritime Chamber in Szczecin.

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*zewnętrzną oznaką jest bandera pod którą statek uprawia żeglugę morską. ... Przynależność państwowa statku – nationality of the ship – określana jest w doktrynie jako odpowiednik obywatelstwa osoby fizycznej. [Each seagoing ship has the nationality whose external sign is the flag under which the vessel operates in shipping. ... The nationality of the ship is determined in the legal theory as equivalent to the nationality of a natural person.]*

<sup>8</sup> Compare: *Leksykon prawa morskiego, 100 podstawowych pojęć*, ed. D. Pyć and I. Zużewicz-Wiewiórowska, C.H. Beck, Warsaw 2013, p. 517: *Charakter prawny izb morskich utrudnia jednoznaczne zakwalifikowanie rejestru okrętowego do kategorii rejestrów sądowych lub administracyjnych... Należy opowiedzieć się za poglądem zaliczającym rejestr okrętowy do rejestrów quasi-sądowych [The legal nature of the Maritime Chambers impedes a clear classification of the register of ships into the category of judicial or administrative registers. One should opt for the view of including the register of ships in the quasi-judicial registers.]*

The vessel is subject to registration in this Chamber which is competent for the vessel's home port<sup>9</sup>.

The register kept by the Maritime Chambers is a public register comprising the seagoing vessels that are allowed, and bound at the same moment, to fly the Polish flag and are able to operate in the international shipping<sup>10</sup>.

The register is run in the Polish language only and is basically open to the public, although a person who desires to obtain an official extract from the register should evidence its legal interest in obtaining such a document. In the author's opinion such a formalistic limitation seems to be somewhat an impractical solution and the reasons for introducing such limitations are rather obscure<sup>11</sup>.

Both Maritime Chambers are open weekdays only. The opening hours of that located in Gdynia are: 07:30 a.m. - 03:30 p.m. and the Maritime Chamber in Szczecin is open between 07:15 a.m. - 03:15 p.m. They are closed on public holidays.

Poland has only one regime of the vessel registration. In Poland there is no international ship register such as, for example, in Norway (the Norwegian International Ship Register) or Liberia (the Liberian International Ship and Corporate Registry etc.)<sup>12</sup>.

PRS comprises the records on seagoing vessels, including the vessels, which are under construction in Poland. The PMC defines a seagoing vessel as: "any floating structure appropriated for, or employed in navigation on the sea", (Article 2 §1 of the PMC). Thus, such "floating structures" as a floating crane or a drilling platform can be registered in PRS.

The seagoing vessel under construction is defined as a vessel, which is under construction, from the moment of laying her keel or completion of equivalent

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<sup>9</sup> M.H. Koziński [in:] *Prawo morskie, Vol. II, Część trzecia: prawo żegluga morskiej*, ed. J. Łopuski, Oficyna Wydawnicza Branta, Bydgoszcz 1996 – 2000, p. 68.

<sup>10</sup> *Leksykon prawa morskiego, 100 podstawowych pojęć*, ed. D. Pyć and I. Zużewicz-Wiewiórska, C.H. Beck, Warszawa 2013, p. 514: *Rejestr okrętowy jest rejestrem publicznym statków morskich. Stanowi urzędowy wykaz statków morskich utworzony i funkcjonujący na podstawie przepisów prawa, prowadzony przez organ rejestrowy o charakterze publicznym. [The register of ships is a public register of seagoing ships. It is an official list of seagoing ships, established and functioning on the basis of legislation, kept by the public registration authority].*

<sup>11</sup> *Leksykon prawa morskiego, 100 podstawowych pojęć*, ed. D. Pyć and I. Zużewicz-Wiewiórska, C.H. Beck, Warszawa 2013, p. 518: *Jawność formalna rejestru – każda osoba ma prawo zapoznania się z treścią wpisów w rejestrze. Uprawnienie do żądania poświadczonych wyciągów z rejestru zostało jednak zastrzeżone na rzecz osób zainteresowanych (mających interes prawny). [The formal transparency of a register – each person has the right to get acquainted with the contents of the entries into the register. The right to request certified extracts from the register, however, has been reserved for the persons concerned (with a legal interest)].*

<sup>12</sup> More on that subject – compare P. Anders, *O utworzeniu polskiego otwartego rejestru okrętowego – propozycje zmiany Kodeksu morskiego*, TGM, 1989, No 10.

work in her place of construction until the end of construction (Article 2 § 2 of PMC). There are neither trading nor age restrictions for registration in the PRS.

Two main Polish national acts which comprise the rules regarding legal forms of shipowning entities are as follows:

- 1) 2000 Code of Commercial Partnership and Companies – (hereinafter: “CCPC”) (*Journal of Laws 2000 No 94, item 1037 as amended*) and
- 2) 2004 Freedom of Conducting Commercial Activity Act – (hereinafter: “FCCA”) (*Journal of Laws 2004 No 173, item 1807 as amended*).

The CCPC regulates the formation, structure and operation of commercial partnerships and corporate companies (legal persons). It differentiates 4 different kinds of partnerships (a registered partnership, a professional partnership, a limited partnership, a limited joint-stock partnership) and 2 kinds of corporate companies (a limited liability company and a joint-stock company). In theory, all of them might be the owners of vessels. From the practical point of view, the limited liability company is most suitable for the purpose of owning a vessel.

The FCCA contains provisions on the formation and operation of a Polish branch office of a foreign company. It also regulates the terms under which a natural person or an entity from abroad is entitled to conduct the commercial activity in Poland. As regards forming a limited liability company with its seat in Poland or acquiring shares in such a company, it is allowed to various kinds of persons and entities, either Polish or foreign.

PRS is open to public inspection. Any person having a legal interest therein may request for issuing the certified copies or extracts from the register. As it has been already mentioned, PRS is made up of three kinds of registers: the permanent (underlying) register, the temporary register and the register of vessels under construction.

## 2.1. THE PERMANENT REGISTER

The register book of the permanent register is composed of three chapters, namely:

- the first chapter – “The vessel”
- the second chapter – “The owner, the operator”
- the third chapter – “The maritime hypothecation (incl. mortgage type), restrictions related to disposition of the vessel”.

The following particulars are recorded in the permanent register:

- 1) consecutive registration number of the vessel and the date of entry;
- 2) the name or identity and IMO identity number, the international call sign, category and the type of a vessel;

- 3) the previous name or the previous identity, data referring to the previous register and the date of deletion thereof from such register;
- 4) the name of the vessel's home port;
- 5) the year, the place of construction and the name of a shipbuilding yard, if such data is available, as well as the main construction material and the type of the vessel's propulsion;
- 6) the vessel's registered dimensions and tonnage;
- 7) the name, nationality and address of the vessel's owner or of all her joint owners and their respective shares in the joint ownership; the title of acquiring ownership of the vessel;
- 8) the name, nationality and address of the vessel's operator;
- 9) maritime hypothecation (including the mortgage type); restrictions related to disposition of the vessel;
- 10) ascertainment by the Maritime Chamber of the Polish nationality of the vessel and the date of registration of the vessel in PRS;
- 11) ascertainment by the Maritime Chamber of suspension of the Polish nationality of the vessel and the date of decision in this respect;
- 12) the reasons for, and the date of, deletion of the vessel from the register.

## 2.2. THE TEMPORARY REGISTER

The register book of the temporary register is composed of two chapters, namely:

- the first chapter – “The vessel”
- the second chapter – “The owner; the operator”

As regards the temporary register, the data mentioned above in items: 1, 3, 5, 8 and 12 is subject to registration. Moreover, the following particulars are registered in the temporary register:

- a) the name of the vessel's home port indicated by her operator, the name of the vessel's home port indicated by her owner,
- b) the name and address of the Polish representative of the vessel's operator, if such a representative has been appointed,
- c) the previous nationality of the vessel and the date of its suspension, the name of a foreign permanent register and foreign registration authority,
- d) annotation on the documents comprising the consent of competent authorities of the country of a foreign permanent register, the owner of the vessel and all mortgagees on acquiring the temporary Polish nationality by the vessel; the assurance of the competent authorities of the country of a foreign permanent register that a vessel is not authorised to fly a flag of that country in the period of temporary registration in the Polish register,

- e) the ascertainment by the Maritime Chamber of the temporary Polish nationality of the vessel, the period of time for which the vessel has acquired Polish nationality, the date of a decision in that respect and a number of files, the date of registration of the vessel in PRS.

### 2.3. THE REGISTER OF VESSELS UNDER CONSTRUCTION

The register book of the register of vessels under construction comprises of the following two chapters:

- the first chapter: “The vessel under construction, the shipyard, the owner”
- the second chapter: “Maritime hypothecation (including the mortgage type)”

The following particulars are recorded in the register of vessels under construction:

- 1) the consecutive registration number of the vessel and the date of entry;
- 2) the name or identity designation of the vessel;
- 3) the name of the shipyard in which the vessel is under construction;
- 4) the name and address of the owner of the vessel under construction;
- 5) the ascertainment of the shipbuilding contract, the date of its conclusion and the period of construction;
- 6) maritime hypothecation (including the mortgage type);
- 7) the date of laying the vessel’s keel or completion of the equivalent work in the place of her construction and the number of construction.

The costs of registration comprise the registration fees (in PLN) and reimbursement of the expenses borne by the Maritime Chamber. The basic registration fees cover:

- the registration of the vessel in the permanent register – 0.2% or 0.1% of vessel’s value – depending on her gross tonnage,
- the registration of the vessel in the temporary register - 1/20 of 0.2 % or 0.1% of the vessel’s value (depending on her gross tonnage) per each year of the temporary Polish nationality,
- the registration of the vessel under construction - 0.1% of the amount of remuneration agreed in the shipbuilding contract; if after completion of construction works, the vessel is transferred to the permanent register, the registration fee will be reduced by the said 0.1% which has already been paid.

Besides, the applicant is obliged to reimburse the expenses born by the Maritime Chamber in the registration proceedings, such as the costs of translation of the documents into the Polish language (the obligatory language of the proceedings), engaging Court experts etc.



## 2.4. ERRORS IN THE REGISTER

The Polish law divides errors in the register into following two groups: (i) errors in records of rights and claims, and (ii) errors in other records. In case of inconsistency between records in PRS, in the part concerning the rights and claims on or against the vessel (for e.g.: the right of ownership, mortgage), and the actual legal state of affairs, a person – whose right has not been recorded, or has been recorded incorrectly, or has been recorded as encumbered with non-existing restriction or encumbrances – might claim the correction in a separate proceedings before the Maritime Chamber. However, if the decision of a judge at the Maritime Chamber, as to these records, is not final and is still subject to appeal, the correction may be made in the appellate proceedings, without instituting another, separate proceedings for making corrections.

The person entitled to claim correction may request for revealing his or her claim in a form of a separate record, in PRS. The Maritime Chamber may also reveal this fact *ex officio*. If such a record is made, the legal presumption of credibility and reliability of the records concerning the rights and claims on and against the vessel ceases to exist. In case of errors in records, other than those concerning the rights and claims, or just *lapsus calami*, the Maritime Chamber corrects them *ex officio* or upon request of an interested party.

## 3. DOCUMENTATION REQUIRED FOR REGISTRATION

The documents submitted to the Maritime Chamber must be in their original versions or copies certified for their authenticity by competent authorities – e.g. by a Notary Public. They must be submitted in their original language versions and accompanied by the official translation into Polish, if drawn up in a foreign language. The registration proceedings are conducted exclusively in the Polish language.

If the Power of Attorney for a Polish counsel at law is signed abroad, the signatures should be authenticated by a local Notary Public and the document should be either apostilled or legalised. Furthermore, if the Power of Attorney is given by a company or other entity, it should be evidenced that the individuals, who put signatures on it, have been authorised to sign on its behalf, most preferably, by an excerpt from the relevant register of companies.

Under the registration proceedings the Maritime Chamber examines whether the application for registration and documentation attached thereto are in compliance with applicable law as regards the legal form and contents thereof. Only in exceptional cases, when serious doubts and suspicions are raised by the Maritime

Chamber, it examines whether the given data is in compliance with the actual legal state of affairs.

### 3.1. THE PERMANENT REGISTER

If the application concerns the registration of a vessel in the permanent register, the following documents should be attached thereto:

- a) the Certificate of Name issued by the Director of Maritime Office in Gdynia or in Szczecin,
- b) the International Tonnage Certificate (an original and a certified copy drawn up by the relevant certification society),
- c) the Certificate of Call Sign and IMO Number,
- d) the document evidencing the year, place of construction and the name of the shipyard, in which the vessel has been constructed, if the applicant is in possession of that document,
- e) the corporate documents of the owner(s) and vessel's operator, i.e.:
  - an Excerpt from register of entrepreneurs of the National Court Register,
  - a Certificate of NIP – Tax Identification Number and REGON – Statistical Number and/or document's evidencing domicile of owner(s) and vessel's operator,
- f) the Bill of Sale or other relevant document evidencing ownership or authorising transfer of the share in ownership,
- g) if the vessel's operator is not the owner of the vessel – a document comprising the consent of the owner for navigating the vessel,
- h) the Certificate of Deletion (if applicable),
- i) the Certificate of Flag (if issued).

### 3.2. THE TEMPORARY REGISTER

As regards the registration in the temporary register, the following documents must be attached to the motion for registration:

- a) the International Tonnage Certificate,
- b) the Certificate of Registry from the underlying register of the vessel stating the particulars of the vessel, the designation of her owner(s), as well as data from that register, particularly that referring to any registered encumbrances and other restrictions relating to her disposal,
- c) a written consent from the competent authorities of the State of the underlying register, from the owner(s) of the vessel, and from all her mortgagees for the vessel to be granted the temporary Polish nationality, as well as assurance from the competent authorities of the State of her underlying register to the effect

that as long as the vessel is of the Polish nationality she is not entitled to fly the flag of that State,

- d) a written consent from the competent authority of the State of an underlying register for the vessel to be released from obligation of flying the flag of that State,
- e) a contract providing for lease or bareboat charter of the vessel or other agreement authorising the applicant to navigate the vessel in its own name,
- f) if the vessel's operator is a legal person – corporate documentation comprising information on its full business name, date and the registration number, as well as stating its seat or the seat of its branch office,
- g) if the vessel's operator is a natural person - evidence stating the address of his or her domicile or domicile of his or her branch office.

### 3.3. THE REGISTER OF VESSELS UNDER CONSTRUCTION

As regards the register of vessels under construction, the following documents should be attached to the application for registration:

- a) a document evidencing the name or identity designation of the vessel under construction, the date of laying her keel or completing equivalent work in her place of construction and the number of construction; that data is usually included in the shipbuilding contract, except for the date of laying the vessel's keel or performing equal work, which should be defined in a separate certificate drawn up by a shipyard,
- b) a shipbuilding contract,
- c) if the owner of the vessel under construction is a legal person - corporate documentation comprising information on its full business name, date and the registration number,
- d) if the owner of the vessel under construction is a natural person - evidence stating an address of his or her domicile,
- e) a document evidencing the ownership of the vessel.

Any amendment to data entered into PRS is subject to entry in the said register. Unless a certain record is not deleted by the Maritime Chamber itself, acting *ex officio*, it is regarded as of the legal effect. Any changes in the ownership should be notified by the interested parties or by the owner to the Maritime Chamber. The documents evidencing the changes should be attached to such notification. However, if the person bound to make notification has failed to do so, the Maritime Chamber may, after having investigated the case, effect an *ex officio* entry, inserting an appropriate note in the tenor of the entry.

Upon registration the Maritime Chamber issues a Ship Certificate, only in a paper form, that is a basic document that legitimates and distinguishes the seagoing vessel; the Ship Certificate attests the Polish nationality of the vessel<sup>13</sup>.

#### 4. DELETION FROM THE REGISTER

A vessel shall be deleted from PRS, if the vessel loses her Polish nationality, for example as a result of the sale thereof. However, if the vessel is encumbered with maritime hypothecation or mortgage, the deletion requires a prior written consent of the mortgagee. If the interested party, or the owner, fails to make notification about the loss of the Polish nationality of the vessel, the Maritime Chamber may, after having investigated the matter, effect an *ex officio* entry, inserting an appropriate note in the tenor of the entry. A motion for deletion should include the description of changes in the records. The original Certificate of Registry, the International Tonnage Certificate and the documents evidencing the transfer of ownership should be attached to the motion for deletion. The decision on deletion is taken by the Maritime Chamber.

The owner or an interested party should notify the Maritime Chamber of the total loss requesting for deletion of the vessel from the register. The original Certificate of Registry, the International Tonnage Certificate and the documents evidencing total loss should be attached to the motion for deletion. The decision on deletion is taken by the Maritime Chamber either upon motion or *ex officio*, if the motion hasn't been submitted.

As mentioned above, deletion of the vessel from the register requires a mortgagee's prior written consent. Deletion requires the prior written consent of her mortgagee also, if:

- a vessel has sunk or has been destroyed,
- a vessel has been lost,
- a vessel has lost her Polish nationality,
- a vessel has ceased to be a seagoing vessel (see Article 31 §1 and §2 of the PMC).

A vessel under construction is deleted from PRS, if:

- a vessel has been destroyed during construction or her construction has been given up,
- a vessel has been entered into the underlying register either in Poland or abroad.

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<sup>13</sup> J. Łopuski, *Encyklopedia podręczna prawa morskiego*, Wydawnictwo Morskie, Gdańsk 1982, p. 22.

In these cases, the deletion of a vessel from the register of vessels under construction requires a prior written consent from her mortgagee, unless the vessel under construction has been entered into the permanent register in Poland as a vessel and the maritime hypothecation (including the mortgage type) encumbering her has been entered into the permanent register *ex officio* by the decision of the Maritime Chamber (Article 31 §3 and §4 of the PMC).

## 5. LEGAL EFFECT OF REGISTRATION UNDER POLISH CIVIL LAW

Any particular which is recorded in PRS, is effective as against third parties. Such particular, even though not entered into the register, is effective as against third parties when such were cognizant thereof.

PLMRA creates legal presumptions of credibility and reliability of the records in the register, but only in the part concerning registered rights and claims. It is presumed that the recorded right and/or claim is recorded in compliance with the actual legal state of affairs. Moreover, it is presumed that the deleted right and/or claim does not exist. The presumption of credibility of records is applicable also to priority of the rights which are entered into PRS. It is *praesumptio iuris tantum*. Hence, it can be rebutted with competent, substantial evidence. It should be underlined that presumption of credibility of records does not cease to exist, even if the warning about possible inconsistency of the records with the actual legal state of affairs has been recorded.

PLMRA also states the rule that in case of inconsistency between records in PRS - in part concerning rights and claims on or against the vessel (e.g. right of ownership, mortgage) - and the actual legal state of affairs, the contents of the books (records in PRS) shall prevail over the actual, unrecorded legal state of affairs, with respect to the third person who has acquired ownership of the vessel or maritime hypothecation (including the mortgage type) from the person registered as an owner or a mortgagee in PRS. Therefore, if for example a third person buys a vessel from the registered owner, the legal transaction will be valid and effective, even if the real owner of the vessel was somebody else (some person not recorded as the owner of the vessel). The said rule ceases to exist, if the warning about any possible inconsistency of the records with the actual legal state of affairs has been recorded.

## 6. FLAGGING IN VESSELS PERMANENTLY REGISTERED IN ANOTHER STATE

Permission for flagging in of a vessel which remains registered in the underlying (permanent) register in another country is granted by a Maritime Chamber. If interest of the Polish maritime economy so requires, the Minister of Maritime Economy may oppose to flagging in of the vessel. The decision of the Minister prevails over the decision of the Maritime Chamber.

A vessel may obtain a temporary Polish nationality provided that the applicant:

- a) has presented documents listed in point 3 of this paper,
- b) has stated the vessel's home port in Poland,
- c) has bound himself to carry out the ship operating business in Poland,
- d) is a body corporate having either its seat or branch office in Poland, or an individual either domiciled in Poland or having its branch office in Poland.

The operator of the vessel, which has obtained the temporary Polish nationality, is bound to man the vessel in accordance with the Polish regulations and to submit her to the Polish regulations with regard to measurement, safety of navigation, ship's documents and protection of the environment. The name of such a vessel may be changed only upon the consent of the competent authorities of the state of her underlying register. Moreover, the prior consent of her mortgagees and owner is also required in this respect.

A vessel entered into the underlying (permanent) register abroad, may be entered into PRS, but only into the temporary register of PRS. It is not allowed to register the vessel in the permanent register of PRS, unless such vessel is deleted from the foreign underlying (permanent) register.

The evidence of entry into the temporary register of PRS is the Certificate of Temporary Registry, which says among others that: *“Maritime Chamber certifies that the ship described below has been entered in Polish Temporary Register of Ships under No. (...) The ship has obtained temporary Polish nationality from (...) to (...) and the right to fly Polish flag during that time.”*

## 7. FLAGGING OUT VESSELS PERMANENTLY REGISTERED IN POLAND

The Polish nationality of a vessel may be suspended upon the motion of her owner, however, only with respect to a vessel of Polish ownership and a vessel deemed to be of Polish ownership. The motion should be submitted to the Maritime Chamber, which is competent for taking decisions on suspending the Polish

nationality. Under the PMC, granting a foreign nationality to a vessel has no legal effect until the suspension of her Polish nationality is entered into the permanent register of PRS. The suspension takes effect on the date the owner has notified the Maritime Chamber of the fact that the vessel has acquired a foreign nationality.

In exceptional cases, mainly if interest of the Polish maritime economy so requires, the Minister of Maritime Economy may object to suspension of the Polish nationality of a vessel. The decision of the Minister prevails over the decision of the Maritime Chamber.

When applying for suspension, the owner of the vessel determines the required period of suspension. However, compliance with the motion, as regards time for which the permission is granted, is in the sole and absolute discretion of the Maritime Chamber. Polish legislation does not state any precise time limits for which the permission for suspension can be granted. It is also allowed to apply for prolongation of suspension. The suspension of the Polish nationality ends with the lapse of the suspension period or before such time upon the owner's motion, or as a result of loss of her temporary foreign nationality. The suspension ceases to be effective upon the Maritime Chamber's decision on the date of deletion of the respective entry in the underlying register of the vessel.

The motion for suspension must be submitted by the owner of the vessel. The owner should state the period of suspension, the register into which she is to be entered, submit the original of the Certificate of Registry of the vessel, the International Tonnage Certificate and if applicable - the document comprising written consent of all her mortgagees for suspending the Polish nationality. During the period of suspension of the vessel's Polish nationality, she must not fly the Polish flag. Moreover, she may not have her name changed without the consent of both, her owner and her mortgagees. The home port of such a vessel should be the port of the state of her temporary nationality.

## 8. REGISTRATION OF RIGHTS IN RESPECT OF VESSELS UNDER CONSTRUCTION

The vessel, which is under construction in Poland, is not subject to obligation of being entered into PRS. However, such a vessel may be entered into the register of vessels under construction of PRS voluntarily, upon the motion of her owner. In majority of cases the main purpose of registration is to secure interests of the party, who finances construction works by establishing and registering maritime hypothecation (including the mortgage type) against the vessel and by recording the ownership of the vessel under construction in the register. The register of

a vessel under construction is kept by the Martine Chamber competent for the respective place of the vessel's construction.

The vessel under construction may be entered into PRS provided that the ship's keel has been laid or equivalent structural work has been performed in the place of her launching (construction). The owner of the vessel under construction does not have to be a Polish citizen or an entity construed in accordance with Polish legislation. Ownership of the vessel is irrelevant as regards registration in the register of vessels under construction. Once construction works come to an end, the vessel is *ex lege* no longer regarded as a vessel under construction and should be either transferred to the permanent register of PRS or deleted from it.

Only a seagoing vessel, that is under construction in Poland (built in a shipyard located in Poland), is eligible for being entered into the Polish register of vessels under construction; for a legal definition of the seagoing vessel and description of the period in which the seagoing vessel is regarded as a vessel under construction.

As the register book of the register of vessels under construction is composed of the two chapters, named: "The vessel under construction, shipyard, the owner" and "The maritime hypothecation (including the mortgage type)", thus in that register only the right of ownership and maritime hypothecation/mortgage can be registered. No other rights, encumbrances or restrictions at the vessel's disposal can be entered into PRS.

## REJESTRACJA STATKÓW W POLSKIM REJESTRZE OKRĘTOWYM

**Słowa kluczowe:** polski rejestr statków, rejestracja statków

### Abstrakt:

Artykuł jest próbą przedstawienia podstawowych informacji na temat polskiego rejestru okrętowego, jego podstawowych zasad, konstrukcji oraz sposobu jego funkcjonowania. Publikacja ta nie jest oczywiście wyczerpującą analizą, a raczej syntetyczną informacją na temat budowy i sposobu funkcjonowania polskiego rejestru statków i obiektów, jakie mogą być w nim wpisane, procedur rejestracyjnych i wysokości opłat, a także pojęcia polskiej przynależności statku. Artykuł przedstawia też zasadnicze informacje dotyczące rejestracji czasowej (równoległej) oraz czasowego zawieszania wpisu do polskiego rejestru okrętowego („*flagging in*” oraz „*flagging out*”).

Publikacja niniejsza opisuje aktualny stan legislacji w Polsce, w oparciu o Kodeks morski z 2001 roku. Nie uwzględnia natomiast projektu nowego Kodeksu morskiego, który zawiera znacznie zmodyfikowane i uelastycznione przepisy o rejestrze okrętowym, zasadniczo zmieniające całą konstrukcję tej instytucji.