

The ship mortgage – Malta

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1. Form and contents

1.1 Does the legal system in Malta prescribe a set form of mortgage?

The Merchant Shipping Act provides for a statutory form of mortgage. There is only one form which has to be used for all types of mortgage.

1.2 If not, does the legal system in Malta lay down any specific requirements as to the content of mortgages to ensure either their validity or their priority?

Not applicable.

1.3 Must mortgages for registration in Malta be in any particular language?

The mortgage must be in English or Maltese.

1.4 What are the requirements of the legal system in Malta with regard to:

1.4.1 Execution of the mortgage by the mortgagor?

The mortgagor is usually a company and so the person signing must have authority to do so by virtue of the memorandum and articles of association of the company or by virtue of resolutions of the board of directors or by virtue of a power of attorney issued in pursuance to the resolutions or the memorandum of the company. The mortgagor must execute the mortgage in the presence of a named witness.

1.4.2 Execution of the mortgage by the mortgagee?

The mortgagee does not execute the mortgage.

1.4.3 Notarisation?

The power of attorney on the basis of which the mortgage is executed should be notarised. If the mortgagor is a Malta company, then the notary only needs to confirm the identity of the signatory. If the mortgagor is not a Malta company, then the notary would need to confirm (i) the identity of the signatory and (ii) the authority of the signatory to bind the company.

* The publisher acknowledges David Galea as author of this chapter in the previous edition.

1.4.4 Legalisation?

Notarised documents should also be legalised by apostille.

Note: Where one of the above is not possible, the Registrar may accept lawyers as witnesses to signature, identity and authority and honorary consuls of Malta for legalisation, but one should verify the position in each case.

2. Mortgagees' rights

2.1 Does the legal system in Malta provide mortgagees with the rights which they would normally expect, ie, the right to take possession of and sell the vessel on default, (a) by law and/or (b) only if included expressly in the mortgage?

In the event of default of any term or condition of a registered mortgage or of any documents or agreements referred to therein, the mortgagee shall, upon giving notice to the mortgagor:

2.1.1 Be entitled to take possession of the ship or share therein in respect of which it is registered; but except so far as may be necessary for making a mortgage's ship or share available as a security for the mortgage debt, the mortgagee shall not by reason of the mortgage be deemed to be the owner of the ship or share, nor shall the mortgagor be deemed to have ceased to be the owner thereof;

2.1.2 Have power absolutely to sell the ship or share in respect of which it is registered; but where there are more persons than one registered as mortgagees of the same ship or share, a subsequent mortgagee shall not, except under the order of a court of competent jurisdiction, sell the ship or share without the concurrence of every prior mortgagee; and if the proceeds of sale, after discharging the mortgage debt, show a surplus in its hands, the mortgagee shall deposit the same for the benefit of other creditors and of the mortgagor; and

2.1.3 Have 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.

For the purposes of the proceedings above, the debtor shall be deemed to be served if the application or other act is served on the master of the vessel, or if he is absent from these Islands, on the local agent appointed for the vessel by the owners or their agent, or in the absence of such local agent, a curator appointed by the court to represent the debtor and the ship.

2.2 Are there any limits (and, if so, what are they) on the right of the mortgagee on default:

2.2.1 To take possession of the vessel?

2.2.2 To sell the vessel at auction?

2.2.3 To sell the vessel privately?

As seen above, there are no limits except practical ones. In Malta, if the owner refuses to allow the mortgagee to take possession, then recourse to the courts will be necessary, but that results from the procedural and criminal law, not the Merchant Shipping Act.

3. Registration

3.1 Where may registration of mortgages take place:

3.1.1 In Malta?

Mortgages may only be registered at the Registry of Ships in Malta.

3.1.2 Abroad?

Not applicable.

3.2 If mortgages may be executed and presented for registration in a foreign language, what, if any, are the translation requirements and when must they be completed?

Mortgages in Malta can be executed and presented for registration in English or Maltese.

3.3 How many originals of the mortgage must be presented for registration? How many are retained by the registering authority?

Only one original form is delivered and registered. A copy is retained by the Registrar and certified copies are issued. The original is returned to the mortgagee.

3.4 What other documents must be produced to the registering authority when registering the mortgage? Which will be retained?

A copy of a power of attorney would need to be produced to the registering authority duly issued by the owner of the vessel authorising attorneys in Malta to register the mortgage. The power of attorney would need to be notarised and apostilled with the notary confirming the identity and/or the authority of the signatory. If the owner of the vessel is a Malta company, then a copy of a good standing certificate issued by the registry of companies referring to the date of the power of attorney would also be required.

Furthermore, if a second priority mortgage is to be registered over a vessel and the first priority mortgagee is different from the second priority mortgagee, then a written consent from the first priority mortgagee is required authorising the registration of the second priority mortgage. Such written consent would also need to be notarised for identity and authority and duly legalised. A scanned copy will suffice.

3.5 Must original documents be submitted or will photocopies or faxed copies of some or all documents be accepted? If so, which? Are there any requirements for copies to be verified?

Photocopies of the power of attorney and good standing certificate will suffice.

3.6 What are the fees currently payable on mortgage registration?

The fees payable for mortgage registration are €500.

3.7 Can a mortgage be registered over a vessel currently under construction? If so, please provide details of the documents to be submitted and the fees payable.

A vessel currently under construction may be registered under the Malta flag as long as when built or equipped it would qualify as a ship registrable under the Merchant Shipping Act. In the case where a declaration of ownership has been completed in the registration of a vessel under construction, and registration has occurred under the ownership of a particular party, a mortgage may be registered over such vessel while it is still under construction.

The documents required are the same as those required for the registration of a mortgage on a Malta flagged vessel.

The fees applicable are €500 for the mortgage registration.

4. Amendment

4.1 Can registered mortgages be amended and/or supplemented?

Yes, the amendment of a mortgage may be effected for any purpose, but it must, at law, be effected for any one or more of the following purposes:

4.1.1 To increase the amount secured by such mortgage; and/or

4.1.2 To extend such mortgage to secure any other obligation of the mortgagor, whether as principal or as surety for any other person, in favour of the mortgagee.

In order to effect the amendment a new instrument of mortgage is executed containing the amendment, together with the written consent on the said instrument, of the mortgagee whose mortgage has been amended. This instrument is executed by the mortgagor and counter-signed by the mortgagee in the presence of witnesses.

Where any mortgages other than the mortgage that it is intended to amend are entered in the register of the ship, an amendment shall not be noted unless the consent in writing of all the other mortgagees whose interests may be prejudiced by the amendment is produced to the Registrar.

4.2 If so, what documents are required by the registering authority?

The documents are the same as those of a new mortgage in addition to the above-mentioned consents where applicable.

4.3 If so, please answer questions listed in Clauses 1 and 3 above as if references to mortgages were references to amending and/or supplementing instruments.

The amendment must be in the statutory form of mortgage as stated in Clause 1 above, either in English or Maltese.

Registration may only occur in Malta. One original form is delivered and registered. A copy is retained by the Registrar and certified copies are issued in any number. The original is returned to the mortgagee.

No other documents apart from the mortgage form, the required corporate authorities to execute the amendment mortgage and a good standing certificate dated as per the corporate authorities (if the mortgagor is a Maltese company) are required. Scanned copies of the corporate authorities are accepted as long as the originals are notarised and legalised.

The registry of ships charges €250 for the registration of an amendment mortgage.

5. Discharge

5.1 What documents are required by the registering authority to discharge a registered mortgage?

The original mortgage deed duly signed and attested in the requisite part, specifically reserved for discharge on the back of the mortgage deed, together with a power of attorney appointing a Maltese representative to sign for and on behalf of the mortgagee will be required. The power of attorney must be notarised and apostilled or legalised.

The discharge is executed by the mortgagee and should be witnessed.

In practice, two systems are usually followed for the purpose of effecting mortgage discharges:

5.1.1 In some cases, the mortgagee executes the discharge through his authorised representative at the mortgagee's place of business, which documents are notarised and apostilled and the original form of mortgage is then sent to the local mortgagee's representative for registering at the appropriate moment; and

5.1.2 In others, the mortgagee issues a power of attorney to his Maltese representative, duly notarised and legalised, and the latter attends to the discharge formalities at the appropriate moment and registers such discharge.
Scanned copies of the power of attorney are accepted as long as the originals are notarised and apostilled.

5.2 Where may registration of discharge mortgages take place:

5.2.1 In Malta?

Yes, they are registered at the Registry of Ships.

5.2.2 Abroad?

It is possible to discharge a mortgage at the embassy of Malta in the respective country.

5.3 If the discharge of mortgages may be executed and presented for registration in a foreign language, what, if any, are the translation requirements and when must they be completed?

It is not possible for the discharge of a mortgage to be executed and presented for registration in a foreign language.

5.4 How many originals of the discharge of mortgage must be presented for registration? How many are retained by the registering authority?

There is only one original mortgage issued by the Registry of Ships and thus it is only such original mortgage which must be presented for the discharge thereof. The Registry of Ships will retain a certified true copy.

5.5 What other documents must be produced to the registering authority when registering the discharge of mortgage? Which will be retained?

The other document which must be produced is a copy of a power of attorney, notarised and apostilled, authorising attorneys to execute the discharge of the mortgage on behalf of the mortgagee. The copy of the power of attorney will be retained.

5.6 Must original documents be submitted or will photocopies, faxed copies or PDF copies of some or all documents be accepted? If so, which? Are there any requirements for copies to be verified?

The original mortgage to be discharged has to be submitted to the Registry of Ships. A scanned copy of the power of attorney will suffice.

5.7 What are the fees currently payable on registration of a discharge of mortgage?

The Registry of Ships does not charge any fees for the registration of a discharge of mortgage.

However, for mortgages which were registered before 2003, there is a charge of €250 for the discharge thereof.

5.8 Can a discharge of mortgage be registered over a vessel currently under construction? If so, please provide details of the documents to be submitted and the fees payable.

Yes, it is possible to discharge a mortgage over a vessel currently under construction. The same documents as those stated above are required.

6. General

6.1 Please identify the principal statutes and regulations in Malta governing the registration of mortgages on ships.

The Merchant Shipping Act, Chapter 234 of the Laws of Malta is the only act regulating the registration of mortgages.

6.2 Must notice of mortgage and/or certified copy or original mortgage be placed on board the mortgaged ship? Is there any time limit for doing so?

There is no statutory obligation to display a copy of the mortgage on board the vessel, but this usually forms the object of a specific contractual stipulation usually found in the deed of covenants ancillary to the mortgage.

6.3 Are there any other matters in the context of mortgages on ships under the legal system in Malta which you feel should be emphasised?

A registered mortgage shall be deemed to be an executive title where the obligation it secures is a debt certain, liquidated and due and not consisting in the performance of an act.

The rights of a mortgagee apply to all registered mortgages which secure debts resulting from any account current or overdraft or other credit facility.

Upon the registration of any mortgage in the register, the rights of any mortgagee shall not be affected by:

6.3.1 The creation of any separate privilege or charge on any party, appurtenance or accessory of a ship which may attach in virtue of any law; or

6.3.2 The reservation of ownership rights by a seller of any part, appurtenance or accessory sold to a shipowner under a contract of sale, hire purchase or any similar contract. This is provided that provisions, fuel and other consumable goods shall not be considered as appurtenances.

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