

Vessel mortgage

Omar Omar

o.omar@tamimi.com

Vessel mortgage in the UAE is governed by the UAE Commercial Maritime Law No. 26 for the year 1981 and amendments as per law No. 11 for the year 1988 (the "Law"). The Law permits the mortgage of a vessel if its total tonnage exceeds ten tons. As per the Law, There is only one type of vessel mortgages which confers priority rights for mortgagee over other debtors.

The mortgagee must be a natural person or a juridical person (body corporate) including banks, national financing establishments or those having branches officially licensed in the UAE. If the vessel is co-owned, it may be mortgaged by the consent of a majority of the owners having at least three quarters of the shares. If such majority cannot be achieved, the matter may be referred to the civil court within its jurisdiction the ship registry is to issue a decision considering what is best for the joint owners.

A vessel mortgage is only valid if it is made by an official instrument, otherwise it shall be void and shall not be recognized by any authority. A mortgage on a vessel or on a share therein shall remain valid on the vessel's wreckage. A mortgage shall not cover freight, remunerations, assistance and subsidies granted by the State, nor against insurance monies or compensation for damage, but it shall include compensation due to the owner for material damage sustained by the vessel which has not been repaired. Nevertheless, it shall be permissible for an agreement to be made in a contract of mortgage for the mortgagee creditor to recover his debt out of the insurance money on condition that the insurers so accept in writing, or if they are given notice thereof.

A mortgage may be placed on a vessel under construction however; the mortgage must be preceded by a declaration from the relevant Maritime Office in the port in its jurisdiction the vessel is being constructed, stating the length and other dimensions of the vessel, its approximate tonnage, and the address of the yard or place in which it is being built. Amongst very few jurisdictions, the UAE in articles 101 and 102 of the UAE Commercial Maritime Law permits the mortgage of a vessel while under construction.

Any mortgage will be registered in the ships' register at the port of registration of the vessel, or with the consul of the State if the mortgage is made while the vessel is abroad. If the mortgage is made on the vessel while it is in under construction, it must be registered in the register of ships at the area in which it is being built. In order to effect the mortgage, an official copy of the contract of mortgage must be submitted to the Maritime Inspection Office, accompanied by two schedules signed by the applicant for registration containing in particular the following: (a) The name, surname and nationality of each debtor and creditor, together with their places of residence and occupation. (b) Date and type of contract. (c) The amount of the debt as shown in the contract, and if the mortgage is being effected against more than one vessel the schedules must specify the amount of the debt relating to each of them. If the mortgage is against a vessel and other property, the schedules should specify the amount of the debt secured by the vessel. (d) Conditions relating to interest on the debts, if any, and conditions of settlement. (e) The name and description of the mortgaged vessel, the date and number of the certificate of registration, or the construction report on the vessel from the relevant office in accordance with Article 101, and its registration number on the register for the place of construction. (f) The chosen address of the creditor within the area of the Registration Bureau in which registration has been effected. The ships' register will endorse the contents of the schedules and shall deliver one of them to the applicant with an endorsement to the effect that registration has taken place, and will also endorse the registration certificate to that effect. The Ships' register in which the mortgage has been registered shall notify all the other ship registers in the State thereof.

A valid mortgage shall rank directly after the priority debts referred to in subparagraphs (a), (b), (c), (d),

and (e) of Article 84 which are (a) Judicial costs incurred in maintaining and selling the vessel, distributing the proceeds of its sale, costs of loading, lighthouse and port, other dues and taxes of the same type, pilotage, compensation for damage caused to port installations, docks and navigation routes, costs of removing obstacles to navigation routes caused by the vessel, and costs of towage and maintenance as from vessel's arrival time to last harbour. (b) Debts arising out of a contract for the employment of the master, crew and other parties committed to a maritime employment contract on the vessel. (c) Rewards due for assistance and salvage and vessel's share in maritime general average. (d) Compensation due from collisions and other navigation accidents, compensation due for bodily harm to the passengers and crew and compensation for loss or damage to goods and luggage. (e) Debts arising out of contracts made by the master and operations carried out by the master, within his/her authorities, outside vessel's port of registration for an actual maintenance requirement for the vessel or the continuance of its voyage that is whether or not the master is the owner of the vessel, or whether the debt is due to him/her, or to persons undertaking supply to the vessel, lenders, persons who have made repairs to the vessel or other contractors.. Debts secured by a mortgage shall rank in order of the dates of registration thereof. If two or more mortgages are effected against a vessel or against a share in it, they shall rank in order of registration even if they were registered on the same day. Registration shall result in the interest on the debt being secured for the last two years in addition to the interest for the current year at the time of the auction, and such interest shall rank in the same order as the principal sum of the debt.