

## SHIP MORTGAGES IN VIETNAMESE LAWS

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### ABSTRACT

The Civil Code and the Vietnam Maritime Law both have regulations on ship mortgages. Accordingly, ships are considered assets and can be mortgaged to secure a loan. The ship registration agency will register the mortgage and issue the ship mortgage certificate. However, regulations on ship mortgages still have many limitations and have not been completed. For example, regulations on conditions for ships to qualify as collateral, as well as conditions for foreign ships to be mortgaged in Vietnam. Besides, as well as the regulations on the conditions of the subject in the ship mortgage relationship. Therefore, the article analyzes the inadequacies and limitations of Vietnamese law on ship mortgages and then proposes recommendations to improve the law on ship mortgages according to the provisions of Vietnamese law.

**Keywords:** Ship; Mortgage, Ship Mortgage, Vietnam

## LEIS DO VIETNÃ SOBRE HIPOTECAS DE NAVIOS

### RESUMO

O Código Civil e a Lei Marítima do Vietname têm regulamentos sobre hipotecas de navios. Conseqüentemente, os navios são considerados ativos e podem ser hipotecados para garantir um empréstimo. A agência de registro do navio registrará a hipoteca e emitirá o certificado de hipoteca do navio. No entanto, os regulamentos sobre hipotecas de navios ainda têm muitas limitações e não foram concluídos. Por exemplo, regulamentos sobre as condições para os navios serem qualificados como garantia, bem como as condições para os navios estrangeiros serem hipotecados no Vietname. Além disso, bem como a regulamentação sobre as condições do sujeito na relação de hipoteca de navio. Portanto, o artigo analisa as inadequações e limitações da lei vietnamita sobre hipotecas de navios e, em seguida, propõe recomendações para melhorar a lei sobre hipotecas de navios de acordo com as disposições da lei vietnamita.

**Palavras-chave:** Navio; Hipoteca; Hipoteca de navio; Vietnã



## INTRODUCTION

Currently, the maritime transport sector is facing numerous unclear legal provisions from some countries regarding the pledging of ships. The ambiguity surrounding ship pledging can lead to disputes and financial risks, especially when ships need to fulfill obligations for international cargo transportation. Research on the theory and regulations of maritime law related to ship pledging will contribute to the establishment of clear and fair procedures for all parties involved. Shipowners often need to invest a large amount of capital in purchasing, repairing, and maintaining ships. Pledging ships is a way to leverage this asset to ensure investment capital and financial security during ship operations. Therefore, understanding and mastering the regulations and conditions of ship pledging will help shipowners and financial institutions make the most accurate and reasonable decisions to minimize risks and achieve the highest efficiency. Issues related to ship pledging are often complex, especially when involving the participation of multiple countries and territories. Therefore, researching, analyzing, evaluating, and addressing legal challenges related to ship pledging and related conditions is urgent and necessary. It not only ensures the interests of relevant parties but also helps manage risks and develop appropriate legal regulations consistent with the laws regarding ship pledging in some countries in the region, as well as establishing strong connections between the financial and maritime transport sectors.

## METHODOLOGY

To address the legal issues at hand, the research focuses on the following fundamental legal theories and perspectives:

*Stakeholder Theory:* Applying this theory to propose improvements to maritime lien regulations concerning vessel mortgages by regulating the interests of stakeholders and other directly related parties. This involves safeguarding the interests of both the vessel mortgagee and the vessel mortgage holder, clearly defining the scope of entities involved in vessel mortgage activities based on prioritizing the interests of relevant stakeholders in line with Vietnam's specific context

*Theory of Ownership:* Utilizing the theory of ownership to elucidate and accurately determine the relationship between vessel owners and vessel mortgagees, thereby identifying the rights and obligations of both parties in vessel mortgages.

*Transaction Cost Theory:* Applying the transaction cost theory to assess the costs and benefits of adjusting Vietnam's maritime lien relationships. This involves determining



the necessary adjustments to vessel mortgage regulations to achieve the highest efficiency at the lowest cost for both the organization receiving the vessel mortgage and the costs associated with handling mortgaged assets, namely vessels.

In addition, the research employs specific methods:

*Documentary Research and Synthesis Analysis Method:* The documentary research and synthesis analysis method is widely used and important in legal studies in general to analyze and synthesize various sources of documents. These include primary documents such as legislative texts and case law, and secondary documents such as relevant scientific works. This method serves the purpose of describing and evaluating the current state of maritime law.

*Comparative Legal Method:* The comparative legal method is used to identify similarities and differences in vessel mortgages and conditions among several countries worldwide. This helps clarify the objectives, functions, and regulations of the legal framework concerning vessel mortgages and conditions. Based on this analysis, the thesis evaluates Vietnam's legal framework from a comparative legal perspective, potentially offering lessons learned and suggestions for improving and optimizing maritime lien laws and conditions.

*Historical Method:* The historical method is applied in the research on vessel mortgages and conditions, serving as a valuable approach for evaluating and understanding the development of vessel mortgages and conditions. This method enables the author to track and assess the evolution and changes in policies, rules, and legal foundations related to vessel mortgages and conditions. Additionally, the historical method helps identify the strengths and weaknesses of vessel mortgages and conditions across different periods, providing an overview of the subject matter.

## RESULTS AND DISCUSSION

### Conditions for mortgaged ships

According to the provisions of the Vietnamese Law, assets are understood as objects - including real estate and movable assets, money, valuable papers and property rights<sup>1</sup>. Comparing this concept with the concepts of movable and real estate in Article 107 of the 2015 Vietnam Civil Code, it can be determined that a ship is a movable property and a

<sup>1</sup> Article 105 of Vietnam Civil Code 2015 (Law No. 91/2015/QH13) dated November 24, 2015.



tangible asset. For this type of asset, a mortgaged ship must simultaneously meet the following conditions:

*First*, the mortgaged ship is an asset under the legal ownership of the mortgagor.

A mortgage is a civil transaction established on the basis of property ownership, so the condition of legal ownership of the mortgaged ship is a prerequisite. This condition is stipulated right in the concept of ship mortgage in Clause 1, Article 37 of the Vietnam Maritime Code 2015 as analyzed in Chapter 1 and reaffirmed in Clause 2 of this Article <sup>2</sup>. At the same time, the 2015 Vietnam Civil Code in Clause 1, Article 295 also stipulates that the secured property must be owned by the securing party, except for some statutory cases related to property lien and reservation ownership. The ship owner's ownership of the ship is demonstrated through the ship owner being granted a ship ownership registration certificate and registered in the Vietnam National Ship Register<sup>3</sup>.

*Second*, a mortgaged ship is a ship that has been built or a ship under construction that meets certain legal conditions. According to the provisions of Article 37 of the Vietnamese Code of Conduct 2015, mortgaged ships include ships that have been built and ships under construction. Thus, to mortgage, the owner must prove that the ship has been issued with a Vietnamese Ship Registration Certificate, for ships that have been built, or a Ship Registration Certificate under construction, for ships under construction. For ships under construction, this type of ship can only be granted a ship registration certificate under construction when (i) there is a shipbuilding contract or a contract to purchase and sell ships under construction; (ii) the ship's proper name and (iii) the ship's main keel has been laid <sup>4</sup>. Ships under construction that do not fully satisfy these three conditions cannot become mortgaged assets. At the same time, accessories or equipment of the ship are also considered mortgaged assets if there is no other agreement between the mortgagor and the mortgagee <sup>5</sup>. Mortgages for two objects, completed ships and ships under construction, are also allowed under Chinese Law <sup>6</sup>.

<sup>2</sup> Clause 2, Article 37 of the Vietnamese Code of Conduct 2015 (Law No. 95/2015/QH13) dated November 25, 2015: "Ship owners have the right to mortgage Vietnamese ships under their ownership to the mortgagee according to the regulations of the Ministry this law and other relevant legal provisions".

<sup>3</sup> Point a, Clause 1, Article 18 of the 2015 Vietnam Code of Conduct (Law No. 95/2015/QH13) dated November 25, 2015.

<sup>4</sup> Clause 2, Article 23 of Vietnam's Code of Conduct 2015 (Law No. 95/2015/QH13) dated November 25, 2015.

<sup>5</sup> Article 318 of Vietnam Civil Code 2015 (Law No. 91/2015/QH13) dated November 24, 2015.

<sup>6</sup> Article 180 of the Property Law of the People's Republic of China 2007: "The following properties to which the obligor or the third party has the right to dispose of may be used for mortgage:(1) Buildings and other fixed objects on the ground;(2) The right to use land for construction;(3) The right to contract management of barren land, etc. as obtained by means of bid invitation, auction and public consultation, etc.; (4) Manufacturing facilities, raw materials, semi-manufactured goods and products;(5) Buildings, vessels and aircraft that are under construction;(6) Means of communications and transportation;(7) The properties other than those that shall not be mortgaged



In addition, the change in law regulations on the type of ship that can be mortgaged has also created certain flexibility in exercising mortgage rights on ships. Specifically, when Decree 102/2017/ND-CP took effect, this Decree in Article 31 specifically listed the types of ships that can be mortgaged<sup>7</sup>. When Decree 99/2022/ND-CP replaced Decree 102/2017/ND-CP, Decree 99/2022/ND-CP removed this regulation and instead only regulated cases of registration of defense measures. Security measures, including registration of ship mortgages<sup>8</sup>. The fact that Decree 99/2022/ND-CP does not specifically stipulate the types of ships that can be registered for mortgage is consistent with the principle of promulgating regulatory documents in our country. Because the regulations on the types of ships that can be mortgaged have been adjusted by the specialized law, the Vietnamese Civil Code 2015, and the general law, the Vietnam Civil Code 2015.

*Third*, the mortgaged ship is not in the bareboat charter period, unless there is written consent from the bareboat charterer. According to the provisions of Clause 2, Article 230 of the 2015 Vietnam Maritime Code, during the lease period bareboat, the shipowner is not allowed to mortgage the ship without the written consent of the bareboat charterer. This condition is only imposed on completed ships. With this condition, the mortgaged ship must be a ship that is not being leased under a bareboat leasing contract or is in an existing bareboat leasing relationship but has the charterer's written consent to the charter mortgage the ship to ensure civil obligations for the ship owner.

In addition, in Clause 1, Article 31 of Decree 21/2021/ND-CP, it is stipulated that in case the property is being rented or lent but is used as mortgage, the mortgagor must notify the mortgagee accept knowing. Thus, in addition to the case where the ship is being leased bareboat, there must be written confirmation of agreement from the charterer as analyzed above, the law stipulates that in the case the ship is being leased in another form or is being chartered lending, the mortgagor only has to notify the mortgagee of that lease or loan without the consent of the lessor or lender.

*Fourth*, the mortgaged ship is not subject to disputed assets or assets distrained for judgment enforcement.

Currently, there is no law regulation that clearly states that if a ship is in dispute, the shipowner cannot perform a security transaction on that ship. There is only a provision in

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according to any law or administrative regulation. A mortgagor may mortgage all the properties listed in the previous paragraph together.”,

<sup>7</sup> According to Article 31 of Decree 102/2017/ND-CP, mortgaged ships include: ships with indefinite registration, ships with fixed term registration, ships under construction, ships with temporary registration and small seagoing vessels.

<sup>8</sup> Clause 1, Article 41 of Decree 99/2022/ND-CP of the Government dated November 30, 2022 on registration of security measures.



Clause 2, Article 160 of the 2015 Vietnam Civil Code on the principle of exercising property ownership rights that "The owner may perform all acts according to his/her will with respect to the property but must not violate the property." with the provisions of law". However, a ship mortgage transaction is only effective after it is recorded in the Vietnam National Ship Register<sup>9</sup>. In cases where a ship is in dispute or has been distrained according to a decision of a judgment enforcement agency, these are cases where the ship security transaction registration agency refuses the request to register a ship mortgage<sup>10</sup>. Refusal to register a ship mortgage makes the ship mortgage contract ineligible to take effect according to regulations. Thereby, it can be inferred that ships that are in dispute or are being distrained for judgment enforcement cannot become collateral. Specifically, these cases include:

*The first* is when there is a document of acceptance or a document proving the acceptance of dispute resolution by the Court or another competent agency sent to the agency registering security interests on ships<sup>11</sup>.

*Second*, when there is a document from the civil judgment enforcement agency or judgment enforcement officer sent to the security transaction registration agency before the time of recording and updating the ship mortgage registration content in the Register. Vietnam national ship register on (i) notice of distraint of ships as judgment enforcement assets or (ii) request to temporarily suspend or stop the registration of ships where the mortgagor is the debtor execution<sup>12</sup>.

*Third*, is when there is a document from an agency or person with authority to proceed proceedings or by a competent authority or person regarding a request not to register according to law regulations. This document must also be sent to the registration agency before the time of recording and updating the ship mortgage registration content in the Vietnam National Ship Register<sup>13</sup>.

Thus, to ensure that a ship mortgage transaction is eligible to take effect after it is concluded, the mortgaged ship must meet the conditions of not being a disputed asset or being distrained to enforce a judgment.

<sup>9</sup> Clause 2, Article 39 of Vietnam's Code of Conduct 2015 (Law No. 95/2015/QH13) dated November 25, 2015.

<sup>10</sup> Point c and point i Clause 1 Article 15 Decree 99/2022/ND-CP of the Government dated November 30, 2022 on registration of security measures.

<sup>11</sup> Point c Clause 1 Article 15 Decree 99/2022/ND-CP of the Government dated November 30, 2022 on registration of security measures.

<sup>12</sup> Point c Clause 1 Article 15 Decree 99/2022/ND-CP of the Government dated November 30, 2022 on registration of security measures.

<sup>13</sup> Point i, Clause 1, Article 15 of Decree 99/2022/ND-CP of the Government dated November 30, 2022 on registration of security measures.





## Conditions for foreign ships mortgaged in Vietnam

A foreign ship is a ship flying a flag of a foreign nationality<sup>14</sup>. According to the provisions of Clause 2, Article 30 of Decree 171/2016/ND-CP, Vietnamese organizations and individuals that own ships have the right to decide to register ships flying foreign flags with the condition that the capital used to create the ship is That sea has no state capital. Procedures for registering ships flying flags of foreign nationality are carried out according to the law of the flag country<sup>15</sup>. When a ship is registered to fly a foreign national flag, the ship owner must send a copy of the Ship Registration Certificate to the Vietnam National Ship Registry within 30 days from the date the ship is registered<sup>16</sup>. From these regulations, it can be understood that only ships flying flags of foreign nationality and owned by Vietnamese organizations or individuals can be managed according to the Vietnam National Ship Register, this is the first condition. First, a ship flying a foreign flag can be mortgaged under Vietnamese law.

The second condition is the condition of the ship's lifespan. Ships flying a foreign flag must have a lifespan of no more than 15 years. According to the provisions of Clause 1, Article 7 of Decree 171/2016/ND-CP, foreign ships registered in Vietnam must meet specific regulations on the age limit of this registered ship. When the ship owner completes the registration procedures, the foreign ship is recorded in the Vietnam National Ship Register. At that time, the foreign ship meets the second condition for mortgage under Vietnamese law.

Finally, as for the general conditions, foreign ships used as mortgage objects in Vietnam must satisfy the conditions to become mortgage assets similar to Vietnamese ships as analyzed in the previous sections, including: belongs to the legal ownership of the mortgagor; Not subject to disputed assets or assets being distrained for judgment enforcement according to the provisions of Vietnamese law; not during the bareboat charter period, unless otherwise agreed in writing by the bareboat charterer.

Through the conditions for mortgage of foreign ships in Vietnam just mentioned, it can be concluded that basically, foreign ships must meet the same conditions as Vietnamese ships to become collateral assets in mortgage transactions. Ship mortgage according to Vietnamese law. A separate point is that the foreign ship must be owned by a Vietnamese organization or individual and must complete its registration according to the Vietnamese law, which means the ship registration information must be recorded in the Vietnam National Ship Register.

Regarding the form of establishment, a foreign ship mortgage transaction must also meet two conditions: the mortgage contract is made in writing and must be registered for secured transactions according to law regulations. Although the 2015 Vietnam Maritime Code does not directly express this principle, it can be compared with the regulations on ship mortgage registration and the effective time of ship mortgage transactions as analyzed in the previous sections of the topic. It can be inferred that foreign ship mortgage

<sup>14</sup> Clause 2, Article 3, Decree 121/2014/ND-CP of the Government dated December 24, 2014 detailing a number of articles of the 2006 maritime labor convention on labor regimes for seafarers working on ships sea.

<sup>15</sup> Clause 1, Article 31, Decree 171/2016/ND-CP of the Government dated December 27, 2016 on registration, de-registration and buying, selling and building new ships.

<sup>16</sup> Clause 2, Article 30, Decree 171/2016/ND-CP of the Government dated December 27, 2016 on registration, de-registration and buying, selling and building new ships.



contracts must be made in writing. Because the security contract is one of the required documents to register a security interest on a ship. At the same time, a mortgage transaction on a foreign ship is only legally effective when it has been recorded in the Vietnam National Ship Register, that is, when the security transaction registration procedure has been completed, similar to the case of mortgage of Vietnamese ships.

## Conditions for ship mortgage holders

The subject of a ship mortgage contract includes individuals and legal entities participating in the signing and implementation of the contract and bear the responsibilities and obligations corresponding to their roles in the contract. The two main subjects in the mortgage relationship include the mortgagor, the ship owner, and the mortgagee - the subject whose civil rights are secured by ship mortgage.

Vietnamese law's regulations on subject conditions in ship mortgage transactions are similar to other civil transactions and have many common points between the mortgagor and the mortgagee. Specifically, the conditions the subject needs to meet to ensure the legal validity of the ship mortgage transaction include:

## General conditions on mortgage and receiver mortgage

*First*, is the condition of subject capacity. According to the provisions of Point a, Clause 1, Article 117 of the 2015 Vietnam Civil Code, a civil transaction is valid when the subject participating in the transaction has civil legal capacity and civil act capacity consistent with the transaction that the participating subjects establish. The subject participating in establishing a security transaction in general and a ship mortgage in particular can be an individual or a legal entity provided that the subject meets the subject capacity conditions according to the provisions of the Civil Code.

*Second*, is the condition of the subject's voluntary participation in the transaction. In terms of will, entities participating in ship mortgage transactions must be on a completely voluntary basis, without being forced, threatened or deceived<sup>17</sup>. This is the second condition that must be considered to ensure the validity of the ship mortgage transaction. Parties participating in a mortgage transaction need to do so completely voluntarily. The freedom to decide whether or not to participate in this contract is the right of each subject, based on personal will and desires, without subjective influence or interference from the other party or party. This is how law indirectly protects the legal rights and interests of the contract subjects.

## Specific conditions regarding the mortgagee and the mortgagor

Specific conditions of the mortgagor: the mortgagor of the ship must be the ship's owner. The shipowner is the person who owns the ship<sup>18</sup>. This regulation clearly shows that the only entity qualified to become a ship mortgagee is the ship owner. The theory of ownership shows that only the true owner has the right to determine the legal fate of the

<sup>17</sup> Point b Clause 1 Article 117 Vietnam Civil Code 2015 (Law No. 91/2015/QH13) dated November 24, 2015.

<sup>18</sup> Clause 1, Article 15 of Vietnam's Code of Conduct 2015 (Law No. 95/2015/QH13) dated November 25, 2015.





property, including the right to use collateral to ensure the performance of obligations. In terms of ownership, mortgage of property is a manifestation of the exercise of the owner's right to dispose of the mortgaged property.

In this condition, the Chinese law takes a broader approach when stipulating that the mortgagor of the property can include a third person with the right to dispose of the property. It can be seen that the regulation that the mortgagor must be the ship owner is an appropriate regulation built on the basis of protecting the property owner's right to freedom of disposition. However, the flexible regulations of Chinese law when granting mortgage rights to subjects with the right to dispose of assets can also be considered for application in some specific cases, especially for assets with multi-faceted activities shaped and complex like a ship.

Specific conditions of the mortgagee: the mortgagee is the entity that agrees to let the mortgagor use the ship owned by the mortgagor as security for the performance of one or more obligations of the mortgagor himself or of another third party that has civil obligations to the mortgagee. Here it can be understood that the mortgagee's own condition is that the mortgagee must be the subject with rights in a specific civil transaction secured by the ship mortgage relationship.

## Legal limitations

Mortgage of a ship is one of the methods of mobilizing finance for ship owners as prescribed in specialized maritime laws, currently the Vietnam Maritime Code 2015. However, because the Vietnam Maritime Code 2015 regulates many relationships related to maritime activities, so the content of ship mortgages is only mentioned in a few provisions as analyzed throughout the topic. Most of the contents not specified in this specialized Code will be compared to Civil Law according to the principles of applying Law in our country. A ship is a unique, highly valuable piece of real estate and has many characteristics unlike other types of common assets, so in some cases, it is necessary to have more specific and specialized regulations governing the relationship mortgage on this type of property. Through in-depth research on this topic, the author found it necessary to develop solutions to complete some of the following law regulations:

*First*, regarding the purchase of insurance for mortgaged ships: as analyzed in Chapter 1 of the topic, in Clause 2, Article 38 of the 2015 Vietnam Maritime Code on the principles of mortgage of Vietnamese ships, there is a regulation "Mortgaged ships must be the shipowner buys insurance, unless otherwise agreed in the mortgage contract. This word "other agreement" can be understood in many different ways, leading to differences in the rights and obligations of the subjects and the method of implementing this principle. With the current regulations, according to the first understanding, it can be understood that the parties can agree on the subject to buy insurance: the mortgagor or mortgagee will buy insurance instead of the buyer. The danger is the ship owner. According to the second interpretation, eliminating the requirement to buy ship insurance: means that the parties to the contract can agree not to buy insurance for the ship. According to the third interpretation, using other assets as replacement: the word "other agreement" in the mortgage contract can also be understood to mean using other assets as replacement collateral for the ship if the ship is damaged, due to natural disasters, or due to objective factors that cause the value to decrease or lose value completely.



*Second*, on the principle of mortgage of a Vietnamese ship when that ship is owned by many organizations and individuals: according to the provisions of Clause 5, Article 38 of the 2015 Vietnam Maritime Code: "The mortgage of a ship owned by two or more owners or more, the consent of all those owners must be obtained, unless otherwise agreed. This regulation requires the maximum consent of all owners to mortgage their owned ships. This regulation is consistent with the principles stipulated in Article 194 of the Vietnam Civil Code 2015<sup>19</sup>. However, ships are assets of great value and can be owned by many owners, so the principle of having the full consent of the owners when mortgaging a ship is more or less created. certain difficulties for ship mortgage activities.

In practice, gathering buy-in from all owners can become complicated and time-consuming, especially if there are disagreements in business direction and development as well as in strategic vision. For some owners, they have ownership rights but do not directly exploit the assets. The diversity of views and interests of individual owners also increases the likelihood of disputes, slows down the mortgage process, and can even hinder the implementation of important decisions related to the property product. Therefore, requiring the consent of all owners may not be the most effective method of managing and executing a ship mortgage.

*Third*, regarding cases of refusal to register security measures: according to the provisions of Clause 1, Article 15 of Decree 99/2022/ND-CP, when receiving decisions to accept cases, decisions to request declaration of the enforcement agency before the time of recording the ship mortgage registration in the Vietnam National Ship Register, the registration agency will refuse the request to register the security measure. This regulation is appropriate to ensure that a ship that is in dispute or has been distrained to enforce a judgment is not disposed of in another transaction, complicating and causing instability in property ownership relationships.

In terms of the time of receiving decisions and documents from the court and judgment enforcement agency, these documents must be successfully sent to the registration agency before this agency records the security interest in the Register. Vietnamese national ship. In case this recording action of the registration agency has been completed before receiving the documents and decisions of the court or judgment enforcement agency, the mortgage registration will still be valid and the registration agency will only have the obligation to notify the sending agency about the status of mortgage transactions on ships<sup>20</sup>. These regulations are completely consistent with the functions of state agencies. However, the ship mortgage transaction still has legal effect and creates countervailing effects with third parties, which in this case can lead to many future disputes related to the ownership and disposition of the ship sea or make the judgment enforcement process more complicated, affecting the legitimate rights and interests of many subjects.

*Fourth*, on the method of registering a mortgage on a ship: Decree 99/2022/ND-CP in Clause 1, Article 13 stipulates three methods of registering security measures: (i) through the online registration system gland; (ii) submit paper copies directly or via postal

<sup>19</sup> Article 94 of Vietnam Civil Code 2015 (Law No. 91/2015/QH13) dated November 24, 2015: "The owner has the right to sell, exchange, donate, lend, inherit, and give up the right to own, consume, destroy or carry out other forms of disposal in accordance with the law on property."

<sup>20</sup> Clause 3 Article 15 Decree 99/2022/ND-CP of the Government dated November 30, 2022 on registration of security measures.



service; and (iii) via email. However, for the current registration of security interests on ships, it can only be done by the second method: submitting and receiving results directly or sending via postal service. This discrepancy between regulations and practice has created certain difficulties in accessing and implementing this administrative procedure. This not only takes time and effort to complete ship mortgage registration procedures, but can also create inconvenience and obstacles in effectively managing issues related to ship mortgages.

## SOME RECOMMENDATIONS

To overcome the imperfections in current Vietnamese law regulations related to mortgage and mortgage registration of ships, through researching the topic, the author proposes to implement the following solutions:

*Firstly*, amend and supplement the provisions of the 2015 Vietnam Maritime Code regarding the obligation to buy insurance for mortgaged ships.

In the transportation industry, especially the maritime shipping industry, facing challenges Risks such as bad weather, accidents or other objective conditions are inevitable. Therefore, purchasing insurance for collateral assets that are ships is not only a necessary risk prevention measure but also an important requirement to protect the financial interests of both the ship owner and the recipient.

The provisions in Clause 2, Article 38 of the 2015 Vietnamese Code on "other agreements" between the mortgagor and the mortgagee regarding the implementation of the insurance purchase obligation are still not specific and can lead to many different interpretations. Therefore, in this "other agreement" content, the author proposes to specifically stipulate "another agreement on the subject responsible for purchasing insurance". At the same time, there is a flexible regulatory approach in the Chinese Law regarding this issue<sup>21</sup>, the author proposes to adjust the provisions in Clause 2, Article 38 of the 2015 Vietnamese Code of Conduct as follows: "Mortgaged ships must be insured by the shipowner, except in the case of The mortgage contract has a different agreement on the entity responsible for purchasing insurance. In case the ship is not insured, the mortgagee has the right to purchase ship insurance and request the mortgagor to refund the insurance fee.

With this adjustment, the principle that mortgaged ships must be insured is always implemented in the most flexible way, not only ensuring compliance with legal principles but also helping the mortgagee have more self-insurance mechanisms protect your rights. In addition, this adjustment will increase the shipowner's responsibility in purchasing insurance for mortgaged ships and enhance the ability to fulfill obligations and limit risks of the mortgagor. From there, it can be seen that this regulation not only enhances stability in the shipping industry, helping to minimize possible risks, but also contributes to creating a healthy legal environment, where all parties concerned take full responsibility for their obligations and rights.

*Second*, adjust the consensus ratio of co-owners for ship mortgages.

<sup>21</sup> Article 15 of China's Civil Code 1992. "The mortgaged ship shall be announced by the mortgage unless the contract provides otherwise. In case the ship is not insured, the mortgagee has the right to place the ship under insurance coverage and the mortgagor shall pay for the premium accordingly," <https://www.lawinfochina.com/display.aspx?lib=law&id=191#menu1>, accessed January 3, 2024.



The regulation on 100% consent rate of ship owners in using ships as collateral in Clause 5, Article 38 of the 2015 Vietnam Code of Law may create certain barriers for the mortgagor. . At the same time, as analyzed in the previous parts of the topic, this principle is also mandatory in China's PL, but China's minimum consent rate of owners is somewhat more flexible. Specifically, Article 16 of the 1992 Chinese Civil Code only requires the consent of the joint owners accounting for more than 2/3 of the shares of the ship, unless there are other agreements of the co-owners on the ratio<sup>22</sup>. This is a regulation that the author considers to be quite appropriate and has many progressive points of Chinese law.

Accepting the above progress points of Chinese PL, the author proposes to similarly apply this consensus rate to Vietnamese PL. Specifically, the author proposes to amend Clause 5, Article 38 of the 2015 Vietnam Maritime Code as follows: "The mortgage of a ship owned by two or more owners must be approved by the owners of more than two owners. /3 of the shares of that ship, unless otherwise agreed between the owners on a higher ratio. With this regulation, co-owners can agree to apply the legal rate or a higher rate, depending on the co-owner's risk appetite for using the ship as collateral perform civil obligations.

*Third*, build an interdisciplinary information mechanism on ship management. As an asset with high value and complex exploitation activities, our state has strictly managed ship registration information and secured transaction information related to ships in the National Ship Register. However, the management at the Vietnam National Ship Register still does not cover all civil relations related to ships, especially in cases where ships are disputed assets or are subject to litigation statue of distraint for execution of judgment. The fact that a ship is in dispute or is distrained for execution but the ship mortgage transaction is still registered and has adverse effects on third parties, which can make related legal relations even more complicated and difficult more resolved.

To limit this situation, the author would like to propose building an interdisciplinary management mechanism for specific types of assets, especially ships. Accordingly, competent state agencies are allowed

It is possible to provide online information to the ship management agency about the status of resolving disputes and requests for enforcement of judgments related to ships in order to promptly and continuously update information about ships. This helps the registration agency promptly prevent ship mortgage transactions where the mortgaged property "has legal issues that need to be resolved". At the same time, litigation-conducting agencies and judgment enforcement agencies can also use this interdisciplinary platform to look up the status of disputed assets and assets requiring distraint for judgment enforcement, which are ships, in order to promptly There are appropriate solutions to ensure dispute resolution as well as the enforcement of effective judgments and decisions of courts and commercial arbitrators.

<sup>22</sup>Article 16 of the 1992 Chinese Civil Code: "*The establishment of mortgage by the joint owners of a ship shall, unless otherwise agreed upon among the joint owners, be subject to the agreement of those joint owners who have more than two-thirds of the shares thereof. The mortgage established by the joint owners of a ship shall not be affected by virtue of the division of ownership within*", <https://www.lawinfochina.com/display.aspx?lib=law&id=191#menu1>, accessed on 03 /01/2024.



## CONCLUSION

Through research and analysis of Vietnamese law regulations on ship mortgage conditions, it can be concluded that currently Vietnamese law regulations on ship mortgage conditions are relatively complete and have many similarities with law of countries with developed maritime industries such as China and the United Kingdom. Accordingly, in addition to complying with the principles of ship mortgage clearly stipulated in Article 38 of the current Vietnam Maritime Code, the conditions on subjects participating in the ship mortgage relationship, conditions on mortgaged ships, As well as the conditions on the form of establishing and registering a ship mortgage relationship have also been stipulated quite fully and in detail in the specialized provisions of the Vietnamese Civil Code 2015 and the general provisions of the Vietnamese Civil Code 2015 and guiding documents implementation guide.

However, there are still some regulations that are still principled, do not clearly express the will of lawmakers or do not have an effective enforcement mechanism in practice. In this Chapter 2, the author analyzed the shortcomings in the way of expressing regulations as well as the enforcement mechanism of law regulations related to ship mortgage conditions and proposed some perfect solutions based on basis to inherit and learn from advances in law in China and the UK. The author hopes that these can be positive contributions in building a flexible and comprehensive legal mechanism to promote the development of ship finance activities in our country.

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