

MARITIME MORTGAGE in the Egyptian maritime commercial law No. 8/1990.

By Mr. / Usama Soliman
Advocate before Supreme Court

The new Egyptian Maritime Commercial law organized the maritime mortgage in the Articles from 14 to 58 with provisions similar to a great extent to the official mortgage discipline in the civil law , with the consequent of reference to the provisions set up in the civil law concerning the official mortgage if there is no text in the maritime commercial law concerning the maritime mortgage .

How will the maritime mortgage be Established ? How will it be Registered ?

The maritime mortgage is considered an agreed upon trust , i.e. it is not applied to the ship without contract between the debtor mortgager , the ship - owner and the creditor mortgage .

The legal rules applicable , in this respect , are the same public legal rules cited in the Egyptian civil law (Art.1033 civil) . But the maritime mortgage is unique in certain provisions concerning the place of mortgage , its form and the stipulation of registration in the ships register in order to make use of it against others .

1. The place of mortgage

The maritime mortgage cannot be levied upon anything other than a ship , as is above mentioned , whatever the purpose it is set for and whatever its cargo is . The mortgage levied upon the ship extends to its appendices that are necessary in its investment .

Will the ship owned in common be mortgaged ?

If the ship is owned in common to many persons , it may be mortgaged with the consent of the owners who possess at least three quarters of the shares .

If this majority is not available . The matter will be raised to the concerned court to decide the case in accordance with the interests of the owners in common (Art.42) .

The legislator does not necessitate that the mortgage is to be levied upon the whole ship , but it may be limited only to the share of one partner , as the partner can mortgage his share of the ship (Art 43 / 1).

Will the ship in the course of construction be mortgaged ?

Though the characteristics of the ship will not be trusted unless its building is complete , the legislator frankly states that the ship in the course of construction may be mortgaged (Art . 44) .

As the ship is not registered in the ships register before its building is complete , the mortgage of the ship in the course of building will be preceded by an admission in the registration office , in whose circuit lies the place of building , declaring this place , the length of the ship , its other dimensions and its approximate tonnage (Art . 44) . The mortgage also should be registered in the ships register at the registration office , at whose circuit lies the place of building (Art . 45) .

Will the shipwreck be mortgaged ?

The mortgaged ship is still bearing the mortgage even though it is damaged in a shipwreck that changes it into a wreck ; the mortgage levied upon it or a share of it is shifted to its wreck (Art.43/1).This is a support to the trust of the equipper (the owner).

Will the transport fees and subsidies be mortgaged ?

As the mortgager keeps the possession of the ship and its investment , the levied mortgage upon the ship does not apply to the transport fees (Act . 43 / 2) .

Subsidies and donations gifted by the state or another public moral person to the ship may be also exempted from mortgage (Art . 43 / 2) .

Will the compensations for Damages and the Amount of Insurance be mortgaged ?

The maritime legislator also, laid aside of mortgage the amounts off compensation due to the owner for the damages occurring to the ship or for insurance contracts (Art . 43 / 2) .

But he gave the mortgager the right to shift the insurance compensation to the creditor mortgage . He states that according to the explicit agreement in the contract of mortgage , the creditor mortgage may get his due right from the amount of insurance , provided , the insurers accept that in writing or declare it (Art . 43 / 2) .

What is the legal form wherein the maritime mortgage contract concluded ?

The maritime mortgage is an official contract . Article 41 Maritime notes that the ship mortgage will not be levied without

an official contract . This text is an application to the comprehensive text of Article 11 / 1 that states that all disposals levied upon the ship should be performed through an official deed , otherwise it will be void .

The mortgage contract has to be written before the specific officer at one of the registration offices subordinate to the registration body if the mortgage is to be levied in the republic . If the mortgage is to be levied to be levied abroad, the contract should be written before the Egyptian consul abroad , if there is none , it should be written before the specific local officer (Art . 11\2).

How will the Maritime Mortgage be Registered?

The registration at the mortgage upon the ship is performed by registering it in the ship register at the port office wherein the ship is registered, But, if the mortgage on the ship is levied while it is in the course of building , it will be recorded in the ship register at the registration office in whose circuit the place of building the ship lies (Art . 45) .

Articles 46 and 47 cite the procedures of this registration .

Registration in the ship register keeps the mortgage for ten years from the date of its performance . Like the official mortgage . This registration should be renewed before the lapse of these ten years , otherwise its effect is void , i.e. , it invokes no protest against others (Art . 49) . The renewal of the mortgage will be valid for ten years from the date of renewal of another ten years , etc . , until the mortgage lapses .

If the debt guaranteed by the mortgage lapses for any reason , or the mortgage only lapses for invalidity , rescission or the creditor giving it up or the registration becomes void for formal failure , and there is no use for recovering the registration . The mortgagor and others who are hurt by its existence may call for canceling it .

What are the Effects of the maritime mortgage ?

The maritime mortgage results in effects on both parties of the mortgage . The registration of the mortgage also results in effects on others :

a. Effects of the Maritime mortgage on Both parties :

(1) As for the debtor mortgager :

The ship mortgage does not lead to depriving the debtor mortgager of the possession of the ship , but he keeps it and its possession does not shift to the creditor mortgage , contradicting the mortgage of the movables . Therefore , the debtor mortgager can use his ship , invest it and dispose of it in all forms of disposition including the transfer of its ownership or remortgaging it if the creditor mortgage did not record a minute of detention in the ship register . Article 51 states that disposition of the ship will be void after recording a minute of detention in the ships register .

(2) As for the creditor mortgage :

The maritime mortgage contract lays to the creditor mortgage of the ship consequently an in - kind right . But the creditor mortgage is an ordinary creditor to the ship equipper (owner) before his consequent in kind right on it . Thus , he will have general guarantee on all properties of the debtor mortgager .

b. Effects of the maritime mortgage on others :

(1) Right of precedence

The creditor mortgage precedes the normal creditors to the equipper (owner) , but he comes next in grade to those who have privileged maritime rights . If there are many creditor mortgages , the grade of each will be considered according to the priority of registering his mortgage . The priority is considered on the basis of the date of registering each mortgage . If many mortgages are registered in one day , all these mortgages will be equal in grade (Art . 50) .

(2) Right of Trace

The maritime mortgage contract also gives the creditor mortgage the privilege of tracing . Article 51 states that the creditor mortgages of a ship or part of it can trace it whatever hand may lay hold on it . The disposal of the mortgaged ship will be void after the registration of the detention minute in the ships register .

Will the Mortgage levied on a share of the ship lead to take procedures for its sale ?

If the mortgage is levied on a share of the ship , we may differentiate between two suppositions :

First , if the mortgaged share is no more than half the ship , the creditor cannot take any procedure for the sale of the whole ship , but the case is limited to the call for selling the mortgaged part of it .

Second, if the mortgaged share is more than half the ship , the creditor may , after performing the detention, get an order from the court for the sale of the whole ship .

Will the mortgaged ship be sold to a foreigner ?

Article 57 presented a new provision , when it stated that if the mortgaged ship is optionally sold to a foreigner , the sale will be void without the creditor mortgage giving up the sale contract of the mortgage , and who violates this provision will be imprisoned for no more than a year , and fined with no more than three thousand pounds or one of these punishments .

What are the causes of the lapse of the maritime mortgage ?

The maritime mortgage lapses for one of the following causes :

a. The lapse of the Debt :

For any reason of lapse according to the public rules .

b. The Destruction of the mortgaged ship :

But the levied mortgage remains , and is transferred to its wreck (Art . 43 / 1) .

c. The purgation :

Purgation is carried out by force of law in the case of the forced sale . The decision of the auctioneer should purge the ship from all mortgages and the rights of the creditors shift to its prose (Art . 53) .

d. Waiving :

At last , the maritime mortgage lapses when the creditor mortgage waives it .

This article provides for a general overview only and must not be relied upon as constituting advice in any specific case. Advice should always be sought before taking steps in proceedings- For Further information pls. Contact Mr. U. Soliman