A vessel and her ownership are registered in a ship registry and the vessel flies the flag of the country of such ship registry. Any possible mortgages are also registered against the vessel in the same ship registry. However, a specific trade or charter of the vessel may require that the vessel flies another flag for a certain time period. This could be the case where the bareboat charterer wants to fly another flag for the length of the charter, or due to requirements for the vessel to fly a local flag in order to undertake a specific local trade. Offshore supply vessels operating within the jurisdiction of a particular state (continental shelf/territorial waters) may be required to comply with a wide range of national regulations, including the obligation to fly the flag of that state. Those obligations may extend to the local chartering/operation of the vessel, and in some instances only local companies are permitted to register the vessel under the local flag. Bareboat flagging/dual flagging by way of an external or intra-group bareboat charterer may be a solution in such circumstances.

In the case of a bareboat registration the vessel will generally retain its original registration in the underlying ship registry, and ownership and mortgages will remain registered in that registry. However, the right to fly the flag of the underlying registry is suspended for the period of the dual flag. Notwithstanding that the original registration is maintained, there are several issues which the owners and mortgagees need to consider before accepting a bareboat registration in another jurisdiction. Depending on the local laws prevailing and the regulations of the bareboat flag jurisdiction, the rights and interests of the owners, mortgagees and other interested parties may be at risk.

Some of the key risk factors which owners, mortgagees and other interested parties need to consider when a bareboat registration is being contemplated are identified below.
The examples given are based on transactions Simonsen Vogt Wiig has been involved in, and on the basis of advice received from local lawyers in connection with these transactions. We do not intend to provide a complete account of the laws and regulations of the various jurisdictions which are mentioned, but simply to highlight some of the issues which need to be considered.

Does your ship register allow bareboat registration?
The first issue to consider is whether the vessel’s current flag allows bareboat registration in another ship registry and temporary suspension of the underlying flag. Norway is just one example of several jurisdictions that do not allow bareboat registration, neither in nor out of jurisdiction. Consequently, if the vessel is flagged under a Norwegian national or international flag, it must change that underlying flag before undertaking a bareboat registration.

Can the details of the underlying registry be registered in the bareboat register?
Some flags, such as the Marshall Islands registry, allow for a bareboat registration to include the details of the underlying flag. If such details are registered, any third party obtaining information on the vessel from the Marshall Islands registry will be able to see that the vessel has an underlying register, and gain access to details of ownership and any mortgages in that underlying registry.

Can foreign mortgages be registered in the bareboat registry?
In Russia, and other jurisdictions, the bareboat registry allows for registering details of any mortgage registered in the underlying registry. Such registration improves the availability of information about the mortgage and ownership, making it easier for third parties to obtain basic information about the vessel, her ownership and encumbrances. However, the availability of such information does not necessarily reflect any established legal position or secure an interest in the vessel. In Turkmenistan, for example, provisions in the Maritime Code allowed registration of such details, but local lawyers confirmed that these provisions did not coordinate with other provisions of Turkmenistan law. In other words, the status of the mortgage registered in the underlying registry is uncertain even if its details are recorded in the Turkmenistan bareboat registry. In China there is no mandatory right or requirement to register details of the underlying registration; it is possible to apply for the registration of such details, but registrars are in general reluctant to allow registration.

Will the mortgage be respected and enforceable against third party creditors?
Where a mortgage is registered in the underlying register, that registration should be maintained notwithstanding any bareboat registration. In many jurisdictions a foreign mortgage will be respected, and details of the foreign mortgage may also be entered into the bareboat register. However, this is not always the case. Some jurisdictions may not respect a foreign mortgage at all. Under Chinese law, for instance, a foreign mortgage may not be enforceable against third party Chinese creditors unless the details of the mortgage are recorded in the Chinese ship registry when the vessel is bareboat registered in China and flying the Chinese flag. Given that registration of the foreign mortgage is discretionary to the local registrar there are clear risks involved for any mortgagee when a bareboat registration in China is contemplated. In Turkmenistan the details of the foreign mortgage may be registered, but the mortgage as such cannot be recorded. Local Turkmenistan laws require a mortgage as such to be registered in the Turkmenistan register in order to be enforceable in Turkmenistan, and any foreign registered mortgage will not be enforceable in Turkmenistan even if its details are recorded. In France we have been advised by local counsel to register a full additional French mortgage, in order secure the mortgagee’s legal position.

Will the owners be able to withdraw the vessel from the bareboat flag, and will the ownership be protected?
The owner of a bareboat chartered ship may face situations where it is necessary to regain possession of the ship, withdraw the vessel from the bareboat register and reactivate the underlying register as the main register. In such situations the bareboat charterer may not always be cooperative. As the bareboat registration is based on the bareboat charterer being in possession of the ship and therefore the registrant, the owner may face problems in removing the vessel from bareboat registration and obtaining the necessary documentation for the reactivation of the underlying registration.

As the bareboat registration is based on the bareboat charterer being in possession of the ship and therefore the registrant, the owner may face problems in removing the vessel from bareboat registration and obtaining the necessary documentation for the reactivation of the underlying registration.
Are there any simple ways to ensure removal from the bareboat registry?

One possible solution is to obtain a Power of Attorney from the bareboat charterer giving the owner and/or the mortgagee the authority to withdraw and terminate the bareboat registration in the name of the bareboat charterer. Whether such Power of Attorney will be respected depends on the local laws. In Russia we have been advised that a Power of Attorney, while apparently helpful, could be withdrawn by the bareboat charterer at any time. It follows that a Power of Attorney may assist owners and mortgagees if the bareboat charterer chooses to cooperate or take no action at all, but it will not assist owners and mortgagees if the bareboat charterer actively resists withdrawal. Our advice from China is that a Power of Attorney would not be of assistance, but that the owner should try to obtain undated application letters for deletion pre-signed by the bareboat charterer and use these when applying for deletion from the local register.

Conclusion
The above examples show how important it is to make careful, specific risk assessments when contemplating bareboat registration in another registry. In some jurisdictions there may be no certain way of securing owners’ and mortgagees’ interests in the vessel, in which case the owners and mortgagees must consider alternative ways of obtaining satisfactory security. On the other hand, it is important not to forego business opportunities simply because bareboat registration is required, and such registration does not appear to be straightforward at first glance. Simonsen Vogt Wiig has guided many clients through difficult bareboat registration processes with successful results, and remains ready to assist others in the future.