

Ship Mortgage in Croatian Law: Legal Nature, Effects and Issues in Application

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The purpose of this paper is to analyse the institute of ship mortgage in Croatian law, with particular emphasis on its legal nature, effects, and practical issues. The analysis encompasses the normative framework of the Maritime Code, case law, and international sources of law. The paper proceeds from the thesis that the dualism between ship mortgages and maritime liens causes legal uncertainty and increases financing risk. Ship mortgage represents one of the key instruments for financing maritime activities. A ship, as an object of rights, possesses a specific legal nature that requires deviation from the general rules of property law. It is precisely this specificity that generates a number of theoretical and practical issues that are the subject of this paper. The analysis also includes doctrinal positions and implications for legal certainty. The Maritime Code of the Republic of Croatia constitutes the fundamental source of law for this paper, particularly through the provisions of Articles 219–234, governing the registration of ships and ship mortgages, as well as Articles 241–254, governing maritime liens. The specific nature of ship mortgage, as a real right over another's property effective *erga omnes*, derives from the fact that it concerns a movable asset treated as immovable property. This is also evident in the manner of regulating legal relationships through agreements on securing monetary claims by establishing a mortgage on a ship, which is presented in detail in the paper. Through the analysed case law for the purposes of this paper, the thesis has been confirmed that maritime liens take priority over mortgages, as well as that there is a clear emphasis on the limitation of the principle of reliance on registers, which demonstrates a deviation from general rules. The main issues include the slowness of procedures for registration and recording of ships and rights therein in ship registers, in relation to the evident conflict between mortgages and liens, particularly in light of the fact that the registration of maritime liens in ship registers is not mandatory. The conclusion is that a ship mortgage constitutes a developed but insufficiently balanced system, and that modernisation of the system through the digitalisation of registers, more precise regulation of priorities in the registration of encumbrances on ships, and the acceleration of enforcement proceedings would undoubtedly lead to greater legal certainty and ensure a balance between creditor protection and market functionality.

KEY WORDS

- ~ Mortgage
- ~ Ship
- ~ Maritime law
- ~ Ship mortgage
- ~ Maritime liens

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1. INTRODUCTION

In the Maritime Code (hereinafter: MC), a ship is defined as a maritime object intended for navigation at sea (except a warship), whose hull length exceeds 15 meters or which is authorised to carry more than 12 passengers (Article 5(2) MC). A ship may be a passenger ship, cargo ship, technical floating object, fishing vessel, public vessel, or scientific research vessel (Article 5(2) MC), while a mortgage (ship mortgage) is defined as a right under which the creditor is entitled to satisfy its claim from the sale price of the ship realised through judicial sale, out-of-court sale, or by taking possession of and exploiting the ship (Article 219 MC).

Article 209 MC prescribes that the provisions of the Ownership and Other Real Rights Act (hereinafter: OA) shall apply *mutatis mutandis* to all real rights concerning a ship and a yacht, unless otherwise provided by the MC. It is therefore logical to compare a ship mortgage with the general institute of security rights over assets, i.e. with a mortgage over movables, which is defined in Article 297(1) OA as a limited real right over a specific asset (collateral) authorising its holder (secured creditor) to satisfy a specific claim, should it not be fulfilled when due, from the value of that asset, regardless of its ownership, which the current owner (debtor) is obliged to tolerate. The secured (mortgage) creditor enforces its right to satisfaction through the court, and in the case of movables, also out of court (Articles 336 and 337 OA), with the particularity of a ship mortgage being that the mortgage creditor is authorised to satisfy its claim by taking possession of and exploiting the ship, a right not provided under the OA (Kvartuč, 2017).

Given that a ship is a movable asset registered in the ship register, and that a ship mortgage is a limited real right registered in such a register (a registered security right), such a mortgage cannot be created without registration, except in the case of compulsory judicial sale of a ship not entered in the ship register, when the mortgage is established by an inventory of seizure (Article 214(1) MC).

Maritime liens are a characteristic legal institute for which there is no clear general statutory definition; however, they may be defined as claims which, due to their importance, are singled out and, as such, have priority in satisfaction over all other claims, including mortgage claims (Brstilo, 2001; Nikčević Grdinić, 2014).

The fundamental characteristics of maritime liens are that they always constitute a specific encumbrance on the ship *in rem*, that they have priority in satisfaction over all other claims (including mortgage claims), that they possess a distinctly maritime legal character, and that they are secret (invisible), arising from the absence of any requirement of registration, unlike mortgages which must be registered in ship registers, coupled with statutorily limited duration, since after the underlying claim ceases to exist, the lien may still subsist but will no longer retain its privileged character (Čorić, 1993; Pallua, 1957 and 1973; Stanković, 1996).

The extent of uncertainty surrounding these two institutes in practice is evidenced by the fact that a creditor holding a maritime lien on a ship will very often engage, as principal, a maritime agency or maritime agent to monitor the vessel's navigation route in order to remain informed at all times of the ship's legal status and any enforcement proceedings initiated by another creditor. This engagement entails additional costs, also providing an opportunity to participate in ongoing enforcement proceedings and to undertake procedural actions in its own interest. Maritime agencies are, as a rule, engaged by shipowners for activities related to navigation, port clearance and dispatch of vessels, and intermediation in concluding contracts for the exploitation of ships (Vuleta, 2024).

The institution of mortgage constitutes one of the fundamental instruments for securing claims within the Croatian legal system. However, Croatian law recognises several forms of mortgage, whereby it is necessary to distinguish between the classical mortgage regulated by the OA and the ship mortgage regulated by the MC. Although both institutions share the common function of securing creditors through a proprietary security right, significant legal, functional, and procedural differences exist between them. A mortgage under the OA constitutes a limited real right over immovable property, which authorises the creditor to satisfy its claim from the value of the encumbered immovable, irrespective of any subsequent change in ownership of the property, whereas a ship mortgage constitutes a special proprietary right over a ship or other floating object entered in the ship register (Stanković, 1996). Although functionally analogous to a mortgage over immovable property, the ship mortgage is characterised by specific features arising from the mobility of the secured asset, the international nature of maritime navigation, the special regime of maritime liens enjoying priority over the mortgage, and the possibility of registration of foreign rights and international elements. Since a ship, as the object of security, crosses national borders, it is subject to international legal rules and therefore requires a special regime of publicity and enforcement. It is precisely for these reasons that the ship mortgage constitutes a specialised and autonomous form of proprietary security, deviating from the general principles of the classical mortgage in order to safeguard the security and functionality of maritime commerce.

Accordingly, this paper aims at contributing to a clearer understanding of the legal regime governing the system of ship mortgages in relation to maritime liens, to provide a precise definition of the content of consensual agreements establishing a ship mortgage for the purpose of securing monetary claims, and to offer arguments for potential normative or administrative improvements to the enforcement system governing the sale of ships.

2. ESTABLISHMENT OF A SHIP MORTGAGE

2.1. General Remarks on the Establishment of a Ship Mortgage

As previously stated, a ship mortgage may be acquired, transferred, limited, and extinguished only by registration in the appropriate ship register maintained by the competent harbour master's offices (Articles 253–384 MC). An application for the registration of a mortgage may be submitted by the mortgage creditor, and if the creditor fails to do so, the registration may also be requested by a guarantor in favour of the mortgage creditor (Marin, 2005).

A ship mortgage may arise on the basis of a contract—contractual mortgage—or on the basis of a court decision—judicial mortgage (Article 220 MC). If a contract or mortgage instrument, bearing a notarised signature of the debtor, contains a statement by the debtor that the creditor may directly request registration of the mortgage in the ship register on the basis of such contract or instrument, as well as a statement by the debtor consenting that, on the basis of such contract or instrument, direct enforcement against the ship subject to the mortgage may be carried out upon maturity of the secured claim, such contract or instrument constitutes an enforceable title on the basis of which enforcement may be carried out without a declaration of enforceability (Instructions for Ship Registration of the Ministry of the Sea, Transport and Infrastructure, September 2021; hereinafter: Instructions 2021).

In Sheet C of the main register file, real rights encumbering the maritime object or its part are entered, as well as rights acquired over such rights, time charter agreements for the entire ship, rights of pre-emption, and other restrictions at the disposal of the maritime object to which the owner of the encumbered maritime object is subject, including prohibitions of encumbrance and alienation, as well as all annotations not expressly prescribed to be entered in another sheet of the register file (Instructions 2021). If a mortgage has been established on a ship, the consent of the mortgage creditors is required for the deletion of the ship from the ship register. Where a ship subject to a mortgage is deleted *ex officio*, such deletion shall be effected upon the expiry of three months from the delivery of notice to the mortgage creditors that the conditions for deletion *ex officio* have been met, or immediately upon receipt of the creditor's consent to such deletion (Article 384 MC).

An application for the registration of a mortgage shall be submitted against the registered owner of the ship at the time of filing the application and must be filed with the harbour master's office maintaining the relevant ship register. The mortgage must be registered therein, as the priority ranking is determined by the time at which the application for registration is received by the competent harbour master's office. Unlike a mortgage under English law, a ship mortgage cannot be registered over a share in the ship as a whole where the ship is owned by a single person, or over the share of an individual co-owner where the ship is co-owned (Kvartuč, 2017). In the case of co-ownership, the consent of all co-owners is required for the registration of a mortgage on the ship.

The registration of a mortgage must include at least the monetary amount of the claim secured by the mortgage, the amount of interest if payable in addition to the claim, the name or business name and registered seat, or the personal name and domicile of the mortgage creditor, it being understood that the procedure and process of registration in the ship register, including the registration of a ship mortgage, are governed accordingly (Hlača, 2006).

In the event that the mortgage creditor takes possession of and exploits the ship, such creditor shall be entered in the ship register as the ship operator. This constitutes a declaratory entry, as the mortgage holder acquires the status of ship operator under the Maritime Code by the mere act of taking possession of the ship, and not only upon registration in the ship register (Kvartuč, 2017).

2.2. Comparative Analysis

In this paper, a comparative analysis of legal solutions relating to maritime security instruments has been conducted, with particular emphasis on the institution of the ship mortgage and related proprietary security rights, especially in light of the absence of ratification of international rules by a considerable number of states. In this regard, the selection of the legal systems of England, Turkey, and Italy is not incidental, but rather grounded in their normative representativeness and functional diversity within contemporary maritime law regimes. The combination of these legal systems enables a

comprehensive insight into different normative approaches - ranging from the flexible precedent-based model, through codified continental solutions, to transitional and harmonisation-oriented models.

English law, as a classical representative of the common law system, occupies a central position in international maritime law, particularly in view of its influence on the development of standard institutions of maritime financing and security. It is characterised by a high degree of flexibility and a well-developed body of case law, rendering it a reference model for the analysis of legal instruments, such as ship mortgages and maritime liens.

As regards the legal regulation of ship mortgages in English law, it was already governed by the Navigation Act of 1660, later amended in 1854 by the Merchant Shipping Act, which regulated ship mortgages, while today the Merchant Shipping Act 1995 is in force (Bowtle, McGuinness, 2001). In English law, a ship mortgage represents a form of security created by contract or on the basis of a contract, embodying a proprietary interest in the asset subject to the mortgage, which is extinguished upon fulfilment of the agreed obligation, i.e. repayment of the debt with or without interest (Bowtle, McGuinness, 2001). In comparison with the Croatian Maritime Code, it is evident that it does not regulate the manner of satisfaction of the secured claim, which need not necessarily be monetary (Bowtle, McGuinness, 2001).

English law distinguishes between a statutory mortgage (where the creditor acquires a mortgage right, but not unconditionally, as it exists only until the debtor exercises the contractual right of redemption by repaying the debt or performing another obligation, thereby releasing the ship from the mortgage, accompanied by the transfer of ownership), a common law mortgage (which may be created over an unregistered ship or a share in a ship and need not be established in any specific form, including written form, its main feature being the transfer of ownership from debtor to creditor), and an equitable mortgage (a contract enabling security enforceable in equity, aimed at giving effect to the clear intention of the contracting parties, characterised by informality and essentially representing an obligation-based claim of the mortgage creditor against the debtor for the purpose of securing a claim or other obligation) (Bowtle, McGuinness, 2001).

Turkish law occupies a specific position as a hybrid legal system which, although formally belonging to the continental legal tradition, substantially incorporates solutions inspired by international conventions and European legal standards. Its relevance derives from the geostrategic position of Turkey as one of the key maritime states, as well as from recent legislative reforms aimed at harmonising national law with contemporary trends in international maritime law. Ship mortgages in Turkish law are regulated by the Turkish Commercial Code of 2011, together with the Law on the Implementation and Enforcement of the new Turkish Commercial Code. These laws entered into force on 1 July 2012 (Kerim, 2016). Specific features of Turkish law are reflected in the fact that creditor powers in the phase of satisfying a mortgage-secured claim are made available for all ships in order to prevent depreciation of the ship's value or the emergence of new privileged claims while awaiting a public auction—*pendente lite* (sale prior to obtaining a court decision) (Kerim, 2016). Another specificity in Turkey is private sale conducted by the Enforcement Office, as opposed to a public auction, regulated with the aim of ensuring a fast and efficient sale of the ship (Article 1387 of the Commercial Code).

On the other hand, Italian law, as part of the continental European civil law tradition, represents a normatively developed and systematic approach to the regulation of maritime security rights, whereby the solutions contained in the Italian *Codice della Navigazione* are of particular importance for understanding the formalised registration and proprietary mechanisms of security over ships. In the Italian legal system, the creditor is entitled only to satisfy its claim through judicial sale of the ship, and may not unilaterally take possession of the ship for the purpose of its exploitation in order to satisfy a mortgage-secured debt (Berlingieri, 2016).

Furthermore, for a more comprehensive understanding of the international legal framework, it is necessary to refer to the solutions set out in the International Convention on Maritime Liens and Mortgages of 1993 ("Convention"), which entered into force in 2003. However, it should be noted that the Convention has been ratified by a relatively limited number of states (for example, Croatia, Italy, Turkey, England, and the United States have not ratified it; Stanković, 1995), and consequently it has not attained a sufficient degree of international recognition. For this very reason, practical familiarity with the rules governing ship mortgages and maritime liens across a wide range of jurisdictions remains indispensable. The Convention particularly regulates issues concerning the order of priority in satisfaction (priority ranking), the legal effects of mortgage registration, and the cross-border recognition of maritime security rights, thereby making a significant contribution to legal certainty in international maritime commerce. Nevertheless, legal uncertainty in this field remains highly pronounced, which clearly demonstrates the need for unified international rules governing proprietary security rights over ships.

2.3. Judicial Ship Mortgage

With regard to the establishment of a judicial mortgage, it should be noted that there exist compulsory judicial mortgages and voluntary judicial mortgages (Marin, 2005). A voluntary judicial mortgage is based on an agreement between

the parties (Article 848 MC), with the subsidiary application of the provisions of the Enforcement Act (Articles 299–306 EA), which regulate judicial security by establishing a security right on the basis of party agreement.

An agreement between the parties for the establishment of a voluntary judicial mortgage is an agreement concluded before a court in the form of a court record, establishing the parties' will to create a mortgage on a ship for the purpose of securing a claim. Such a record has the force of an enforceable instrument on the basis of which the court issues a decision ordering security by registration of a mortgage on the ship (Marin, 2005).

In this type of mortgage, it is important to note that, upon maturity of the monetary claim, a separate application must be submitted to the court for the issuance of a decision on security by registration of a mortgage on the ship on the basis of the aforementioned agreement. Once the court grants the application and issues the decision, it forwards the decision along with the case file to the competent harbour master's office for the registration of the mortgage (Kvartuč, 2017).

The applicant for security, on the basis of an enforceable instrument establishing a monetary claim, is entitled to request security of that claim by establishing a compulsory judicial mortgage on the ship of the opposing party (Article 932 MC). If the court grants the application, it forwards the decision together with the case file to the competent harbour master's office, ordering the registration of the mortgage on the ship, which then carries out such registration (Hlača, 2006).

As a provisional measure, the court may order the pre-registration of a security right on the ship or a ship under construction of the opposing party, by the implementation of which the applicant acquires a mortgage on the ship (Article 946(1) MC). In this case, the legal basis (*titulus*) for acquiring the mortgage is the court decision ordering the establishment of the mortgage by pre-registration, while the mode of acquisition (*modus*) is not full registration but pre-registration. The granting of this measure requires that the applicant possesses a decision of a domestic court or administrative authority that has not yet become enforceable (or a settlement concluded before a domestic court or administrative authority if the claim established therein has not yet matured, or a notarial instrument if the claim established therein has not yet matured), together with proof of the likelihood (not certainty) of a risk that, without acquiring the mortgage by pre-registration, enforcement of the claim would be rendered impossible or significantly impeded (Article 943(1) MC).

A specific feature of the pre-registration of a judicial mortgage on a ship, as opposed to full registration, is that it is time-limited (Article 948(1) MC). Such a provisional measure may last no longer than fifteen days after the occurrence of the conditions for enforcement, i.e. until the expiry of the fifteenth day following the enforceability of the enforcement instrument (Article 948(3) MC).

2.4. Contractual Ship Mortgage

A mortgage agreement, i.e. an agreement establishing a security right, must contain the exact names or business names of the contracting parties, the place and date of conclusion of the agreement, the legal basis for the establishment of the mortgage, the precise designation of the ship, an indication that the agreement concerns a mortgage, and an explicit statement by the mortgage debtor, i.e. the shipowner, consenting to registration (Article 260 MC).

By a mortgage agreement, the mortgage debtor or a third party (pledgor) undertakes, for the purpose of establishing a mortgage on a ship to secure a specific claim, to allow the creditor to register such mortgage in the ship register. At the same time, the mortgage creditor undertakes to take all necessary actions to ensure that, upon termination of the secured claim, the mortgage is deleted from the ship register. Two types of such agreements should be distinguished.

The first type does not constitute an enforceable instrument and, on its basis, enforcement cannot be carried out directly; rather, it is first necessary to obtain a judgment in civil proceedings, and only thereafter to propose and conduct enforcement for the satisfaction of the claim secured by the ship mortgage (Hlača, 2006). In such an agreement, only the signature of the shipowner as the mortgage debtor is notarised, and in addition to the aforementioned essential elements, it also contains an unconditional authorisation by the mortgage debtor, allowing the mortgage creditor to request and obtain registration of the mortgage on the ship.

The second type constitutes an enforceable instrument on the basis of which enforcement may be carried out directly upon the maturity of the claim secured by the mortgage (Article 220 MC). In this regard, an example of a contractual ship mortgage, which must always be solemnised, is provided as *Appendix: AGREEMENT ON SECURING A MONETARY CLAIM BY ESTABLISHING A SECURITY RIGHT (MORTGAGE) ON A SHIP* (Source: Sample agreement used by the Law Office of MSc Dean Rahan)

3. RELATION BETWEEN GENERAL SECURITY INTEREST AND MARITIME LIENS AS A SPECIFIC STATUTORY SECURITY INTEREST

Maritime liens represent claims for wages and other amounts owed to the master, officers, and other members of the ship's crew in connection with their employment on the ship, including repatriation costs and social security contributions payable on their behalf, claims for death or personal injury occurring on land or at sea in connection with the operation of the ship, claims for salvage of the ship, claims for port dues, canal navigation charges, and pilotage costs, claims arising from non-contractual liability for material loss or damage caused by the use of the ship, excluding loss of or damage to cargo, containers, and passengers' personal belongings (Article 241 MC).

Maritime liens on a ship are a special form of claims relating to the use and navigation of the ship, which enjoy a higher legal status compared to other proprietary rights, including mortgages (Vuleta, 2024). Unlike contractual security instruments, maritime liens arise directly by operation of law, without the need for registration in the ship register, and operate *erga omnes*, i.e. against everyone, regardless of whether the person concerned is the owner, charterer, or ship operator in relation to whom the claim arose (Articles 241–251 MC).

The priority of maritime liens over ship mortgages is reflected in the order of payment, as privileged claims are satisfied before all other security rights, regardless of the time of their creation or registration (see High Commercial Court of the Republic of Croatia, case no. PŽ-9319/12 of 26 October 2012, and Commercial Court in Split, case no. P-198/2024 of 27 June 2024). However, maritime liens have a limited duration and cease when the secured claim is satisfied, after the expiry of one year without interruption, upon the sale of the ship in enforcement or bankruptcy proceedings, or at auction for removal of a wreck, upon the establishment of a limitation fund under international maritime law rules, or upon the declaration of the ship as maritime or war booty (Article 246(1) MC). In certain cases, such as the release of the ship, liens may be re-established (see Commercial Court in Split, case no. P-199/2024 of 27 June 2024). However, maritime liens do not cease in the event of a change of ownership, change of registration, or change of flag of the ship (Article 243 MC). They also do not cease even in the event of deletion of the ship from the ship register (Article 250 MC).

It may be concluded that maritime liens constitute a fundamental element of creditor protection in maritime transport, particularly with regard to seafarers, i.e. the ship's crew (Marin, 2008).

With regard to statutory security interests, the Maritime Code distinguishes between statutory security rights of authorised state bodies and maritime liens as a specific statutory security right, classifying them into two ranks of priority (Article 912 MC). After enforcement costs are satisfied, creditors (authorised state bodies) whose claims are secured by statutory security rights under Articles 171 and 840 MC are paid first, followed by creditors (natural and legal persons), whose claims are secured by the specific statutory security right—maritime liens (Article 912 MC).

Under these provisions, if a ship constitutes or may constitute a danger to ports, waterways, or navigation, the competent harbour master's office shall order the shipowner to take appropriate measures to remedy deficiencies within a specified period (Article 840n(1) MC). If the shipowner fails to comply, the harbour master's office shall order the port authority to remove the ship at the owner's risk and expense (Article 840n(4) MC). With respect to claims concerning the costs of ship removal, the Republic of Croatia, i.e. the competent state authority that removed the ship, has a statutory security right over the ship and may retain it until the claim is satisfied (Article 840n(5) MC). Any unpaid claim includes the sale of the ship at public auction. If the case concerns a sunken ship or wreck obstructing navigation, the competent state authority that removed the ship (wreck) has a statutory security right with a right of retention until the claim is satisfied (Rahan, 2009). Any unpaid claim includes public auction or judicial sale of the ship/wreck (Article 840j MC).

The issue of maritime liens in relation to security rights has long been present in both Croatian and international proprietary relations concerning high-value ships (Vuleta, 2024). The most significant difference between these two institutes, and at the same time a practical problem for all participants in such relations, is the fact that the validity of a maritime lien as a priority claim does not require registration in the ship register (Vuleta, 2024).

4. ENFORCEMENT AGAINST SHIPS AND SATISFACTION OF CLAIMS

Conditions and methods for the sale of a ship for the purpose of satisfying claims are governed by Articles 870–878 of the MC. After the procedure for determining the value of the ship has been conducted, the court issues a decision on the sale of the ship, which establishes its value and determines the conditions and method of sale, as well as the time and place if the sale is carried out by auction. Only persons who have paid a security deposit, which generally amounts to one-tenth of the determined value of the ship, may participate in a public oral auction (Vuleta, 2020). At the first auction hearing, the ship may not be sold below one-half of its determined value. If the ship is not sold at the first hearing, the court shall

schedule a second hearing at which the ship may be sold for less than one-half of its determined value, but not below one-third of that value. The parties and creditors participating in the proceedings may agree that the ship may be sold at auction for a price lower than one-half or one-third of its determined value. In the event of an unsuccessful first and second auction due to the failure to achieve the minimum acceptable bid, the court shall schedule a new hearing if requested by the enforcement creditor (Article 896 MC).

In addition to sale by public oral auction, the ship may also be sold within a specified period by direct agreement, no later than the sale of the ship at public auction, if agreed by the parties, mortgage creditors, and holders of personal servitudes extinguished by the sale of the ship. However, the ship may also be sold if a third party, no later than eight days before the sale hearing, declares its willingness to take over the ship at a price exceeding the determined value of the ship by at least one quarter (Vuleta, 2020).

The Croatian Maritime Code also provides for the possibility of an overbid, in which case the court shall stay the enforcement proceedings if a third party, no later than eight days before the sale hearing, by providing appropriate security, declares its willingness to acquire (purchase) the ship subject to enforcement for a price exceeding the determined value of the ship by at least one quarter and undertakes to bear all costs that would otherwise be borne by the debtor (Article 904(1)(1) MC).

Specific problems arise due to the (still) non-mandatory registration regime for maritime liens, as in enforcement proceedings it is practically unknown whether and how many maritime liens encumber the ship prior to forced sale, unless such a creditor independently discovers that enforcement proceedings are being conducted against a ship over which it holds a lien. Even then, such a creditor is not enabled to participate unless it has filed its claim no later than at the first auction hearing (Vuleta, 2020).

Enforcement creditors are also placed in a difficult position due to the non-mandatory registration of maritime liens in ship registers, as when initiating enforcement proceedings for satisfaction of their claim through sale of the ship, they do not know (nor can they know) whether maritime liens exist on the ship, which always take priority over all other creditors' claims regardless of the ship's flag state (Hlača, 2006).

5. CONCLUSION

An analysis of the legal nature, effects, and practical application of ship mortgages in Croatian law unequivocally confirms that this is a complex and specific property law institution which, although formally integrated into the general system of security interests, in its essence represents an autonomous and functionally adapted category of maritime law.

The central issue identified in this paper arises from the normative and functional dualism between the ship mortgage as a registered security right over a vessel and maritime liens as statutory, unregistered, yet priority claims. This phenomenon leads to an erosion of legal certainty, since maritime liens, due to their "invisibility" in legal transactions, derogate from the principle of reliance on public registers and create an objective risk for mortgage creditors and potential financiers.

In this context, the fundamental hypothesis of the paper has been confirmed, namely that the existing system of securing claims on ships in Croatian law, although normatively elaborated, is not functionally balanced, as it privileges certain categories of claims to the detriment of transparency and predictability in legal transactions. Consequently, such a situation negatively affects the availability and cost of financing in the maritime sector.

Additional practical problems arise from the slowness and formalism of registration procedures in ship registers, as well as from the inefficiency of enforcement proceedings for the sale of ships, particularly in situations where it is not possible to determine in advance the scope of privileged claims. This undermines not only the position of creditors but also the overall functionality of the maritime credit market.

Accordingly, it is proposed that a mandatory registration system for maritime liens in ship registers be finally established, together with a precise determination of the manner of acquiring maritime liens and the introduction of a deadline within which a maritime lien must be recognised or contested, as well as the acceleration and rationalisation of enforcement proceedings for the sale of ships.

In conclusion, it may be stated that ship mortgages in Croatian law represent a normatively developed but functionally insufficiently coherent system, the future sustainability of which will depend on the legislator's ability to establish a balance between the protection of privileged creditors and the need for legal certainty, as well as an efficient maritime financing market.

CONFLICT OF INTEREST

The authors declare that they have no known financial or non-financial conflicting interests in any material discussed in this paper.

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APPENDIX

BANK (XXXXX), represented by its special attorney-in-fact NAME SURNAME — as creditor and applicant for security (hereinafter: the Bank)

and XXXXXXXXXXXXXXX, OIB: XXXXXXXXXXXXXXX — as debtor (hereinafter: the Debtor) and XXXXXXXXXXXXXXX, OIB: XXXXXXXXXXXXXXX, represented by the President of the Management Board XXXXX — as mortgage debtor (hereinafter: the Mortgage Debtor)

conclude on XX (XX) XX 20XX (twenty twenty-XX) in XX

AGREEMENT ON SECURING A MONETARY CLAIM BY ESTABLISHING A SECURITY RIGHT (MORTGAGE) ON A SHIP

Article 1

1.1. The Parties to this Agreement jointly determine that the Bank and the Debtor concluded on XX (XXXXX) XXXX 20XX (XXXXXX) in XXXX a Loan Agreement No. XXXX (hereinafter: the Agreement) in the amount of XXXXXXXX EUR (XXXXXX euros), together with all contractual interest, default interest, fees, costs as determined by the Agreement and all possible annexes to the said Agreement (hereinafter: the Claim).

1.2. The repayment deadline of the Claim under the Agreement is XX (XXXX) XX 20XX (XXXXXX).

1.3. A copy of the above-mentioned Agreement forms an integral part of this Agreement, and the Parties hereto jointly establish that the amount of the Claim and its maturity shall be determined in accordance with the Agreement.

1.4. The Bank is authorised to subsequently determine the amount of the Claim and its maturity in accordance with the provisions of Article 302 of the Enforcement Act.

1.5. The Debtor and the Mortgage Debtor expressly agree that an extract from the Bank's business records shall constitute proof of the amount and maturity of the Bank's Claim arising from the said Agreement.

Article 2

2.1. The Parties to this Agreement establish that the Mortgage Debtor is the owner of the following:

Type of maritime object: passenger ship, name: XXXXX, National Identification Number (NIB): XXXXXXXX, Port of registry: XXXXXXXX, hull material: XXXXXXXX, call sign: XXXXXXXX, country of build: XXXXXXXX, place of build: XXXXXXXXXXXX, gross tonnage: XX, registered under folio number: XXXXX of the Ship Register of the Harbour Master's Office XXXXXXXX, year of build: XXXXXXXX (hereinafter: the Ship).

2.3. The Mortgage Debtor declares and warrants: (i) that the extract from the ship register, which forms an integral part of this Agreement, fully and accurately reflects the factual and legal status of the Ship; (ii) that it is the exclusive and undisputed owner of the Ship; (iii) that there are no third-party rights which in any way reduce or restrict its ownership rights over the Ship, or the possibility of registering a security interest or any encumbrance in favour of the Bank; (iv) that there are no registered or unregistered encumbrances on the Ship, or any other off-register rights; (v) that no claims or proceedings are pending or threatened before any court or arbitral tribunal, in the Republic of Croatia or abroad, in relation to the Ship; (vi) that no proposal for the opening of pre-bankruptcy proceedings against the Mortgage Debtor has been or will be filed at least until the registration of the security right under this Agreement; (vii) that, to the best of its knowledge, no proposal for the opening of bankruptcy proceedings has been filed nor have bankruptcy proceedings been opened against the Mortgage Debtor.

2.3. The Debtor and the Mortgage Debtor undertake to insure the Ship with an insurance company previously approved by the Bank, to assign the insurance policies in favour of the Bank, and to renew the insurance annually and assign the insurance policies in favour of the Bank until full settlement of all obligations assumed under the Loan Agreement and this Agreement.

2.4. If the Debtor and the Mortgage Debtor fail to act in accordance with paragraph 3 of this Article, by signing this Agreement they irrevocably authorise the Bank to do so on their behalf and at their expense.

2.5. The Parties expressly agree that the insurance cost referred to in paragraph 3 of this Article constitutes a claim of the Bank within the meaning of Article 1 of this Agreement.

2.6. For the purpose of notification of the established mortgage under this Agreement, and for the exercise of the rights of mortgage creditors under Article 231(3) of the Maritime Code (OG 181/2004, 76/2007, 146/2008, 61/2011, 56/2013, 26/2015, 17/19), a copy (original or copy) of this Agreement shall be delivered to the insurance company referred to in the preceding paragraph.

Article 3

3.1. The Mortgage Debtor, as the full owner of the Ship referred to in Article 2 of this Agreement, expressly and unconditionally, without any further consents or approvals, permits the Bank, as mortgage creditor, in accordance with Articles 301 and 307 of the Enforcement Act and the relevant provisions of the Maritime Code, to request and obtain from the Harbour Master's Office XXXXXXXXXX the registration in its favour of a contractual mortgage over the said Ship in Sheet "C" of folio number XXXXXXXX as the main register entry, and in Sheet "C" of folio number XXXXXXXX as a subsidiary register entry of the main register of the Ship Register of the Harbour Master's Office XXXXXXXX for the purpose of securing repayment of the Claim owed by the Debtor to the Bank under the Agreement referred to in Article 1, up to a maximum amount of XXXX EUR (XXXXXXX euros), together with all contractual interest, default interest, fees, costs as provided under the Agreement and all annexes thereto, as well as other costs in accordance with the Bank's decisions.

3.2. In the event that it is not possible to establish a contractual mortgage in favour of the Bank over the Ship, the Debtor undertakes, upon the Bank's request, to enable and permit the establishment of a security right (mortgage) over other appropriate and acceptable security instruments for the Bank, for the purpose of securing the Claim under this Agreement, and for that purpose to sign a notarised instrument containing an enforceability clause, in which case it shall bear all costs related to the conclusion of such instrument.

3.3. By signing this Agreement, the Debtor declares that it assumes the risk of any potential refusal of registration of the contractual mortgage in favour of the Bank, and accordingly declares that it shall personally bear the costs of notarisation and all other potential costs arising from such refusal.

3.4. As long as this security right remains in force, the Mortgage Debtor undertakes:

- (i) not to, and not to undertake to, further pledge or otherwise encumber the Ship;
- (ii) to promptly notify the Bank of all factual or legal matters that may affect the Ship, including any changes in the value of the Ship and any enforcement measures taken by third parties with a view to enforcing claims against the Ship;
- (iii) from the date of conclusion of this Agreement until full settlement of all obligations under this Agreement, not to sell or dispose of the Ship without the prior written consent of the Bank. In the event of sale or disposal of the Ship, the Debtor undertakes to provide the Bank with the relevant agreement.

Article 4

4.1. The Debtor and the Mortgage Debtor declare and warrant:

- (i) that they have taken all actions necessary for the valid conclusion of this Agreement and for the creation of full, valid, and enforceable obligations of the Debtor in accordance with the provisions of this Agreement;
- (ii) that the conclusion of this Agreement and the fulfilment of the assumed obligations do not constitute a breach of (i) the provisions of the founding act and other internal acts of the Debtor and the Mortgage Debtor; (ii) the provisions of any agreement to which the Debtor and/or the Mortgage Debtor is a party or by which it is otherwise bound; or (iii) any regulations applicable to the operations of the Debtor and/or the Mortgage Debtor.

Article 5

In the event of non-performance of any obligation of the Debtor arising from the Agreement or this Agreement, the Bank may, in accordance with the provisions of the Agreement, declare the Claim due and payable, in which case the Debtor shall be obliged to repay to the Bank the entire outstanding debt (Claim) in accordance with the Agreement.

Article 6

6.1. The Parties agree that this Agreement has the effect of an enforceable notarial instrument under Article 28 and of an agreement pursuant to the provisions of Chapter Twenty-Nine of the Enforcement Act.

6.2. The Mortgage Debtor agrees that the Bank, as the applicant for security, may, directly on the basis of this Agreement, for the purpose of enforcing the Claim it holds against the Debtor, initiate enforcement proceedings by sale of the Ship, after a public notary has affixed the certificate of enforceability to this Agreement.

6.3. The Mortgage Debtor agrees that the applicant for security may, at its discretion, satisfy its due and unpaid claim by using and operating the Ship which is the subject of the security right under this Agreement, after a public notary has affixed the certificate of enforceability to this Agreement.

6.4. The Parties hereby irrevocably and unconditionally authorise and instruct the public notary to affix the certificate of enforceability to this Agreement, upon request of the Bank as applicant for security and upon submission of (i) an extract from the Bank's business records and (ii) a written statement by the Bank stating that: (a) the Debtor has been notified that the Claim has become immediately due and payable, together with all interest, fees, and other amounts payable under the Agreement and this Agreement; (b) the Debtor has failed to fulfil its payment obligation in accordance with such notice; (c) specifying the amount of the Claim under the Agreement that has become due and payable from the Debtor, as well as the date of its maturity.

Article 7

7.1. The Debtor undertakes, upon the Bank's request and at its own expense, to provide proof of a revised valuation of the Ship in a form and content acceptable to the Bank. The revision of the valuation of the Ship may be carried out by an authorised appraiser approved by the Bank.

7.2. If the Debtor fails to act in accordance with paragraph 1 of this Article, by signing this Agreement it irrevocably authorises the Bank to do so on its behalf and at its expense.

7.3. The Parties expressly agree that the cost of the revision of the valuation of the Ship constitutes a claim of the Bank within the meaning of Article 1 of this Agreement.

7.4. If the Debtor fails to submit the revised valuation of the Ship upon the Bank's request in accordance with paragraph 1 of this Article, the Bank is entitled to terminate the Agreement, declare the Claim due, and initiate enforcement proceedings.

7.5. The Parties agree that, in the event of forced sale of the Ship, such sale shall be conducted in accordance with Article 102 of the Enforcement Act and Article 219 of the Maritime Code.

7.6. The Parties agree that, if during the term of the Agreement and this Agreement the Ship is damaged or its condition becomes such that the mortgage established under this Agreement no longer constitutes sufficient security for the Bank's Claim, the Bank may request early repayment of the secured Claim, unless the Debtor provides additional sufficient security acceptable to the Bank to cover the resulting shortfall.

Article 8

8.1. The Debtor and the Mortgage Debtor expressly agree that the Bank, as the applicant for security, in the event of maturity of any obligation under the Agreement and this Agreement, may initiate direct and forced enforcement on the basis of the Agreement and this Agreement and extracts from its business records, over all their accounts, movable and immovable property, and other tangible rights.

8.2. The Debtor and the Mortgage Debtor authorise the Bank, without any further approvals or consents, to collect any due and unpaid obligations arising from the Agreement and this Agreement from all their accounts held with the Bank.

Article 9

Upon full settlement of all obligations of the Debtor arising from the Agreement and this Agreement, the Bank undertakes to issue a deletion statement for the mortgage established under this Agreement, provided that all legal requirements are met and there are no legal obstacles to issuing such deletion statement.

Article 10

10.1. By signing this Agreement, the Debtor and the Mortgage Debtor expressly agree that all written communications from the Bank or the public notary shall be sent to the address specified in this Agreement, and that the date of delivery shall be

deemed to be the date of submission of the document to the post office, or to another entity authorised to perform postal services, when sent by registered mail.

10.2. The Debtor and the Mortgage Debtor undertake to notify the Bank in writing without delay of any change of address. Otherwise, the addresses stated in this Agreement, or any addresses subsequently notified to the Bank by the Debtor and the Mortgage Debtor in the agreed manner, shall be deemed correct.

10.3. The Parties agree that all service of documents in disputes arising from this Agreement and the Loan Agreement shall be carried out to the addresses of the contracting parties stated in this Agreement, or to any addresses subsequently notified to the Bank by the Debtor and the Mortgage Debtor in writing in the agreed manner, in accordance with Article 133b of the Civil Procedure Act.

Article 11

All costs related to the drafting and notarisation (solemnisation) and implementation of this Agreement shall be borne by the Debtor. If the Debtor fails to settle the costs of this Agreement within three days from the date of notarisation, the Bank shall be entitled to pay such costs on its behalf, in which case the Debtor irrevocably authorises the Bank to collect the amount of such costs from any of its accounts held with the Bank without any further consent or approval.

Article 12

If at any time any provision of this Agreement is or becomes null, unlawful, invalid, or unenforceable in whole or in part under any law, this shall not, to the extent permitted, affect or impair the legality, validity, or enforceability of the remaining provisions of this Agreement.

Article 13

This Agreement is executed in 7 (seven) identical counterparts, of which 2 (two) are for the Bank, and 1 (one) each for the Debtor, the Mortgage Debtor, the Harbour Master's Office, the insurance company, and the public notary.

DEBTOR:

BANK:

MORTGAGE DEBTOR: _____