



THE SHIP MORTGAGE IN PANAMA

Introduction

Panama remains the first merchant marine registry in the world with nearly 8 thousand and more ships of different types and services. As open registry flag (be named that registry which does not maintain restrictions of nationality and in addition contains a series of fiscal and technical advantages), its success is due mostly to the legal development that throughout the years has been directed to the ship mortgage.

Since its conception, the ship mortgage has been determinant in the deposit of necessary trust by its principal beneficiaries (in this case the bank or the mortgagee) both in its legal structure as well as in the registration institutions which support them as means to guarantee legal certainty to its rights in the different credits issued to shipowners that maintain their ships registered under our flag.

On the other hand, due to its practicality and flexibility, the ship mortgage has served as a facilitating instrument to financing in the acquisition of ships and the different operations the shipowners of the Panamanian flag maintain worldwide.

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Applicable Legislation

Current Law No. 55 of August 6, 2008 refer to its articles 249 thru 271 specifically on ship mortgages over Panamanian flag ships and provides as reference what is established in the Civil Code in connection to the mortgages on immovables (Real Rights or “in rem”) and the applicable regulations insofar that these do not contradict the special regime of the Law 55.

Legal Aspects

The essential requirements in our legislation to constitute and be able to register a ship mortgage contract are established in article 260 of Law 55 to wit:

- a. The ship mortgage contract may be granted in any language and shall be in writing in a private document or a public deed or may be constituted in accordance with the formalities of the laws of the place of issuance.
- b. The ship mortgage contract may contain the following basic information:
 - i. Name and address of mortgagor and mortgagee;
 - ii. The fixed amount or guaranteed maximum;
 - iii. Payment dates of the capital and interests, or the manner to determine said dates, save the mortgage is to be granted to guarantee obligations which are due upon request, future obligations or obligations subject to a precedent condition;
 - iv. In as much as applicable, the parties shall determine in the mortgage contract the interest rate agreed or the manner of calculation thereof; and
 - v. Name of the vessel, number of navigation license, call letters and registered dimensions and tonnages.

Mortgages in Panama may ensure future obligations and obligations of any third party.

Moreover, they may be granted in the form of fleet instead of individually and registered on vessels which are still in construction under the condition of submitting a certification issued by the Shipyard describing the information required by article 263 of Law 55.

Registration Process

Once the shipowner obtains title of ownership on the ship, the same may be registered together with the mortgage whether in a preliminary or permanent manner at the Ship Registry.

The preliminary registration is achieved by means of submitting the required application forms, detailing the principal characteristics of the document to be registered.

The registration if made initially in a preliminary manner, may be performed through the Panamanian Consulates authorized by the Merchant Marine (Pancon) or locally in Panama. In both cases, the registration shall produce total legal effects against third parties for a period of six (6) months as of the date on which the preliminary registration was made.

Later, the title of ownership of the vessel and the ship mortgages shall be translated, notarized and filed for their permanent registration at the Ship Registry. Once registered in a permanent manner, the ship mortgage shall be effective against third parties as of the date of its preliminary registration;

By virtue of the Panamanian Merchant Marine being more competitive, Law 55 was amended under Law No. 27 of October 28, 2014 where now a ship mortgage executed abroad may be registered in a permanent manner in its original English language by means of an extract.

The Ship Mortgage as privileged maritime lien

The ship mortgage is deemed a privileged maritime lien in Panama. The priority order of privileged maritime liens in the Republic of Panama is established according to article 244 of Law 55. Originally, the previous maritime trade law established by legal order, the classification of the mortgage in a seventh place. However, the legislators agreed mostly in order to stimulate the growth of the Panamanian flag and give same higher priority to the mortgagees, to enact Law No. 27 of October 28, 2018 thus amending article 244 of law 55 upgrading the ship mortgage to fourth place.



Due that the ship mortgage is considered a privileged maritime lien, its judicial execution would continue the process established for such need, based on Law No. 8 of 1982 regarding the Maritime Procedure.

