

SHIP MORTGAGES IN THE BAHAMAS

The Merchant Shipping Act 1976 (Chapter 268, Statute Law of The Bahamas, 2009 Revised Edition) (the "MSA") provides a simple, inexpensive and expedient procedure for the registration of ship mortgages in The Bahamas. Ships and ship mortgages are registered in the Port of Nassau on the Bahamian Register of Ships (the "Register"), which is maintained by the Bahamas Maritime Authority ("BMA"). The BMA has offices in Nassau, New York, London, Hong Kong and Piraeus, Greece.

Ownership of a ship is divided into 64 shares, and any ship or share of a ship registered under the MSA may be mortgaged under the Act. A mortgagee is not deemed to be the owner of the ship or a share in a ship merely by reason of the existence of a mortgage and the mortgagor will continue to be the owner. However, the mortgagor's title to the vessel is encumbered by and subject to the mortgage and the mortgagee's rights thereunder. Every registered mortgagee has the power to dispose of the ship and give effectual receipts for the purchase money. A mortgagee may also take possession of the ship if necessary.

The MSA requires that a mortgage of a registered ship be in one of the prescribed forms: (i) the mortgage to secure principal sum and interest, or (ii) the mortgage to secure an account current. Both are used for ships already constructed and ships under construction. The one generally used is the account current form because of the wider protection it gives the mortgagee; it is adaptable to virtually any type of finance and its wording is such that it can secure a mortgagee for present and future indebtedness, however it may arise. The usual mortgage of a ship is contained in two documents, one being the statutory form of mortgage and the other a collateral deed of covenants. It is in the latter document that the mortgagee's powers are generally set out and by which they are regulated.

A mortgage is registered as soon as the original is presented to the Registrar of Ships for registration, along with the prescribed fee. Only brief details of the mortgage are entered into the Register. No other charges or encumbrances on a vessel are permitted to be recorded on the Register. When the mortgage is discharged, this information is entered on the Register.

Mortgages rank in priority by date of registration and not according to the dates of the mortgages. Mortgagees may, between themselves, agree to a variation of these priorities, but such variation cannot be reflected on the Register. The claim of a mortgagee against a ship ranks in priority after the maritime liens which are set out in Section 277 of the MSA. A registered mortgage has priority over an unregistered mortgage, irrespective of notice.

The prescribed fee for registering a mortgage is \$200.00 for ships under 1,600 net tons and \$400.00 for ships over 1,600 net tons. There are no additional costs or expenses in connection with maintaining the mortgage on the Ship Register. A transcript showing details of the mortgages entered on the Ship Register can be obtained upon request and upon payment of a small fee, currently \$100.

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