

Ship Finance:

Registration of Mortgages under Maltese Law

Following is a brief outline of the security provided by a Maltese registered Mortgage:

1. Mortgages enjoy a significantly higher ranking over other privileged claims as specified in the Merchant Shipping Act Cap 234 of the Laws of Malta, and rank, in relation to other mortgages, according to the priority in date and time of their registration.
2. A vessel registered under the Malta flag may not be deleted by the owner without the prior written consent of the Mortgagee. A Maltese vessel (whose trading certificates have expired on account of the owner's negligence) may not be struck off the Register without the Registrar's submission of a one month notification received in writing by the Mortgagee, the owner and their respective local representatives.
3. The Mortgagee has the absolute power to sell the ship, but where there are several mortgagees, a subsequent mortgagee can only do so with the concurrence of prior mortgagees, unless the sale takes place following the order of a court of competent jurisdiction. The balance of the proceeds of sale, after discharging the mortgage debt, must be deposited for the benefit of other creditors and the mortgagor.
4. The Mortgagee has the power to apply for any extensions, pay fees, receive certificates, and generally do all such things in the name of the owner as may be required in order to maintain the status and validity of the registration of the ship.
5. The Mortgagee also has the power to prohibit the creation of any further mortgages and may likewise preclude the transfer of ownership of the Ship without his prior written consent. This may be effected by the inclusion of an express clause to this effect in the Mortgage Deed.
6. More importantly, the Mortgagee has an Executive title such that in the event of a breach of any of the conditions stipulated in the Loan Agreement, the Mortgagee may proceed to take full possession of the vessel without first having to obtain a Court judgement.

The filing and registration of the Mortgage instrument is effected here in Malta at the Malta Maritime Authority before the Registrar of Ships. The Mortgage is to be drawn up on the appropriate statutory form. Upon the registration of a Mortgage, the Registrar indicates the date and time on the said Mortgage and records it on the Register book. The original duly executed Mortgage instrument is then forwarded to the Mortgagee by the local representatives and is to be kept by them.

Apart from a copy of the Mortgage Deed itself, no other security documents need be registered with the Registry.

The registration of a Mortgage can be effected through the services of a Maltese representative for the Mortgagor by virtue of a Power of Attorney duly issued. This ensures that any amendments or alterations that may arise at the last minute may be easily effected by the duly empowered Attorney-in-fact. Moreover, the Mortgagee's representative can ensure that, prior to the registration of the Mortgage, there are no other existing mortgages or encumbrances which may jeopardise the priority ranking of the Bank/Financier.

It is important to note that the Mortgagor's Shareholders/Directors resolutions as well as Power of Attorney authorising the registration of the Mortgage are normally forwarded to the Mortgagee's local representatives for their examination in the light of Maltese Law. All signatures must be duly notarised and apostilled by the Ministry of Foreign Affairs, or legalised by a Maltese Consul, as the case may be.