A BRIEF INTRODUCTION
TO
OFFSHORE REGISTRATION AND FINANCING OF YACHTS

A Presentation to the
ABA Section of Business Law
Commercial Finance Committee
SUBCOMMITTEE ON MARITIME FINANCING

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By: Mark J. Buhler
Buhler Law Firm P.A.
555 Winderley Place, Suite 300
Maitland, FL 32751

Telephone: 407-681-7000
Telefax: 407-681-7500
E-mail: mark.buhler@earthlink.net

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QUESTION: WHY DO SO MANY OWNERS REGISTER THEIR YACHTS IN FOREIGN REGISTRIES?

A. POTENTIAL ADVANTAGES OF FOREIGN REGISTRATION

1. The owner might be able to avoid liability for state sales or use tax (at least in Florida).***
   a. Yachts are frequently sold/purchased and delivered outside the territorial boundaries of the State of Florida, then registered in a foreign registry. Often the closings take place in The Bahamas, or in international waters between Florida and The Bahamas (to avoid an “exportation” that could have subsequent U.S. duty implications). Alternatively, yachts may be purchased in Florida by nonresidents exempt from the sales tax pursuant to a statutory “removal” exemption if they are timely removed from the state after the sale and registered in another state or a foreign jurisdiction. (See, Florida Statutes § 212.05(1)(a)2.)
   b. A foreign registered yacht owned by a nonresident of Florida that visits Florida is usually not deemed "imported" into Florida, and thus not subject to state use tax, when it arrives under a federal cruising license and is intended to be used only for pleasure purposes. There are some exceptions to that position, however:
      i. If the yacht is sold or chartered, or even offered for sale or charter while in the state. Florida Department of Revenue, Technical Assistance Advisements No. 89A-015 and 89A-040R.
      ii. If, despite having a cruising license, a consumption entry is filed or import duty is paid while the yacht is in the United States.
      iii. If the vessel’s use is considered by the Florida Department of Revenue to be “inconsistent” with the terms of the cruising license (including internationally advertised offers for sale or charter that do not exclude U.S. residents). Florida Department of Revenue, Technical Assistance Advisement No. 90A-027.
   c. Sometimes yachts are purchased exempt from sales tax pursuant to the general statutory exemption for goods purchased exclusively for resale (including rental), by an entity that has registered as a “dealer” with the Department of Revenue. If that exemption is claimed, all subsequent use of the yacht, whether within or outside of Florida, must be made pursuant to bareboat charters. Sales tax must be collected and remitted to the DOR on all charter hire charged or paid while the yacht is in Florida. This chartering “resale” strategy can have an unintended consequence of limiting the use of the yacht to 12 “passengers”, or
else the yacht becomes subject to U.S. Coast Guard inspection pursuant to the Passenger Vessel Safety Act (1993).

*** NOTE: ALL of these strategies can impose significant impediments to a beneficial owner's ability to personally use the boat in Florida.

2. The owner may be able to avoid liability for federal import duty (at rate of 1½%, plus various fees) if the yacht is not deemed “imported” into the country. Importation is a very fact specific issue, and also involves the intent of the owner. (Availing of this strategy also limits a beneficial owner's ability to use the boat in the U.S. for any significant period of time if the beneficial owner is a U.S. resident.)

3. Foreign registration might be the only viable registration alternative for many yachts over 300 Gross Tons, most of which could not pass the U.S. Coast Guard inspection requirements applicable to "seagoing motor vessels".
   a. "Seagoing motor vessels" are defined as vessels of at least 300 Gross Tons that make voyages beyond the Boundary Line (46 U.S.C. § 2101(33)).
   b. The inspection requirements applicable to seagoing motor vessels were originally intended as the domestic implementation of the standards imposed on cargo vessels of 500GT or more under the International Convention on Safety of Life at Sea (“SOLAS”). Most yachts are not built to those standards, and retrofits would be both unsightly and extremely expensive.

4. The owner may be unable or unwilling to comply with the U.S. citizenship requirements for U.S.-documented vessels. (See 46 U.S.C. §12103(b))
   b. For corporations, the chief executive officer and Chairman of the Board of Directors must be U.S. Citizens. No more than a minority of the number of directors required to constitute a quorum may be non-citizens. (However, all of the shares of a vessel with only a recreational or registry endorsement may be owned by non-citizens.)
   c. Partnerships and trusts have even stricter citizenship requirements than corporations, requiring each general partner or trust beneficiary to be citizens.
   d. Limited liability companies are not even addressed by the statute, but the Coast Guard determines on a case by case basis whether an LLC is structured more like a corporation or more like a partnership, and applies the corresponding citizenship requirements.

5. The owner may prefer to hire a foreign crew, and thus must avoid the U.S. citizenship requirements that would apply to the master and crew if the yacht was U.S. documented. (There is now a statutory exception to the general U.S. citizenship requirement for the master in command of a U.S. documented vessel, applicable if the yacht has only a “recreational” endorsement. (46 U.S.C. § 12131) Any other endorsement, however, requires having a U.S. citizen in command of the vessel. But, there are still U.S. immigration issues that would have to be dealt with to have foreign master or crew on a U.S. documented yacht when operating in U.S. waters. On foreign
registered yachts that are foreign based, foreign citizen crew members working on board the yacht can get temporary seaman visas or temporary entry into the U.S. without visas.

6. The owner may seek a level of anonymity not available in the U.S. Nominee shareholders and/or directors are available in some foreign jurisdictions. Also some tax free countries do not require any financial reporting.

7. The owner may wish to avoid liability for certain U.S. legal obligations to crew members, at least when operating outside U.S. waters (e.g., Jones Act, maintenance and cure, tax withholding, etc.). Such obligations generally do not apply to foreign registered yachts when operating outside the U.S.

8. The owner may wish to avoid the applicability of the inspection requirements under the Passenger Vessel Safety Act of 1993 for chartering while outside the U.S. (such as in the Mediterranean or Caribbean). PVSA requirements apply to U.S. flag vessels worldwide, but only apply to foreign flag yachts when bareboat chartering in the U.S.

9. The owner may wish to avoid the possibility of very severe penalties for violations of U.S. laws relating to vessel documentation and mortgages, which would be applicable if the vessel were U.S. documented (e.g., fines, forfeiture of vessel, imprisonment, etc. under 46 U.S.C. §§ 12151 & 31330).

10. The owner may wish to maintain a disguised identity in areas where crime or terrorism directed toward Americans may be a concern (e.g., eastern Mediterranean / Middle & Near East).

11. Subsidized construction financing may be available in some foreign countries.

12. Registration of vessels under construction is available in several foreign countries, such as Canada, the Netherlands, Italy, Sweden, Cayman Islands, and Saint Vincent.

13. The owner may wish to avoid the 50% import duty on repairs or maintenance performed abroad on U.S. flag vessels that are used in the foreign or coastwise trade. (This would not apply if the yacht had only a recreational endorsement and was not used to carry passengers for hire.)

B. POTENTIAL DISADVANTAGES OF FOREIGN REGISTRATION

1. If foreign registration is used in conjunction with a strategy to avoid sales or use tax, or U.S. import duty, it will significantly hinder the owner's ability to freely use the yacht within the U.S., because the owner must avoid any act that would constitute "importation" into the state or the country. This will limit the frequency and amount of time the yacht can be physically present in the U.S. and/or in any particular state.

2. A cruising license is needed for a foreign yacht to move about freely in the U.S., and to avoid various federal tonnage taxes, fees, formal entry and clearance requirements, etc. (19 CFR §4.94) Cruising licenses are issued for a maximum of a year, and are not supposed to be renewed without the vessel leaving the country and traveling to a foreign
port before returning at least 15 days after the prior cruising license expired. In some U.S. locations this would be very inconvenient. If, however, the yacht was originally built in the U.S., or import duty has been paid, it may be possible to get successive cruising licenses issued without leaving the country.

3. In a dramatic reversal of roles over the last ten years, a proliferation of “safety codes” and other regulations in foreign jurisdictions is making registration and operation of yachts under many of the foreign registries considerably more complicated, more highly regulated, and more expensive than documentation in the U.S. This is the result of an apparently concerted international effort, in which the United Kingdom is obviously one of the driving forces, and the International Maritime Organization may also be playing a major role. This development creates a serious tradeoff against the potential savings sought on sales or use tax and import duty.

4. There may be restrictive citizenship requirements, or other qualification for foreign registry, that may require formation and maintenance of a costly foreign entity.
   a. Until recent liberalization of the eligibility requirements, qualification to be the owner of a yacht registered under any of the “Red Ensign” flags required establishment of an entity incorporated in some qualifying “British” jurisdiction (e.g., the UK, or a British overseas territory such as Bermuda, British Virgin Islands, Cayman Islands, Gibraltar, Isle of Man, Turks & Caicos.). Recent changes in Cayman Islands legislation, and in that of some other “British” offshore registries, broadens the ranks of qualifying entities to include entities incorporated within one of the European Union countries or their possessions) The Cayman Islands now will even allows U.S. entities to become “qualified” by registration in the Cayman Islands.
   b. Some countries have either no, or not very restrictive, citizenship requirements: Bahamas (yachts over 24 meters under Load Line measurements), Belize, Honduras, Marshall Islands (if a foreign maritime entity is registered in the Marshall Islands), St. Vincent & Grenadines (if there is a registered agent in St. Vincent).
   c. Many countries require appointment of an authorized agent to deal with the maritime authorities (which is often a foreign maritime attorney).

5. There may be crew citizenship or licensing requirements that are inconvenient or difficult to meet.
   a. Some countries have nationality or national licensing requirements for crew, although these frequently are not applied to pleasure yachts. Some countries accept licenses or certificates of competency issued by other countries that have ratified the STCW Convention (Standards of Training, Certification and Watch Keeping), or issue their own license on the basis of the certificate of competency issued by the other country.
6. Initial transaction costs and ongoing corporate and vessel registration costs are considerably higher than in the U.S. (After all, most foreign registries are in this for the revenue!)

   a. Initial vessel registration fees and costs – usually range from a few hundred dollars to a few thousand dollars, depending on the country.
   b. Annual vessel registration and tonnage fees – usually range from several hundred dollars to a few thousand dollars. Some countries charge by NRT, others by GRT, others by length. Some charge a flat fee.
   c. Company formation costs – range from several hundred dollars to several thousand dollars.
   d. Company annual fees – typically several hundred dollars.
   e. Stamp duty – usually a percentage of the amount of financing involved.
   f. Recording fees for Bills of Sale, Mortgages, etc. – up to several hundred dollars each instrument.
   g. Certificates, licenses, etc. – typically measured in the hundreds of dollars
   h. Inspection requirements – published fee schedules or hourly charges, plus all expenses of surveyors.
   i. Income taxes – the most commonly used jurisdictions are all tax free.

7. Higher Domestic and Foreign Attorneys Fees – The transactions and documentation are more complicated and more document intensive, thus more expensive. There are substantial fees for foreign counsel to handle company formation, provision of nominee shareholders/directors, filing of annual returns, ship registration and renewals, furnishing of opinion letters for financing transactions, etc. Rates in offshore jurisdictions are often similar to or even higher than those in many cities in the U.S.

8. Financing Implications - The availability and cost of financing could be affected by foreign registration of a yacht.
   a. There may be a limited number of lenders willing at any given time to provide financing on foreign registered yachts.
   b. Preferred mortgages on foreign flag yachts are slightly inferior to preferred mortgages on U.S. flag vessels (about which more will be said later).
   c. Perception of greater risks, thus possibly higher interest rates and fees.

9. Insurance Implications

   a. Availability of insurance on foreign registered yachts is generally quite good, as long as a reputable flag is chosen.
   b. Insurance costs may be affected by the safety record of the flag state.
   c. Lenders may require more extensive and expensive insurance coverage, including Breach of Warranty insurance.
   d. An owner must be very careful with insurance applications, corporate formalities, proper names, and full disclosure of all relevant information relating to beneficial ownership, the condition and value of the yacht, and the experience and claims history of the yacht captain, the owner, the beneficial owner(s), other entities owned or formerly owned by the beneficial owner, etc.
10. Perhaps the greatest disadvantage for U.S. citizens/residents that might wish to charter their yachts – substantial restrictions on uses of a foreign flag yacht in the U.S.

a. Cannot engage in the “coastwise trade” (carrying either merchandise or passengers for hire), which requires that a vessel be (i) U.S. built vessel, (ii) U.S. owned, and (iii) U.S. documented.

b. Chartering of foreign registered yachts in the U.S. is restricted to bareboat charters for pleasure purposes only. There can be no carrying of “passengers for hire” (i.e., no “crewed” charters).

c. Carriage of “business guests” is now considered to be the carriage of “passengers” in violation of the coastwise trade laws. See, 50 Customs Bulletins and Decisions, Vol. 36, No. 23, pp. 50-56, June 5, 2002.

d. U.S. built vessels of over 200 G.T. that have ever been sold foreign or registered foreign permanently lose their U.S. coastwise trade privileges. (46 U.S.C. §12132(a) Vessels under 200 G.T. may regain coastwise privileges when returned to U.S. documentation.

e. Foreign vessels that are even offered for charter or sale in the U.S. will incur federal import duty and state use tax liabilities.

**QUESTION: IS A FOREIGN MORTGAGE AS GOOD AS A U.S. PREFERRED MORTGAGE?**

**A. PRIORITY OF U.S. PREFERRED MORTGAGES.**

1. The priority of the lien of a “preferred mortgage” on a U.S. documented vessel is established by 46 U.S.C. §31326(b)(1). A preferred mortgage lien has priority over all claims against the vessel except (i) expenses and fees allowed by the court, (ii) costs imposed by the court, and (iii) “preferred maritime liens.” The term “preferred maritime lien” is defined in 46 U.S.C. §31301(5) as “a maritime lien on a vessel -

a. arising before a preferred mortgage was filed under section 31321 of this title;

b. for damage arising out of maritime tort;

c. for wages of a stevedore when employed directly by a person listed in section 31341 of this title;

d. for wages of the crew of the vessel;

e. for general average; or

f. for salvage, including contract salvage . . .”

Thus a significant number of “maritime liens” qualify as “preferred maritime liens” that have priority over preferred mortgages. A preferred mortgage does have priority, however, over several other classes of maritime claims, and over all non-maritime liens and claims. Some of the more notable inferior claims are maritime liens for “necessaries” furnished after the filing of the mortgage, subsequent mortgages or security interests, tax liens, judgment liens and other non-maritime liens or claims.
B. FOREIGN PREFERRED MORTGAGES.

1. “Preferred Mortgage” Status: Certain mortgages on foreign vessels may also come within the statutory definition of a “preferred mortgage” for purposes of an in rem enforcement action in the U.S. under Sections 31325 and 31326 of Title 46. In order for a mortgage, hypothecation or similar charge that is established as a security on a foreign registered vessel to come within the definition of “preferred mortgage” in §31301(6)(B), the following conditions must have been met:

   a. the mortgage, hypothecation or similar charge was executed under the laws of the foreign country under whose laws the ownership of the vessel is documented; and
   b. the mortgage, hypothecation or similar charge has been registered under the laws of that foreign country in a public register at the port of registry of the vessel, or at a central office. (Id.)

2. Disadvantages of Foreign Preferred Mortgages from a Lender’s Perspective:

   a. Liens for “Necessaries” - Federal courts have jurisdiction under 46 U.S.C. §31325 to enforce mortgages that qualify as “preferred mortgages” on foreign vessels. Under 46 U.S.C. §31326(b), however, a preferred mortgage lien on a foreign yacht is subordinate to any maritime lien for “necessaries” provided in the United States, even if the necessaries were provided after the mortgage was filed. Thus, in the United States, the priority of a preferred mortgage lien on a foreign vessel is significantly lower than the priority of a preferred mortgage on a U.S. documented vessel, which primes all liens for “necessaries” furnished after the U.S. mortgage was filed.

   b. Forfeiture Protections – The mortgagee of a U.S. documented vessel has a limited statutory protection against forfeiture of its interest in a vessel for a violation of a law of the United States, so long as the mortgagee did not authorize, consent to, or conspire to do the act, failure or omission that is the basis of the violation (46 U.S.C. §31327). There is presently no similar statutory protection for vessels that are not U.S. documented, including foreign registered yachts. Some relief may be available, however, under U.S. general maritime law. It has long been held that “maritime liens” are not terminated or displaced by a forfeiture for violation of United States laws. See, The St. Jago de Cuba, 9 Wheat (22 U.S.); The Ermis, 33 F. 2d 763 (S.D. Fla. 1929). See also, G. Gilmore and C. Black, The Law of Admiralty, §9 74, pp 758-759 (2d Edition 1975). There may be some debate as to whether a “preferred mortgage lien” recognized pursuant to 46 U.S.C. §31325(a) on a foreign registered vessel is considered a “maritime lien” entitled to protection under the doctrine cited above. There is at least one reported case, however, in which, with no discussion or rationale given, a foreign ship mortgage was enforced and paid ahead of the government’s forfeiture claim. U.S. v. One (1) Liberian Refrigerator Vessel, M/V EA, 447 F.Supp. 1053 (M.D.Fla. 1977), aff’d sub nom, E. A. Shipping Company, Inc. v. Bazemore, 617 F.2d 136 (5th Cir. 1980).
QUESTION: WHAT DOCUMENTATION IS TYPICAL FOR A FOREIGN YACHT LOAN?

1. Jurisdictions Whose Law is Modeled on U.S. Law: The loan closing documentation for loans secured by mortgages on yachts registered in certain jurisdictions whose law is modeled on U.S. law, such as Liberia and the Marshall Islands, will bear great similarity to the documentation for a loan on a U.S. documented yacht.

2. Jurisdictions Whose Law Derives from British Law: There are significant differences in the documentation typical of loans secured by mortgages on yachts registered in jurisdictions whose law is derived from British law, such as all of the “Red Ensign” jurisdictions, and in former British colonies such as The Bahamas, Saint Vincent and the Grenadines, Jamaica, etc. Most significant is the use of a simple one page statutorily prescribed form of mortgage, usually supplemented by a separate “Deed of Covenants” that contains the bulk of the provisions typical found in a U.S. preferred mortgage. Other significant differences relate to due diligence documents, documentation establishing corporate authority, and instruments relating to the pledging of shares. For a sample generic list of documents for a “British” style yacht loan transaction, see Attachment 1 to this outline.

QUESTION: ARE THERE ANY SIGNIFICANT ADVANTAGES OR DISADVANTAGES AMONG THE MANY OFFSHORE REGISTRIES?

1. British Jurisdictions Generally:
   a. “Red Ensign” jurisdictions that operate shipping registers (that is, certain British Possessions / UK Crown Dependencies / UK Overseas Territories) are divided into two “Categories” of registries for vessel registration purposes:
      i. “Category 1” registries – Bermuda, British Virgin Islands, Cayman Islands, Gibraltar, and Isle of Man – can in most instances register pleasure yachts without limitation on tonnage;
      ii. “Category 2” registries – Anguilla, Falkland Islands, Guernsey, Jersey, Montserrat, St. Helena, and Turks & Caicos – are limited to pleasure vessels of not more than 150 tons, with an exception for pleasure yachts of less than 400 tons provided that certain survey and inspection standards are met, and that they are not used commercially.
   b. All of the Category 1 registries are generally considered to be very reputable registries.
   c. “British” flag yachts that engage in crewed charters, and apparently even bareboat charters, are considered to be “engaged in trade” and thus are (i) required to comply with the applicable United Kingdom Maritime and Coastguard Agency (“MCA”) Code of Practice for the Safety of [Large] [Small] Commercial Sailing and Motor Vessels (depending on length), and (ii) required to be registered as "commercial" yachts. This will result in the yacht not qualifying for a cruising
license in the U.S, at least while commercially registered. Frequently such yachts are “flipped” between commercial registration when they are operating outside the U.S. and pleasure registration when they are coming to cruise in the U.S.

2. **Cayman Islands**
   
a. The largest, and arguably the premier, offshore yacht registry.
b. Very flexible with regard to ownership entity – under the liberalized owner eligibility provisions, even U.S. entities can now become “registered” in the Cayman Islands and thus qualified to be the owner of a Cayman Islands registered vessel.
c. The registry has an office in Fort Lauderdale which can provide expedited service.
d. Specific advantages for lenders/mortgagees:
   
i. Restrictions on further mortgaging or sale of the vessel contained in the Mortgage can be reflected on the Register, and will be honored by the CISR to block a subsequent mortgage or sale;
ii. Mortgages may be registered on vessels under construction;
iii. The mortgage has highest priority under Cayman Islands law in the event of a bankruptcy of the vessel’s owner;
iv. The mortgagee has a statutory power of sale of the vessel.

e. One Disadvantage of Cayman Registration: The current administration of the Maritime Authority of the Cayman Islands now requires compliance with the MCA Code of Practice for the Safety of Large Commercial Sailing and Motor Vessels, and registration as a "commercial" yacht, for any chartering, even for bareboat chartering. (See CISR Shipping Notice 14/2004). Many older yachts will find it impossible, or economically impractical, to achieve MCA certification. A "commercial" registration will also create a problem in obtaining a cruising license in the U.S. since cruising licenses are restricted to vessels "used and employed exclusively as pleasure vessels . .." (46 U.S.C. § 104)

3. **Marshall Islands**
   
a. The registry has an office in Fort Lauderdale which can provide expedited service.
b. Registration can be renewed annually, or tri-annually at a slightly reduced fee (owner’s option).
c. Vessels must generally be owned by a citizen of the Marshall Islands (usually a Marshall Islands entity), but waivers may be granted to foreign owners, including U.S. entities, who register as a “Foreign Maritime Entity”.
d. There is no requirement for “private” yachts to be classed.
e. Crewed charters can be performed under a "commercial" yacht registration, which also requires compliance with the Marshall Islands Commercial Yacht Code (MI-103). The Commercial Yacht Code bears a striking resemblance to the MCA Code. Commercial registration would disqualify the
yacht from eligibility for a cruising license in the U.S. while it is commercially registered.

f. “Private” yachts (i.e., not registered as “commercial”) may be either bareboat chartered or time chartered for up to 84 days a year without having to be registered commercial, so long as they comply with certain enhanced safety and manning requirements while chartered. A yacht registered as a private yacht, and that has only been bareboat chartered for pleasure purposes, should still be able to obtain a cruising license in the U.S. There might be an issue as to whether a yacht that has engaged in crewed charters under a “private” registry is eligible for a cruising license in the U.S.

g. The registry has specific vessel insurance requirements, and scrutinizes compliance fairly vigorously.

4. Belize -

a. Although now an independent country, the registration and regulation regime of Belize is solidly based on the British system. They have adopted safety codes very similar to the MCA codes for “commercial” yachts, and have adopted wholesale a plethora of British maritime regulations.

b. There are no citizenship or nationality requirements for the owner of a yacht registered in Belize.

c. The Belize registry allows “private” yachts to charter for up to a total of 112 days in any period of 12 consecutive months without having to comply with the full safety code, provided the yacht satisfies the additional requirements for commercial yachts of the same size, as well as the requirements pertaining to any change in the operating range, during the period when the yacht will be in commercial use.

5. Saint Vincent and the Grenadines -

a. The registry has an office in Fort Lauderdale which can provide expedited service for registration of yachts only.

b. The registry allows the registration of vessels owned by foreign entities, as long as the entity has a registered agent in St. Vincent.

c. The Shipping Act, 2004, contains some uncommon or peculiar provisions, some of them reminiscent of the Ship Mortgage Act in the U.S. before it was substantially amended in 1988. Compliance with the Act will require great care by a lender’s counsel in order to create and perfect a valid mortgage. Some of the statutory provisions are at the very least ambiguous, and arguably internally inconsistent.

d. In July 2008 a Safety Code of Practice for Pleasure Yachts was promulgated. It applies to pleasure yachts under 500 gross tons, even though not engaged in charters or carrying passengers for hire, or otherwise engaged in trade. If yachts under 500 gross tons are engaged in such activities, they must comply with the Safety Code of Practice for Pleasure Yachts Engaged in Commercial Trade.

e. In July 2008 a Safety Code of Practice for Pleasure Yachts Engaged in Commercial Trade was promulgated. It applies to pleasure yachts under 500 gross tons, even though not engaged in charters or carrying passengers for hire, or otherwise engaged in trade.
gross tons that are on charter or carrying passengers for hire, or otherwise engaged in trade.

6. **British Virgin Islands** –
   
a. This is a very popular jurisdiction for offshore company formation and registration of “smaller” yachts.
b. The registry has just recently been upgraded to a Category 1 Red Ensign registry, entitled to register large yachts.
c. There is an upper limit of 3000 gross tons for yacht registration.
d. The registry has adopted and applies the MCA codes for small and large commercial yachts, i.e., up to 24 meters in length, and over 24 meters in length.

7. **The Bahamas** - Requires that all pleasure yachts over 24 meters in length be classed, and comply with the requirements of the MCA Code of Practice for the Safety of Large Pleasure Yachts, regardless of whether they are private pleasure yachts or commercial yachts. This is a substantial disincentive for use of this registry by private pleasure yachts that do not engage in chartering.

8. **Bermuda** – Its maritime legislation mirrors that of the United Kingdom. It should be noted that Bermuda exercises a rather high degree of scrutiny of the beneficial ownership of yacht owning companies.
ATTACHMENT “1”

SCHEDULE OF DOCUMENTS

US$___,000,000.00 LOAN

TO: [BORROWER]

FROM: [LENDER]

Documents Respecting Corporate Authority and Related Matters:

1) Certified Copy of Certificate of Incorporation

2) Certificate of Good Standing issued by [FLAG] Registrar of Companies

3) Certificate of Secretary of [BORROWER] Respecting Holders of Outstanding Stock, Incumbency of Directors and Officers, Other Corporate Matters, and Attached Certified Copies of Various Documents, including:
   a. Certified Copy of Memorandum of Association;
   b. Certified Copy of Articles of Association;
   c. Certified copy of Actions by Unanimous Written Consent of the Director(s) and Shareholder(s) of [BORROWER] Respecting the Loan Transaction;
   d. Certified Copy of Register of Members;
   e. Certified Copy of Register of Directors and Officers;
   f. Certified Copy of Register of Mortgages or Charges.

4) Power of Attorney from [BORROWER] in favor of person(s) to act for the Company

Documents Respecting the Loan:

5) [Executed Loan Commitment Letter]

6) Marine Note and Security Agreement executed by [BORROWER] in favor of [LENDER]

7) Authorization and Directions to Pay Proceeds

8) [Affidavits of Borrower’s Attorney in Fact and Lender’s Agent re: out-of-state execution and delivery of the note, to evidence exemption from liability for Florida documentary stamp taxes)]
9) [Indemnification Agreement in respect of Florida Documentary Stamp Tax]

Documents Respecting Title to, and Registration and Mortgaging of the Vessel:

10) Copies of Bills of Sale for the Vessel and the tenders and/or personal watercraft obtained upon acquisition

11) Copy of the Protocol of Delivery and Acceptance of Vessel

12) Copies of all Documents furnished to [FLAG] Registrar of Ships in connection with Registration of the Vessel

13) Copy of new Certificate of British Registry

14) Copies of all Regulatory or Convention or Classification Certificates, including MCA Certificate of Compliance for a Large Charter Yacht

15) Copy of Private Ship Station License

16) [Copy of Transcript of Register from [FLAG] Registrar of Ships, evidencing Borrower’s ownership of the Vessel free and clear prior to execution/filing of the Statutory Mortgage]

17) Verification by Lender’s agent of the Vessel’s actual existence and identity (e.g., pencil tracing or close-up photo of Hull Identification Number and Official Number, and photos of the Vessel)

18) First priority Statutory Mortgage (to Secure Account Current, etc.) from [BORROWER] to [LENDER], entered in the Register of British Ships by the [FLAG] Registrar of Ships

19) Deed of Covenants supplemental to the Statutory Mortgage

20) Transcript of Register evidencing registration of the Statutory Mortgage in favor of [LENDER] with first priority, and no other mortgages or liens or encumbrances of record

21) Insurance Cover Notes, Policies or Related Documents, including endorsements in favor of [LENDER] as to (i) Notice of Assignment, (ii) Loss Payable Clauses, (iii) 30 days Notice of Cancellation, (iv) no liability of Lender for premiums, and (iv) Breach of Warranty coverage

22) Insurance Broker’s Letter of Undertaking, with Appendices A, B, and C thereto

23) [Insurance Anti-coercion Statement (Florida)]

Documents Respecting the Collateral (Other than the Mortgage):

24) Collateral Assignment of Earnings, Charter Hire, etc., and Notices of Assignment

25) Collateral Assignment of Insurances of Vessel, and Notice of Assignment
26) **U.C.C.-1 Financing Statement** identifying [BORROWER] as Debtor and [LENDER] as Secured Party, with an Attachment identifying all the Collateral (to be filed with the District of Columbia Recorder of Deeds)

27) **Certified Copy of the Company’s Register of Mortgages or Charges**, amended to reflect the Statutory Mortgage, Deed of Covenants, Marine Note and Security Agreement, Collateral Assignment of Earnings, Charter Hire, etc., and Collateral Assignment of Insurances

28) **Shares Charge and Pledge Agreement** executed by [BENEFICIAL OWNER] respecting 100% of the issued and outstanding stock of [BORROWER]

29) **Consent of Director(s) of [BORROWER] to the Shares Charge and Pledge Agreement**

30) **Blank, undated Shares Transfer form(s)** executed by [BENEFICIAL OWNER]

31) **Irrevocable Proxy and Power of Attorney** executed by [BENEFICIAL OWNER]

32) **Undated Letters of Resignation** executed by each Director and Officer of [BORROWER]

33) **Original Issued and Outstanding Share Certificate(s)** of [BORROWER]

34) **Lender’s Receipt for the Share Certificates**

35) **Irrevocable Unconditional Personal Guarantee** of [BENEFICIAL OWNER]

36) **[If appropriate, Irrevocable Unconditional Personal Guarantee of Spouse of [BENEFICIAL OWNER]**

**Miscellaneous Documents:**

37) **Verification of Liquidity and Credit Reference** Received from [BANK REFERENCE]

38) **Condition/Valuation Survey** by [SURVEYOR]

39) **Opinion Letter of [FLAG] Counsel** for Borrower

40) **Certificate of Officer of [BORROWER]** in Support of Opinion Letter

41) **[Opinion of [FLAG] Counsel** for Lender]

42) **Closing Statement.**