

Shipping finance: recent French law legal updates

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There have recently been significant developments in French maritime law, which will be of interest to all professionals involved in the maritime sector, and which aim to make the French maritime flag more attractive.

Thanks to its overseas territories, France is the second largest maritime territory in the world behind the United States.¹ Based on article 76 of the Montego Bay Convention,² France has recently filed requests with the Commission on the Limits of the Continental Shelf of the United Nations (Division for Ocean Affairs and the Law of the Sea) for the extension of its continental shelf that are still under examination, but which may soon permit France to overtake the US and become the world's biggest sub-maritime territory.

And yet, France's civilian fleet ranks 31st in the world, whereas it was 5th in the 60's.³ Legislation that is incomprehensible to anyone who is not familiar with French maritime law (due to applicable statutes and rules located in many and different places), painful administrative procedures for applicants for the French flag and an outdated regime of French law maritime security interests, are just a few of the reasons why France's flag has become less and less attractive for international ship-owners, operators and financiers.

But things are changing and France is now taking steps to improve the attractiveness of its flag. The Law No. 2016-816 dated 20 June 2016⁴ and the recent Decree No. 2017-974 dated 10 May 2017⁵ bring welcome innovations to the existing ship registration provisions; and the Decree No. 2016-1893 dated 28 December 2016⁶ aims to gather scattered existing maritime regulations into the French Transport Code, in order to improve the readability of French maritime law and make it more practical and predictable for users.

Welcome innovations relating to French law ship registration matters

The new legislation brings some interesting innovations to the existing provisions set out in Articles 219 *et seq.* of the French Customs Code (*Code des douanes*) which relate to the registration requirements of ships on the French registry. Below are the most significant changes.

¹ *Rapport d'information de l'Assemblée nationale du 29 juin 2016 de la Commission des affaires étrangères sur « la diplomatie et la défense des frontières maritimes de la France – Nos frontières maritimes : pour un projet politique à la hauteur des enjeux »*

² United Nations Convention on the Law of the Sea of 10 December 1982

³ *Avis n° 145 (2016-2017) de M. Charles Revet, Sénateur, fait au nom de la commission de l'aménagement du territoire et du développement durable sur le projet de loi de finances pour 2017, enregistré à la Présidence du Sénat le 24 novembre 2016*

⁴ *Loi n° 2016-816 du 20 juin 2016 pour l'économie bleue*

⁵ *Décret n° 2017-974 du 10 mai 2017 relatif à la francisation des navires et aux hypothèques maritimes*

⁶ *Décret n° 2016-1893 du 28 décembre 2016 relatif aux dispositions du livre 1er, du livre IV, à l'exception de son titre IV, ainsi que des chapitres 1er et IV des titres 1er à IX du livre VII de la cinquième partie réglementaire du Code des transports, et portant diverses mesures d'adaptation relatives à l'outre-mer*

It is now possible for all ships operated under bareboat charter arrangements⁷ that the charterer may request that the French flag be suspended or frozen if the charterer intends to operate the ship and transfer its flag to another country during the charter period.⁸ If a mortgage is registered against the ship, the suspension of the French flag will be subject to the prior consent of the mortgagees and will only be possible if the country of the new flag does not allow for the registration of new mortgages over the ship. Provided that these conditions are met, the French flag will be suspended but any existing French law ship mortgage will remain registered in France. This change will considerably simplify the registration process for short term charter arrangements.

The ability to register ships on the French registry is also extended to ship managers, as long as the management of the ships is carried out from France and the ship managers meet the nationality requirements set out in the French Customs Code, which are the same as those required for ship-owners.

Finally, the new legislation reduces, subject to a specific authorisation, the minimum ownership share required to register a ship on the French registry. As a general rule, the provisions of the French Customs Code provide that where a ship is owned by co-owners, each co-owner must own at least 50% of the ship. However, the reformed legislation introduces a new threshold by providing that a ship can now be registered on the French maritime registry where its co-owners own at least 25% each of the ship subject to the co-owners meeting the following criteria: (i) the co-owners must meet the nationality requirements set out in the French Customs Code, and (ii) the management of the ship must be carried out by co-owners or by managers complying with these nationality requirements.

Improved competitiveness of the French flag

The reforms also aim to improve France's flag competitiveness. Article L.5553-11⁹ of the French Transport Code now grants ship operators¹⁰ a full exemption of social charges (*charges patronales*) for the crew employed on board vessels registered under the French flag. The vessels in question must carry out transport or services activities and must be subject to international competition. Such change will benefit the French ship operators who have suffered to date from the heavy French social charges compared to ship operators in other jurisdictions.

Further legislation also removes restrictions imposed on French flag vessels with respect to gambling on board.¹¹ Such restrictions, which deprived the ship operators of French passenger vessels of revenues, were no longer justified. Gambling and slot machines will now be able to be installed on all French passenger ships (subject to an administrative authorisation), allowing them to be better positioned in the international maritime market.

Further technical changes have been made to French maritime law, although they cannot all be listed for the purposes of this note. The reforms are welcome and continue - from a more general view - other recent French law changes aimed at improving France's international competitiveness in shipping finance.¹²

French maritime law unification process

The French law maritime statutes (*lois*), previously to be found in various pieces of legislation, were compiled in 2010 into a new French Transport Code,¹³ while the French law maritime regulations (*règlements*) remained scattered and therefore uneasy to read.

The Decree No. 2016-1893 dated 28 December 2016 continues the unification process of French maritime legislation by incorporating most of the existing regulations into the French Transport Code. Quite unhelpfully, some maritime regulations have not been abolished or codified into the French Transport Code, and it will therefore remain necessary to consult both the French Transport Code and the remaining existing regulations.

⁷ *Affrètements « coque nue »*

⁸ Such suspension was previously possible with respect to ships registered on the French International Register (RIF) only and only on the basis of an Inter-ministerial Circular dated 9 July 2008 which did not have the force of law

⁹ As modified by article 43 of the *Loi n° 2016-816 du 20 juin 2016 pour l'économie bleue*

¹⁰ *Entreprises d'armement maritime*

¹¹ Article 51 of the *Loi n° 2016-816 du 20 juin 2016 pour l'économie bleue*

¹² See our Client Alert dated 13 January 2017 entitled *Transfer of French export credit activities from Coface to Bpifrance Assurance Export S.A.S.*

¹³ *Ordonnance n° 2010-1307 du 28 octobre 2010 relative à la partie législative du Code des transports*

Some cause for optimism can, however, be found in the obligation imposed on the French government, by the new legislation,¹⁴ to provide Parliament with a report on the possible creation of a specific Sea Code (*Code de la mer*), which would gather together all French maritime laws and regulations. The report is expected to be released by the end of 2017.

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¹⁴ Article 97 of the *Loi n° 2016-816 du 20 juin 2016 pour l'économie bleue*