

Ship Mortgage

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In the maritime business, the most appropriate method to supply credit is to place a mortgage on a ship. The ship mortgage has three elements: a ship, a credit and an actual property right placed on the ship.

The provisions concerning ship mortgages in the Turkish codes come from the German and Swiss codes.

A ship mortgage covers the ship together with its integral parts and appendants, freight, insurance benefit of the ship and its cost. The rank of a mortgage is subject to Turkish Civil Code; the rank of the mortgage on a ship is subject to the fixed method, which means that when the previous mortgage is satisfied the next mortgage cannot move progressively upto that rank. The parties are however free to agree otherwise.

The notarized mortgage agreement between the owner of the ship and the creditor shall be submitted to the ship registry in order to register the mortgage.

A mortgage can only be placed in Turkish currency according to the general rule of the Turkish Civil Code. However, in 1991, a new article added to Turkish Civil Code brought an exception to this rule and since then, under some conditions a mortgage can be placed in foreign currency. According to Article 940 of Turkish Commercial Code, a mortgage can also be placed in Turkish Liras indexed to a foreign currency.

According to Article 939 of the Turkish Commercial Code, a mortgage in a foreign currency can only be placed with a permit from the Ministry of Finance. However, this rule was changed by Article 18 of the 32nd Decree (2006-32/32), which was issued according to the Law on the Protection of The Value of Turkish Currency (No. 1567). According to the new rule, a mortgaged can be placed over foreign currency without the permission of Ministry of Finance.

A ship mortgage can also be placed on a ship, which is under construction and this mortgage can be registered on the registry of ships under construction. This mortgage can be placed on the ship at any time during the construction. When the construction is finished, the ship is registered to the ship registry and the mortgage still stays on the ship with the same rank.

The creditor can collect its claim from the ship by an execution procedure when the debt becomes due. The said execution procedure shall be done according to the Article 145 *et seq.* of the Turkish Law of Execution and Bankruptcy.

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