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Effects of Maritime Mortgages on Creditors and Debtors under the UAE Law

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ABSTRACT

This article aims to investigate the definition of mortgage and will clarify and address the importance of mortgage and the application of maritime mortgage (vessel and ancillaries thereof). It is known that contracts affect the parties thereto and third parties. Therefore, we explored the effects of the mortgage contract on the creditor (mortgagee) in terms of the assignment of the mortgage right to a third party, the method of enforcement on the mortgaged vessel, and his right in priority and tracking. Moreover, the article examines the effects of the maritime mortgage on the debtor (mortgagor). We also explained that the debtor (mortgagor) is the principal party in the mortgage contract, amongst the effects thereof, to manage the mortgaged vessel with ordinary diligence, exert the effort required to maintain it, and clarify the disposals, which may be effected on the mortgaged vessel. We concluded that the maritime mortgage rules outlined in the UAE Maritime Commercial Law (26) of 1981 must be updated to promote foreign investment in the State, particularly since the said law was enacted in 1981 and various changes have taken place from that time in the field of maritime commerce.

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Introduction

This paper delves into the multifaceted nature of mortgages, with a specific focus on maritime mortgages pertaining to vessels and their ancillaries. The purpose of this article is to explore and elucidate the significance of mortgages while examining their definition and application within the maritime context. Contracts, as known, have far-reaching implications for the parties involved as well as third parties. Consequently, we aim to investigate the effects of mortgage contracts on the creditor (mortgagee), particularly in terms of the assignment of mortgage rights to third parties, methods of enforcement on mortgaged vessels, and the creditor's rights in terms of priority and tracking.

Furthermore, our examination extends to the debtor (mortgagor) and the impact of maritime mortgages upon their responsibilities. As the principal party in the mortgage contract, the debtor assumes various obligations, including the diligent management of the mortgaged vessel, the necessary efforts to maintain it, and the elucidation of permissible disposals concerning the vessel.

Throughout this exploration, it becomes evident that the existing maritime mortgage regulations outlined in the UAE Maritime Commercial Law (26) of 1981 necessitate updating to foster foreign investment in the state. Given that this law was enacted over four decades ago, numerous changes have transpired within the field of maritime commerce since then. Consequently, an update to these regulations becomes imperative to align with current

developments and promote a conducive environment for international investment (Indriyati & Chandrawulan, 2019).

By addressing the aforementioned aspects and highlighting the necessity for regulatory revisions, this paper aims to contribute to the discourse surrounding mortgage definitions and applications within the maritime domain. Through an in-depth analysis of the effects on both the creditor and debtor, this research endeavors to shed light on the intricacies of maritime mortgages, ultimately advocating for legal updates that accommodate the evolving landscape of maritime commerce.

Prior research conducted in the field of maritime law in the UAE has significantly contributed to enhancing our comprehension of various facets within this domain. Notable studies include Naboush's (2020) research titled "The Carrier's Liability for Delay under UAE Maritime Law: A Comparative Study" published in the Arab Law Quarterly. This study explores the concept of carrier liability for delays in the context of UAE maritime law and presents a comparative analysis. The research delves into the legal frameworks and regulations governing carrier liability for delays, providing valuable insights into this specific area of maritime law.

Another significant study is Hassan's (2015) work titled "Ship Mortgage: A Comparative Study of English and Emirati Law", published in the Journal Sharia and Law. This research focuses on ship mortgages and conducts a comparative analysis of English and Emirati law. By examining the legal provisions, rights, and obligations related to ship mortgages in both jurisdictions, this study offers a comprehensive understanding of the similarities and differences between the two legal systems.

Both Naboush's (2020) and Hassan's (2015) researches contribute to the existing body of knowledge in maritime law, providing valuable insights and comparative analyses within their respective areas of study. These studies enhance our understanding of the legal aspects surrounding carrier liability for delays and ship mortgages, and their comparative approach helps shed light on the similarities and distinctions between different legal systems in these domains.

In this paper, a methodology based on legal analysis has been utilized to accomplish the research objectives. The definition of mortgage and the significance of mortgage, particularly in the context of maritime law, have been thoroughly investigated. The effects of mortgage contracts on both the creditor (mortgagee) and the debtor (mortgagor) have been carefully examined. Legal sources, primarily the UAE Maritime Commercial Law (26) of 1981, have been thoroughly examined to gain a comprehensive understanding of the prevailing maritime mortgage regulations. Additionally, relevant data, legal provisions, and case studies have been analyzed to support the findings and arguments presented in the paper. The conclusion draws upon the comprehensive analysis conducted throughout the research and emphasizes the necessity for updating the maritime mortgage rules to facilitate foreign investment in the State, considering the dynamic changes that have occurred in the field of maritime commerce since the law was enacted in 1981.

1. General Provisions of Vessel's Mortgage

1.1. Definition of mortgage in the UAE Law

A mortgage is a contract, and the contract is lexically defined as (the opposite of dissolution, i.e., it has the meaning of a covenant, a linking the object, an agreement between two parties under which each party shall carry out what is agreed upon. As prescribed by the legists, the lexical meaning of the word "contract" falls within the contextual meaning) (Ibn Manzur, 1993). The contract requires specific conditions.

It may be said that the maritime mortgage is defined as an official mortgage made only with an official contract. The mortgage shall be made by virtue of a contract issued by the competent government authority and the competent officer. Otherwise, it is deemed invalid. This contract shall come into effect in the event of a mortgage of the vessel in full or of any part thereof. In the case of a mortgage of several vessels jointly, the mortgage includes the ship's ancillaries necessary for the use, such as machines, lifeboats, etc. In addition, the mortgage shall also apply to the vessel, or part thereof, as well as the salvage.

As per the civil transactions, the mortgage could serve as a security and can be possessory, as per their respective special provisions. Mortgage applies to property but not movable, although the possessory pledge applies to both. The UAE Civil Transaction Law No. (5) of 1985 as amended defines mortgage in Article (1399) as "a pledge by way of security is a contract whereby an obligee acquires, over real property allocated for the satisfaction of his debt, a right in rem whereby he shall take precedence over ordinary obliges and obligees subsequent in rank to him in the satisfaction of his right out of the proceeds of such land, in possession of whomsoever it may be".

Long ago, the creditor only accepted to mortgage property or a movable as a possessory pledge as he deemed it a strong guarantee to recover his debt. The transfer of the possession of the mortgaged to the mortgagee creditor was more general in the past, although this type of mortgage affects the owner since he is deprived of utilization thereof during the mortgage period. In addition, it deprives him of taking advantage of the debt itself. Jurisprudence has recently tended to apply for official or security mortgages while the mortgaged property remains in the hands of the mortgagor. However, this does not affect the creditor's security since this type of mortgage has guarantees, which make the creditor confident in recovering the debt. In this type of mortgage, the mortgagor debtor mortgages the vessel to the mortgagee by recording this mortgage in its register. Therefore, the mortgagee creditor obtains preference over ordinary creditors and creditors following him in rank, and the mortgagor debtor is committed to the mortgage contract expenses unless otherwise agreed by the parties.

The mortgage is a preferential debt. The debts secured by a mortgage shall rank as per the date of registration of the mortgage contract. If two or more contracts are registered against a vessel or a share therein, they shall rank as per the precedence of registration even if they are registered on the same day. The UAE Maritime Commercial Law No. (26) of 1981 in Article 105(2) provides that: "if two or more mortgages are effected against a vessel or a share in it, they shall rank in order of registration even if they were registered on the same day". This signifies that the mortgagee creditor has a preference right over the mortgagor's other creditors, and he follows in rank the preferential creditors. The mortgagee creditor obtains preference over the creditors following him in rank and the ordinary creditors. Moreover, he has priority over the mortgagee creditors recorded after him even if they were registered on the same day and the mortgage date reflects the rank of the mortgagee creditor.

Mortgage constitutes a major guarantee, in the event of non-payment of the debt amount, the mortgagee can execute over the mortgaged property as per the legal procedures laid down (before to initiation of execution proceedings over the mortgaged property, the mortgagee shall file a request to the judge of summary matters to attach and sell the mortgaged property in the auction and send a notice in writing to the mortgagor and the guarantor. If any, via registered mail with acknowledgement of receipt to notify him of the default and claim him to repay the debt and the other dues within at least thirty days from the date of the notice (Cassation Appeal No. 328 of 2017). However, this guarantee trembled and weakened against preferential debts, especially if the latter got possession of the proceeds

of the vessel sale. At that time, the mortgagee creditor has no share therein. The International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages (Brussels, 1926) has considered this in Articles 2 and 3. Preferential rights are divided into two classes. The first class is about maritime mortgages called first-rank liens, but in regards to the second-class, the Convention has left to the national legislations the freedom to determine it provided that it shall follow the maritime mortgage in rank and called the second rank liens. The Convention has excluded from the first class the contractual debts whose holders can obtain a maritime mortgage thereon in support of the credit value of the maritime mortgage. It has limited the preferential debts in some liens that the national legislation may not amend or add thereto.

The Convention has provided a comprehensive solution for safeguarding maritime mortgage credit, although it encountered limited backing from significant shipping nations globally, including those with common-law legal systems (Delgado & Pablo, 2018). The contractual creditor always retains his standing, looks after his own, and obtains a mortgage or a guarantee. Therefore, the national laws shall observe the same and exclude contractual debts from preferential debts. Thereby, it has decreased liens over the vessel and restored maritime mortgage to its power and prestige, as provided for in Article 1 of the International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages (Brussels, 1926): "Mortgages, hypothecations, and other similar charges upon vessels, duly effected in accordance with the law of the Contracting State to which the vessel belongs, and registered in a public register either at the port of the vessel's registry or a central office, shall be regarded as valid and respected in all the other contracting countries" (Keijser & van der Linden van Sprankhuizen, 2022).

1.2. Application of maritime mortgage (vessel and ancillaries thereof)

The maritime mortgage applies to vessels but not all vessels. The vessel means every self-propelled structure, navigable, operated, or configured for use in maritime navigation, whether used for commercial purposes or not or for passenger transport. The vessel ancillaries necessary for use are considered a part thereof and are subjected to the same provision (Article 11 of the UAE Maritime Commercial Law). The description of the vessel extends to its ancillaries necessary for maritime use, such as machines, masts, helms, and lifeboats. Most likely, the vessel ancillaries are considered a part thereof either from the technical or legal aspect since the vessel cannot carry out its navigational function without its ancillaries. In order to operate a vessel legally, Article 13 of the UAE Maritime Commercial Law No. (26) of 1981 provides that: "Every vessel must have a name, nationality, flag and port of registry". The following shall be considered:

Name of vessel. Every vessel must have a name approved by the competent authority, and it may not be amended unless approved by the competent authority in writing. Every vessel has a name, and the vessel owner shall write its name in Arabic and Roman scripts at the bow and stern, on both sides (Article 41 of the UAE Maritime Commercial Law). The name must be written in colour different from the paint colour of the hull. If the vessel is painted in a dark colour, the name must be written in bold letters in light colour. The light colours which are always used are white and yellow (Al Maqdadi, 2009).

Nationality of the vessel. Nationality is deemed a political and legal link that connects the individual to the state, and requires responsiveness and loyalty to the state. This responsiveness is only available with the natural person; the difference between a natural person's nationality and a legal person remains in place. The former is genuine and indicates the natural person's belonging to the state; the latter is figurative and indicates the attribution of the legal person to a specific state (Abdullah, 1977). International law states that every

commercial vessel must have the nationality of a specific state, which grants the vessel such nationality as per specific conditions so that the commercial vessel could prove its existence as per Article 5 of the Geneva Convention on the High Seas of 1958 – corresponding to Article 6 of the United Nations Convention on Conditions for Registration of Ships of 1986 – states: “Each State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship; in particular, the State must effectively exercise its jurisdiction and control in administrative, technical, and social matters over ships flying its flag”.

Flag of the vessel. Every vessel shall fly the flag of the state of registration. It can fly another when necessary, as provided in the international maritime conventions. No vessel shall sail under a flag unless registered as per the provisions of law. In the event of the presence of a vessel abroad, the chief of mission or his representative may grant such a vessel, after inspection, temporary permission to fly the state flag till its arrival at its destination for registration. However, if the vessel flag is changed, the effectiveness of mortgages before the change of flag requires confirmation of entries of such mortgages in the registers of the state that the new flag follows. Therefore, such mortgages shall retain their rank as to the mortgages resulting under the new flag (Taha, 1995).

Vessel class. Vessels are divided into classes based on the specifications followed in construction. Every vessel has a specific class based on the existence of various specifications such as age, compliance with durability terms, and method of construction. Vessels are divided into first, second, or third class as per their specifications (Al Maqdadi, 2009). The supervisory bodies shall estimate the vessel class among the most important supervisory bodies, Lloyd’s Register, a British company. Bureau Veritas, a French company, headquartered in Paris, and the American Bureau of Shipping (ABS), an American maritime classification society. The class specified by the classification companies for the vessel constitutes evidence of its navigability. However, this evidence is not conclusive and is rebuttable (Taha, 1995). The class estimate grants the vessel its technical value, and therefore, it is taken into consideration by the contractors and affects the determination of premiums, mortgages, and various maritime transactions.

Tonnage of the vessel. The ship’s internal power depends on the amount of its tonnage or capacity and is measured by the ton. It is different from weight tons and amounts to 100 cube feet. The UAE Maritime Commercial Law No. (26) of 1981 provides for a specific weight to register the ship in Article 18:

“1. It shall not be permissible for any vessel to sail upon the sea under the flag of the State unless it has been registered in accordance with the provisions of this Law.

2. Fishing boats, pleasure boats, or boats used in commerce, the total tonnage of each, which does not exceed ten tons, shall be exempt from registration. The same exemption shall apply to lighters, barges, tugs, cranes, dredgers, diving boats, and other floating structures working within the ports of the State”.

One must distinguish between three types of tonnage:

Total gross tonnage: means the whole vessel capacity, including the structures existing on the deck.

Gross tonnage: the spaces occupied by the equipment and machines, as well as the size of structures existing on the deck and not used in cargo transport are supposed to be deducted.

Net tonnage: the empty space already used in the carriage of cargo and persons, and therefore, every empty space in the vessel not designated for carriage is excluded from the net tonnage calculation.

The vessel tonnage is regulated as per the International Convention on Tonnage Measurement of Ships of 1969, which in Article 2 Definitions states that:

“(4) “Gross tonnage” means the measure of the overall size of a ship determined in accordance with the provisions of the present Convention;

(5) “Net tonnage” means the measure of the useful capacity of a ship determined in accordance with the provisions of the present Convention; ...

(8) “Length” means 96 per cent of the total length on a waterline at 85 per cent of the least moulded depth measured from the top of the keel or the length from the fore side of the stem to the axis of the rudder stock on that waterline if that be greater. In ships designed with a rake of the keel, the waterline on which this length is measured shall be parallel to the designed waterline”.

The vessel tonnage, size measurement, capacity, and calculation thereof shall be as per various rules and regulations, including the international rules approved by the IMO and as regulated at the national level for every state. This standard has gained prominence in taxes, fees, the safety of lives, and the preservation of the marine environment from pollution.

2. Effects of the maritime mortgage on creditor (mortgagee)

It is known that contracts have effects on the parties thereto and third parties. This section will tackle the effects of the mortgage contract on the creditor (mortgagee) in terms of the assignment of the mortgage right to a third party, the method of enforcement on the mortgaged vessel, and his right to priority and tracking.

2.1. Assignment of the mortgage right to a third party

As a legal term, a third party has various meanings as per the different legal systems. A third party is not a party to the contract. The third party means the person with no dependency relationship with the debtor to act under his orders or prohibitions. The debtor has no direct control over what is in his possession. He has independent powers over the transferred (Mubarak, 2010). The mortgagee creditor is entitled to assign his right in mortgage to a third party as per the legal procedures in this regard. The debtor must be notified of this assignment to express his consent. The debtor must accept the such assignment in order to be effectual (Abdurrahim, 1985). Every right related to a vessel that is already registered shall not be valid against third parties unless recorded with the registrar in the operation sheet from the date entered in such register. It is intended to protect the rights of third parties over the vessel. Any acts thereon must be recorded in the ship register, and if this registration is not affected, the holder of this registration who commits negligence cannot invoke such right against a third party. He must also register it immediately since he cannot invoke it from the registration date. If it is not registered and there is a right resulting for a third party over the vessel, he cannot say that he has a preference right over a third party. Article 108 of the UAE Maritime Commercial Law No. (26) of 1981 states: “Any disposal of a vessel encumbered by a mortgage resulting in it losing its State nationality is prohibited, and such disposal shall be void”.

In the event of the existence of a large number of mortgages, more than one mortgage over the vessel can be created. In this case, it must be handed over to a third party or to one of the creditors to be in his possession for himself and the account of the remaining creditors. Preference and priority over the vessel shall be as per the date of registration of their mortgages with the competent officer. Preference and priority shall be as per the date established for their mortgages, as the former shall have preference over the latter.

One might conclude that the most important conditions for assignment to a third party are the debtor’s consent and registration, as provided in Article 1418 of the UAE Civil Transaction

Law No. (5) of 1985 as amended: "A pledgee of a pledge by way of security may assign his right to another person provided that the debtor consents, and the deed of assignment shall be registered with the land registry".

2.2. Execution over the property (subject matter of mortgage)

Execution is the main goal and purpose of the mortgage in the event of non-fulfilment. The execution extends to the property (subject matter of mortgage) (vessel) as well as the property of the ship's operator.

The ship's operator means any person investing in the ship on his own in his capacity as an owner or charterer. In accordance with Article 6 of the International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships, and Protocol of Signature, 1957, the limitation of liability shall apply to the charterer, manager, and operator of the ship, and to the master, members of the crew and other servants of the owner, charterer, manager or operator acting in the course of their employment, in the same way as they apply to an owner himself. Pursuant to Article 1 of the Convention on Limitation of Liability for Maritime Claims, 1976, the number of beneficiaries of the limitation of liability has increased by the addition of salvor, which means "any person rendering services in direct connexion with salvage operations". The mortgagee creditor has a real right over the vessel; therefore, he may not take the execution procedures on another property of the debtor before the application of execution on the vessel. Although, when the mortgage is recorded, the mortgagee creditor has two privileges, i.e., preference and mortgage against a third party, an application of precautionary attachment on the debtor's movables are not precluded if the creditor's debt (claimant) is secured by a mortgage or a possessory pledge on properties owned by the debtor and allocated for the fulfilment, whatever their value since all the debtor's properties of movables and real estate secure fulfilment after the attachment becomes final in execution (Cassation Appeal No. 244 of 2012).

Upon conclusion of the mortgage contract, the mortgagor shall hand over the mortgaged property to the creditor or the person agreed upon in the contract and shall not interfere with the creditor in possession of the mortgaged property, whether this exposure is legal or material. He cannot also conduct any activity that may result in ousting the mortgaged property from the hands of the mortgagee in possession. He shall refrain from any action that might cause dispossession of the property (subject matter of mortgage) and he shall not do any act that may decrease the guarantee. He must guarantee the depreciation or the defects of the mortgaged property because the mortgaged property is in the hands of the creditor and the custody of the mortgagor. If the mortgaged property is subjected to depreciation or damage, the creditor is entitled to claim his debt or another security.

2.3. Priority and tracking rights

The mortgagee has priority in fulfilling his right by preference over the other ordinary creditors, i.e., the right of the mortgagee creditor has priority in the classification of rights of ordinary creditors, and follows in rank the preferential right holders. In the event of multiple mortgages over one vessel, preference is granted as per the date of mortgage registration in the vessel's register, even if recorded on the same day. Some argue that if multiple mortgages are registered over one vessel on the same day, all the mortgages are considered in the same rank regardless of the hour of registration or precedence on this day (Al Fiqi, 2007). The maritime mortgage right shall be valid against a third party upon completion of the registration procedures. The creditor, who is a priority over the other ordinary creditors, has the right to track the vessel against a third party, provided the mortgage is registered

before the transfer of ownership to a third party. The preference right gives the mortgagee creditor priority to fulfil his debt before all the ordinary creditors and before some preferential creditors without others (Abdul Hai & Labib, 2015). The mortgagee has priority right after the preferential debts mentioned in Article 84 of the UAE Maritime Commercial Law No. (26) of 1981.

The UAE Maritime Commercial Law No. (26) of 1981 Article 105 states that:

“1. The mortgage shall rank directly after the priority debts referred to in subparagraphs (a), (b), (c), (d), and (e) of Article 84. Debts secured by a mortgage shall rank in order of the registration dates.

2. If two or more mortgages are effected against a vessel or against a share in it, they shall rank in order of registration even if they were registered on the same day.

3. Registration shall result in the interest on the debt being secured for the last two years in addition to the interest for the current year at the time of the auction, and such interest shall rank in the same order as the principal sum of the debt”.

The tracking right is to track the ship in any hand. The mortgagee creditor is entitled to track the ship, whether the mortgage is effected on the whole vessel or a part thereof, and whether it is in the hands of another creditor or buyer. Tracking is valid against the person in possession of the vessel, even if he has good intentions (Hamdy, 1997). The UAE Maritime Commercial Law No. (26) of 1981 in Article 107 (1) states that: “The mortgage creditors of a vessel or part thereof shall follow it in the hands of whomsoever it may be. The mortgage shall not terminate by reason of confiscation of the vessel for a breach by it of the laws of the State”.

It is understood that the mortgagee creditor of a vessel or part thereof shall follow it in the hands of whomsoever it may be. The mortgaged vessel cannot be disposed of after the registration of the notice of arrest in the ship’s register. This means that the ownership of the ship must be transferred to the person in possession of the vessel before recording the arrest in the ship’s register. It shall not be permissible to dispose of the vessel after that. Prior to the initiation of proceedings, the mortgagee creditor shall notify the person in possession of the vessel of the notice of arrest and the notice of debt payment.

As per the general rules, the person in possession of the vessel has the right to either pay the debt and replace the mortgagee creditor in his rights or discharge the vessel of debts within the limits of its price. If the vessel sale is made by satisfaction upon auction, the vessel shall be discharged of all mortgages, and the rights of the creditors shall transfer to the proceeds of the sale or abandon, or incur the arrest and sale procedures. If the ownership of the vessel is transferred to the person in possession before registration of the notice of arrest in the register of ships, then the mortgagee creditor is not entitled to effect mortgage on the vessel because it is transferred to a new owner who owes nothing to the creditor of the old owner. Therefore, the law stipulates that tracking must be before registration of arrest in the ship’s register against the one to whom the vessel is transferred for any reason of ownership. The debt secured by the mortgage remains existing in full or in part, regardless of the sequence of sales. If the notice of arrest is registered in the ship’s register, then any disposal of the vessel shall be void.

If the new owner wishes to annul the proceedings for arrest and sale, he must, before commencing those proceedings, notify the creditors registered in the register of vessels at their chosen places of residence of resume of the contract, with the date of the contract, the name and nationality of the seller, the name and type of the vessel, its tonnage, value and costs, and a schedule of the debts registered, with the dates and amounts thereof, and the names of the creditors. The new owner must also express his preparedness to pay the debts secured by the mortgage immediately, whether they are due for payment or not, up

to the value of the vessel to which they attach. He must redeem the mortgages of the vessel by depositing the price with the competent authority. In this case, he is entitled to request the deregistration of mortgages without taking any further action. If the debt exceeds the value of the vessel, the new owner shall not be liable.

The mortgagee creditor shall have recourse to other property of the old owner as an ordinary creditor, and hence, refer to the Civil Transaction Law to claim the debt. This is a major guarantee to recover maritime debts. The mortgagor debtor cannot dispose of the vessel or the mortgaged part thereof by voluntary sale, i.e., on his own, and if made, it shall be void. The right of maritime mortgage grants the creditor a special guarantee together with the general guarantee, which he has over all the debtor's unmortgaged properties if the mortgaged vessel does not fulfil his debt in full.

It is noted that the voluntary sale of the vessel may affect the preference right established for the mortgagee creditor since the buyer may move it to another state rather than the one in which the mortgage is affected. In addition to the change of its name and register, and then it would be difficult for the mortgagee creditor to recover his debt. Article 69 (1) of the UAE Maritime Commercial Law No. (26) of 1981 stipulates that:

"It shall not be permissible for the owner of a national ship to sell it or to scrap it before satisfying all debts due to the State in respect thereof, and, if the said vessel is encumbered with a mortgage, the consent of the mortgagee obtained".

Therefore, tracking constitutes a major guarantee. Voluntary sale of the vessel to a foreigner is not allowed because the sale to a foreigner will result in losing its nationality; the mortgagee creditor shall be subjected to a foreign law, which may not recognize his right. If the vessel flag is changed, the effectiveness of mortgages before the change of flag requires confirmation of entries of such mortgages in the registers of the state that the new flag follows. Therefore, such mortgages shall retain their rank as to the mortgages resulting under the new flag (Taha, 1995).

A voluntary sale to a foreigner is permissible if the mortgagee creditor assigns the mortgage in the same contract of sale. In this case, it is supposed that the sale is made as per the procedures established. The sale is deemed void even if the mortgagee creditor assigns the mortgage in the same contract of sale in the event that the legal procedures are not followed. Article 114 of the UAE Maritime Commercial Law No. (26) of 1981 stipulates that:

"A foreign mortgagee creditor may – up until the mortgage is registered – request the Office that he be treated as an accredited (or: approved) mortgagee creditor, and if the ownership of the mortgaged vessel becomes vested in that creditor, he must, within sixty days from the date of the transfer of ownership, request the Office to offer it for sale to the State or nationals thereof at a price not less than the amount of the debt plus ancillaries, and if the State or a national accepts the said offer within six months from the date on which it was made, the vessel shall be discharged from all debts and obligations against it provided that the full Price is paid on delivery of the vessel, and if the offer is not accepted within the said period the vessel shall retain its registration for a period not exceeding six months from the date of notification to him of the rejection of the offer or from the date of the termination of the period thereof without notification being received, as the case may be".

3. Effects of the maritime mortgage on the debtor (mortgagor)

The debtor (mortgagor) is the principal party in the mortgage contract and, amongst the effects thereof, to manage the mortgaged vessel with ordinary diligence, exert the effort required to maintain it, and clarify the disposals which may be effected on the mortgaged vessel.

3.1. Management of property (subject matter of mortgage)

The mortgaged vessel is a trust in the hands of the mortgagor debtor to secure any deficiency, damage, or loss attached thereto arising from his default or infringement. He must maintain ordinary diligence. However, the mortgagor remains the owner of the mortgaged property. He has all the owner's authority over the mortgaged property, except in contradiction with the creditor's right. It is warranted to the mortgagor the right of use, which means the use of the object in a good way, and the right of utilization, which means receipt of benefits resulting therefrom.

Right of disposal, which means to transfer or lease it to another person, or change its features or etc. He has no right to dispose of the mortgaged property throughout the whole duration of the mortgage unless by a mutual agreement. Every contract made otherwise shall be deemed void because the right of disposal will suspend the right of arrest granted to the creditor. The creditor must take care of the mortgaged property in terms of the useful and necessary maintenance and repairs, together with ordinary diligence. In the event of default, he shall be liable to the mortgagor against damage caused to the mortgaged property and the use thereof as per its nature and the purpose for which it is prepared. Nevertheless, he may not benefit from the mortgaged property for his own interest without the mortgagor's approval. In this event, he must deduct a value equivalent to the benefit from the expenses incurred in regard to the mortgaged property. Article 1413 (1) of the UAE Civil Transaction Law No. (5) of 1985 stipulates that:

"The pledgor shall have the right to manage the property pledged and to obtain the yield thereof up to the date on which he is compulsorily divested of ownership upon his failure to pay the debt".

The vessel is considered as a property in the case of maritime mortgage since the security mortgage applies to both of them (the rules of security mortgage shall apply to the vessel for being a movable of special nature. It is deemed an exception to the legal rules (Radwan, 1998).

If the creditor abuses the right of management, use, or utilization, the mortgagor is entitled to claim to place the mortgaged property under the control of a receiver. If a defect or reduction in value is caused to the mortgaged property, and the creditor fears that it has not become sufficient to satisfy the debt, he can file a lawsuit to claim the sale of the mortgaged property in the auction or for the exchange's or market price. If the court allows the same, the price shall be deposited in an official bank and remains allocated to satisfy the debt.

However, in this case, the mortgagor may object sale and claim to recover the mortgaged property and provide another property, which the judge deems sufficient to satisfy the debt. The mortgagee creditor has rights originating from the contract concluded between him and the mortgagor debtor. He can object to every act or omission from the mortgagor that may reduce his guarantee to the vessel (subject matter of mortgage), such as negligence in maintenance or repair, which may cause damage to it. The creditor may request to take all the precautionary actions on an urgent basis to maintain the mortgaged property (Baroudi, 1983).

The mortgagor shall exert reasonable diligence to make the vessel trustworthy before travel or upon commencement thereof to make the vessel seaworthy, equipped, and supported with a crew in a satisfactorily way. It must be shipped in a manner that guarantees by the end of the cargo operations, the shipment, storage, maintenance, care, and unloading of goods with diligence as per their type, in compliance with loading, unloading, stowage, and transportation.

If the mortgagor finds that the existence of the mortgaged property in the hands of the creditor will result in a defect or reduction in value, he is entitled to file a lawsuit against the creditor and claim to sell and deposit the property. He also has the right to claim its recovery

on condition that he shall provide another security that the judge deems sufficient to satisfy the debt. The creditor shall also return the mortgaged property to the mortgagor at the end of the mortgage, after fulfilment of his debt in full, and all the related interests and expenses.

The return includes the property itself, in addition to any growth or increases attached thereto. If the mortgaged property depreciates and the creditor receives compensation against it, he must return it to the mortgagor, together with the interests thereof, if any. The creditor's rights are reflected in the privilege he has over the mortgaged property. He has the right to arrest it till the satisfaction of his debt and ancillaries. He also has a general privilege as an ordinary creditor over all his debtor's property, upon the insufficiency of the mortgaged property allocated to satisfy the debt.

Maintenance of the property (subject matter of the mortgage). The mortgagor debtor shall maintain the vessel till the end of the maritime mortgage contract in the state it was in upon conclusion of the mortgage contract and operate it in the place agreed upon. He shall pay compensation against any damage exceeding the consumption arising from the normal use of vessels. The charterer shall be liable to the damages arising from the commercial use of the vessel, subject to the consumption arising from normal use; the obligation of the charterer of an unequipped vessel to return it at the end of the contract term in the state it was in, subject to the consumption arising from the normal use, is considered an application of the provisions of the civil law, in compliance with the general rules. Therefore, the charterer is not relieved from liability against any damage caused to the vessel unless being attributable to force majeure or fault of a third party (Hosni, 1980). While sailing, the master is assumed to maintain it and assess the situation in terms of the imminent threat to the vessel, tonnage, and the way of sacrifice in order to safeguard the vessel.

It is a substantive matter subject to court if presented thereto to assess the circumstances which pushed the master for such a sacrifice. If the court has not found a justification in such circumstances, the master shall be liable to pay compensation for the resulting damage if the sacrifice was for the purpose of doing harm to the owner of the goods or the ship owner. Most of the rules that govern maritime navigation originate from maritime practices. For example, in the event of exposure to threat, it is understood to give freedom to the master to cancel part of its cargo to avoid danger without recourse to the owners of goods if the danger was immediate and there was no time to consult the owners of goods (Al Maqdadi, 2009).

The mortgage of the vessel does not deprive the mortgagor of the owner's authority, since he still has the right of use, utilization, and disposal. Whereas the mortgaged vessel remains in possession of the mortgagor debtor, he is bound to guarantee the safety of the mortgage. The mortgagee creditor is entitled to object to act or omission which may decrease his security as to the mortgagee creditor.

3.2. Conditional disposal of property (subject matter of mortgage)

The legal description of the vessel extends to its ancillaries. Therefore, they are also included in the disposals effected on the vessel, such as sale, mortgage, and insurance unless otherwise stipulated by virtue of an express agreement, although the vessel, under construction, does not amount to a vessel in the legal sense, it is subjected to some provisions of the maritime law such as concession and mortgage (Hamdy, 1997).

No disposal of the mortgaged vessel is permissible after registration of arrest in the register of ships. Article 107 (2) of the UAE Maritime Commercial Law No. (26) of 1981 provides for:

"It shall not be permissible to dispose of the vessel after a notice of arrest has been registered on the register of ships".

It is required that the ownership of the vessel must be transferred to the person in possession before the registration of the notice of arrest in the register of ships since it shall not be permissible to dispose of the vessel thereafter. The mortgagee creditor shall, before commencing the proceedings, notify the person in possession of the vessel of notice of arrest together with a notice to pay the debt.

Article 76 of the UAE Maritime Commercial Law No. (26) of 1981 stipulates that:

"1. Any co-owner may dispose of his share. Nevertheless, he shall not be permitted to mortgage it save by the consent of the majority stipulated in Article 73.

2. If the disposal is such as to cause the vessel to lose its State nationality, such disposal shall not be valid until after all of the owners have consented, and the provisions set out in Article 70 have been followed".

It is shown that the disposal of a vessel mortgaged by a maritime mortgage is conditioned by the consent of the majority of owners if it is co-owned and not to its nationality.

Condition of the majority of owners. It is noted that a partner is not free to mortgage his share. However, he must obtain the consent of owners possessing the majority of shares. The importance of obtaining the consent of those lies in the possible implications of the sale of the vessel in the end of the partner mortgaging his share has not fulfilled the debt. Article 98 of the UAE Maritime Commercial Law No. (26) of 1981 requires the consent of the majority of owners having three-quarters of the shares. It stipulates that: "If the vessel is co-owned, it may be mortgaged into by the agreement of a majority of the owners having at least three-quarters of the shares. If there is no such majority, it shall be permissible to refer the matter to the civil court, which has jurisdiction in the area of the Registration Bureau of the vessel for a decision in accordance with the interests of the joint owners".

Common property is not only limited to ownership, but also the other real rights, such as joint ownership of the right of utilization, easement, mortgage, or other real rights unless contrary to the nature of such rights or the provisions of law (Sawar, 2019).

The Vessel shall not lose its state nationality. Nationality grants the vessel various advantages. Perhaps the most important is that coastal navigation is limited to it foreign vessels which do not fly the vessel's flag. It is intended to carry out national maritime transportation in terms of import and export in order to support its growth, expand its fleet, and build huge national transportation companies. Therefore, the State supports it with financial aid and facilitates obtaining loans. Among the advantages gained by the nationality, the vessel is subject to supervision by the State; granting nationality helps identify the applicable law in the events of conflict of laws since the nationality law shall apply to dealings made on the vessel and the crimes committed thereon (Al Qalioubi, 1987).

Nationality is the legal bond between the person and the State and involves the person's loyalty towards the State in political terms. All laws confirm it is important that the vessel shall fly the flag of the State in which it is registered. Article 14 (1) of UAE Maritime Commercial Law No. (26) of 1981 sets forth:

"A vessel shall acquire the nationality of the State if it is registered in any of its ports and is owned by a natural or legal person having the said nationality. If the vessel is owned by a number of persons jointly, it may only have the nationality of the State if all of the owners are of that nationality".

The provisions of the vessel nationality overlap with other provisions, from which one may know how the vessel acquires the State nationality. It can be said that vessels acquire nationality as per the owner's nationality. The owner's nationality is conferred on the vessel. This is still one condition of the nationality acquisition terms for a vessel and also provided that the majority of owners are nationals of the State. Therefore, it is true or possible that among

the owners of a vessel acquiring UAE nationality are foreign owners provided their number is less than the UAE nationals who represent the majority of owners.

According to Article 91 of the United Nations Convention on the Law of Sea, 1982, every State shall fix standards or conditions for the grant of its nationality to vessels. No ship may acquire more than one nationality at the same time in order not to be subjected to more than one legal system. The acquisition of a specific State nationality means that the vessel is subjected to the legal rules of that state. Such rules shall also apply to incidents taking place inside the vessel while sailing outside the port of registration.

The maritime law states that every ship shall prepare an official register for the crimes committed by a crew member while sailing, the judgments rendered, the penalties imposed, as well as diseases, personal injuries, births, deaths, marriages, and all the other matters provided this shall not extend to crimes committed inside the vessel while berthing in a foreign port. Article 108 of the UAE Maritime Commercial Law No. (26) of 1981 sets forth: "Any disposal of a vessel encumbered by a mortgage resulting in its losing its State nationality is prohibited, and such disposal shall be void".

The grant of nationality for any vessel confers the identity through which it deals with other states. The grant of nationality is realized when the vessel is allowed to fly the flag of its State nationality.

When a vessel has a nationality, it means that it is registered in such a State. Therefore, it holds its nationality. Hence, an independent system shall arise, called a ship registration system, that is subjected to international and national law in terms of its proceedings and effects. Due to the importance of the registration of ships and the important legal effects resulting therefrom, it has been necessary to establish the minimum conditions with which the State complies to confirm the genuine link between the State and the ship holding its nationality. Therefore, the United Nations Convention on Conditions for Registration of Ships, 1986, is concluded and establishes some important principles which the States comply with, uphold, and add to their national laws. One of those principles is stated in Article (4) of the Convention:

"1. Every State, whether coastal or land-locked, has the right to sail ships flying its flag on the high seas.

2. Ships have the nationality of the State whose flag they are entitled to fly.

3. Ships shall sail under the flag of one State only.

4. No ships shall be entered in the registers of ships of two or more States at a time, subject to the provisions of paragraphs 4 and 5 of article 11 and to article 12.

5. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry".

Registration. Disposals must be by an official document, recorded in the ship's register for the purpose of registration. If made outside the State, they must be executed before the Consul of the State. Article 66 of the UAE Maritime Commercial Law No. (26) of 1981 sets forth:

"1. All dealings of which the subject matter is the construction or transfer of a ship or the extinguishment of a right of ownership therein or any other rights in rem must be by an official document, failing which they shall be invalid.

2. If such dealings occur in a foreign country, they must be written before a consul of the State therein, or before the competent local officer if there is no consul.

3. The said dealings shall be of no effect as between the contracting parties or in relation to other parties unless they are recorded in the Register of Ships in accordance with the procedures laid down by law".

Sale to a foreigner requires following the procedures established in Article 70 of the UAE Maritime Commercial Law No. (26) of 1981. Otherwise, the sale is deemed void.

It is worth noting that there is an international treaty specifically designed to tackle the legal aspects and implications of ship sales on a global scale; it is called the Convention on the International Effects of Judicial Sales of Ships. This convention aims to establish a harmonized legal framework for the recognition and enforcement of judicial sales of ships across different jurisdictions. (Cao et al., 2023).

Conclusions

The UAE Maritime Commercial Law (26) of 1981 regulates the maritime mortgage from Articles 97 to 114, in addition to the application of provisions of the Civil Transaction Code on security mortgage to the vessel mortgage.

This research concludes that the mortgage contract has various implications for both the creditor (mortgagee) and the debtor (mortgagor) in relation to the assignment of the mortgage right to a third party, the procedures involved in executing the mortgage on the vessel, the rights of tracking and priority, as well as the effects stemming from the maritime mortgage on the debtor. For the creditor, the mortgage contract affects their ability to transfer their mortgage right to another party. Additionally, it specifies the procedures and methods for carrying out the mortgage on the vessel. The contract also establishes the creditor's rights of tracking and priority, ensuring their interests are protected in case of default or other legal proceedings.

On the other hand, the debtor is obligated to manage the mortgaged vessel with due diligence, which entails taking necessary steps to maintain its condition and value. The mortgage contract outlines the debtor's responsibilities in this regard. Moreover, the contract provides clarity regarding the debtor's permissible transactions and dealings involving the mortgaged vessel, defining any limitations or conditions that may apply.

In conclusion, it is found that the maritime mortgage regulations outlined in the UAE Maritime Commercial Law (26) of 1981 need to be revised and updated to encourage foreign investment in the country. This is particularly crucial considering that the law was enacted in 1981, and numerous developments have occurred in the maritime commerce sector since then. By updating the maritime mortgage rules, the legal framework can better accommodate and attract foreign investment, thereby stimulating economic growth and enhancing the competitiveness of the UAE in the global maritime industry.

The changes and advancements in technology, trade practices, and international maritime conventions over the years necessitate a modernized approach to maritime mortgage regulations. Updating the law would allow for the inclusion of provisions that align with contemporary standards and practices, ensuring that the UAE remains an attractive destination for foreign investors seeking opportunities in maritime commerce.

By revisiting and revising the maritime mortgage rules, the UAE can signal its commitment to fostering a favourable and secure investment environment in the maritime sector. This can facilitate increased capital flows, technology transfer, job creation, and overall economic prosperity. Therefore, it is essential to undertake the necessary updates to the existing regulations in order to harness the full potential of foreign investment in the maritime industry and maintain the country's competitiveness on the global stage.

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Маді Р., Альмансурі Е. Вплив морської застави на кредиторів і боржників за законодавством ОАЕ. – Стаття.

Ця стаття має на меті дослідження визначення застави, роз'яснення і розгляд її важливості, а також особливостей застосування морської застави (судна та його допоміжних засобів). Відомо, що договори чинять вплив на сторони та третіх осіб. Тому у статті досліджено наслідки договору застави для кредитора (заставодержателя) з точки зору уступки права застави третій особі, способу звернення стягнення на заставлене судно, його пріоритетного права та відстеження. Крім того, у статті розглядаються наслідки морської застави для боржника (заставаодавця) та пояснюється, що він є основною стороною у договорі застави, наслідком чого є звичайне управління заставленим судном, необхідність його обслуговування, і уточнення факту відчуження щодо заставленого судна. Дійдено висновку, що правила морської застави, викладені у Законі ОАЕ про морську торгівлю № (26) 1981 р., мають бути оновлені з метою сприяння іноземним інвестиціям, і особливо у зв'язку з тим, що згаданий закон був прийнятий у 1981 р., і з того часу сфера морської торгівлі змінилася.

Ключові слова: морська застава, кредитор (заставодержатель), боржник (заставаодавець), ОАЕ.

