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WORLD MARITIME UNIVERSITY

Malmö, Sweden

**INTEGRATED APPROACH TO THE
MODIFICATION
OF
THE SHIPPING REGISTER IN MACAO**

By

VONG KAM FAI

Macao

A dissertation submitted to the World Maritime University in partial
fulfilment of the requirement for the award of the degree of

MASTER OF SCIENCE

in

GENERAL MARITIME ADMINISTRATION

&

ENVIRONMENT PROTECTION

1996

Declaration

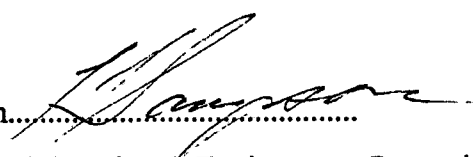
I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my personal views, and are not necessarily endorsed by the University.

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Abstract

Title of dissertation: Integrated Approach to the Modification of the Shipping Register of Macao

Degree: Msc.

The dissertation is a study on the modification of the shipping register in Macao. It begins by revealing the facts about the current registration of ships in the territory and ends with proposing a modified shipping register which is considered acceptable to all parties involved and some recommendations for its further development.

During the process, a brief look is taken at the historical background of the creation of the Macao Ship's Register (MSR), the cause of its inoperability and the reality of the registration of ships in the territory - the registration of property of ships instead of registration in a real sense.

The other issue to be examined are the needs for the modification of this irregular situation of the registration of ships in Macao. They are primarily the needs of the Republic of Portugal (Portugal) and the People's Republic of China (PRC) for the smooth transference of administration of Macao from the former to the latter according to the Joint Declaration on the Question of Macao (Joint Declaration).

As the necessity for the modification of the MSR to make it operable is recognized, a proposed modified shipping register is thus presented. In the proposal, all possible conflicts of interests with Portugal and the PRC are prevented with no cost to the interests of the territory. Otherwise, the register would either fail in concretization or become meaningless to the territory. Consequently, stringent requirements for ownership of ships and manning requirements with conditional flexibility are included in the proposed register.

In the concluding chapter, conclusions and recommendations are made. The former concentrates on the benefits that the proposed modified shipping register would bring, while the latter is on the eventual efforts of the Capitania dos Ports de Macao (CPM, Harbor Master's Office of Macao) to help smooth the operations and future development of the register.

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List of Abbreviations

CPM	Capitania dos Portos de Macao (Harbor Master's Office of Macao)
EOM	Estatuto Organico de Macao (Organization Statute of Macao)
MSR	Macao Ship's Register
PRC	People's Republic of China
RAEM	Região Administrative Especial de Macau (Macao Special Administrative Region)
STCW	International Convention on Standards, Training, Certification and Watchkeeping for Seafarers

Chapter 1

Introduction

Macao is a territory with a total area of 20.9 km and a population of 400,000. It lies on the coast of southern China between the two estuaries of the Pearl River and the West River. The territory, though long considered to be an integral part of the PRC, is at present under Portuguese administration.

On 13 April 1987, upon conclusion of diplomatic negotiations, the PRC and Portugal signed the Joint-Declaration. It heralds the end of the Portuguese administration in the territory and the Chinese resumption of the exercise of sovereignty over Macao. The transference of the Administration is determined to be made on 20 December 1999. At that time, the Macao Special Administrative Region (RAEM) will be established in accordance with the Basic Law of the RAEM of the PRC (Basic Law).

Among the administrative organs transferred, the shipping register will naturally be one. However, the MSR, which was created by the government of Macao without prior consent and subsequent support of Portugal and the PRC (the current and future flag states of ships registered there respectively) is destined to failure and thus actually exists only on paper. Unfortunately, it was originally planned to resume the registration of ships in the territory. This function of the CPM has been lost since the Portuguese withdrew the legal basis on the matters in the wake of its decolonization policy in Macao.

Regarding the registration of ships, the current situation of the territory causes people to worry about the smooth transition of administration to the PRC and the further development of the local shipping industry. This induces the author to work for its solution and subsequently leads to the writing of this dissertation. The dissertation, in other words, aims at clarifying the facts about the MSR, explaining the necessity for its modification and primarily, proposing a modified shipping register which appears to be acceptable to all parties involved.

The dissertation, as a whole, is arranged in six chapters supported by one appendix containing the organization chart of the CPM. It is in chapter 2 where the reality of the existing shipping register is discussed. In examining the issues concerned, some background information about the creation of the MSR is provided due to its immediate relevance to the characteristics of the register. The other matter worthy of a few pages is the inherent problems of the legislation governing the registration of ships in the territory. By virtue of these, the MSR has never been concretized. Finally, at the end of this chapter, the registration of property of ships, which is now being practiced in the CPM instead of the registration of ships in a real sense, is further clarified.

The need for modifying and making the MSR operable is the theme throughout chapter 3. In the chapter, much emphasis is laid on the importance of an operable shipping register for the transition of administration to the PRC. In addition, the local maritime community's concerns over the legitimacy of their ships registered in the territory and the inherent needs of the CPM for subjecting ships under its single jurisdiction for safety and marine pollution control are the other elements to be reviewed.

Chapter 4 is wholly devoted to the feasibility study on the modification of the MSR and the analysis of the factors to be involved in the process of modification. As far

as it is concerned, the analysis may help avoid problems which eventually made the register inoperable.

Chapter 5 is the core of the dissertation in which a proposal for modifying the MSR is presented. In the proposal, principles and guidelines for the modified shipping register are set. Among them, those on manning requirements and requirements for the ownership of ships are included. Finally, to make this chapter complete, it seems not unwise to mention the conditional transition of ships, which are currently registered in the territory to the proposed modified register with registration of ships in a real sense.

In chapter 6, conclusions are drawn, and recommendations for further development of the proposed register are made as an end to the dissertation. In fact, this dissertation does not aim at becoming a working document or represent the position of the government of Macao. Instead, it is only an attempt to make contributions to the CPM and the shipping industry of the territory so as to make them become more efficient and effective in response to the rapid changes of the maritime reality of the present day. In this crucial moment of the transference of administration to the PRC, this is particularly essential and imminent.

Chapter 2

Reality of the Registration of Ships in Macao

Generally speaking, there are three small ports in Macao. They are the Outer Harbor where the ferry terminal between Macao and Hong Kong is built, the Inner Harbor where the general cargoes are operated and catch of fish discharged and the Port of Ka-Ho where only containers are handled.

According to an unpublished official report, most vessels actually registered in the CPM are of small capacity (Figure 1). A majority of them are participating in the coastal maritime transport between Macao and the nearby Chinese ports in the region, while a small amount serves only for the local maritime traffic and dredging.

Statistics on vessels registered in the CPM

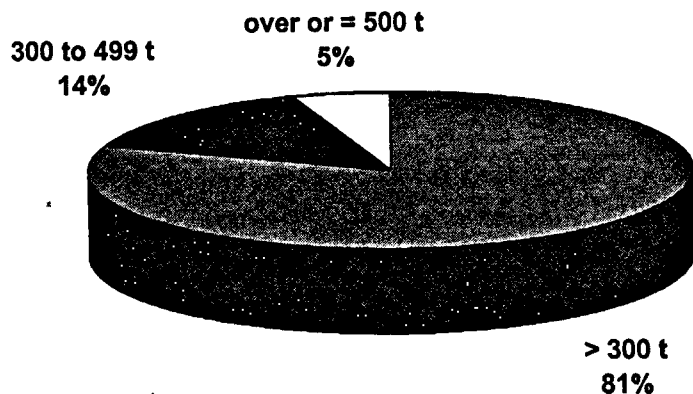


Figure 1 Statistics on vessels registered in the CPM

(Source: unpublished official report)

The history of regular maritime activities in Macao can be traced to the early period of the Ming Dynasty of China (Xin Cheng An, 1991, page 175). Since the first Portuguese presence in the territory in the 17th century, it has become a crucial stepstone for trade between Europe and the Far East. Along with further expansion of colonization, the Portuguese began to build their fortresses and piers in this small peninsula.

In the turn of the last century, the Ministry of Marine Affairs and Overseas of the Portuguese government decided to take Macao as one of the ports of registry of Portugal. Meanwhile, a division of the Portuguese General Harbor Master's Office, the CPM, was installed in the territory for that purpose. The CPM represented the interests of the Portuguese government in the region and acted on behalf of it in terms of maritime administration.

However, this practice remained unchanged for nearly a century until the Portuguese Revolution in 1974. At that time, the Portuguese government renounced its claim of colony to the territory. This resulted in the subsequent disjunction between governmental structures of Macao and Portugal. The system of the Harbor Master's Office was involved without exception. Eventually, the legal basis for the registration of ships in the territory was withdrawn by Portugal.

Today, the registration of ships in the CPM could only carry the nature of registration of property but not the registration of ships in a real sense. On seeing that, the CPM made an attempt to its solution by creating the MSR in the territory in 1988. In spite of that, due to some specific reasons, the MSR exists only on paper and has never been operable.

Last year, the CPM had its obsolete administrative structure reorganized for the first time in the century. In the new organogram (see Appendix 1), the CPM is composed

of four departments and two dependent units. However, it is this small maritime administration which is assuming the responsibility for all the maritime affairs of the territory, including the registration of ships.

2.1 Existing Shipping Register

2.1.1 Creation of the MSR

When a shipping register is discussed, it is useful to get familiar with the background knowledge about its creation. This is because a close relation always exists between the background where the shipping register is brewed and the register itself. The MSR is no exception.

2.1.1.1 Obsolete maritime legislation, withdrawal of legal basis and disjunction between governmental structures

The registration of ships in Macao did not begin without necessary legal basis and authority delegated by the Portuguese government. At the turn of the century, Portugal determined to consolidate its colonial administration overseas. As a result, Macao was taken as one of its ports of registry and a division of the national General Harbor Master's Office, thus the CPM, was installed in the territory for that purpose. By means of that, the Portuguese government succeeded in extending its official maritime administration to Macao.

Theoretically, the CPM, as a division of the national General Harbor Master's Office, was entitled to act on behalf and represent the interests of the Ministry of Marine Affairs and Overseas of Portugal. In this context, there was no difference between the CPM and its counterparts in Portugal in the legal basis and authority delegated by the Portuguese government. By virtue of this, ships registered in the CPM in the past

could fly the national flag and be conferred with the Portuguese nationality. In terms of administrative procedures and requirements for the registration of ships, they were exactly the same as those in Portugal. In addition, the safety of ships was under rigorous control of the Portuguese navy in the territory.

In 1909, on recognizing the importance of having the Portuguese maritime legislation localized for their better adaptation to the reality of the local community, the CPM decided to enact the General Regulations of the CPM in lieu of impractical regulations. As a consequence, some adjustments in the previous administrative procedures and requirements for the registration of ships were made. Since then, no change of the Regulations has ever been made for nearly a century. Nonetheless, they are still in force in Macao at present. However, the relevant legislation became stagnant.

In the 1920s, the Portuguese government felt the need for further strengthening its colonial administration overseas, therefore, it decided that all the maritime legislation promulgated in Portugal would naturally have their binding legal effects on the colonies. Any current legislation in contradiction with them would be void. Instructions on the applicability of relevant legislation would then be given by the Colonial Ministry to the colonies overseas. Appeals should be filed to the Supreme Court in the Portugal.

Under these circumstances, the registration of ships in the CPM did continue to proceed even though the local maritime legislation could no longer support it any more and became obsolete. However, it is not only inadequate but also impossible for the CPM to take the initiative in making any changes in this aspect.

Fortunately or unfortunately, the Portuguese Revolution against the dictatorship in 1974 shattered the tranquillity. At that time, the revolutionary government declared

the conclusion of its colonization policy and admitted the Chinese sovereignty over Macao. Nonetheless, the PRC decided to commend the territory to the care of Portugal temporarily and have it back in an opportune time.

The legal status of the territory of Macao was actually undergoing a radical change. In order to reflect the political reality of the Portuguese transitional commitment on the territory, the Estatuto Organico de Macau (EOM, Organization Statute of Macao) was promulgated through Law No. 1-76 of Portugal. By the said legislation, Macao was authorized to have limited independence from Portugal and enjoy legislative, administrative and judicial autonomy to a certain extent.

Nowadays, any Portuguese maritime legislation, before it can be applied to Macao, must be promulgated again in the territory. In the strict sense, Portugal has therefore withdrawn the legal basis for the registration of ships in the territory. Somehow, since the Portuguese Revolution, no maritime legislation with respect to the registration of ships has ever been promulgated in Macao. To make things worse is that the provisions in the obsolete General Regulations of the CPM can no longer support the registration of ships of the present day any more.

In addition, the paralysis of the function of registration of ships in the CPM can be attributed to the political factors involved. For the Portuguese government, the political reality of the legal status of Macao made it difficult to continue to take the territory as one of its ports of registry.

Theoretically, the CPM is separated from the hierarchical structures of the Portuguese government and became subordinate to the government of Macao. There is no natural legal relation between the CPM and the General Harbor Master's Office of Portugal. Therefore, the former can neither represent the interests of the Ministry of Sea of Portugal (Ministry created after the Portuguese Revolution and in charge of

all the marine affairs) nor act on behalf of the Portuguese government in terms of the registration of ships. In this aspect, the CPM lost its function entirely. Eight years later after the Portuguese Revolution, the need for the recovery of this function of the CPM eventually led to the creation of the MSR.

2.1.1.2 Initiative of the Portuguese shipowners

There is no doubt that the legislation governing the MSR was promulgated in Macao. Nevertheless, it was primarily the Portuguese shipowners who took the initiative to make it a reality in the territory. This was done simply out of their need for resolving the dilemma of the shipping industry in Portugal.

In time of colonization, most of the Portuguese national fleet was devoted to trading between the country and its colonies overseas. Upon conclusion of the colonization policy and the subsequent independence of the ex-colonies, the shipping industry and trade of Portugal suffered fundamental changes in various aspects.

In addition to the considerable loss of share in maritime transport between Portugal and the previous colonies overseas, there were still some other factors which made the business of the national shipping industry difficult. They included the natural repercussions on the world freight market, strong intervention and serious bureaucracy of the government, less flexibility in shipping regulations and strict control over transaction of ships registered in Portugal.

However, the success of the Norwegian shipowners inspired their Portuguese counterparts to try for the same solution to the problem of registration of ships in Portugal. During the whole period of the 1970s, the shipping industry of the Scandinavian country, Norway, was undergoing the same hardship as that in Portugal. The relative competitive edges an open registry would offer were so

attractive that a considerable number of the Norwegian shipowners could not help having their ships flagged out irrespective of what efforts the government had been made to keep them stay, not even direct shipbuilding subsidies, tax allowances, home credit schemes, investment and research subsidies and assistance from non-public sources (Robert Kappel, 1988, page 24).

In 1987, the situation of registration of ships in Norway went through a radical change as the government submitted to the political pressure from the local maritime community, mainly the National Association of Shipowners. For the purpose of having the national merchant fleet kept stable against impact from flagging out, the Norwegian government finally agreed to establish a Norwegian International Ship Register. It functions in parallel with the existing National Ship Register and is especially reserved for ships not involved in the local and coastal maritime traffic.

The International Ship Register is considered to be a combination of the strength of both a traditional normal shipping register and an open register. It can provide the shipowners with most of the advantages a flag of convenience of open register would offer, such as the flexibility in recruitment of crew and exemption of taxation. On the other hand, the effective control over beneficial shipowners and management of the ships which a traditional normal shipping register required is still retained in the hands of the flag state. Under such circumstances, the Norwegian shipowners can maintain its relative competitiveness. Therefore, the flagging out is improved to a large extent.

As a consequence, the Portuguese shipowners would like to try their own means in Portugal. In other words, they would like to have the same second register in the country. However, one man's meat is another man's poison. Owing to the frequent changes in government and unstable maritime policy in Portugal, the efforts of the Portuguese shipowners in the registration of ships did not receive any reward. This

made some of them determine to seek a solution to their problems to the once colonial outpost of the country in the Far East, the territory of Macao. They soon began frequent contacts with the local government on the matter and were received with a great deal of enthusiasm. However, not only the Portuguese shipowners but also the government of Macao had a common interest in the international shipping register.

2.1.1.3 Plans for restoration of registration of ships and revival of the local shipping industry

Strictly speaking, the MSR was created primarily with the aim of restoring the registration of ships in the territory and reviving the local staggering shipping industry rather than with the aim of transferring the Administration of Macao to the PRC. In 1985, seeing the problem of chaotic registration of ships and the constant decline in the local shipping industry (which was once a major contributing industry to the economy of Macao), the CPM felt the need to regulate the activities of registration of ships and contribute to the revival of the relevant industry. However, the financial resources which the local government could allocate to the maritime sector were limited and did not really support what was planned.

Therefore, the CPM would like to have recourse to a shipping register which can restore the registration of ships in the territory and at the same time, bring instant financial benefits to the sector. Moreover, this shipping register should also, as it is described in the preamble of the legislation governing the creation of the MSR (Decree 64/88, 1988, Macao),

“provide sufficient incentives to the shipowners for increasing the number of ships registered ...”

On the other hand, the Joint Declaration that was signed in the same year, had not mentioned any arrangement for the registration of ships in the territory upon the transference of administration to the PRC. Under such circumstances, the CPM felt free in determining the issue as well as the type of shipping register to be transferred. Subsequently it considered that the creation of the MSR would be in the best interest of the territory.

2.1.1.4 Promulgation of the legislation of the MSR

On 11 July 1988, the Governor of Macao promulgated the legislation governing the creation of the MSR in the territory by utilizing his unique authority conceded by Paragraphs 1 and 2 of Article 13 of the EOM as well as the authority delegated to him by the Legislative Assembly of Macao through Law 15/88/M. In this way, the MSR was created. Since then, no supporting legislations for registration of ships have ever been enacted in the territory.

2.1.2 Characteristics of the existing shipping register

In the legislation governing the creation of the MSR, there are 29 articles governing the registration of ships in the territory. Many of them are highly interrelated and interdependent. In general, the MSR is characterized by the following:

- Nationality and flag state of the ships registered

In Article 6 of the said legislation, it is described as follows:

“Ships registered in the MSR will fly the flag of the state which administers the territory of Macao.”

The Article implies that before the transference of administration of Macao to the PRC on 20 December 1999, ships registered in the MSR will fly the Portuguese flag and Portugal will naturally be their flag state. After that, the flag used by the ships

will exclusively be Chinese. The PRC will take over the jurisdiction, protection and responsibility under international law now exercised and borne by Portugal as the flag state of the ships.

- Requirements for ownership and conditions of ships to be registered

There are neither requirements for the ownership nor restrictions on the maximum age of ships to be registered. Nevertheless, representatives in the territory who are duly authorized to accept legal service on behalf of the shipowners are required to nominate in case the shipowners are not local residents or does not have their head office in Macao. In this context, it is not obligatory that the representatives should be the local permanent residents of Macao or Portuguese.

- Manning requirements and social standard of seafarers recruited

As far as the manning requirements are concerned, there is no restriction on the nationality of qualified seafarers recruited. In this aspect, no great difference is found between the MSR and an open register. With respect to the social standard of the crew, specially in terms of the laboral contracts and minimum working conditions, no concrete regulation is referred.

- Fees and taxation

On registration of ships, shipowners are subject to a registration fee for the initial registration. Subsequently a fee in function of the gross registered tonnage of the ships is needed to pay on a yearly basis. For shipowners who are running their maritime transport business in the territory, certain annual charges are applicable. The shipowners are exempted from a profit tax on freight collected just as the case in an open register. In regard to the salary seafarers have earned on board, it is entirely tax-exempt.

- Safety and marine pollution control over ships

In the legislation, Article 16 makes it an obligation that ships to be registered must be subject to the technical inspections of the MSR. The technical conditions of the ships should be in conformity with the provisions of the international conventions and other relevant legislation in force in the territory. In this way, the safety and marine pollution control over ships can be ensured.

2.1.3 The inoperable MSR

The MSR, since the respective legislation was enacted in Macao, has never fulfilled its normal function as a shipping register and exists only on paper. However, this can be attributed to various reasons. Among them, the lack of support from the Portuguese government is a major one.

2.1.3.1 Doubtful legal basis of the register

It is beyond argument that registration of ships is an exclusive action of a sovereign state. Such state may also give permission to its dependent territory or special administrative region to legislate and otherwise act on its behalf in this aspect. Ships registered there could then receive recognition from the international maritime community.

The territory of Macao, as its legal status suggests, is not a sovereign state but is at present under the Portuguese administration. It has never had the permission from Portugal to legislate or act on its behalf in terms of registration of ships. Therefore, there are sufficient reasons to cast doubt upon the legal basis of the legislation of the MSR.

According to the EOM, both the Governor of Macao and the local Legislative Assembly can have their exclusive competence to promulgate legislations in the

territory. As it is stated in Paragraph 1 and 2 of Article 13, Paragraph 1 and 2 of Article 30 and Paragraph 1 and 2 of Article 31 of the EOM, their competence is only within the limits of making laws on domestic matters in Macao but not on such exclusive actions of the sovereign state as the registration of ships.

The legislation governing the MSR was promulgated in the territory by the Governor of Macao by utilizing the competence delegated to him by the EOM. Naturally, it is absolutely impossible for the government of Macao to bind the Portuguese government to implement such legislation as well as to oblige Portugal to be the flag state of the ships registered in the MSR. As a result, the MSR, as a shipping register, can not function normally in terms of conferring flag and nationality to ships registered there without prior consent of Portugal if those ships are determined to use the Portuguese flag.

2.1.3.2 Lack of support from the Portuguese government

The lack of support from Portugal to the MSR is primarily due to two reasons, the conflicts of interest of the MSR with Portugal and the political risk which the Portuguese government would have run to the relationship with the PRC if it had granted approval to the MSR. Even though the territory is actually under the Portuguese administration, it is not necessary to justify the Portuguese approval of the MSR at the cost of the own interests of the country. In the registration of ships, the Portuguese government has a special interest different from that of the government of Macao.

- Conflicts of interest with Portugal

There are some provisions in the legislation of the MSR which Portugal considered as a threat to its effective control over ships and crew and constituted problems of conflicts of interest.

For Portugal, no requirements for either ownership of ships or technical and management control over ships in the MSR would eventually place the unidentified beneficial shipowners or the management of the ships in a good position to take risks in comparison with those living under the eyes of a maritime administration of the flag state. The intentional poor maintenance is always one of the results.

In addition, the maximum flexibility allowed for recruiting seafarers on board ships registered in the territory would, in most of the cases, induce shipowners to employ foreign crew due to their competitive cost. This would subsequently be prejudicial to any possible criminal actions taken on them if extradition was needed, but no agreement does exist between their countries and Portugal in this aspect.

In the event of the execution of disciplinary actions, such as the withdrawal of the certificate of competence, the maritime jurisdiction on these seafarers is exclusively reserved to their flag state, as is stated in Paragraph 2 of Article 97 of the United Nations Convention on the Law of the Sea,

“... In disciplinary matters, the State which has issued a master’s certificate or a certificate of competence or license shall alone be competent, after due legal process, to pronounce the withdrawal of such certificates, even if the holder is not a national of the State which issued them.”

This will make it hard to carry out the execution and to gain access to the foreign crew in the investigation of marine casualties.

In synthesis of all the above-mentioned factors involved, Portugal did not consider the MSR worthy of either its support or approval. Naturally, the Portuguese government has adopted a negative attitude towards it.

- Political risk to the relationship with the PRC

If Portugal had given its consent to the registration of ships in the MSR unilaterally, it would have run political risk regarding the relationship with the PRC. This is mainly because, in conformity with the Joint Declaration, Portugal is responsible to the PRC for consulting with the latter about the registration of ships in the Sino-Portuguese Liaison Group (Liaison Group) before such consent is given.

At the end of 1987, the Liaison Group was formed according to the provisions in Annex II of the Joint Declaration. It gives an opportunity to both Portugal and the PRC for exchanging their opinions on matters relating to the smooth transition of administration of Macao to the PRC. It is necessary that not only legislation to be enacted in Macao during the transitional period which is intended to have legal effects after the transference of administration, but also important matters which would affect the smooth transition should be fully discussed in the Liaison Group before the respective decisions are made. Obviously, the creation of the MSR is considered as one of these important matters.

In the Liaison Group, the legislation and matters are checked to see whether they correspond to the interests of the PRC and whether adjustments need to be made. In this situation, Portugal would only grant approval to the MSR until it has been confirmed that the MSR does correspond to the interest of the PRC. As the necessary consultation procedures in the Liaison Group for the MSR have not been completed yet, therefore, it was not adequate for Portugal to give its support to the MSR. Otherwise, Portugal would have run the political risk to the intimate relationship with the PRC.

2.1.3.3 Lack of supporting legislation for the operation of the MSR

Strictly speaking, the MSR appears just like a framework of legal document for further concretization rather than a workable legislation. A majority of international

maritime conventions and regulations intended to be applied in the MSR are pending for their introduction and promulgation in Macao. As can be seen in Paragraph 2 of Article 2 of Decree 64/88/M (the legislation governing the creation of the MSR),

“The MSR is an organ of the Administration of Macao, with administrative and financial autonomy and regulated by decrees later enacted.”

even the concretization of the organ itself has to be determined by the promulgation of further decrees.

However, owing to the lack of support from Portugal for the MSR, the enactment of such kinds of decrees in the territory would inevitably become meaningless and even aggravate the embarrassing situation of the registration of ships. In view of that, the government of Macao has never attempted to promulgate the relevant decrees in the territory.

In addition, in conformity with the provisions in the Basic Document of the International Maritime Organization, the introduction of international maritime conventions to a territory is the responsibility of the sovereign state of the territory. Portugal can make such introduction of conventions to Macao only after completing the necessary consultation procedures with the PRC in the Liaison Group. In this aspect, the local government can do nothing unilaterally. Without the supporting legislation, the MSR can never be concretized and operate. As a result, it actually became inoperable and exists only on paper.

2.2 Registration of the Property of Ships

Ships registered without being entitled to fly the flag of a sovereign state should not be considered as having been registered in a real sense. Consequently, they can not receive the due recognition of that sovereign state let alone the international maritime community. In reality, ships registered in Macao have been in the same situation

since the Portuguese withdrew its legal basis for the registration of ships in the territory. Even with the MSR created, this situation still remains unchanged.

In 1974, upon the change of the legal status of Macao and the subsequent Portuguese withdrawal of legal basis for the registration of ships in the territory, the CPM decided that the registration of ships in the territory should be continued. The decision was made primarily for the sake of safety and marine pollution control over local ships as well as for the convenience for licensing their activities. Naturally, the registration is not regarded as the true entry of the ships in the public records of Portugal. Instead, it serves only for management purposes of the CPM and registration of property of ships. Ships registered there are not entitled to use the Portuguese flag.

The MSR, which was created in 1988, was originally planned to restore the registration of ships in Macao. However, it actually exists on paper and is not workable. In order to preserve the status quo in this aspect, the CPM has to continue the practice of registration of the property of ships in the territory even though it is reluctant to do so.

Chapter 3

Necessity of Modification

3.1 For transition of the Administration of Macao to the PRC

It is an undeniable fact that the MSR is inoperable and does not serve the registration of ships in Macao. In the transference of administration of the territory to the PRC, the inoperable MSR is considered to be a constituent part of the Administration and thus needed to be transferred. In accordance with the Joint Declaration, Portugal is responsible for the regular administration of Macao before the end of the transitional period. Therefore, the Portuguese government should take the responsibility for making the MSR workable before the transference is made. Otherwise, the smooth transition will be affected and so will the relationship between Portugal and the PRC.

In addition, some provisions in the legislation governing the creation of the MSR have constituted problems of conflicts of interest with Portugal. Consequently, there is a need for the modification of the MSR before the register can function properly.

3.1.1 Origin of the transference of administration and the Joint Declaration

Macao had been a disputed territory between Portugal and the PRC. The settlement of such dispute originated the need for the transference of administration of the territory from the former to the latter and led to the proclamation of the Joint Declaration.

The story began in the Ching Dynasty of China when the Portuguese gradually occupied the territory of Macao. The occupation of the territory which is long considered to be part of the territory of China was described by the Portuguese historians as a reward for the expulsion of pirates. As time elapsed, in 1949, the PRC gained control of the mainland at the end of the Chinese civil war. Since then, the PRC has constantly challenged the Portuguese right on Macao while Portugal has insisted on its legitimate claim of colony on the territory.

In fact, the Portuguese government disregarded the challenge from the PRC and continued its colonial administration in Macao until the end of its colonization policy overseas in 1974. At that time, Portugal decided to return the territory of Macao to the PRC.

However, the return of the territory to the PRC did not necessarily signify the hurried withdrawal of the Portuguese administration from Macao. Instead, the PRC, in order to prevent any political unrest or social turmoil in the territory, determined to commend Macao to the provisional care of Portugal until the moment when the transference of administration is asked. At the beginning of the last decade, upon concluding the diplomatic negotiations between the PRC and Great Britain over the solution of the problem of Hong Kong, such an opportune moment came.

Later on, as both the PRC and Portugal had the common interest in further strengthening their relationship, the diplomatic negotiations over Macao could thus be conducted in a satisfactory environment. Practically, there was no great barrier found in the negotiations. Finally, the Chinese and Portuguese governments signed the Joint Declaration on the Question of Macao in 1987.

3.1.2 Basic Law and transition of the existing shipping register

The transition of the existing shipping register of the territory to the PRC is mainly for the purpose of satisfying the need of the Basic Law. After the Joint Declaration was signed, the drafting of the future base of law for Macao got under way. In 1993, the General Assembly of the National People's Congress of the PRC adopted the Basic Law of the RAEM of the PRC. The law was elaborated according to the principle of "one country, two systems", which was previously laid down by the Joint Declaration.

In the Basic Law, there are some provisions particularly included for dealing with and regulating the activities and competency of the RAEM. It is in Article 116 of the Basic Law where the registration of ships in the RAEM is regulated. It is so stated,

'The Macao Special Administrative Region shall be authorized by the Central People's Government to maintain a shipping register and issue related certificates under its legislation, using the name "Macao, China".'

The Article makes it clear that after the transference of administration of the territory to the PRC, the RAEM can still maintain its own shipping register. Even though the form of such shipping register is not defined, obviously, it should be the natural extension and transition of the present shipping register of Macao to the RAEM.

On the other hand, if the PRC determines that the shipping register referred to in the Basic Law be enacted after the transference of administration and there will not be any transition of the existing shipping register, such decision will certainly be prejudicial to the international image of the PRC. Furthermore, from the perspective of the PRC, it could exert an adverse political influence on the eventual solution of a similar problem, the unification with Taiwan. This is because the decision will make a lasting impression on the outside world that the PRC is imposing a shipping register on the maritime community of Macao, disregarding the interest of the

involved sectors. As a result, the current system of registration of ships in the territory would suffer a radical change.

Unfortunately, all of this could cause people to cast discredit on the promise made by the PRC in the Joint Declaration that the Central People's Government of the PRC will not intervene in the internal affairs of the RAEM and that the current legal, administrative and judicial system of Macao will not be changed radically. This is not what the PRC would like to see. Therefore, it is not only Portugal which, in conformity with the Joint Declaration, has a responsibility for solving the problem of the inoperable MSR for transition purposes, but also the PRC which would hope this can be done in its favor.

In the modification of the MSR to make it workable, both the PRC and Portugal have common interests. The need for the modification of the MSR is indisputable. Moreover, the maintenance of a shipping register in the RAEM should be authorized by the PRC just because this will ensure that authority from the Central People's Government has been duly delegated to the RAEM. Then the RAEM is entitled to act on behalf of the PRC in terms of registration of ships after the transference of administration.

3.2 Social demand for the modification

The social demand is the other driving force that obliges the local government to modify and make the MSR operable. For the local shipowners, there are mainly two kinds of demands which justify the modification. They are the demand for legal status of ships and the demand for better financial support of ships.

3.2.1 Demand from local shipowners for legal status of ships

In the recent years, as the number of ships registered in the territory began to grow rapidly, the demand from local shipowners for legal status of ships has emerged. However, the rapid growth in number of ships registered may be attributed to some historical reasons and privileges which the CPM at present provides for ships registered locally.

In the past, for the local shipowners, it was not wise to have their ships registered in the CPM in exchange for the legal status of ships they required. Before the Portuguese decolonization policy, the Portuguese government was engaged in colonial wars in other regions. The shipowners were worried about the eventual recruitment of their ships registered in the CPM by the Portuguese government for the use as maritime transport in colonial wars overseas. As a result, all of the local shipowners, a majority of them being Chinese, preferred to have their ships registered in the nearby ports of the region.

In the 1990s, the situation of registration of ships in those ports entirely changed. They found that the registration of ships in those ports was no longer in their favor. The requirements for the ownership of ships were too rigorous for them to meet. This caused the local shipowners to think about having their ships registered in or transferred back to the territory of Macao.

At the same time, the CPM decided to provide some privileges for the local shipowners to have their ships registered in the territory by promulgating Decree 1/95. In Article 1 of the said Decree, it is stipulated that ships registered in the CPM could have priority in using the port facilities of Macao and be exempted from normal administrative procedures. By and large, all of the above-mentioned factors led to a rapid growth in number of ships registered in Macao even though ships registered there could not be entitled to use any flag.

However, different shipowners can understand such registration of ships in quite different ways. For the shipowners of ships which previously had their registration outside Macao, the registration of property of ships in the CPM does not incur a problem of dual nationality of ships. The registration brings them only benefits rather than problems. Consequently, they will not ask for trouble by demanding the legal status of ships thus registered.

For the shipowners of ships which only had their registration in the territory but no others, the demand for the legal status of ships is great and imminent. In fact, without proper registration and the legal relation established between the ships and Portugal accordingly, their ships can neither have the right to consular assistance nor political and naval protection provided by Portugal (N.P. Ready 1994, Page 7). In addition, they will not have the legal basis for being subject to the single jurisdiction of Portugal. As a consequence, they are susceptible to the jurisdiction imposed on them by any flag states.

Fortunately, a majority of them in this case are employed in the maritime transport between the nearby Chinese ports and Macao and owned by local Chinese shipowners. In most of the cases, no Chinese maritime authorities would have any trouble with the ships because of their stateless situation. Practically, the PRC acquiesces in the right of the ships and considers them as if they were registered in the PRC owing to the compatriotic relationship with their shipowners.

In the other ports of the region, where the ships registered in the territory normally make port calls, the situation is similar. The local maritime authorities treat them just in the same way as if they had duly registered in Portugal owing to the relationship between Macao and the former.

Sometimes, such acquiescence and practices in the ports of the PRC and foreign countries are at the discretion of the on-scene executive officers and do not always work. It is especially true when the ships registered in Macao are in dispute with their local counterparts. As the ships are theoretically stateless, the shipowners can not ask for the protection provided by Portugal under international law. The troubles are great and solutions are sometimes costly.

This problem of the legal status of ships registered in Macao, indeed, constitutes substantial impediments to the commercial operations of the local shipowners and their shipping companies in such cases. In the past, the volume and value of the cargoes transported by ships registered in the territory, as well as the value of those ships was not so great as it is at present. Therefore, most local insurance companies did not refuse the shippers and shipping companies' request for the insurance of the cargoes and the ships respectively.

Sometimes, the insurance companies would employ qualified surveyors to evaluate the risk of the ships in terms of safety and marine environmental protection and then decide the premiums and whether the insurance might be accepted or not. In the event of cargoes insured, the local and foreign banks might equally receive the Bills of Lading issued by the shipping companies as negotiable documents and titles of the cargoes. In this way, the business of the local shipowners was not affected to a large extent.

In the recent years, when the volume and value of cargoes transported by ships registered in Macao are growing fast, and the value of ships becoming greater, local insurance companies and banks have become aware of the eventual liabilities and risks as a result of their practices. Therefore, major insurance companies and banks have decided not to continue such practices. In this situation, a certain number of local shippers have to seek the solution of the problems to ships with registration

outside Macao for better protection of their interests. In other words, they would like to have their cargoes transported by ships with registration in the real sense and thus definitely insured.

Consequently, the business of the local shipowners and their companies has declined sharply and undergone considerable hardships. Strictly speaking, this problem could be solved only after the local shipping register is modified and made operable. Ships then registered in the territory may have its due legal status. Therefore, there is a pressing need for the modification of such register.

3.2.2 Demand for better financial position in acquisition of ships

The nationality of a ship provides the legal bedrock for the effective constitution of mortgages. In acquisition of ships, without such legal bedrock, the financing is always impossible. In this way, ships registered in the territory in a stateless situation are destined to be denied any financing. As a result, the local shipowners with ships registered in Macao, constantly ask the government for modifying and making the MSR operable so as to change the stateless situation of their ships and gain access to ship financing.

In the past, the problem of ship financing was not always so serious as it is today. The funds needed for acquiring new ships were, in most of the cases, within the reach of the possible shipowners. In acquisition of ships, local shipowners would either be a sole proprietor or form a joint-venture to obtain the necessary financial resources. They would then have their ships registered outside Macao.

However, the registration of their ships overseas could make the shipowners of Macao pay undue costs. In the recent years, the shipping registers in the nearby ports of the region have begun to tighten their conditions for registration of ships. In order

to meet the rigorous requirements for the ownership of ships, the shipowners of the territory have to concede the controlling shares of the ships to their counterparts in those ports. This is what they are reluctant to do.

Nevertheless, it is not to say there are no advantages for such registration. At least, they can obtain the nationality and the legal status of their ships. As the shipping industry is growing more and more capital intensive, self financing or financing through joint-venture in acquisition of ships is becoming impractical. The nationality which the ships eventually possess by the registration outside Macao can help provide the legal bedrock for their financing through banks or other financial institutions.

The situation of registration of ships in the territory is different. Ships thus registered can not obtain their proper legal status. This certainly constitutes impediments to their normal financing through banks or other financial institutions. Under the prevailing circumstances, in acquisition of ships, if a considerable sum of financing is involved, the local shipowners will first have their ships registered outside Macao for the financing purposes. For the convenience of the business, they might then come to register in the territory again.

Of course, the local shipowners do not want to concede the controlling shares of the ships to their foreign counterparts in exchange for the nationality of ships and the subsequent easy access to financing. For them, the best alternative may be the registration of ships in the territory in a real sense and the subsequent easy financing. Therefore, there is a strong demand from the local shipowners for the MSR to be modified and made operable to serve this purpose.

3.3 Inherent need of the CPM

Among the various functions of the CPM, there are two major functions: to help develop the local shipping industry, and to have safety and marine pollution control over ships. At present, these two functions of the CPM have not been fully exercised. This is primarily because the proper legal relation between the CPM and the ships there registered cannot be established. In order to effectively exercise these kinds of functions, there is an inherent need for the CPM to modify and make the MSR operable.

3.3.1 Implementing maritime policy to help develop the local shipping industry

It is without doubt that the inoperable MSR and continuous practice of registration of property of ships can do nothing to help improve the registration of ships in the territory. On the contrary, they would only make the situation of registration of ships and the implementation of maritime policy more complicated. As the registration of ships in the CPM is not a registration in a real sense, consequently, only discretionary requirements for ownership of ships need to be met in registration. For convenience of their operations, ships previously having registered outside Macao would come to register again in the CPM. In this way, many foreign shipowners would have their ships registered in the territory.

Sometimes, it is difficult to distinguish such ships from those really owned by the local shipowners. For this reason, the CPM finds it hard to implement its maritime policy. In recent years, the local shipping industry has begun to decline sharply due to the lack of support from the government. In view of that, the CPM has decided to implement its maritime policy in favor of the shipping industry. In the planned maritime policy, privileges to ships registered in the territory, such as priority in the use of the local port facilities, subsidies for their provisioning and shipbuilding, as well as reductions in port charges, are given.

However, for the CPM, there is enough reason to believe that once the maritime policy is implemented, some of the foreign shipowners having their ships registered in the territory would enjoy the privileges originally planned only for the local shipowners. Therefore, there is an inherent need for the CPM to modify the MSR. The problem of dual registration of ships can then be avoided, and the CPM will have the real local ships on which its maritime policy could be implemented.

3.3.2 More effective safety and marine pollution control over ships

If the MSR is successfully modified, the registration of ships in a real sense can be used as a starting point for the positive development of port state control in Macao. One of the major functions of the MSR is, by means of registration of ships, to subject the ships there registered to the single jurisdiction of Portugal. The government of the territory would then have a sufficient legal base to act on behalf of Portugal in terms of flag state control over those ships. The port state control of the CPM would subsequently be developed positively. Doubtlessly, this would result in an effective safety and marine pollution control over ships.

On the other hand, as a coastal region and as an associate-member of the International Maritime Organization, Macao has the moral responsibility and obligation to ensure safety of life at sea and the protection of the marine environment. The modification of the MSR and its eventual operations provides an opportunity to the CPM for its introduction of the relevant international maritime conventions into the territory via Portugal to serve these purposes. This may equally be seen as a driving force for the modernization of the obsolete maritime legislation system in Macao. In this aspect, the CPM has its own indisputable responsibility.

Moreover, as the International Airport of Macao began to operate and the importance of the territory as a transit port in the region is growing, the local demand for maritime transport will be strong in the foreseeable future. This will definitely cause the CPM to address the safety of ships and marine environmental protection. Therefore, it is an inherent need for the CPM to modify, make the MSR operable, and eventually strengthen the port state control of the territory.

Chapter 4

Feasibility of the Modification and Considerations in the process

4.1 Feasibility of the modification

As can be seen, the modification of the MSR to make it operable is of vital importance to the CPM, the local maritime community and to the transference of administration. Before the modification, a feasibility study should be made so as to see if the modification is possible for the all the parties involved.

Obviously, there are some conditions which will have a great influence over the success of the modification. They are the timing and technical possibility of modification, the political atmosphere between the PRC and Portugal, and whether the approach is adequate to ensure the interests of both countries in the process. In fact, without meeting these conditions, the modification of the MSR is not considered feasible.

However, it is fortunate that all conditions for the successful modification are now mature. The modification is indeed feasible. This is primarily based on the following rationale:

- Timing of modification

As the transitional period of Macao to the PRC is approaching its end, it becomes clear that the shipping register after modification will serve mainly the RAEM, which is to be established three years later according to the Basic Law. For Portugal,

the register is only a provisional mechanism serving the transference of administration to the PRC. The political risk and responsibility as a flag state for ships registered in the territory are limited to quite a short period of time and are considerably reduced in comparison with eight years ago. At present, the timing is good for modifying the register of the territory.

- Technical possibility of modification

In general, Portugal and the PRC share the same legal concept in formulating their legislation governing the registration of ships. They have a common interest in rigorous control over ships and crew. This provides a firm base for the modification of the register in Macao and determines the technical possibility of such modification.

- Political atmosphere between the PRC and Portugal

Since Portugal and the PRC concluded diplomatic negotiations on the question of Macao and signed the Joint Declaration, the relationship between these two countries has developed rapidly. On various occasions, both the Chinese and Portuguese governments have clearly expressed their wish for a smooth transition of administration of Macao and will take it as the base for further strengthening of their political and economic relationship. By virtue of such a satisfactory political atmosphere, there is no reason to believe that through the cordial and friendly cooperation between the PRC and Portugal, difficulties in the modification of the register cannot be overcome.

- Mechanism to ensure the interests of both countries in the modification

In the process of modification in the shipping register of Macao, the existence of a proper mechanism to secure the interests of both Portugal and the PRC is important. This is because it can positively help to build up the political confidence between the

two countries. In this aspect, the Liaison Group, established in conformity with the Joint Declaration, may better serve the purpose.

As the register is to be modified and made operable mainly for transitional purposes, the proposed modification has to be passed on to the Liaison Group for its decision. Any conflicts of interests with the two countries could thus be eliminated. In this way, it is doubtless that both the PRC and Portugal will agree with the modification of the MSR without worries about their interests being damaged in the process.

4.2 Modification of the MSR in the context of the interests of the PRC and Portugal while in combination with the objective reality of the territory

In the modification of the MSR, there is a principle which should be followed. This is, under no circumstances, should such a modification be prejudicial to the interests of the PRC or Portugal, or at the cost of the objective reality of the territory. Otherwise, it will either not be approved or be meaningless to the local shipping industry and the territory as a whole. In the latter case, the modified shipping register will finally turn out to be a political tool for the exchange of interests between those two countries. Their goodwill towards the territory will be in doubt.

4.2.1 On the requirements for ownership of ships

Both the PRC and Portugal demand a rigorous control over ownership of ships even though there is a slight difference in the level of control between them. In order to prevent any conflicts of interests with these two countries and their possible objection in this aspect, the same rigorous control should be planned in the proposed modified shipping register of the territory.

For Portugal, in the national shipping register other than the second register, the registration of ships is reserved to the ships of their nationals but no others. All the control and management of the ships are obligatory to be exercised from the country. In this situation, unidentified beneficial shipowners will not appear.

For the PRC, although certain foreign investment is allowed in response to the economic open policy, a major participation of its nationals in the ownership of ships is still required. As it can be seen in Article 2 of the Regulations of the PRC Governing the Registration of Ship, registrable ships are described as,

- “1. ships owned by citizens of the PRC whose residences or principle places of business are located within the territory thereof;
 2. ships owned by enterprises with legal person status whose principle places of business are located within the territory, provided that if foreign investment is involved, the proportion of registered capital contributed by Chinese investors shall not be less than 50 per cent;
- ...”

In the eyes of the PRC, there will not be any problem of unidentified beneficial shipowners in its regulations. At least, all the management and control of the ships would have to be exercised at all times from the mainland of China.

In the proposed modified shipping register, if the ownership of ships is restricted to the nationals of the state which administers Macao, there should not be any objection from Portugal and the PRC. Nevertheless, this restriction will not work well at present, considering the majority of shipowners of Macao are Chinese.

If the register decided to restrict the ownership of ships to Portuguese nationals as it is in Portugal, then 99% of the local shipowners of the territory would be excluded from the register. This will not correspond to the interests of the territory and thus would not be practical. On the other hand, for Portugal, before the transference of

administration to the PRC, it is unreasonable and illogical that the ownership of ships should be restricted to Chinese nationals. Therefore, neither restrictions should be applicable.

It is fortunate that another common interest of the two countries may still be found. It is the rigorous control over ownership of ships and the intention of these two countries to prevent unidentified beneficial shipowners, as well as to impose restriction on the management and control of the ships. Indeed, if the requirements for the ownership of ships in the proposed modified shipping register are planned on the same principle, then the best alternative in this aspect should be the permanent residents of Macao. In other words, the requirements for ownership of ships should be restricted to the permanent residents of the territory.

Considering the objective reality of foreign investment in the territory, if ships are owned by a company with foreign investment, the ownership of ships registered should be limited to the locally incorporated company. Further, a major participation of permanent residents is required to prevent any occurrence of unidentified beneficial shipowners.

In addition, in either case of ownership of ships, all the management and control of the ships would have to be exercised from the territory at all times.

4.2.2 On the manning requirements

On manning requirements for ships registered, both the PRC and Portugal take the same view. This means the strict control over nationality and qualifications of crew. If the same rigorous control in manning requirements is applied to the planned modified shipping register of Macao, at least at present, this will not correspond to the interests of the territory. This is because the competitiveness of the local shipping

industry may be impaired. For this matter, there really does not exist a satisfactory solution.

For Portugal, seafarers recruited on board ships on its national register are restricted to the nationals. All their certificates of competency for serving on seagoing ships are issued in conformity with the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW). In this way, the Portuguese government is able to control crew quality and prevent the use of substandard crew.

In this aspect, the PRC legislates in the same way as Portugal. Nevertheless, conditional flexibility is allowed. The recruitment of foreign seafarers is limited to some special cases as stated in Article 7 of the Regulations of the PRC Governing the Registration of Ships,

“... In case it is necessary to recruit foreign seafarers, their employment shall be approved by the competent authority of transport and communications under the State Council.”

If the proposed modified shipping register in the territory decides to adopt the same manning requirements as their counterpart in Portugal, there is no reason to believe that the PRC should have any objection to such requirements. This is because stricter control over crew certainly means no harm to the PRC. In this way, seafarers on seagoing ships in the register would be limited to Portuguese before the transference of administration and to the Chinese after such transference. At the same time, the qualifications of seafarers on board seagoing ships should always keep pace with the STCW.

At present, if the proposed register obliges shipowners to recruit Portuguese seafarers, then the local shipowners will substantially lose their competitiveness due to the unacceptable cost and heavy burden of social welfare of those seafarers.

Indeed, such manning requirements are now neither in favor of the local shipping industry nor corresponding to the interests of the territory as a whole. As a result, these kinds of manning requirements are not realistic in the register.

Originally, the common interests of the PRC and Portugal in subjecting their seafarers to effective jurisdiction and control may help solve the problem. That means, if the recruitment of seafarers in the register is restricted to the permanent residents of the territory, there may not be any worry about the possible loss of control and jurisdiction over seafarers.

In spite of that, owing to some historical reasons, such an idea may not be easily implemented in the territory. In recent years, for lack of government support, training of seafarers in Macao has been limited to the preparation of seafarers on board ships employed in the local maritime traffic. The existing examination and licensing system is obsolete and cannot support seafarers who would like to be recruited on board seagoing ships let alone the training of seafarers to keep pace with the STCW.

Consequently, there is a limited number of qualified seafarers of permanent residents in the territory for seagoing ships. If seafarers on board ships registered in Macao are restricted to those of the local permanent residents, this may only result in a far smaller registered fleet of seagoing ships than is expected for the proposed modified shipping register. As a result, in the aspect of manning requirements, it is hard to maintain an equilibrium between interests of all parties involved.

4.2.3 The need for a comprehensive shipping register

For the PRC, if the structure of the shipping register of Macao is modified to be the same as that of the PRC, this would certainly lead to effective management by the Chinese Central People's Government over the matter of registration of ships as well

as the communication of information between the two registers after the transference of administration. However, the limited financial resources of the territory do not suggest doing so. What the local government really needs is a comprehensive shipping register under which all ships can be registered.

In the PRC, fishing vessels and vessels employed in commercial maritime transport are registered in different shipping registers. The former vessels are registered in the Superintendency of Fishery in the fishing ports while the latter vessels are registered in the Harbor Superintendency in the commercial ports.

In Portugal, all ships are registered in the local harbor master's office in the port. They will then fall into different categories of the register by type and activity. As Macao was once taken by Portugal as a port of registry, the CPM has all the characteristics of its Portuguese counterparts in the registration of ships. All ships are registered in the CPM and then fall into different categories of the register according to type and activity.

In 1974, Portugal withdrew its legal base on the registration of ships in the territory. At the same time, the natural legal relation between the CPM and the General Harbor Master's Office of Portugal was terminated. Nevertheless, the way in which the CPM deals with ships there registered remains unchanged, although the nature of the registration is entirely different from the past.

The limited financial resources of the territory constrain the alternatives of the CPM for the proposed modified shipping register. In recent years, as the economic growth of the territory became stagnant, the government has begun to tighten its budget for the maritime sector.

In addition, the actual size of the government of Macao is quite small. If the MSR is broken down into two separate registers after the planned modification as is the case in the PRC, the financial burden to the local government would be unnecessarily heavy. Therefore, it would be better that such mechanism for the registration of ships in the territory be kept to a relatively small size.

What is worse is that the recovery of the costs for such institutional setups and their maintenance is practically impossible. The heavy charges and taxes needed to be levied would be unacceptable to most local shipowners who possess small size ships. This would not correspond to the interests of the shipping industry and the territory as a whole.

Economically speaking, it is not practical to follow the example of the PRC in the proposed modified shipping register of Macao. As a matter of fact, it is not unwise to maintain the current single register in the CPM under which all ships can be registered.

4.2.4 Imposition on ships registered

In the MSR, shipowners with ships registered in the territory may be exempted from profit tax for the freight earned. This fiscal arrangement was made by the local government as an incentive to attract international shipowners to register in the territory. However, as discussed in 4.2.1 in the proposed modified shipping register, the ownership of ships should be restricted to the permanent residents of the territory or locally incorporated companies. As a result, the target of the register would change. A review on the issue is needed.

For the government of Macao, there is no reason to grant the local shipowners the exemption from a profit tax. In terms of direct economic benefits brought to the

government, the contribution of the local shipowners is far less than that of the international shipowners for which the MSR was originally planned. Obviously, if the exemption continues in the proposed modified shipping register, the capability of the local government for redistribution of public revenues to the maritime sectors would be reduced.

In addition, the exemption would incur problems in the fairness and equilibrium of the taxation system of the territory. It is foreseen that if such exemption is granted in the register, the government would undergo pressure from other local industries asking for the same treatment. At the same time, the financial burden from the maintenance of the register needs to be offset by tax to avoid the necessity of resorting to other financial resources of the government.

In view of that, the exemption of the shipowners from a profit tax would definitely be prejudicial to the interests of the local government. Therefore, it is not considered to be suitable to maintain the privileges of exemption of shipowners from profit tax in the proposed modified shipping register.

4.3 Integration of the proposed modified register into governmental structure

Doubtlessly, if the proposed modified shipping register is subordinate to the CPM, the coordination of maritime policy in the CPM and safety and marine environment protection control over ships registered would be easily strengthened. By the nature of its activities and functions, the proposed modified register should be an integral part of the CPM.

However, the MSR was created differently. It is a government organ working in parallel with the CPM under the tutelage of the same Secretary of the Governor of Macao. Apparently, such administrative arrangement is not reasonable. By virtue of

the nature of its activities and functions, the MSR, as a shipping register, should have worked closely with the local maritime administration, the CPM. Its separation from the CPM appears like a fish out of water and consequently would be prejudicial to the effective management of maritime activities and coordination of maritime policy of the CPM.

On recognizing the importance of placing the shipping register under the CPM, in the reorganization of the previous year, the local government decided to assign the function of registration of ships to the CPM. The shipping register is placed under the Department of Licensing and Registration of Ships of the CPM. This provides a firm legal base for the proposed modified shipping register to be integrated into the government structure of Macao.

4.4 Maintenance of privileges for ships of Macao in the Chinese ports

The restoration of registration of ships in the territory by the proposed modified shipping register would mean a significant change for ships currently registered there. If this proposal is implemented, ships registered in Macao would be entitled to fly the Portuguese flag. Portugal would be definitely their flag state.

However, this could result in the diplomatic embarrassment and political sensitivity for the PRC if it continued to treat Portuguese flagged ships of Macao in the same way, as if they were registered in the PRC. At present, this does not constitute any problem for the PRC because the registration of ships in Macao is not a registration of ships in a real sense.

As a result, for the PRC, if those ships were registered in the proposed modified shipping register, it would no longer be convenient to offer them the same privileges as in the past. They may be considered as Portuguese ships when calls are made to

Chinese ports. Naturally, this would affect the competitiveness of their shipowners and constitute impediments for them to have their ships registered in the territory. Therefore, it is important that the status quo in the treatment of ships of Macao in the Chinese ports be maintained for the good of the local shipowners and the shipping industry as a whole.

At present, because of the registration of ships in Macao does not exist in a real sense, ships registered in Macao can be treated by the PRC with much flexibility. Owing to the compatriotic relationships of their shipowners with the PRC, some privileges reserved to the ships registered locally in the Chinese ports may be conceded to them. Such privileges may include the exemption of complicated administrative procedures when calling in ports, subsidies for provisioning and reduction in port charges. Naturally, this is in favor of the operations of the local shipowners and helps enhance the competitiveness of their ships to a large extent.

From the time the proposed modified shipping register may begin to operate, the above flexibility in treatment and privileges may have to be withdrawn. Then it is the turn for the local shipowners to consider the advantages and disadvantages of having registration of ships in the territory in a real sense. Moreover, both Portugal and the PRC do not allow dual registration of ships. In Article 50 of the Regulations of the PRC Governing the Registration of Ships, there is a penalty provision especially included for punishing the practice of dual registration. For the local shipowners, flexibility is not possible in this aspect.

For those shipowners who have previously registered their ships in the nearby Chinese ports, the solution to the problem is to simply withdraw their registration of property of ships in the CPM. They may continue to enjoy the privileges offered by the PRC even though it is not convenient for their operations in Macao.

On the other hand, for the shipowners who only have their ships registered in Macao and operate in no other ports, they may have a dilemma. The registration of their ships in the proposed modified shipping register will definitely mean the loss of the privileges that they now enjoy. This may substantially affect their competitiveness in the operation of the ships as well as their business in the PRC.

However, if they prefer to enjoy the current privileges, local shipowners would have to register their ships in the PRC. In order to meet the requirements for such registration, they have to concede the controlling shares of the ships to their counterparts in the PRC. Still, they may suffer from the inconvenience of operating their ships in Macao.

Therefore, the maintenance of privileges for ships of Macao in Chinese ports is of vital importance to the local shipowners and the register as a whole. Otherwise, it will result in a far smaller registered fleet for the proposed modified shipping register than is expected. This would really make the register meaningless.

Fortunately, in view of the remaining short period of time to the end of the transitional period to the PRC and the amiable political relationship between the PRC and Portugal, it is widely believed that special arrangements in this aspect may be made to preserve the status quo. The problem can be solved at no cost of the sovereignty and proper interests of these two countries.

Chapter 5

The Proposed Modified Shipping Register

5.1 Modification of the MSR

Since its creation eight years ago, the MSR has never functioned but actually exists only on paper. However, it is the unique legal basis for the registration of ships in the territory. Legally speaking, the relevant legislation is considered to still be in force in Macao. The modification of the MSR to make it operable instead of creating a new shipping register is needed primarily due to the time constraint of the transitional period to the PRC and due to practical needs.

By virtue of such modification, the time-consuming administrative and legislative procedures needed for creating a new register may be avoided. Moreover, there are many useful provisions in the legislation of the MSR that are considered adequate to be maintained after the modification.

In principle, the proposed modified shipping register is based on the framework of the MSR. The modification would only concentrate on the provisions of the legislation that are thought to be prejudicial to the interests of all parties involved. In addition, some detailed administrative procedures for the registration of ships would be supplemented.

5.2 Procedures of the modification

The adequate and strict control over the procedures of modification may, to a large extent, ensure the success of the proposed modified shipping register. This is because it can provide a firm legal base for the functioning of the register. First, the CPM should submit the proposed modified shipping register to the Governor of Macao via the Secretary of Transport and Public Infrastructure to which the CPM is subordinate. The proposal for the register would then be transferred to the Portuguese government for consideration.

Second, with prior consent granted by the Portuguese government, the proposal would be presented to the Liaison Group for completing the procedures of consultation and discussion with the PRC. Finally, with approval from the Chinese side, the proposal would be solidified into a decree in Portugal by the Portuguese government, which would require further ratification of the President of Portugal.

In this way, the indispensable authority for the functioning of the proposed modified shipping register on behalf of Portugal could be delegated to Macao. Subsequently, the modified shipping register could operate directly after rapid administrative procedures of modification to the MSR by the CPM.

5.3 Principles of modification

There is a constraint on the modification of the existing shipping register. In the proposed modified shipping register, any provisions which may incur conflicts of interests with the PRC and Portugal are to be avoided. At the same time, the provisions in the register should be in tune with the reality of the territory of Macao. Under such circumstances, the following principles should be adhered to:

- Principle of identity

In the planned modified shipping register, provisions would be elaborated as close to those in the national shipping registers of Portugal and the PRC as possible, if they are applicable. This may help prevent any objection from these two countries.

- Principle of similarity

If the principle of identity cannot be followed, then the provisions in the register would be elaborated on the same principle of those in the national shipping registers of Portugal and the PRC or on the principle of the register which asks for more rigorous control over registration of ships.

- Principle of particularity

In view of the special objective reality of Macao, which is quite different from those of the PRC and Portugal in some situations, provisions are needed to be in tune with the reality of the territory so as to reflect its particularity. Under no circumstances should this principle be applied at the cost of the interests of the PRC and Portugal.

5.4 Proposed modification of the shipping register

5.4.1 Proposed modified shipping register in the governmental structure

The proposed modified shipping register would be a governmental organ subordinate to the hierarchical structure of the CPM as was discussed in 4.3. In the CPM, the register is a sub-unit of the Department of Licensing and Registration of Ships. All human and financial resources now allocated to the registration of property of ships in the CPM would be transferred to the proposed modified shipping register.

For the purpose of management and communication of information, the register is indirectly responsible to the Ministry of Sea of the Portuguese government via the government of Macao, before the transition of the Administration to the PRC. After

that, the register is indirectly responsible to the Ministry of Communications and Ministry of Agriculture, Fishery and Forests of the Chinese government via the local government.

5.4.2 Framework of the register

As was stated in 4.2.3, the proposed modified shipping register should be a comprehensive shipping register in which all types of registrable ships may be registered. Therefore, the modified shipping register would have four different Parts to meet the needs of the registrable ships:

- (a) Part I for ships of 20-ton gross tons or more participating in commercial maritime transport or other similar activities,
- (b) Part II for fishing vessels,
- (c) Part III for ships registered under bareboat charter and
- (d) Part IV for small ships not qualified for the registration in Part I, II and III.

However, under no circumstances may ships be registered on more than one Part of the register at any one time.

5.4.3 The flag ships entitled to fly

Ships registered in the planned modified shipping register should fly the flag of the state which administers the territory of Macao. In other words, before the transference of administration to the PRC, ships registered in the proposed modified register would fly the Portuguese flag. Consequently, the ships thus registered will have the Portuguese nationality. The Portuguese jurisdiction, protection and responsibility under the international law would extend to ships of this register.

After the transition to the PRC, all ships registered in the proposed modified register, irrespective of the date on which their registration is made, would fly the Chinese

flag only. The responsibility of Portugal as the flag state of ships registered in the territory under the international law should be assumed by the PRC. On the other hand, under no circumstances may ships on the register be allowed to have dual nationality at the same time.

5.4.4 Requirements for the ownership of ships to be registered

Shipowners with ships registered in the proposed modified shipping register would be classified into two categories in terms of the nature of ownership of the ships. They are the individual and incorporated company shipowners.

5.4.4.1 Individual shipowners

For individual shipowners, the right to register a ship in the proposed modified shipping register should be limited to permanent residents of Macao. In this way, the local government can ensure their usual subjection to its jurisdiction on behalf of Portugal as the flag state of the ship. For the sake of smooth transition of such a register, the definition of permanent residents of the territory should be that found in Article 24 of the Basic Law of the PRC. This is because, by means of that, there should not be any discrepancies between definitions used before and after the transition.

5.4.4.2 Incorporated company shipowners

For ships owned by incorporated companies, the right to register in the proposed modified shipping register should be reserved to companies incorporated locally in Macao. If the incorporated company is fully held by permanent residents of the territory, there will not be any problem for the registration of their ships in the register.

For a company incorporated locally with participation of foreign investment, it is equally considered to be qualified to have ships registered in the register when the company has a major participation of local permanent residents. The total percentage of local participation should not be less than 50%.

In addition, ships owned by companies with foreign investment will have no access to the registration of ships on Part II of the proposed modified shipping register. This is because the registration of fishing vessels and their activities are considered to be domestic matters of the local government and exclusively reserved to the permanent residents of Macao.

Moreover, in either case, for individual or incorporated company shipowners, the management, control and operations of the ship should at all times be exercised from Macao. For the purpose of enforcement and acceptance of legal service on their behalf, the shipowners should nominate a representative of local permanent residents.

5.4.5 Manning requirements

As was discussed in 4.2.2, there does not exist a satisfactory solution to the problem of the manning requirements. In order to not incur any conflicts of interests with Portugal and the PRC, the proposed modified shipping register will demand rigorous requirements on recruitment of seafarers. However, considering the special reality of the territory, the register will allow certain conditional flexibility on such manning requirements.

5.4.5.1 Nationality of the seafarers

Seafarers recruited on board ships registered in the proposed modified shipping register should be restricted to those of the permanent residents of Macao or nationals of the state which administers the territory. In other words, before the transference of administration, seafarers should be Portuguese or permanent residents of Macao. After that, they will be the Chinese or permanent residents of the territory.

In case it is necessary to recruit foreign seafarers, a waiver would be given and judged on a case by case basis. Practically, it is expected that wide exemptions in this aspect would be needed at present for the good of the shipowners. However, such exemptions may only be considered to be of a provisional measure. Once the number of qualified seafarers of permanent residents of Macao is increased to such an extent as to fully satisfy the needs of the local market, the waiver should only be given under stringent control.

Principally, the recruitment of seafarers on board ships to be employed in maritime traffic and on fishing vessels should be restricted to the seafarers of permanent residents of Macao.

5.4.5.2 Qualifications of the seafarers

All seafarers on board ships registered in the proposed modified shipping register are required to possess qualifications appropriate to their positions for ensuring the safety of navigation. Relevant certificates of competency must be produced for this purpose.

In addition, seafarers on board seagoing ships registered on Part I and III of the register should hold a relevant certificate of competency issued in conformity with the applicable international maritime conventions, mainly the STCW. This is because

both Portugal and the PRC are signatory parties of the convention. The arrangement is made so as to prevent any possible objection from both countries in terms of qualifications of the seafarers.

For seafarers on board ships of local maritime traffic, fishing vessels and non-seagoing ships registered in Part IV of the register, their certificates of competency should be issued by the CPM. In the event of certificates of competency issued by institutions other than the CPM, the seafarers in question should gain the recognition of their certificates from the CPM before they are recruited on board. Naturally, under no circumstances should the standards of these seafarers be lower than those of the state which administers Macao.

5.4.5.3 Discipline on board, social welfare, standard of salary and working conditions of the seafarers

In the proposed modified shipping register, the discipline of crew on board should be regulated by the Seamen's Code of the state which administers Macao. The social welfare for seafarers of local permanent residents and the referred state may not be lower than what is stipulated in the Labor Law of the territory. At the same time, their salary is subject to the respective contracts with the employers. In this aspect, it may be better that the local government will monitor the standard of salary of the seafarers to prevent overexploitation.

For foreign seafarers, their social welfare should be subject to the relevant regulations governing the importation of foreign laborers in the territory. The standard of their salary cannot be lower than that of the middle average of the local seafarers. In this situation, their contracts with employers should be subject to the prior approval of the government of Macao.

Moreover, regarding the working conditions of seafarers on board, the current relevant international conventions and regulations which are in force in Macao should continue to be exercised.

5.4.6 Technical requirements of the ships and inspection

All ships on the proposed modified shipping register, whether they are for seagoing purposes or not, should be subject to the technical requirements stipulated in the local maritime legislation and other applicable regulations of the CPM. In addition, all international maritime conventions in force in the territory should exclusively apply to seagoing ships on Part I and III of the register if applicable. In the event of need, such application may be extended to other ships on the register under the mandate of the Governor of Macao.

For convenience of enforcement of relevant conventions, local maritime legislation and other regulations of the CPM, the CPM may delegate the surveys and inspections on ships on Part I and III of the register to qualified classification societies. All respective certificates issued accordingly should then be recognized by the CPM for the purpose of control over the safety and marine environmental protection of the ships. For the rest of the ships registered in the territory, all their initial and periodic surveys and inspections should be carried out directly by the CPM.

5.4.7 Requirements for the registration of ships, certification and licensing

On registration of ships, in addition to the declaration of nationality of owner(s), the shipowner(s) should provide:

- Evidence of ownership

1. In the case of ships purchased:

- (a) Bill of sale, sales contract and delivery document;
- (b) Document issued by the ship registration authority at the original port of registry of the ship certifying the cancellation of registry upon new registration effected;
- (c) Document evidencing that the ship is not under mortgage or that the mortgagee(s) agrees to the transference of the mortgaged ship.

2. In case of newly-built ships:

The contract of ship construction or the builder's certificate and the delivery document.

3. In case of ships under construction:

The contract of ship construction or the builder's certificate.

4. In case of ships acquired through heritage, presentation, auction under legal process or court decision:

A document with appropriate legal effect evidencing the ship's ownership.

5. In case of ships under bareboat charter:

Bareboat charter party contract and certificate issued by the ship registration authority at the former port of registry to the effect that the former nationality of the ship will be suspended or deleted immediately when the new registration is effected.

- Valid technical documents

1. For seagoing ships to be registered on Part I and III of the proposed modified register:

All the necessary certificates prescribed in the relevant applicable international maritime conventions in force in the territory, in local maritime legislation and other regulations of the CPM, according to the type and activities of the ship. Such certificates should be either issued by qualified classification societies and then recognized by the CPM or issued by the CPM directly.

2. For the rest of the ships to be registered:

Survey book and other valid technical certificates issued by the CPM according to the type and activities of the ship after the survey and inspection of the ship.

Upon completing the necessary procedures of registration, all the seagoing ships duly registered should be issued certificates of nationality and ownership. The other ships should be issued a license book in which the nationality and ownership of the ship are certified. Moreover, in order to indicate the fact that the ship is on the register of the territory of Macao, all certificates and license books issued by the CPM should bear the name Macao and the name of the state which administers the territory.

5.4.8 Registration of ship mortgage, discharge and its legal effects

When a mortgage is established with respect to ships of 20 tons gross tons or more, application for the registration of the ship mortgage may be made to the proposed modified shipping register. Upon registration of such facts, the mortgagee and the mortgagor should submit the following documents of mortgage:

- (a) Written application signed by both mortgage and mortgagor;
- (b) Certificate of ownership or contract of ship construction or builder's certificate if applicable;
- (c) Contract of ship mortgage.

If there are other mortgages established, the relevant certificates should also be submitted. When a mortgage is established on a jointly-owned ship, the joint owners should, in addition, submit a document evidencing the agreement by the joint owners holding more than two-thirds or otherwise agreed proportion of shares thereof.

Upon completing the necessary procedures of registration, matters regarding the mortgagee, the mortgagor and the ship as well as the date of mortgage registration will be recorded in the register of ships and on the certificate of ownership. At the same time, the certificate of registration of ship mortgage should be issued to the mortgagee. In the event of mortgage transference, the mortgagee and the transferee should apply to the register for the registration of the facts relevant to the mortgage.

At that time, the contract of ship mortgage transference must be submitted. A certificate of registration of ship mortgage will then be issued to the transferee, if such registration is approved and the former certificate is sealed.

When two or more mortgages are established on the same ship, the register should make the registration in sequence of the dates on which the applications are registered and indicate the dates of registration in the register of ships. The date on which the application is registered should be the date of registration. In case two or more applications are made on the same day, the dates of registration should be the same. However, the priorities on the mortgage of ship should be in order of the sequence of the registration of the facts. No legal effects should be allowed to act against the third parties without the ship mortgage being duly registered. The legal effects of the mortgage should commence only upon the date of registration.

Upon the discharge of the ship mortgage, a mortgage deed and evidence of such discharge should be submitted. After the register grants its approval of the discharge, the fact can then be recorded in the register of ship.

5.4.9 Bareboat chartering

In the proposed modified shipping register, the registration of a bareboat charter is included for its potential benefits to the local shipping industry and the territory as a whole. Through ship chartering, shipowners can enlarge the capacity of tonnage of their fleets with much more flexibility and in the least costly way. In addition, local seafarers can have more opportunities to be trained and recruited.

In any of the following cases, the shipowner and the charterer may apply for the registration of a bareboat charter under Part III of the register when:

(a) ships registered in the territory, bareboat chartered to a qualified individual or locally incorporated company shipowner, satisfy all the requirements for the ownership of ships on the register;

(b) ships registered with a nation other than the state which administers the territory, are bareboat chartered to a qualified individual or locally incorporated company shipowner which satisfies the conditions of the preceding paragraph.

Conversely, the shipowner and the charterer may apply for the suspension of registration of ship and its nationality from the register when a ship registered in the territory is bareboat chartered overseas other than to the state which administers Macao.

In the event of bareboat charter-in, upon completing the necessary procedures of the registration and approval granted by the CPM, the main points of the bareboat charter should be recorded in the certificate of ownership and the register of ships respectively. At the same time, the certificate of registration of bareboat charter should be issued to both the shipowner and the charterer. The provisional certificate of nationality of the ship should be issued to the charterer only. Generally speaking, the terms of validity for a provisional certificate of nationality of a ship should not exceed two years. However, it is renewable for the same period fifteen days before the end of its validity date.

In the event of bareboat charter-out, upon completing the necessary procedures for the suspension of registration of a ship and its nationality, and once approval is granted by the CPM, the original certificate of nationality should be sealed. The certificate of suspension of nationality of the ship should be issued. Such fact should then be recorded in the ship register accordingly.

5.4.10 Removal of ships from the register

The registration of a ship may be terminated and removed from the register in either of the following circumstances:

- (a) On application by the shipowner;
- (b) If the ship is no longer eligible to be registered;
- (c) On the ship being destroyed;
- (d) For any other reason that the CPM considers as improper for the ship to remain registered.

Upon terminating the registration of the ship and removing it from the ship register, the proposed modified shipping register should issue a closure transcript to the shipowner of the ship. Any mortgagees should be notified of the closure of registration. On receipt of the closure transcript, the shipowner should immediately surrender the certificates of nationality and ownership to the CPM for cancellation.

5.4.11 Fiscal aspects

In addition to the registration fees for the initial registration of ship, the shipowners should pay a tonnage tax annually. All profits from revenues earned and freight collected by shipowners should be subject to a profit tax under the fiscal system of the local government no matter where such revenues and freight are earned and collected.

On the other hand, if the profits from revenues earned and freight collected overseas by shipowners have been subject to profit tax in the relevant countries, then such profits may be exempted from further profit tax in order to avoid the problem of dual taxation. In this aspect, bilateral agreements between the territory and other countries may need to be negotiated. Finally, income or salary of the local seafarers may be

exempted from any income tax. This can be seen as an incentive which the government of Macao would offer to attract people to enter the career.

5.5 Transition of ships currently registered to the proposed modified shipping register
In the proposed modified shipping register, only ships which may fully satisfy the requirements of the register will have the right to register. In order to avoid the unnecessary repetition of administrative procedures and redundant work, the CPM may give an opportunity to ships currently registered as registration of property to transfer to the proposed register without the need for re-registration. However, the transference will be conditional on whether they can satisfy the necessary conditions.

Naturally, ships may be considered qualified for the transference if:

- (a) necessary documents for the registration of ships have been submitted;
- (b) requirements for ownership of ships have been satisfied;
- (c) manning requirements have been satisfied;
- (d) corresponding technical conditions have been met;
- (e) dual nationality of the ship does not result.

If a ship is qualified to transfer, upon application for registration, the register may issue all necessary certificates to the ship. Details of the ship will then be recorded in the corresponding Part of the register. It may then be considered to be registered in the proposed register;

On the other hand, if a ship is qualified to transfer only after some adjustments have been made to meet the above requirements, the ship should be treated as if it is in the initial registration. All normal administrative procedures for registration of ships would thus be necessary.

Chapter 6

Conclusions and Recommendations

The installation of a shipping register in Macao has its historical origins. It was originally planned to restore the registration of ships in the territory, which has been lost since the Portuguese withdrawal of its legal base on the matter. In 1988, the local government unilaterally created the MSR in Macao without prior consent of Portugal. As a result of the lack of support from Portugal, the MSR only exists on paper and has never exercised its functions. In this situation, the registration of ships in Macao turned out to be a registration of property only.

However, the administration of the territory of Macao will be transferred to the PRC according to the Joint Declaration in 1999. Nevertheless, the existing shipping register should be authorized to be maintained after such transference of administration in conformity with the Basic Law. At present, the modification of the MSR to make it operable is seen to be necessary by Portugal, the PRC, the local shipowners, the shipping industry and the territory as a whole. The benefits to all of them are great.

For Portugal, the successful modification of the shipping register in Macao and its eventually operations will lead to the smooth transference of administration to the PRC. This will definitely meet the needs of the Joint Declaration in terms of smooth transition of administration. At the same time, the provisions in the proposed register

are carefully elaborated so as to appear harmless to Portugal. Consequently, for Portugal, there should not be any conflicts of interests.

For the PRC, the operations of the proposed modified shipping register before the transference of administration are important. This is because it may help to avoid the political embarrassment for any actions taken on the issue after the transition and dispel the public illusion that the PRC may impose a shipping register on Macao, disregarding the interests of the local community. In addition, the provisions in the register are made to prevent conflicts of interests with the PRC. Therefore, there will not be any problem for the transition of such mechanism of registration of ships.

For both Portugal and the PRC, the satisfactory solution of the problem may increase the political confidence between the two governments and can surely act as a base for the further strengthening of their relationship.

However, with the operation of the register, the CPM may subject the ships there registered to the single jurisdiction of Portugal to act on its behalf in flag state control. This will help the positive development of port state control of the territory. Macao, as a coastal region and associate-member of the International Maritime Organization, has the responsibility to ensure the safety of life at sea and marine environmental protection. Without the registration of ships in a real sense, the CPM is not able to assume such responsibility and may not have enough room for its further development.

On the other hand, the benefits of the proposed modified shipping register for the local shipowners are considerable. By registering their ships in the register, the shipowners can make their ships subject to the single jurisdiction of Portugal. The ships may then have the right to use the Portuguese flag, the right to diplomatic

protection and consular assistance as well as naval protection by Portugal. Consequently, problem of stateless ships will be eliminated.

For the local shipowners, the requirements for ownership of ships in the proposed modified shipping register may ensure their interests by restricting the ownership to the permanent residents and locally incorporated companies with major local participation. From then on, they will exclusively enjoy the privileges and support from the local government, including the priority for the use of the port facilities in Macao. This will certainly help enhance their competitiveness.

Moreover, the flexibility in recruitment of crew given in the proposed modified shipping register can dispel the worry about the unacceptable costs of seafarers. In terms of costs of seafarers, their competitiveness may be maintained. In addition, in the register, the registration of bareboat chartering is included. This provides the local shipowners the opportunity to have one of the cheapest means of leverage in managing their business in the ever increasing capital intensive industry of maritime transport. Furthermore, the possibility in the registration of mortgages in the register may result in a better financial position for the shipowners both in acquisition of ships and in running their business.

In terms of the commercial operations of local shipowners and their shipping companies, the possible solution of the problem of legal status for ships registered in Macao might equally bring benefits. As a result, the volume of cargo those ships will carry may increase as major insurance companies and local banks may wish to resume their business with such carriage of goods by sea. More and more shippers could have their cargoes transported by ships registered in the territory without any worry about the legitimacy of the ships. The local shipping industry may have an opportunity for further development in this aspect.

This is not to say there would be no adverse impact by the operations of such a register on the local shipping industry. For ships on the register, it is possible that the privileges they are actually enjoying in the Chinese ports would be lost and the interests of the local shipowners affected. In reality, it is widely believed that this problem may be solved through negotiations between the PRC and Portugal with their amiable cooperation in this aspect.

In general, the proposed modified shipping register may bring more advantages than disadvantages to all parties involved. On the other hand, in order to ensure smooth operations and further development, the following efforts are recommended to be made by the CPM:

- Introduction of applicable international maritime conventions into the territory:

For the proposed modified shipping register, its operations and control over technical conditions of the ships there registered are highly depending on the effective exercise of relevant international maritime conventions. This is not only because of the wide acceptance of the conventions by the international maritime community as norms on the technical conditions of ships but also because of the need for facilitating port state control of the ships when calling outside Macao.

At this moment, there is only one international maritime convention applicable in Macao. This is far less than enough to support the operations and control needed by the register. Therefore, before the register enters into operations, the CPM has to introduce more of the relevant conventions into the territory. This may be arranged by simply extending those actually applied in Portugal to Macao after negotiations in the Liaison Group between Portugal and the PRC.

number of fleets to be registered is doubtful, it will then make the existence of such a register practically meaningless.

The measures which the CPM could adopt to make this new register attractive may not necessarily be limited to the traditional approaches, such as the concession of subsidies for shipbuilding, reduction of port charges and tax privileges.

Instead, they can be in the form of logistic supports to the local shipowners and their companies for the expansion of routes and business overseas as well as for facilitating their operations in the territory. These may include government financing to relevant institutions to conduct market research overseas and the creation of a service center for providing shipowners with the information acquired and necessary consultant services on legal matters. In addition, the CPM could also cooperate with local universities for studies on improving maintenance cost and efficiency of ships, subsequently releasing the results to the local shipowners as privileges.

By and large, the timing for modification of the existing shipping register in Macao is opportune and such modification is technically feasible. In addition, the proposed modified shipping register is made so as to better correspond to the interests of all parties involved and to bring substantial benefits to them. Therefore, there is reason to believe that Portugal and the PRC should agree on this modification and that the proposed modified shipping register should be successful.

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Organization Chart of the CPM

Appendix 1

