

The Maritime Law Association of Australia and New Zealand (MLAANZ)

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Foreign Shipping Companies and Cabotage Regulations

Presentation by

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Cabotage Provisions:

- ✚ Restrict coastal operations of foreign vessels in Indian waters.
- ✚ Only Indian vessels can be registered on the Indian Registry - Sections 21 & 22 of the Merchant Shipping Act 1958 (MSA)
- ✚ License from the Director General of Shipping (DGS) to be obtained by Indian ships and chartered ships – Section 406 of the MSA.
- ✚ Licensing of ships for coastal trade - Section 407 of the MSA

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From the legal position two conclusions emerge:

- ✦ No foreign company can register a vessel in India under the MSA; and
- ✦ Foreign flag vessels may operate in India under a license from the DGS, temporary in nature/renewal on similar compliance, subject to:-
 - no Indian Flag vessel is available meeting similar specifications; and
 - price reasonableness of charter hire
- ✦ The best way for a foreign company to enter Indian Shipping Market is by owning and controlling an Indian entity – corporatize.

Foreign Direct Investment

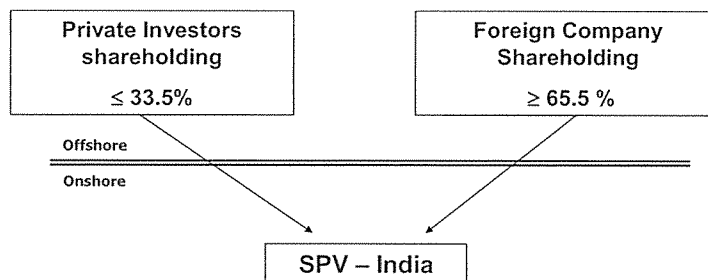
- ✦ The Foreign Exchange Management Act, 1999 (FEMA), permits 100% foreign investment in the shipping sector under the automatic approval route of the Reserve Bank of India (RBI);
- ✦ However, a Foreign Company may have to take approval from the Foreign Investment Promotion Board for every subsequent company to be incorporated.

External Commercial Borrowing

- ✚ An Indian Company is permitted to raise a foreign currency loan from a recognized foreign lender upto US\$ 500 Million under the automatic approval route of the RBI.
- ✚ Such foreign currency loan can be utilized for acquiring a vessel.
- ✚ The Indian vessel can be the security by creating a statutory registered mortgage in favour of the foreign lender.
- ✚ A sole registered mortgage is advisable to enforce the security without approaching the Admiralty Court.

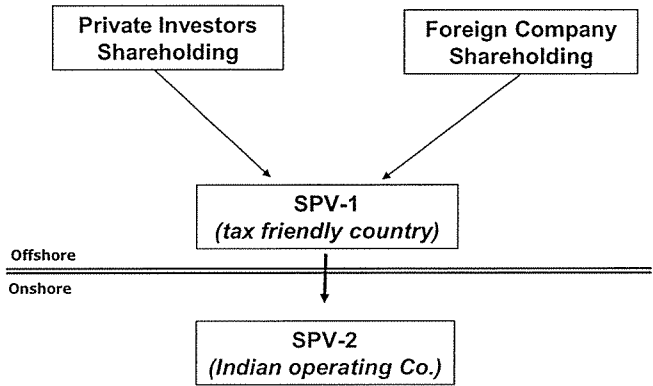
OPTION I- Direct Control under Foreign Company (FC)

Equity structure

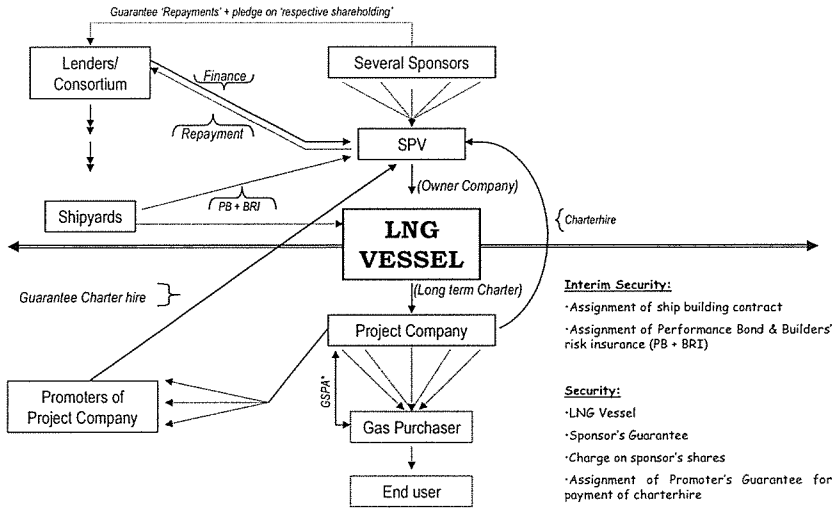


OPTION II - Controlled by an Offshore SPV

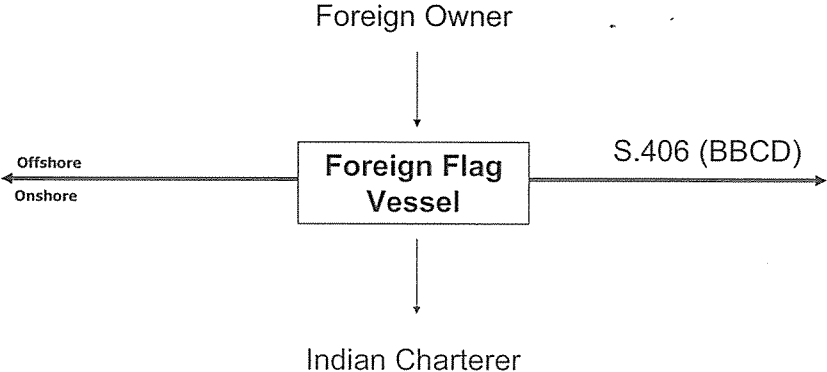
Equity structure



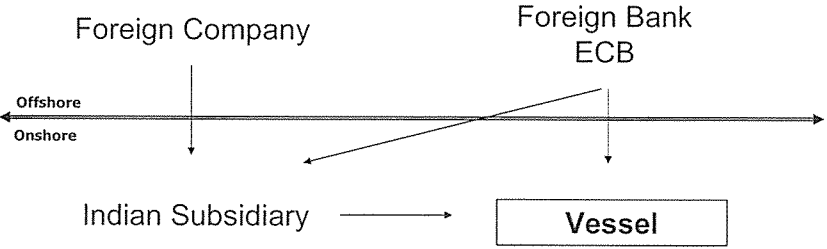
OPTION III - Ring Fencing



OPTION IV – Bareboat Cum Demise Charter (BBCD)



OPTION V - Acquisition



The Tonnage Tax Regime

❖ *Qualifying Company*

- ⚡ The company must be an Indian Company;
- ⚡ The company's place of effective management must be in India;
- ⚡ The company should own at least one Qualifying Ship; and
- ⚡ The main object of the company must be the operation of seagoing ships.

The Tonnage Tax Regime

❖ *Qualifying Ship*

- ⚡ is a sea going ship or vessel of fifteen net tonnage or more;
- ⚡ is a ship registered under the MSA or a ship registered outside India operating under a Section 406 or section 407 licence by the DG Shipping; and
- ⚡ a valid certificate in respect of such ship indicating its net tonnage is in force.

The Tonnage Tax Regime

❖ *Taxation*

- ✚ The Indian company's tax liability would be 35% of its tonnage income.
- ✚ The tonnage income would be computed as per the net tonnage of its qualifying fleet in accordance with a predetermined table.
- ✚ Thus the Indian Company would not be taxed on the business profits of its shipping operations (approx 33%) but would pay a nominal tax rate between 1.5% to 2%.

Tonnage Tax Reserve Account

- ✚ 20% of the Book Profit of the Indian Company would have to be mandatorily credited to a reserve account
- ✚ The amount credited to the reserve account would have to be used for :
 - Acquiring a new ship;
 - Operating the qualifying ship of the Indian company until the acquisition of a new ship
