

PRESIDENTIAL DECREE NO. 1521

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."

SECTION 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 percent 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.

SECTION 3. Mortgage of Vessel 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 of 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.

SECTION 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 mortgagor 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 any 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 was made;
- (3) The amount and date of maturity of the mortgagee;

(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 documentation shall give such direction by wire of letter at the request of the mortgagee and up [on 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 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 the 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.

SECTION 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.

SECTION 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 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 immediately due and payable at the election of the mortgagee.

SECTION 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 certificate shall be promptly forwarded to the Philippine Coast Guard.

SECTION 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 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.

SECTION 9. Inspection of and Copies from Records; 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 regulations 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 the 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.

SECTION 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 rem 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 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.

SECTION 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.

SECTION 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 the discharge of the arrest if a cash deposit is made, or counterbond executed to the creditor is filed, on behalf of the adverse party, with the clerk or judge of the court where the application is made in an amount double the value of the claim to secure the payment of any judgement that the creditor may recover in the action. Upon the filing of such counterbond, copy thereof shall forthwith be served on the creditor or his lawyer. Upon discharge of the order of arrest, the property arrested or seized shall be delivered to the party making the deposit or giving the counterbond, or the person appearing in his behalf, the deposit or counterbond aforesaid standing in place of the vessel or vessels released. Should such deposit or counterbond for any reason be found to be, or become insufficient, and the party furnishing the same fails to file an additional counterbond, the attaching creditor may supply for a new order of arrest or seizure.

SECTION 13. Discharge of Order of Arrest for Improper or Irregular Issuance - The party whose vessel/s has been arrested may also, at any time either before or after the release of the arrested vessel, or before any arrest or seizure has been effected, upon reasonable notice to the creditor, apply to the judge who granted the order, or to the judge of the court in which the action is pending, for an order to discharge the order of arrest or seizure on the ground that the same was improperly or irregularly issued. After the hearing, the judge shall order the discharge of the order of arrest or seizure if it appears that it was improperly or irregularly issued and the defect is not cured forthwith.

SECTION 14. Extrajudicial Foreclosure - The provisions of the Chattel Mortgage Law on the remedy of extra-judicial foreclosure of mortgages in so far as they are not inconsistent herewith shall still apply. For the purpose of taking possession of the vessel or vessels, the foreclosing creditor may secure from a judge of the Court of First Instance of the province where the vessel may be found or where the creditor or debtor resides an order for the arrest or seizure of the vessel. Upon such order of seizure or arrest being issued, the sheriff shall immediately take possession of the vessel or vessels for the purpose of foreclosure and sale. The vessel may only be released in accordance with the provisions of Section 13 of this Act, or when the debtor pays the outstanding obligation.

SECTION 15. Foreign Ship Mortgages - As used in Sections 10 to 18 hereof, the term "preferred mortgage" shall include, in addition to a preferred mortgage made pursuant to the provisions of this decree, any mortgage, hypothecation, or similar charge created as security upon any documented foreign vessel if such mortgage, hypothecation, or similar charge has been duly and validly executed in accordance with the laws of the foreign nation under the laws of which the vessel is documented and has been duly registered in accordance with such laws in a public register either at the port of registry of the vessel or at a central office; and the term "preferred mortgage lien" shall also include the lien of such mortgage, hypothecation, or similar charge: Provided, however, That such "preferred mortgage lien" in the case of a foreign vessel shall be subordinate to maritime liens for repairs, supplies, towage, use of dry-dock or marine railway, or other necessities, performed or supplied in the Philippines.

SECTION 16. Receiver in Foreclosure; possession by sheriff - In any suit in rem in admiralty for the enforcement of the preferred mortgage lien, the court may appoint a receiver and, in its discretion, authorize the receiver to operate the mortgaged vessel. The sheriff may be authorized and directed by the court to take possession of the mortgaged vessel notwithstanding the fact that the vessel is in the possession or under the control of any person claiming a possessory common law lien.

SECTION 17. Preferred Maritime Lien, Priorities, Other Liens -

(a) Upon the sale of any Mortgaged vessel in any extrajudicial sale or by order of a district court of the Philippines in any suit in rem in admiralty for the enforcement of a preferred mortgage lien thereon, all pre-existing claims in the vessel, including any possessory common-law lien of which a lienor is deprived under the provisions of Section 16 of this Decree, shall be held terminated and shall thereafter attach, in like amount and in accordance with the priorities established herein to the proceeds of the sale. The preferred mortgage lien shall have priority over all claims against the vessel, except the following claims in the order stated: (1) expenses and fees allowed and costs taxed by the court and taxes due to the Government; (2) crew's wages; (3) general average; (4) salvage, including contract salvage; (5) maritime liens arising prior in time to the recording of the preferred mortgage; (6) damages arising out of tort; and (7) preferred mortgage registered prior in time.

(b) If the proceeds of the sale should not be sufficient to pay all creditors included in one number or grade, the residue shall be divided among them pro rata. All credits not paid, whether fully or partially shall subsist as ordinary

credits enforceable by personal action against the debtor. The record of judicial sale or sale by public auction shall be recorder in the Record of Transfers & Encumbrances of Vessels in the port of documentation.

SECTION 18. Suit in Personal in Admiralty on Default -

(a) Upon the default of any term or condition of a preferred mortgage upon a vessel, the mortgagee may, in addition to all other remedies granted by this Decree, bring suit in personal admiralty in a district court of the Philippines, against the mortgagor for the amount of the outstanding mortgage indebtedness secured by such vessel or any deficiency in the full payment thereof.

(b) This Decree shall not be construed, in the case of a mortgage covering, in addition to vessels, realty or personalty other than vessels, or both, to authorize the enforcement by suit in rem in admiralty of the rights of the mortgage in respect to such realty or personalty other than vessels.

SECTION 19. Surrender of Documents; termination of mortgagee's interest; sale of mortgaged vessel -

(a) The documents of a vessel of the Philippines covered by a preferred mortgage may not be surrendered (except in the case of the forfeiture of the vessel or its sale by the order of any court of the Philippines or any foreign country) without the approval of the Maritime Industry Authority. The Administrator shall not grant such approval without the mortgagee's consent.

(b) The interest of the mortgagee in a vessel of the Philippines covered by a mortgage, shall not be terminated by the forfeiture of the vessel for a violation of any law of the Philippines, unless the mortgagee authorized, consented, or conspired to effect the illegal act, failure, or omission which constituted such violation. Neither shall the change by the shipowner in the use or character of the vessel or in the business of the mortgagor, without the consent of the mortgagee, nor the failure by the mortgagor to comply with the provisions of Section 5 hereof affect the validity or preference of the preferred ship mortgage as against third persons.

(c) Upon the sale of any vessel of the Philippines covered by a preferred mortgage in any extrajudicial sale or by order of a district court of the Philippines in any suit in rem in admiralty for the enforcement of a maritime lien, the vessel shall be sold free from all pre-existing claims thereon; but the court shall, upon the request of the mortgagee, the plaintiff, or any intervenor, require the purchaser at such sale to give and the mortgagee to accept a new mortgage of the vessel for the balance of the term of the original mortgage. The conditions of such new mortgage shall be the same, so far as practicable, as those of the original mortgage and shall be subject to the approval of the court. If such new mortgage is given, the mortgage shall not be paid from the proceeds of the sale and the amount payable as the purchase price shall be held diminished in the amount of the new mortgage indebtedness.

(d) No vessel of domestic ownership shall be mortgaged, nor, any rights under said mortgage shall be assigned, to any person not a citizen of the Philippines without the approval of the Maritime Industry Authority. The penalties and sanctions provided for under the Commonwealth Act No. 606 shall apply in case of any violation hereof.

(e) The foreclosure sale of vessels mortgaged under the provisions of this Decree, whether judicially or extrajudicially, shall not require the approval of the Maritime Industry Authority.

SECTION 20. Who May Bid in the Foreclosure Sale - The following persons are qualified to bid in the foreclosure sale of the mortgaged vessel:

(a) Citizens of the Philippines or corporations 60% of the capital of which is owned by Filipino citizens.

(b) A foreign mortgagee or foreign national whose country has diplomatic relations with the Philippines or whose country grants reciprocal rights to Filipino citizens.

In case the purchaser is a foreign individual or entity, the Philippine Coast Guard shall, upon presentation of the certificate of sale, cancel the registration of the vessel and issue a certificate to that effect upon request.

SECTION 21. Maritime Lien for Necessaries; person entitled to such lien - Any person furnishing repairs, supplies, towage, use of dry-dock or marine railway, or other necessaries, to any vessel, whether foreign or domestic, upon the order of the owner of such vessel, or of a person authorized by the owner, shall have a maritime lien on the vessel, which may be enforced by suit in rem, and it shall be necessary to allege or prove that credit was given to the vessel.

SECTION 22. Persons Authorized to Procure Repairs, Supplies, and Necessaries - The following persons shall be presumed to have authority from the owner to procure repairs, supplies, towage, use of dry-dock or marine railway, and other necessaries for the vessel: The managing owner, ship's husband, master or any person to whom the management of the vessel at the port of supply is entrusted. No person tortuously or unlawfully in possession or charge of a vessel shall have authority to bind the vessel.

SECTION 23. Notice to Person Furnishing Repairs, Supplies, and Necessaries - The officers and agents of a vessel specified in Section 22 of this Decree shall be taken to include such officers and agents when appointed by a charterer, by an owner pro hac vice, or by an agreed purchaser in possession of the vessel; but nothing in this Decree shall be construed to confer a lien when the furnisher knew, or by exercise of reasonable diligence could have ascertained, that because of the terms of a charter party, agreement for sale of the vessel, or for any other reason, the person ordering the repairs, supplies, or other necessaries was without authority to bind the vessel therefor.

SECTION 24. Waiver of Right to Lien - Nothing in this Decree shall be construed to prevent the furnisher of repairs, supplies, towage, use of dry-dock or

marine railway, or other necessities, or the mortgage, from waiving his right to a lien, or in the case of a preferred mortgage lien, to the preferred status of such lien, at any time by agreement or otherwise.

SECTION 25. Existing Mortgages Not Affected; exception - This Decree shall not apply (1) to any existing mortgage, or (2) to any mortgage hereafter placed at any vessel under an existing mortgage, so long as such existing mortgage remains undischarged. The Decree shall, however, apply to mortgages executed pursuant to Presidential Decree No. 214, provided, that no vested right of third parties are affected thereby.

SECTION 26. Rules and Regulations by Philippine Coast Guard and the Maritime Industry Authority - The Philippine Coast Guard and the Maritime Industry Authority are hereby authorized to make such rules and regulations within their respective spheres of jurisdiction, as they may deem necessary for the efficient execution of the provisions of this decree.

SECTION 27. Port of Documentation - Whenever in the Ship Mortgage Decree of 1978 the words “ port of documentation” are used, they shall be deemed to mean the port of registry of the vessel.

SECTION 28. Instruments and Acts Validated - All mortgages of any vessel or any part thereof, and all documentation, recordations, indorsements and indexing thereof, and proceeding incidental thereto made or done, prior to the effectivity of this Decree are declared valid to the extent they would have been valid if the port or ports at which it should have been documented in accordance with law; and this Section is declared retroactive so as to accomplish such validations: Provided: That nothing herein contained shall be construed to deprive any person of any vested right.

SECTION 29. Repealing Clause - The provision of the New Civil Code, the Code of Commerce, the Chattel Mortgage Law, the Revised Rules of Court and of such other laws, decrees, executive orders, rules and regulations which are in conflict or inconsistent with the provisions of this Decree are hereby repealed, amended or modified accordingly. If for any reason, any section, subsection, sentence, clauses or term of this Decree is held to be unconstitutional such decision shall not affect the validity of the other provisions of this Decree.

SECTION 30. Effectivity - This Decree shall take effect upon its approval.

Done in the City of Manila, this 11th day of June in the year of Our Lord, nineteen hundred and seventy-eight.