

New law aims to attract ship managers to Malta

New law has been introduced with the aim of attracting ship managers to set up in Malta. Dr Jan Rossi, Associate at Valletta-based GANADO Advocates, explains how Legal Notice 128 of 2018 has added substance to the Maltese legal framework on shipmanagement.

Shipmanagement is a major sector of the shipping industry with ship managers establishing themselves in a number of locations with notable shipmanagement centres present in Cyprus, the Netherlands, Singapore and Hong Kong.

Shipmanagement has been simply described as the function of taking care of a ship. It is generally carried out 'in house', that is by the ship owner or a member of the same ship owning group. However, it is also often undertaken by third party ship managers, who are independent from ship owners who wish to outsource ship management functions.

Despite the range of maritime services offered in and from Malta, the presence of third party ship managers in Malta is, so far, practically negligible. In order to attract ship managers to our shores, a comprehensive, stable and functional legal framework on shipmanagement and on the formation, operation, regulation and taxation of ship managers is indispensable.

News that the European Commission conditionally endorsed the Maltese tonnage tax system was therefore received with great enthusiasm. Following the Commission's decision on 19th December 2017, Malta published Legal Notices 127 and 128 of 2018 which amended, supplemented and reinstated its tonnage tax law previously regulated by Legal Notice 83 of 2010. Published on 13th April 2018 and effective 1st May 2018, the new law, strives to ensure compatibility between the Maltese tonnage system and the European Union's rules on 'State Aid' and is being regarded as a positive development by the European Commission, Malta and the shipping industry.

As was the case with its predecessor, the scope of Legal Notice 128 of 2018 is not limited to ship owning activities – shipmanagement and ship managers are also addressed. Shipmanagement activities are now included in the tonnage tax system. Effectively, this means that, going forward, ship managers are permitted to pay a 'tonnage tax' which is equivalent to a percentage of the tonnage tax paid by the owners and/or charterers of the ships managed and this to the exclusion of the standard corporate tax levied under the Income Tax Act (Cap. 123 Laws of Malta).

Ship managers wishing to enter into the Maltese tonnage system must strictly satisfy a number of organisational and operational requirements. For a start, only those ship managers that provide technical and/or crew management services may benefit from the new law. Commercial management is not included.

From an organisational perspective, a ship manager must be set up as a licensed 'shipping organisation' in terms of the Merchant Shipping Act (Cap. 234 Laws of Malta) and must be established in the European Union (EU) or in the European Economic Area (EEA).

In so far as operational requirements are concerned, at least two-thirds of the managed tonnage must be managed from within the EU or EEA. Although it is not necessary for the vessels managed to be registered in Malta, the geographical location of the flag state of the managed tonnage is still taken into consideration, with Legal Notice 83 of 2018 requiring that a large part of the tonnage must be registered under an EU or EEA flag.

In order to place themselves within the new tonnage tax system, ship managers must firstly register with the Registrar-General of Shipping in Malta by submitting certain information including details on the managed vessels. Ship managers are further obliged to submit any other documentation requested by the Registrar-General for the purposes of satisfying the requirements of Legal Notice 128 of 2018 and to immediately inform the Registrar of any changes to the information and documentation submitted.

Legal Notice 128 of 2018 has added substance to the Maltese legal framework on shipmanagement by, amongst others, creating an attractive fiscal regime for third party ship managers. The success of attracting ship managers does not only depend upon the presence of a sound legal framework comprising a favourable fiscal system. Other factors including low operational costs, the expenses of relocating to Malta with regard to existing managers, political stability, the presence of a workforce versed in the shipmanagement industry, the availability of related maritime services and an advanced infrastructure. ●

