



PANAMA MARITIME AUTHORITY
MERCHANT MARINE CIRCULAR MMC-60

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To: Shipowners/Operators, Company Security Officers, Legal Representatives of Panamanian Flagged Vessels, Panamanian Merchant marine Consulates and Recognized Organizations (RO)

Subject: Amendments to Panama Ship Mortgage Law

Reference: Law No. 43 of 8 November 1984 replaced by law N°55 of August 6, 2008

This Merchant Marine Circular replaces MMC-10

1. The objectives of this Law is to improve the provisions dealing with the preliminary Registrations of documents, i.e., bills of sale, mortgages and discharges, through the consular offices of Panama abroad as well as in Panama through Legal Representatives.
2. Nevertheless, law 43 of 1984 is actually known as law 55 of August 6, 2008: Law N°55 is created with the intention to update the Panamanian code of commerce According to the existing needs of the maritime industry.

A. Formalities

The external formalities for granting title to property or a mortgage have been considerably simplified. Prior to the amendment of law 43 of 1984 (actually law 55 of 2008), title to property or mortgage on a Panamanian vessel could only be granted in any of the following ways:

1. In Panama, by public instrument before a Panama Notary Public;
2. Abroad, by public instrument before a Panamanian Consul; or
3. Abroad, pursuant to the formalities required for the same type of deed or contract in the place of execution.

This situation often led to considerable difficulties, making it, for instance, impracticable to grant Panamanian naval mortgages in certain jurisdictions, as was the case of Greece.

A bill of sale or naval mortgages on a Panamanian vessel may be granted in Panama or abroad, in any jurisdiction, in any language, in a private deed, so long as it is authenticated by a Notary Public if granted in the Republic of Panama, or by a Panamanian Consul if granted abroad.

Nevertheless, the law expressly preserves the conflicts principle of the "locus regit actum" in enabling the parties to choose to execute the pertinent deed or contract in accordance with the external formalities required by the laws of the place of execution.

To be effective against third parties, the title to property or mortgage will have to be registered, as before the amendments, at the Panama Public Registry.

B. Preliminary Registration:

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The system of preliminary registrations originally adopted by Law 14 of 1980, now replaced by law 55 of 2008, is preserved and specifically expanded to cover amendments and assignments of mortgages, in addition to titles to property, naval mortgages and releases of mortgage that before the amendment were the proper objects of preliminary registration.

The preliminary registration of a release of mortgage need no longer be tied to the registration of anew mortgage of like preference.

Finally, the preliminary registration of documents filed directly for registration through an attorney-at-law in Panama is now possible, in anticipation of the translation of the pertinent document, its protocolization and definite registration at the Public Registry. This would be done by preparing an extract of the document to be preliminarily registered, similar to the text of the petition that is now filed with the Consul, followed by its attestation by a Panamanian Notary and subsequent preliminary registration at the Panama Public Registry.

Its allowed the issuance of the Certificate of Preliminary Registration thus made either to the petitioner in Panama or, upon the request of the petitioner, through a Panamanian Consul abroad.

C. Marginal Notations:

The requirement to make marginal notations in the case of mortgages that secure future or conditional obligations, with specific reference to revolving credit facilities and the exercise of multicurrency or alternate currency option clauses, is eliminated. The idea is that if the obligation to be secured is sufficiently described in the mortgage or a maximum principal amount stipulated, no marginal notation to the recorded mortgage will be necessary when such obligation materializes or the condition occurs.

D. Revolving Credits

In the case of revolving credit facilities, it is expressly stated that total repayment of an outstanding balance during the period of the facility will in no way affect the security of the mortgage in respect of subsequent drawdowns under the same facility.

E. Other Obligations and Increases in the Principal Amount Secured Resulting From Currency Conversions:

The need to stipulate a maximum amount secured refers only to capital and not to interest, cost, and expenses of collection, and such other indebtedness that may be due on demand or on maturity to the mortgagee, secured by the mortgage. In addition, this principle of indeterminability of the amount secured extends to real increases in the principal amount that may be attributable to currency fluctuations, resulting from currency fluctuations, resulting from currency conversions, without the need to make supplementary filings at the Public Registry.

The above is not to say that the stipulation of a maximum amount secured is no longer possible for such other indebtedness or increases resulting from currency fluctuations, should this be deemed necessary or convenient to preserve the security or enforceability of the Panamanian naval mortgage in jurisdiction that apply, indiscriminately, the provisions of international conventions on the subject of maritime liens and mortgages requiring the stipulation of such a maximum amount.

In the case of judicial proceeding for foreclosure on the mortgage, the amount of indebtedness secured stated in the complaint to be due and payable, shall be presumed certain, the burden being on the shipowner or other interested parties to disprove such allegations.

F. Novation

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Variations in currency denomination, rates of interest and repayment schedules shall not be deemed to novate the principal obligation secured by the naval mortgage, to affect the continued validity and enforceability of the same. They also state that an assumption of the debt thus secured, or substitution of the debtor, shall not be understood to novate the debt.

G. Interest

Stipulations on interest in the mortgage deed are left to the entire discretion of the parties, so long as the rate of interest or the method of determining the same is indicated in the mortgage. For instance, interest may be stipulated as the cost to the mortgagee of funding the loan without reference to any rates prevailing in a certain interbank market. This, combined with the presumption of certainty as to the amount stated in the complaint in respect of interest due and payable, renders such a provision readily enforceable in court for foreclosure on the mortgage.

Maximum or usurious rates of interest for loans or other indebtedness secured by Panamanian naval mortgages on vessels in the international service are no longer applicable.

H. Due Dates

It is unnecessary to detail in the mortgage deed the repayment schedule, so long as the same is determinable from the formula described in the mortgage. They likewise clarify that obligations payable on demand are validly secured by Panamanian naval mortgages.

I. Stipulation of Value for Judicial Sale

The requirement to stipulate in the mortgage a value of the vessel for judicial sale is eliminated. It is therefore, clear that whatever local procedure dictates concerning appraisal of the vessel and minimum bids for judicial sale in the place of foreclosure will apply.

4. Law 55 of 2008 states also establishes some remedial provisions, as follows:

A. Non-Judicial Sales

The stipulations empowering the mortgagee to enforce the mortgage non-judicially, by sale of the vessel out-of-court, heretofore contrary to Panamanian public policy, are now valid. Such stipulations will be valid if they contemplate for notice of the sale to be given to the shipowner and to the other mortgagees of record, if any, not less than twenty (20) calendar days in advance of the sale. The form and method of giving such notice and of effecting the sale are left to agreement between the parties.

The mortgagee shall be responsible for the damages it may cause in exercising the power of non-judicial sale, attributable to his fault or negligence. However, under general principles of law, applicable in this instance, such responsibility may be limited in respect of the shipowner to the mortgagee's wilfull misconduct, recklessness or gross negligence.

The sale so made will extinguish the lien of the mortgage thus enforced. It will not affect, however, other liens or privileges on the vessel.

It is noteworthy at this point that Article 245 of the law 55 of 2008 states that liens or privileges on a vessel are extinguished as follows:

- a. By judicial sale; and
- b. with the exception of the naval mortgage, by non-judicial or voluntary sale, six (6) months after the transfer is definitely registered at the Panama Public Registry.

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It should be pointed out that Article 246 of the law 55 of 2008 states that the lien or privilege shall not be extinguished if the lienor has, before the occurrence of the event or expiration of the term, initiated judicial proceedings to enforce his liens or privilege.

B. Possession and Management of the Vessel

The mortgagees may be granted the power to take control of and manage the vessel when he deems it convenient for the protection of his credit; and that he may appropriate the earnings from the operation of a the vessel to be applied to satisfy the indebtedness secured. This power of possession and management will prevail over the rights of third party possessors, for instance, time and bareboat charterers.

The provision in question imposes the following duties on the mortgagee.

1. The responsibility for damages caused by his fault or negligence in the exercise of such power. As in the case of a the power to dispose of the vessel, such responsibility may be contractually limited to cases of wilfull misconduct, recklessness or gross negligence; and
2. Unless otherwise agreed, the obligation to render quarterly accounts of his activity to the shipowners.

Octubre, 2011 - *Inclusion of new law in reference.*
June, 1992

Inquiries concerning the subject of this Circular or any request should be directed to:
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