CM ADVOCATES LLP



READY TO FLY THE KENYAN FLAG?

A practical guide to ship registration, ownership and compliance in Kenya

A ship does not become a Kenyan ship simply because a Kenyan person or company owns it. It becomes one only when it is registered under the **Merchant Shipping Act, Cap. 389 ("the MSA")**, as amended. Registration fixes the flag the ship may fly, records who owns it and gives buyers, lenders and charterers a starting point for checking the vessel's legal position. The main rules are in Part IV of the MSA (Sections 17 To 79).

This guide explains which ships must be registered, who may own them, how the registration process works step by step, and what owners must keep doing once the ship is on the register.

WHICH SHIPS MUST BE REGISTERED IN KENYA?

Under Section 17, a ship is a Kenyan ship only if it is registered in Kenya under Part IV of the MSA. Section 19 goes further: a ship owned wholly by persons qualified to own a Kenyan ship must be registered in Kenya, unless it is registered in another State. Every Kenyan ship and Kenyan Government ship must also be entered in the register book kept under Section 25.

The consequences of not registering are practical as well as legal. A ship that is required to be registered cannot be recognised as a Kenyan ship or claim the rights and privileges of one. If the master of a qualifying ship cannot, on demand, produce the Certificate of Registry or other evidence satisfying the Director-General that the ship meets the registration requirements, the ship may be detained until that evidence is produced.

WHO CAN OWN A KENYAN SHIP?

Section 18 lists the persons and entities qualified to own a Kenyan ship. These include the Government, nationals of Kenya, corporations registered in Kenya, individuals or corporations that own ships hired out on bareboat charter to Kenyan nationals, individuals or corporations in bona fide joint venture shipping enterprise relationships with Kenyan nationals, as may be prescribed; and any other person the Cabinet Secretary designates by order.

Under Section 18(1), a ship may be registered in Kenya only if it is wholly owned by qualified persons, subject to Section 50. Section 18(2) allows the Cabinet Secretary to make regulations setting the manner and conditions in which other persons or classes of persons may own Kenyan ships. The bareboat charter and joint venture categories may therefore give foreign owners a route to the Kenyan flag, but only on the terms the MSA and its regulations prescribe. Confirm that your ownership structure qualifies before you begin the registration process.

HOW IS A SHIP REGISTERED?

Once the ship and its owner meet the eligibility requirements, registration proceeds in six steps under Part IV of the MSA, ending with the issue of a Certificate of Registry.

STEP 1: Survey the ship and determine its tonnage

A surveyor of ships must survey the vessel and determine its tonnage in accordance with the applicable regulations. The surveyor issues a certificate recording the vessel's build, tonnage and other identifying particulars. This certificate must be submitted to the Registrar before registration can proceed (Section 26). We advise that you obtain the survey certificate first. The declaration of eligibility in Step 4 must describe the ship exactly as it appears in this certificate.

STEP 2: Mark the ship

Under Section 27, every ship other than a small ship must be permanently and conspicuously marked to the satisfaction of the Director-General before it is registered. The required markings are:

i) **The ship's name and port of registry.** The name must appear on each bow, and the name and port of registry on the stern. Letters must be at least 10 centimetres long, proportionate in breadth and of a contrasting colour so that they are clearly visible.
ii) **The official number and net tonnage.** These must be permanently marked on a readily visible and accessible part of the ship's permanent structure, in the manner a surveyor of ships specifies.
iii) **Draught markings.** For ships built after the date of metric conversion, the draught scale must be marked on each side of the stem and sternpost, following the detailed specifications in Section 27(1)(c) on intervals, lettering, visibility and alignment with the corresponding draught line.

The markings must be maintained throughout the ship's registration and may not be altered unless the particulars they represent are lawfully changed under the MSA. The Director-General may exempt a ship or class of ships from some or all of these requirements.

Non-compliance carries real consequences. An owner who allows a ship to proceed to sea without the required markings commits an offence and, on conviction, is liable to a fine not exceeding KES 300,000,

imprisonment for up to two years, or both. Section 27 also creates separate offences for failing to maintain the marks and for altering or removing them without authority. A ship may be detained where a surveyor certifies that its markings are insufficient or inaccurate, until the defect is remedied.

STEP 3: Apply for registration

Under Section 28, the application must be made by the person seeking to be registered as the ship's owner or, where there is more than one proposed owner, by one or more of them. It may also be made through an agent.

Where the proposed owner is an individual, the agent's authority must be confirmed in writing under the hand of the person appointing the agent. Where the proposed owner is a body corporate, the application must be made through an agent whose authority is evidenced by the corporation's common seal, or by a deed or instrument under seal in accordance with the applicable Companies Act requirements. It is instructive to settle who will sign, and put the agent's authority in the correct form, before the application goes to the Registrar.

STEP 4: Make the declaration of eligibility and ownership

Under Section 29, a person cannot be registered as owner of a ship, or of a share in it, until they have made and signed a declaration of eligibility. For a body corporate, the declaration must be made by a person authorised under the Act to act on its behalf. It must refer to the ship as described in the surveyor's certificate and state:

i) **Eligibility to own a Kenyan ship.** A statement confirming the applicant's qualification to own a Kenyan ship. A body corporate must also describe its constitution and business to show that it qualifies.
ii) **Former foreign name.** Where the ship is a foreign ship, its foreign name.
iii) **Ownership shares.** The number of shares in the ship legally owned by the applicant, whether solely or jointly with others.

The declaration establishes the applicant's eligibility and the extent of their legal ownership. Its particulars should be accurate and consistent with the survey certificate and the proposed ownership arrangements.

STEP 5: Provide evidence of title

Section 30 requires evidence of title to be produced on first registration, as specified in the registration regulations. For a newly built ship this will ordinarily include the builder's certificate, which the Registrar retains under Section 32. For a second-hand vessel, evidence of how title passed to the applicant, such as a bill of sale, is usual. The exact documents are those the regulations prescribe, so confirm the list with the Registrar before filing.

STEP 6: Entry in the register and issue of the Certificate of Registry

Once the requirements are met, the Registrar of Ships enters the ship's particulars in the register (Section 31). Under Section 32, the Registrar retains the survey certificate, the builder's certificate where one exists, and all declarations of ownership. Under Section 33, Mombasa is the default port of registry and the port

to which the ship belongs. The Cabinet Secretary may designate another Kenyan port as a port of registry by order.

The Registrar then issues a Certificate of Registry containing the particulars specified in the registration regulations (Section 34(1)). The certificate is valid for 12 months from the date of issue and must be renewed annually on payment of the prescribed fee. Renewal depends on the ship continuing to meet the MSA's conditions: it must be seaworthy, properly fitted and equipped, and must not have undergone any significant alteration since the certificate was issued (Section 34(2))

REGISTRATION AT A GLANCE

Step	MSA Section	What is required
1. Survey and tonnage	26	Surveyor's certificate of build, tonnage and identifying particulars, submitted to the Registrar
2. Marking	27	Name, port of registry, official number, net tonnage and draught marks, to the Director-General's satisfaction
3. Application	28	Made by the proposed owner or an agent, with the agent's authority properly evidenced
4. Declaration	29	Signed declaration of eligibility, former foreign name (if any) and ownership shares
5. Evidence of title	30	Evidence specified in the registration regulations, produced on first registration
6. Register and certificate	31–34	Entry in the register and a Certificate of Registry valid for 12 months

WHAT HAPPENS AFTER REGISTRATION?

Registration establishes the ship's status under Kenyan law, but owners must keep complying with the rules on the certificate, the register and any later changes to the vessel.

- **Certificate of Registry.** The certificate is valid for 12 months and must be renewed annually on payment of the prescribed fee, subject to the conditions in Section 34. Sections 35 and 36 deal with the use and custody of the certificate, including its misuse or loss. Keep it safe, use it only for its lawful purpose and follow the prescribed procedure to replace it if it is lost.
- **Changes in ownership and ship particulars.** A transfer of ownership, a change of name or an alteration to the vessel can all affect the registration, and the MSA sets formalities for each. Establish those formalities before completing a transaction or making changes to particulars recorded in the register. A buyer should also check the registered ownership and any encumbrances before completing a purchase.
- **Buying a foreign-registered ship.** The buyer must deal with both the ship's existing registration and the requirements for registering it in Kenya. Sections 42 to 44 of the MSA cover

provisional registration and the steps for completing registration. Confirm the documents required, establish the status of the foreign registration and keep to the statutory timelines.

- **Refusal and termination of registration.** Sections 20 and 21 set out the grounds for refusing and terminating registration. Owners should understand the circumstances that could put the registration at risk and the procedures available under the Act if a registration decision is challenged.
- **Special registration regimes.** Small ships and ships under construction may be subject to different statutory or regulatory requirements. Confirm which regime applies to your vessel instead of assuming that the ordinary process covers every ship.

COMMON PITFALLS: ISSUES TO ADDRESS BEFORE THEY BECOME PROBLEMS

Ship registration can be delayed or complicated by issues that are not always apparent at the outset. The following are common areas where shipowners and prospective buyers should exercise care.

- **Assuming Kenyan ownership is enough.** Kenyan ownership alone does not make a vessel a Kenyan ship. The applicable registration requirements must be met, including the ownership eligibility criteria under Section 18 of the MSA.
- **Inconsistencies in the ship's particulars.** Differences between the survey certificate, declaration of eligibility, application and supporting ownership documents can raise questions during registration. Check that the vessel's identifying particulars and ownership details are consistent across the documents.
- **Insufficient authority to apply.** Where an application is made through an agent, the agent's authority must be documented in the form required by Section 28. For corporate applicants, this includes ensuring that the authority meets the applicable statutory requirements.
- **Leaving vessel marking until late in the process.** The required markings should be addressed early. Failure to comply with Section 27 can result in penalties and, in specified circumstances, detention of the vessel. An owner who allows a ship to proceed to sea without the required markings may face a fine of up to KES 300,000, imprisonment for up to two years or both.
- **Overlooking certificate renewal requirements.** A Certificate of Registry is valid for 12 months from its date of issue. Owners should diarise the renewal date and confirm that the vessel continues to meet the conditions under Section 34(2).
- **Buying a vessel before checking its registered position.** Before completing a purchase, investigate the registered ownership, the status of any existing registration and any registered mortgages or other relevant interests. This can help identify issues that may affect title or the intended transaction.
- **Treating provisional registration as the final step.** Buyers of foreign-registered vessels should establish the applicable provisional-registration requirements, supporting documents and statutory deadlines under Sections 42–44 before committing to a transaction.

CHECKLIST BEFORE APPLYING FOR REGISTRATION

Before submitting an application, confirm that:

i) The proposed ownership structure satisfies the applicable eligibility requirements under Section 18 of the MSA.
ii) The vessel has been surveyed and the required tonnage certificate obtained.

iii) The required markings have been completed to the satisfaction of the Director-General, unless an applicable exemption applies.
iv) The application is made by the appropriate person and any agent's authority is properly documented.
v) The declaration of eligibility has been prepared and signed by the person authorized to make it.
vi) Evidence of title is available in accordance with the applicable registration regulations.
vii) For a foreign-registered vessel, its former name and existing registration status have been confirmed and the requirements and deadlines for provisional registration have been checked.
viii) The applicable fees and any other registration requirements have been identified and budgeted for.

Resolving ownership, documentation and registration issues before submitting an application or completing a vessel purchase can help avoid unnecessary delays and reduce transaction risks. CM Advocates LLP can advise on the applicable legal requirements and assist with ship registration, vessel acquisitions and related maritime transactions.

CONCLUSION

Registering a ship under the Kenyan flag involves more than completing an application. Ownership eligibility, proof of title, survey, marking and ongoing compliance are all important to securing and maintaining registration.

Whether you are acquiring a vessel, establishing a shipping business, arranging ship finance or managing a fleet, understanding these requirements early can help you identify legal and regulatory issues before they affect a transaction or disrupt operations. Obtaining the right legal advice at the outset can help you navigate the registration process and make informed decisions throughout the vessel's commercial life.

HOW CM ADVOCATES LLP CAN HELP

CM Advocates LLP advises businesses and individuals involved in shipping, vessel ownership and maritime investment. We assist clients at each stage of a vessel's commercial life, from acquisition and registration to financing, operations and changes in ownership. Our services include:

i) **Ship registration and ownership structuring.** Assessing eligibility under Kenyan law, advising on ownership arrangements and preparing registration applications and supporting documents.
ii) **Vessel acquisition and transfer.** Advising on the purchase of new and second-hand vessels, reviewing title and registration records, and assisting with transfers and provisional registration of foreign-registered ships.
iii) **Ship finance and security.** Advising shipowners, lenders and investors on ship mortgages, security arrangements and legal due diligence for vessel financing, including ships under construction.
iv) **Regulatory compliance.** Advising on surveys, tonnage, vessel marking, small-ship licensing, certificate renewals and changes to registered particulars.
v) **Registration disputes and regulatory action.** Advising on refusal or termination of registration, appeals and disputes involving the Kenya Maritime Authority and other relevant authorities.

Planning to register, acquire or finance a vessel in Kenya? Engage CM Advocates LLP to assess the legal requirements, identify issues that may affect your transaction and guide you through registration and compliance.

This publication is intended for general information purposes only and does not constitute legal advice or a legal opinion. It is not a substitute for legal advice tailored to the facts and circumstances of a specific matter. The application of the law may vary depending on the circumstances of each case.

For advice on ship registration, vessel ownership, maritime transactions or related regulatory matters in Kenya, please contact our contributors below or reach out to your usual contact at CM Advocates LLP.

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