

[PRESIDENTIAL DECREE NO. 1521, June 11, 1978]

THE SHIP MORTGAGE DECREE OF 1978

WHEREAS, it is the declared policy of the State to accelerate the growth and development of the shipping industry;

WHEREAS, due to the heavy capital requirement for ship acquisition and operation, the shipping industry has turned to financial institutions, both local and foreign, for assistance;

WHEREAS, Philippine laws on ship mortgage have not been responsive to the needs of vessel financing such that it has deterred the extension of needed loans to the industry;

WHEREAS, there is a recognized need for extending the benefits accorded to overseas shipping under Presidential Decree No. 214 to domestic shipping.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order the enactment of a ship mortgage law as follows:

SECTION 1. *Title*—This Decree shall be known as "The Ship Mortgage Decree of 1978".

SEC. 2. *Who may Constitute a Ship Mortgage*—Any citizen of the Philippines, or any association or corporation organized under the laws of the Philippines, at least sixty per cent of the capital of which is owned by citizens of the Philippines may, for the purpose of financing the construction, acquisition, purchase of vessels or initial operation of vessels, freely constitute a mortgage or any other lien or encumbrance on his or its vessels and its equipment with any bank or other financial institutions, domestic or foreign.

SEC. 3. *Mortgage of Vessels of Domestic Ownership; records*—

- a. No mortgage, which at the time such mortgage is made includes a vessel of domestic ownership as this term is defined in Presidential Decree No. 761, or any portion thereof, as the whole or any part of the property mortgaged; shall be valid, in respect to such vessel, against any person other than the mortgagor, his heir or assign, and a person having actual notice thereof, until such mortgage is recorded in the office of the Philippine Coast Guard of the port of documentation of such vessel.
- b. The Coast Guard District or Station Commander shall record mortgages delivered to him, in the order of their reception, in books to be kept for that purpose and indexed to show—
 1. The name of the vessel;
 2. The names of the parties to the mortgage;
 3. The time and date of reception of the instrument;
 4. The interest in the vessel so mortgaged;
 5. The amount and date of maturity of the mortgage;
 6. Name, citizenship, nationality and residence of owner; and

7. Any material change of condition in respect to any of the preceding items.

A copy of the instrument or mortgage shall be furnished the Central Bank of the Philippines.

SEC. 4. Preferred Mortgages—

- a. A valid mortgage which at the time it is made includes the whole of any vessel of domestic ownership shall have, in respect to such vessel and as of the date of recordation, the preferred status given by the provisions of Section 17 hereof, if—
 1. The mortgage is recorded as provided in Section 3 hereof;
 2. An affidavit is filed with the record of such mortgage to the effect that the mortgage is made in good faith and without any design to hinder, delay, or defraud any existing or future creditor of the mortgagor or any lienor of the mortgaged vessel;
 3. The mortgage does not stipulate that the mortgagee waives the preferred status thereof;
- b. Any mortgage which complies with the above conditions is hereafter called a "preferred mortgage". For purposes of this Decree, a vessel holding a provisional Certificate of Philippine Registry is considered a vessel of domestic ownership such that it can be subject of preferred mortgage. The Philippine Coast Guard is hereby authorized to enter a vessel holding a Provisional Certificate of Philippine Registry in the Registry of Vessels and to record any mortgage executed thereon. Such mortgage shall have the preferred status as of the date of recordation upon compliance with the above conditions.
- c. There shall be endorsed upon the documents of a vessel covered by a preferred mortgage—
 1. The names of the mortgagor and mortgagee;
 2. The time and date the endorsement is made;
 3. The amount and date of maturity of the mortgage; and
 4. Any amount required to be endorsed by the provisions of paragraphs (e) or (f) of this Section.
- d. Such endorsement shall be made (1) by the Coast Guard District or Station Commander of the port of documentation of the mortgaged vessel, or (2) by the Coast Guard District or Station Commander of any port in which the vessel is found, if such Coast Guard District or Station Commander is directed to make the endorsement by the Coast Guard District or Station Commander of the port of documentation. The Coast Guard District or Station Commander of the port of documentation shall give such direction by wire or letter at the request of the mortgagee and upon the tender of the cost of communication of such direction. Whenever any new document is issued for the vessel, such endorsement shall be transferred to and endorsed upon the new document by the Coast Guard District or Station Commander.

In the case of a vessel holding a provisional certificate of Philippine Registry, the endorsement shall be made by the Philippine consul abroad upon direction by wire or letter from the Maritime Industry Authority at the request of the

mortgagee and upon tender of the cost of communication of such direction. A certificate of such endorsement, giving the place, time and description of the endorsement, shall be recorded with the records of registration to be maintained at the Philippine Consulate.

- e. A mortgage which includes property other than a vessel shall not be held a preferred mortgage unless the mortgage provides for the separate discharge of such property by the payment of a specified portion of the mortgage indebtedness. If a preferred mortgage so provides for the separate discharge, the amount of the portion of such payment shall be endorsed upon the documents of the vessel.
- f. If a preferred mortgage includes more than one vessel and provides for the separate discharge of each vessel by the payment of a portion of mortgage indebtedness, the amount of such portion of such payment shall be endorsed upon the documents of the vessel. In case such mortgage does not provide for the separate discharge of a vessel and the vessel is to be sold upon the order of a district court of the Philippines in a suit in rem in admiralty, the court shall determine the portion, of the mortgage indebtedness increased by 20 per centum (1) which, in the opinion of the court, the approximate value of the vessel bears to approximate value of all the vessels covered by the mortgage, and (2) upon the payment of which the vessel shall be discharged from the mortgage.

SEC. 5. *Certified Copies of Mortgage; exhibition*—The Coast Guard District or Station Commander upon the recording of a preferred mortgage shall deliver two certified copies thereof to the mortgagor who shall place, and use due diligence to retain, one copy on board the mortgaged vessel notice of which shall be posted in a conspicuous place thereat and cause such copy and the documents of the vessel to be exhibited by the master to any person having business with the vessel, which may give rise to a maritime lien upon the vessel or to the sale, conveyance, or mortgage thereof. The master of the vessel shall upon the request of any such person, exhibit to him the documents of the vessel placed on board thereof. The requirement of this Section that a copy of a preferred mortgage be placed and retained on board the mortgaged vessel shall not apply in the case of a mortgaged vessel which is not self-propelled (including but not limited to, barges, scows, lighters, and car floats).

If the master of the vessel willfully fails to exhibit the documents of the vessel or the copy of any preferred mortgage thereof, the Philippine Coast Guard may suspend or cancel the master's license.

SEC. 6. *Prior and Subsequent Maritime Liens on Mortgaged Vessel*—The mortgagor (1) shall, upon request of the mortgagee, disclose in writing to him prior to the execution of any preferred mortgage, the existence of any maritime lien, prior mortgage, or other obligation or liability upon the vessel to be mortgaged, that is known to the mortgagor, and (2) without the consent of the mortgagee, shall not incur, after the execution of such mortgage and before the mortgagee has had a reasonable time in which to record the mortgage and have indorsements in respect thereto made upon the documents of the vessel, any contractual obligation creating a lien upon the vessel other than a lien for wages of stevedores when employed directly by the owner, operator, master, ship's husband, or agent of the vessel, for wages of the crew of the vessel, for general average, or for salvage, including contract salvage, in respect to the vessel, tonnage dues and all other charges (not to exceed P20,000) of the Philippine Government in respect to the vessel.

A mortgagor who, with intent to defraud, violates the above provision and if the mortgagor is a corporation or association, the president or other principal executive officer of the corporation or association, shall be punished by a fine of not more than P5,000 or imprisonment of not more than two years, or both. The mortgage indebtedness shall thereupon become immediately due and payable at the election of the mortgagee.

SEC. 7. *Record of Notice of Claim of Lien on Mortgaged Vessel; discharge of lien—*

- a. The Coast Guard District or Station Commander of the port of documentation shall, upon the request of any person, record notice of his claim of a lien upon a vessel covered by a preferred mortgage, together with the nature, date of creation, and amount of the lien, and the name and address of the person. Any person who has caused notice of his claim of lien to be so recorded shall, upon a discharge in whole or in part of the indebtedness, forthwith file with the Coast Guard District or Station Commander a certificate of such discharge. The Coast Guard District or Station Commander shall thereupon record the certificate.
- b. The mortgagor upon a discharge in whole or in part of the mortgage indebtedness, shall forthwith file with the Coast Guard District or Station Commander for the port of documentation of the vessel, a certificate of such discharge duly executed by the mortgagee. Such Coast Guard District or Station Commander shall thereupon record the certificate. In case of a vessel covered by a preferred mortgage, the Coast Guard District or Station Commander at the port of documentation shall endorse upon the documents of the vessel, or direct the Coast Guard District or Station Commander at any port in which the vessel is found, to so endorse, the fact of such discharge. A certificate of such endorsement, giving the time, place and description of the endorsement, shall be recorded with the Philippine Coast Guard. Where the endorsement is made by a person other than the Coast Guard District or Station Commander such certification shall be promptly forwarded to the Philippine Coast Guard.

SEC. 8. *Conditions Precedent to Record; interest on preferred Mortgage—*

- a. No mortgage shall be recorded unless it states the interest of the mortgagor in the vessel, and the interest so mortgaged.
- b. No mortgage, notice of claim of lien, or certificate of discharge thereof, shall be recorded unless previously acknowledged before the Coast Guard District or Station Commander of the port of documentation or a notary public or other officer authorized by a law of the Philippines to take acknowledgement of deeds or before a Philippine consul or consular agent.
- c. In case of a change in the port of documentation of a vessel of the Philippines, no mortgage shall be recorded at the new port of documentation unless there is furnished to the Coast Guard District or Station Commander of such port, together with the copy of the mortgage to be recorded, a certified copy of the record of the vessel at the former port of documentation furnished by the Coast Guard District or Station Commander of such port. The Coast Guard District or Station Commander at the new port of documentation is authorized and directed to record such certified copy.

SEC. 9. *Inspection of the Copies from Record; fees—*Each Coast Guard District or Station Commander shall permit records made under the provisions of this decree to

be inspected during office hours, under such reasonable regulation as the Philippine Coast Guard may establish. Upon the request of any person the Coast Guard District or Station Commander shall furnish him from the records of the Coast Guard's Office (1) a certificate setting forth the names of the owners of any vessel, the interest held by each owner, and the material facts as to any mortgage covering, or any lien or other encumbrance upon, a specified vessel, (2) a certified copy of any mortgage, notice of claim of lien, or certificate of discharge in respect to such vessel or (3) a certified copy as required by subsection (c) of Section 8 hereof. The Philippine Coast Guard shall collect the fees as provided for under existing laws and regulations for any mortgage recorded, or any certificate or certified copy furnished by it.

SEC. 10. *Lien of preferred Mortgage; foreclosure; jurisdiction; procedure*—A preferred mortgage shall constitute a lien upon the mortgaged vessel in the amount of the outstanding mortgage indebtedness secured by such vessel. Upon the default of any term or condition of the mortgage, such lien may be enforced by the mortgagee by suit in lien in admiralty, wherein the vessel itself may be made a party defendant and be arrested in the manner as provided in Section 11 hereof. Original jurisdiction of all such suits is granted to the Court of First Instance of the Philippines exclusively. In addition to any notice by publication, actual notice of commencement of any such suit shall be given by the mortgagee, in such manner as the court shall direct, to (1) the master, other ranking officer, or caretaker of the vessel, and (2) any person who has recorded a notice of claim of an undischarged lien upon the vessel, as provided in Section 7 hereof, unless after search by the mortgagee satisfactory to the court, such mortgagor, master, other ranking officer, caretaker, or claimant is not found within the Philippines. Failure to give notice to any such person, as required by this Section, shall not constitute a jurisdictional defect; but the mortgagee shall be liable to such person for damages in the amount of his interest in the vessel terminated by the suit.

In case of judicial foreclosure as provided herein, the provisions of Rule 68 of the New Rules of Court, if not inconsistent herewith, shall apply.

The lien of a preferred ship mortgage may also be enforced by a suit in rem in admiralty or otherwise in any foreign country in which the vessel may be found pursuant to the procedure of said country for the enforcement of ship mortgages constituting maritime liens on vessels documented under the laws of said country.

SEC. 11. *Arrest of Vessels*—Upon the filing of the petition for the judicial foreclosure of a Preferred Ship Mortgage, or immediately thereafter, the applicant may apply ex parte for an order for the arrest of the mortgaged vessel or vessels and the judge shall immediately issue the same, provided that it is made to appear by affidavit of the applicant, or of some other person who personally knows the facts that a default in the mortgage has occurred and that applicant files a bond executed to the adverse party in an amount to be fixed by the judge, not exceeding the applicant's claim, conditioned that the latter will pay all the costs which may be adjudged to the adverse party and all damages which he may sustain by reason of such arrest, if the court shall finally adjudge that the applicant was not entitled thereto.

SEC. 12. *Discharge of Order of Arrest: Counterbond*—At any time after an order of arrest has been granted, the party whose vessel or vessels had been arrested, or the person appearing in his behalf, may, upon reasonable notice to the applicant, apply to the judge who granted the order, or to the judge of the court in which the action is pending, for an order discharging the order of arrest. That judge shall order