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Kvale Advokatfirma DA

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NORWAY

Law and Practice

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1. Maritime and Shipping Legislation and Regulation

1.1 Domestic Laws Establishing the Authorities of the Maritime and Shipping Courts

The ordinary courts in Norway have authority in all maritime disputes that are subject to Norwegian jurisdiction, unless the parties have agreed to arbitration. Norway does not have specialised courts (such as an Admiralty Court), so shipping and maritime-related disputes are submitted to and settled by the civil courts; this includes ship arrest, direct action claims, claims for salvage, cargo claims and charterparty claims, for example.

There are three instances in the Norwegian court system:

- the district courts;
- the courts of appeal; and
- the Supreme Court.

The relevant legislation for the courts that have jurisdiction in maritime law matters is thus the Norwegian Dispute Act (NDA) and the Norwegian Court of Law Act.

1.2 Port State Control

Norway is a signatory to the Memorandum of Understanding on Port State Control signed on 26 January 1982 (Paris MOU). By utilising a database, results from previous inspections can be made available, enabling member states of the Paris MOU to review a vessel's risk category prior to entering a port.

Port state control is regulated in domestic law under the Regulations of 24 November 2014 No 1458 on port state control. The controls are performed by the Norwegian Maritime Authority, which holds jurisdiction over foreign ships arriving in Norwegian ports. A vessel may be detained if it is considered a hazard to the environment or safety, has breached the Maritime Labour Convention or has working conditions that pose an obvious threat to the crew's safety.

If a pollution incident occurs, the Norwegian Coastal Administration (NCA) is responsible for the emergency response. The NCA is an agency of the Norwegian Ministry of Transport, and exercises authority pursuant to the Harbour and Fairways Act and the Pilotage Act, as well as parts of the Pollution Act. Section 17 of the Harbour and Fairways Act provides legal grounds for the authorities to order wreck removal where a wreck poses a danger or disadvantage for navigation in port.

1.3 Domestic Legislation Applicable to Ship Registration

Ship registration in Norway is divided into the Norwegian International Ship Register (NIS) and the Norwegian Ordinary Ship Register (NOR). Vessels owned by foreign entities can only register in NIS. The Norwegian Maritime Authority is in charge of registering vessels in both NIS and NOR, and holds jurisdiction over all vessels registered in Norway. It is also responsible for the registration of rights in ships in NIS. NOR is regulated by the Norwegian Maritime Code, while NIS is regulated by a special act called *Lov om norsk internasjonalt skipsregister* (the NIS-law).

1.4 Requirements for Ownership of Vessels

For NOR, a vessel must be owned by a Norwegian or EEA person/entity.

Vessels with foreign ownership may register in NIS. The conditions for registration are set out

in Section 1 of the NIS-law. In order to be eligible for registration, the owner must satisfy the conditions for a vessel to be regarded as a Norwegian ship (which includes when the owner is a Norwegian national) contained in Section 1 of the Norwegian Maritime Code.

If these conditions are not met, the vessel can still register in NIS if the owner:

- is a limited company, public limited company or a limited partnership with its head office in Norway;
- is a ship-owning partnership, with a managing reder (person or company) who satisfies the provisions relating to managing reder (person or company) in Chapter 5 of the Norwegian Maritime Code; or
- has appointed a representative who is authorised to accept writs on its behalf, if the owner does not satisfy the two previous conditions. The representative must fulfil the nationality requirements for managing reder (person or company) as set out in Section 103 of the Norwegian Maritime Code.

If the vessel is registered in accordance with these options, it is a legal requirement that the vessel must be operated by a Norwegian shipping company, which is understood to mean either its technical management (manning, outfitting, maintenance, etc) or its commercial operation (chartering, marketing, etc).

The vessel can also be operated wholly or partly from management offices abroad, assuming they are owned by a Norwegian shipping company with its head office in Norway.

The above requirements are in place to avoid NIS becoming a flag of convenience, and to ensure that a vessel can only be registered where the Norwegian authorities can exercise a certain level of control.

A vessel under construction in Norway, or a contract for the construction of a vessel in Norway, can be registered in a separate register, the Shipbuilding Register (BYGG), which is a sub-division of NOR. Vessels under construction abroad cannot be registered in BYGG. The prerequisite is that the vessel is at least 10 m long. The application must be submitted by the owner (if the vessel is under construction) or by the buyer (if it is a ship-building contract).

1.5 Temporary Registration of Vessels

Bareboat registration in and out of the Norwegian Ship Registers has been permitted since 1 July 2020. Foreign vessels (both passenger and cargo ships) as well as drilling platforms and other mobile offshore units may be bareboat registered in NIS and NOR, while having permanent registration in another state. To be registered, a vessel must be at least 15 m long, and both the ship-owner and the mortgagee(s) must give their consent before permission to register is granted.

1.6 Registration of Mortgages

The registration of mortgages is under the administrative control of the Norwegian Maritime Authority, and the registration can be in either NOR, NIS or BYGG. Voluntarily established mortgages can only obtain legal protection through registration.

The registries include information about all registered rights in a vessel, as well as their priority. The registry will also contain information if it has been agreed that a sale or further mortgages are forbidden. As many mortgages include a clause prohibiting further mortgages, the mortgagee must either consent to registration of the new mortgage/right or sign the mortgage for deletion.

The amendment must be made in the original document.

The following document requirements are applicable:

- consent to the registration of a new mortgage/right requires specification of a new creditor, face value and currency;
- if the mortgagee/holder of the right is a company, the endorsement must be signed with a binding signature according to the certificate of company registration; and
- if the mortgagee/holder of the right is a foreign body, a Notary Public must confirm both the identity and the authority of the person signing the amendment. The Notary's signature is then to be legalised by a Norwegian Foreign Service Station or by the amendment of an Apostille.

Also note that the new mortgage/right must be forwarded, in original, to the Department of Ship Registration with a binding signature in the following circumstances:

- if the mortgagor/holder of the right is a Norwegian registered company, it must be signed according to the certificate of company registration; and
- if the mortgagor/holder of the right is a foreign entity, a Notary Public has to confirm the identity and authority of the person signing. The signature of the Notary shall be legalised by a Norwegian Foreign Service Station or by the amendment of an Apostille.

The documents submitted must be originals, and should not be sent for deposit more than three weeks prior to scheduled registration (the sender must include a statement to that effect). The documents will be returned to sender without registration if there is no scheduled registration within three weeks.

1.7 Ship Ownership and Mortgages Registry

All three ship registries in Norway are open to the public, and are searchable by name and IMO number of the vessel as www.sdir.no. The information available to the public includes the full details of the owners of the vessel.

2. Marine Casualties and Owners' Liability

2.1 International Conventions: Pollution and Wreck Removal

While Norway is not a signatory to the 2007 Nairobi International Convention on the Removal of Wrecks, the Norwegian Parliament adopted legislation in 2018 to implement the Convention into Norwegian law once ratified. Chapter 10 of the Norwegian Maritime Code has already incorporated the Convention and will come into effect upon ratification. In the meantime, wreck removal is governed by the Norwegian Harbour and Fairways Act and the Norwegian Pollution Act, which give the authorities the necessary jurisdiction to order a wreck removal.

Norway is also party to the 1973/1978 MARPOL Convention as incorporated into Chapter 5 of the Norwegian Ship Safety and Security Act. Owners must also comply with the following Conventions (which have been incorporated into the Norwegian Maritime Code and the Norwegian Pollution Act):

- the 1976, 1992 and 2003 Protocol on the Establishment of an International Fund for Compensation for Oil Pollution Damage;

- the 1976 and 1992 International Convention on Civil Liability for Oil Pollution Damage; and
- the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage.

2.2 International Conventions: Collision and Salvage

Norway has ratified the IMO International Convention on Salvage of 1989, which is incorporated into Chapter 16 of the Norwegian Maritime Code. Regulation on collisions can be found in Chapter 8, Sections 161–164. The regulation is based on the CMI Collision Convention of 1910, and applies the same fault-based division of liability – ie, the party at fault covers the losses or if the collision was accidental each party carries their own loss.

2.3 1976 Convention on Limitation of Liability for Maritime Claims

Norway has ratified the 1976 Convention on Limitation of Liability for Maritime Claims, with the subsequent amendments of the 1996 Protocol, with certain reservations. In accordance with Article 7.1(a) of the 1996 Protocol, Norway has reserved the right to exclude from limitation under the convention claims made in respect of the raising, removal, destruction or rendering harmless of a ship that is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship, and claims in respect of the removal, destruction or rendering harmless of the cargo of the ship.

The above-mentioned claims will be limited in accordance with Section 172a of the Norwegian Maritime Code, which has substantially higher limitation amounts than the 1996 Protocol. The ship-owner (which includes the disponent owner and the manager, as well as charterers and salvors) can rely on the limitations in Section 171 of the Norwegian Maritime Code.

2.4 Procedure and Requirements for Establishing a Limitation Fund

Under Norwegian law, a limitation fund can only be established after the creditors have initiated legal proceedings to pursue a claim that is subject to limitation, or after the creditors have filed a petition for arrest to temporary secure such a claim. In such instance, the defendant may request the creation of a limitation fund at the court where the action has been brought. The courts have the authority to order a fund to be established. Once a fund is established, either by transfer of the limitation amount or by way of other security (such as an indemnity), the creditors are given a time limit within which to notify their claims.

The limitation fund can be created by all parties that are entitled to limitation under Section 171 of the Norwegian Maritime Code. This includes the ship-owner, the disponent owner, the manager, charterers and salvors, for example.

Pursuant to Section 232 of the Norwegian Maritime Code, the limitation fund amount is calculated on the basis of the vessel's tonnage and must also include interest calculated from the time of the incident until the establishment of the fund. This is in accordance with the provisions of the Convention on Limitation of Liability for Maritime Claims 1976 (as amended by the 1996 Protocol).

3. Cargo Claims

3.1 Bills of Lading

Although Norway is a signatory to the Hague-Visby Rules (HVR), the Hamburg Rules and the Rotterdam Rules, only the HVR have been ratified.

The HVR have been implemented in the Norwegian Maritime Code, albeit with some modifications. For instance, the rules in the Norwegian legislation are more favourable to cargo owners than the HVR stipulates, unless they are expressly waived by the cargo owner. This relates to two categories of rules in particular:

- under the Norwegian Maritime Code, the owner is responsible for the goods from the time and place when the owner physically takes over the goods, as opposed to the tackle-to-tackle principle contained in the HVR; and
- Chapter 13 of the Norwegian Maritime Code applies special liability provisions for the carriage of deck cargo as well as livestock, which cannot be derogated from through agreement.

3.2 Title to Sue on a Bill of Lading

If the bill of lading is subject to Norwegian jurisdiction, any lawful holder of the bill of lading will have title to sue pursuant to the NDA. The prerequisite is that the claim is a legal claim that is based in law, contract or tort, and the claimant must have both a reasonable need to pursue the claim and an adequate connection with the dispute (such as legal or equitable interest).

3.3 Ship-Owners' Liability and Limitation of Liability for Cargo Damages

The key provisions governing the ship-owners' liability for damage to cargo are Sections 275 and 276 of the Norwegian Maritime Code. As long as the goods are in the custody of the ship-owner or any of their contracted helpers, a reversed burden of proof on liability is applied. This means that the ship-owner is liable for damage to the cargo, unless they can prove that the loss or damage was not due to their own fault or neglect or that of any of their agents or servants. This also applies if the carriage is wholly or partially performed by a sub-carrier.

There are, however, certain exceptions. The carrier is not liable for damage or delays caused by nautical errors or fire (unless caused by the negligence of the carrier), unless the ship-owner has failed to take all reasonable steps to ensure that the vessel was seaworthy on departure.

Please note that the exceptions for navigational error and fire do not apply for domestic trade.

Furthermore, a carrier will not be liable for damage to animals if they acted with due care and the damage resulted from particular perils associated with the transportation of animals.

The ship-owners' liability is limited. Section 280 of the Norwegian Maritime Code states that the carriers' liability is limited to 667 Special Drawing Rights (SDRs) for each unit or package of the goods, or 2 SDRs for each kilogram of the gross weight of the goods claimed for damage, delay or loss. In domestic trade, the carrier can limit the liability to 17 SDRs for each kilogram of the gross weight of the damaged or lost goods. Liability for delays in domestic trade shall not exceed the total freight under the transportation agreement.

It is also worth noting that a voyage charterer or time charterer must hold the carrier harmless if the bill of lading contains terms other than those stated in the charterparty, thereby increasing the liability of the carrier.

3.4 Misdeclaration of Cargo

In accordance with Section 301 of the Norwegian Maritime Code, the carrier can claim against the shipper for liability they have incurred as a result of misdeclared cargo.

However, the carrier cannot establish a claim against the shipper if they knew or should have known that the information was not correct. If a clean bill was issued against a Letter of Indemnity (LOI), for instance, the carrier loses his statutory right to claim against the shipper. The same will apply even if there is no explicit agreement to issue a clean bill, if the carrier had an incentive to inspect the cargo more closely or it was visible that the cargo was not in apparent good order.

In the judgment ND 1969 s.105 Stockholm rådhusrätt, Hood River Valley, which is part of the collection of Nordic Maritime Judgments, it was stated that the carrier must consider not only the state of the cargo but also the state of the packaging. Therefore, the courts would consider the carrier's overall knowledge about the cargo, the packaging and the transportation when considering a potential recourse claim against the shipper.

3.5 Time Bar for Filing Claims for Damaged or Lost Cargo

Under Norwegian law, the general time limit for filing a claim for damaged or lost cargo, or for incorrect information in a Bill of Lading, is one year from the time the goods were or should have been delivered (Section 501 (7) of the Norwegian Maritime Code).

For recourse claims related to damage to or loss of cargo, the deadline is one year from the time the original claim was paid or legal proceedings were instituted.

The limitation period can be extended by agreement between the parties after the incident occurred, for up to three years at a time.

4. Maritime Liens and Ship Arrests

4.1 Ship Arrests

Norway is party to the 1952 Arrest Convention, which is implemented in Chapter 4 of the Norwegian Maritime Code. Norway is also a signatory to the 1999 Arrest Convention, which came into force in 2011 but has not yet been ratified. The relevant acts for ship arrests in Norway are the Maritime Code and the NDA.

Under Norwegian law, the prerequisite for arrest in a ship is that the claim in question is defined as a maritime claim in accordance with Section 92 of the Norwegian Maritime Code. The provision exhaustively defines what constitutes a maritime claim and corresponds with Article 1 (1) of the 1952 Convention.

In addition, Norwegian law introduces a special requirement that there is a "genuine need for security" (Section 33-2 of the NDA). This goes beyond the 1952 Convention and means, in essence, that he claimant must establish that the debtor's behaviour indicates that the enforcement of the claim will be prejudiced or would have to take place outside of Norwegian jurisdiction if the court does not grant the arrest. The requirement will usually be found satisfied if the debtor has failed to pay a clear debt, failed to respond to reminders, taken steps to remove their assets from Norwegian jurisdiction, etc. However, it is underlined that this represents a complication in terms of obtaining a ship arrest in Norway.

4.2 Maritime Liens

Section 51 of the Norwegian Maritime Code lists the following claims as enjoying protection as a maritime lien:

- wages and other sums due to the master and other persons employed on board in respect of their employment on the vessel;
- port, canal and other waterway dues and pilotage dues;
- damages in respect of loss of life or personal injury occurring in direct connection with the operation of the ship;
- damages in respect of loss of or damage to property, occurring in direct connection with the operation of the ship, provided the claim is not capable of being based on contract; and
- salvage reward, compensation for wreck removal, and general average contribution.

Maritime liens enjoys a special protection under Norwegian law, and the arrest of a ship is allowed irrespective of whether the requirement of "genuine need for security" (Section 33-2 of the NDA) is satisfied.

Norwegian law differentiates between maritime liens and maritime claims, with the latter category containing a broader array of claims. An arrest can be sought in respect of all maritime claims. However, for maritime claims that do not qualify for a maritime lien, the requirement of "genuine need for security" must also be satisfied.

4.3 Liability in Personam for Owners or Demise Charterers

Norwegian law generally requires that the owner of the ship must be the debtor of the maritime claim giving rise to the arrest, meaning Norwegian law does not acknowledge action "in rem". The exception is certain claims that are secured by a maritime lien, thus giving grounds for an arrest.

4.4 Unpaid Bunkers

The bunker supplier (both contractual and actual supplier) may apply for an arrest for a claim relating to bunkers supplied by them, provided that the debtor owns the vessel that it is sought to arrest. If the bunkers in question were supplied to a charter (time charterer or bareboat charterer), an arrest can only be obtained on the bunkers actually delivered. In accordance with Section 33-2 of the NDA, the bunker supplier must prove a genuine need for security to achieve an arrest.

4.5 Arresting a Vessel

Arresting a ship in Norway is considered to be relatively straightforward, and can be arranged quickly and at a reasonable cost. It is not necessary for the claimant to provide any documents in original, and legal counsel does not need to present a power of attorney from the claimant.

A security deposit from the arresting party can be required, which in accordance with Section 97 of the Norwegian Maritime Code must be at least equivalent to port dues for the next 14 days, as well as possibly also expected damages for wrongful arrest. If the arresting party is the public authority or the claim is question is a crew claim secured by a lien, the court can disregard the security requirement, at its own discretion.

4.6 Arresting Bunkers and Freight

Bunkers on board, claims for hire payment and claims for insurance proceeds and bank accounts can be arrested. The prerequisite is that the bunkers must be owned by the debtor – keeping in mind that the bunkers are normally owned by the charterers (not the owners) under a time charterparty.

4.7 Sister-Ship Arrest

The arrest of sister-ships is regulated in Section 93 (1) of the Norwegian Maritime Code, which states that only the ship in which the claim arose may be arrested. The exception is where the vessels are owned by the same legal entity, and that legal entity is the debtor for the relevant claim. However, it is not possible to arrest ships with associated ownership – ie, where two ship-owning companies have the same holding company or are otherwise part of the same corporate structure.

4.8 Other Ways of Obtaining Attachment Orders

To apply for a ship arrest is clearly the most commonly used procedure to obtain security for a claim against a vessel under Norwegian law. That being said, if the claimant has a binding decision against the debtor, they may proceed directly with an application for attachment in the debtor's vessel. In addition, the general right of detention/retention may also give a claimant security by way of physical possession of the vessel – eg, the yard's right to detain the vessel in its docks until its claims have been paid in full.

4.9 Releasing an Arrested Vessel

Under Section 3-4 of the Norwegian Enforcement Act and Sections 33-4, 33-5 and 32-12 of the NDA, only a cash deposit or an unconditional bank guarantee issued by a Norwegian financial institution is accepted as security.

Under the Norwegian Enforcement of Claims Act, LOIs issued by P&I Clubs are not security recognised by law. Nevertheless, a letter of undertaking may be sufficient security for the claimant to agree to release the vessel on a mutual basis. This is quite common in Norway.

4.10 Procedure for the Judicial Sale of Arrested Ships

Judicial sale proceedings are conditional upon the claimant having an enforceable claim in accordance with the rules of the Enforcement Act.

Chapters 11 and 12 of the Norwegian Enforcement Act establish the rules regulating a forced sale. In short, the claimant must have a final and binding court decision on the claim itself (the main proceedings) before proceeding with a judicial sale. The claimant must also obtain an attachment in the vessel. It is important to note that the claimant's claim has priority from the time of the arrest, even if the final judgment and the execution lien are established later (except where sale proceedings have not been commenced within one year of the arrest), so the arrest may be an important tool for the claimant to establish priority.

In accordance with Sections 11-20 and 11-21 of the Enforcement Act, all claims with higher priority than the claimant's claim will be covered in full before the claimant receives any funds. This means that the court cannot accept a bid unless it is sufficient to cover all claims with a higher priority than that of the claimants. The sale proceeds shall be distributed in the following order:

- court fees and the court-appointed administrator's remuneration;
- costs in connection with the accession that the buyer shall not cover itself, such as document and registration fees (unless the buyer has agreed to cover such fees);
- maritime liens – in the order and priority contained in Sections 51 and 52 of the Norwegian Maritime Code;

- mortgages, similar registered encumbrances based in contract and enforcement liens (including interest); and
- unsecured debts.

4.11 Insolvency Laws Applied by Maritime Courts

Under Norwegian law, insolvency is regulated by the Debt Negotiation and Bankruptcy Act (the DNB-Act) and the Recovery Act. The Mortgage Act and the Norwegian Maritime Code are also important when considering the priority of claims.

Parts of the DNB-Act build on the same principles as the US "Chapter 11" procedure, but it does not go as far in providing the court with flexibility to steer the process to a result that is seen as being acceptable by all involved. As the Norwegian court system does not have specialised courts, bankruptcy proceedings would be submitted to the civil courts. Please see **4.10 Procedure for the Judicial Sale of Arrested Ships** regarding the judicial sale of a vessel.

4.12 Damages in the Event of Wrongful Arrest of a Vessel

A claimant may be held strictly liable for all of the defendant's economic loss if the claim did not exist at the time of arrest (Section 32-11 of the NDA). Furthermore, a claimant who gives wrongful or misleading information concerning the grounds for the arrest, by negligence or intent, will be liable for the losses incurred.

5. Passenger Claims

5.1 Laws and Conventions Applicable to the Resolution of Passenger Claims

Maritime passenger claims are regulated by Chapter 15 of the Norwegian Maritime Code, in Sections 405–432. These provisions are based on the 1974 Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea (PAL), the EEA Agreement Appendix XIII No 56x (Regulation EC No 392/2009), the 2002 Athens Protocol and the EEA Agreement Appendix XIII No 56y.

The limitations of liability for personal injury, death or luggage claims are included in Chapter 15 of the Norwegian Maritime Code, and are based on the 1974 Athens Conventions. The time limit is two years from the end of the voyage, or the time that the voyage ought to have ended. Limitation in passenger claims is regulated in Chapter 9 of the Norwegian Maritime Code. The limit is 250,000 SDRs, multiplied by the number of passengers that the vessel is registered as being allowed to carry.

6. Enforcement of Law and Jurisdiction and Arbitration Clauses

6.1 Enforcement of Law and Jurisdiction Clauses Stated in Bills of Lading

The starting point under Norwegian law is that the parties are free to enter into agreements concerning dispute resolution. In accordance with the Section 4-6 of the NDA, the jurisdiction clauses in bills of lading will therefore be recognised and enforced.

However, Section 310 of the Norwegian Maritime Code provides some limitations in this regard, establishing certain rights for the claimant.

In accordance with Section 310, the claimant has certain rights when bringing a claim that is related to the carriage of cargo, in terms of where to pursue the claim.

The provision states that a jurisdiction agreement that limits the claimant's rights may be invalid if it concerns restrictions on bringing an action at the place where:

- the claimant's principal place of business is situated, or the claimant's place of residence if there is no principal place of business;
- the contract of carriage was concluded, provided the defendant has a place of business or an agent through whom the contract was concluded;
- the receipt for carriage in accordance with the contract of carriage was issued; or
- delivery was agreed or actually occurred in accordance with the contract of carriage.

If the agreement in a bill of lading concerns any of the above scenarios, the court may find that the agreement is not valid, in accordance with Section 310.

6.2 Enforcement of Law and Arbitration Clauses Incorporated Into a Bill of Lading

In accordance with Section 310 of the Norwegian Maritime Code, if a bill of lading is issued pursuant to a charterparty that contains a law and arbitration clause, but the bill of lading itself does not expressly state that the provision is binding on the holder of the bill of lading, said clause cannot be invoked against the holder of a bill of lading – assuming the holder has acquired it in good faith.

Therefore, the arbitration clause must be sufficiently specific when incorporated into the bill of lading in order for the court to recognise it; a general reference to the charterparty will not be sufficient.

6.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Norway is a party to the 1958 New York Convention, which has been incorporated in the Norwegian Arbitration Act 2004 and the Norwegian Enforcement Act. Additionally, any bilateral agreement in place between Norway and the jurisdiction in question will be applicable when determining the recognition and enforcement of arbitral awards.

6.4 Arrest of Vessels Subject to Foreign Arbitration or Jurisdiction

In accordance with Section 96 of the Norwegian Maritime Code, arrest of a vessel can be granted to secure a claim in Norway, which may be pursued in a foreign jurisdiction through either arbitration or court proceedings. That being said, the requirements for arrest – ie, that there is a "genuine need for security", as per Section 33-2 of the NDA – must still be satisfied.

6.5 Domestic Arbitration Institutes

The Nordic Offshore and Maritime Arbitration Association (NOMA) is a joint Nordic initiative, which was established in 2017. NOMA has established separate rules for arbitration based on UNCITRAL Arbitration Rules, as well as Best Practice Guidelines and fast-track rules. The Nordic Marine Insurance Plan is a commonly used standard contract for hull and machinery insurance, and has included NOMA as the standard solution for dispute resolution. Nevertheless, ad hoc arbitration remains the most common way of solving a maritime dispute that is referred to arbitration.

6.6 Remedies Where Proceedings Are Commenced in Breach of Foreign Jurisdiction or Arbitration Clauses

In accordance with the NDA, the court is obliged to consider whether the claim in question falls within its jurisdiction. If the parties have agreed on a foreign jurisdiction or arbitration, the court will reject the claim. As a consequence, the key defence where proceedings are commenced in breach of a foreign jurisdiction or arbitration clause would be to present the jurisdiction/arbitration clause to the relevant Norwegian court, and explain why the dispute in question is covered by the wording of the clause.

7. Ship-Owner's Income Tax Relief

7.1 Exemptions or Tax Reliefs on the Income of a Ship-Owner's Companies

The main tax incentive is the tonnage tax regime, which makes it possible to operate in Norway without being subject to corporate tax on operating income. The European Free Trade Association Surveillance Authority has approved the continuation of the Norwegian Tonnage Tax (NTT) regime until 31 December 2026. The Norwegian regime is in line with EU-based regimes.

The Norwegian tonnage tax regime provides a final exemption from tax on qualifying shipping income. Net financial income is subject to 22% tax. The shipping company needs to opt for the tonnage tax regime in its tax return, or all net income will be taxed at 22% (the ordinary rate).

A tonnage taxed company may only perform activities related to the operation of the company's qualifying ships. As a starting point, other business activities are not permitted by a company that is covered by the regime. However, the permitted activities include strategic and commercial management as well as day-to-day technical operations and maintenance for group-related companies outside the tonnage tax regime. This also includes activities in group-related foreign companies and CFCs. In addition, a specified number of ancillary activities are within the scope of the tonnage tax regime.

The following requirements need to be met for a company to qualify under the tonnage tax regime.

- The shipping company must be registered in Norway or the EEA.
- The minimum requirement for assets is primarily ownership of a qualifying vessel or ownership of at least 3% in a company or chain of companies owning such a vessel. There is a required ratio of owned vessels to chartered-in vessels, and certain restrictions to the chartering out of vessels on bareboat to external parties. There is also a restriction as to what assets the company may own.
- The company must comply with flag requirements.

8. Implications of the Coronavirus Pandemic, Environmental Legislation and Trade Sanctions

8.1 COVID-19-Related Restrictions on Maritime Activities

The Norwegian Maritime Authority has provided updated regulations throughout the pandemic. The latest update was provided on 14 February 2022, where the following checklist was made available to update:

- people are permitted to enter Norway;

- seafarers without a valid COVID Certificate must provide proof of a negative test prior to departure to Svalbard; and
- in case of infection on board, it is recommended that the infected person is isolated for four days after first developing symptoms. If there are suspected or confirmed COVID-19 cases onboard a cruise vessel going to Svalbard, the vessel must go to the mainland.

In case of infection on board, the master of the vessel must notify the NCA's vessel traffic.

The Norwegian Maritime Authority has also published guidelines for risk assessment and emergency preparedness in the context of the COVID-19 pandemic.

These guidelines are applicable to Norwegian ships and are based on the requirements of Regulations of 1 January 2005 No. 8 on working environment, health and safety for the persons working on board ships.

The ship-owner/operating company shall perform a special risk assessment based on all available information, which includes facts and recommendations from competent national and international authorities.

8.2 Non-performance of a Shipping Contract

The wording of the specific force majeure clause is decisive for whether certain events constitute force majeure, such as global illness, epidemics or pandemics. The standard boilerplate clauses included in contracts that predate 2020 are unlikely to cover COVID-19, while newer contracts will likely have regulation covering such events.

Under Norwegian law, the starting point is that professional parties entering into agreements are responsible for their contractual obligations. Therefore, if they have agreed to a contractual obligation they must fulfil said obligation. If the contract is subject to Norwegian law, the Norwegian Sale of Goods Act may be applicable, under which certain force majeure-like events may give grounds to exemption of liability for economic loss caused by a breach of contract.

For the exception to become applicable, it must be shown that the breach was caused by a hindrance that was outside the control of the defaulting party, and that the defaulting party could not reasonably be expected to have foreseen the hindrance at the time of entering into the contract, nor avoid or remedy the consequences of it.

The decisive factor is the actual effect the hinderance has, rather than the nature of the hinderance in question. When considering whether the breach would be considered a force majeure event, the following should be considered:

- review the contract or statute applicable;
- consider the underlying cause for the hinderance;
- foreseeability requirement (was the hinderance foreseeable?);
- formalities connected to invoking force majeure; and
- mitigation/remedy.

The Norwegian court of appeal (*Gulating Lagmanssrett* ref. LF-2021-146849) handled a case during the pandemic regarding this current problem. The case concerned a contract of delivery of salmon, which had to be cancelled due to the COVID-19 pandemic. The issue was whether the cancellation was a breach of contract or whether

the pandemic constituted a force majeure event, thereby giving contractual grounds for the cancellation. The court found that this qualified as a breach of contract, as the event was not within the force majeure clause, and the non-performing party was liable for the loss.

8.3 Enforcement of the "IMO 2020" Rule Relating to Limitation on the Sulphur Content of Fuel Oil

The International Convention for the Prevention of Pollution from Ships (MARPOL) Annex VI and the EU Sulphur Directive (Directive EU 2016/802) have been implemented in Norwegian law.

Norwegian waters up to longitude 62 degrees are part of the North Sea emission control area (ECA), designated in MARPOL, with a 0.10% limit to SOx and particulate matter emissions. On 1 March 2019, the 0.10% limit was extended to also cover the Norwegian world heritage area, which includes the fjords north of this area, as set out in the Regulations of 30 May 2012 No 488 on environmental safety for ships and mobile offshore units. Outside an established ECA, the applicable limit is 0.5%.

Specific requirements have also been introduced on passenger ships sailing on a route to or from harbours in the EEA that are located in Norwegian territorial waters or exclusive economic zones, with an applicable limit of 1.5%.

Multiple sanctions are available if a breach is established, including orders, fines and withdrawal of permits. The vessel also risks detention, and the party inducing the breach may risk prison if there are serious breaches as a result of gross negligence or wilful misconduct.

8.4 Trade Sanctions

In general, any sanction introduced by the UN or the EU will be incorporated into Norwegian law. The Law on Sanctions allows for UN sanctions, sanctions introduced by other intergovernmental organisations and sanctions aimed at maintaining peace and security that have broad international support to be incorporated into domestic law. This gives the Parliament the necessary legal grounds to implement sanctions introduced internationally into domestic law.

EU sanctions are not included in the EEA Agreement, and the Norwegian State has therefore decided to implement these as a political decision, albeit with some exceptions. For instance, Norway has an exception that allows for Russian fishing vessels to call at Norwegian ports. The prohibition on Russian vessels calling at Norwegian ports does not apply to Svalbard, due to special considerations connected to the Svalbard Treaty.

There is very limited case law on the consequences of the imposed sanctions against Russia in Norwegian law. However, one exception is the court case brought by ship-owners Havila Kystruten. The vessel, *Havila Capella*, was operated by Kystruten, but financed through a Hong Kong leasing company that was owned by Russian financing firm GTLK, which itself was owned by the Russian Ministry of Transport. Due to the financial leasing agreement, GTLK was listed as the formal owner of *Capella*. Following the increasingly strict sanctions on Russia, the insurance company terminated the vessel's insurance. While the Norwegian Ministry of Foreign Affairs granted a dispensation from the sanctions for the use of the vessel, it did not grant a dispensation for the insurance of the vessel. In its rejection, it was stated that a dispensation

would entail money being placed at the Russian owner's disposal.

In order to operate the vessel, Kystruten therefore brought the issue to court, seeking arrest in the vessel to obtain ownership thereof. The court was also asked to consider whether the vessel should be subjected to forced use. In June 2022, Hordaland County Court decided to grant Havila Kystruten both arrest and forced use for a period of up to two years, giving Havila Kystruten the possibility to insure the vessel and operate it as normal.

9. Additional Maritime or Shipping Issues

9.1 Other Jurisdiction-Specific Shipping and Maritime Issues

In March 2022, the Court of Appeal rendered a decision where a ship-owner was found guilty of attempting to participate in illegal beaching of a vessel in Pakistan. The ship-owner was sentenced to six months in prison for violating the Pollution Act.

This is the first time that a private person has been sentenced for illegal beaching in Norway, and illustrates the Norwegian court's stance on environmental crime.

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Trends and Developments

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New Case Law in Norwegian Shipping

Introduction

Throughout the past year, several court cases have provided some much-needed guidance on previously unresolved issues in the Norwegian shipping space. There are few Supreme Court cases in Norway on shipping issues, so case law from the court of appeal is also highly relevant and important.

This chapter will summarise some of the consequences of the newest case law affecting the shipping industry in Norway, including cases regarding the Norwegian sanctions against Russia, ship arrests, choice of law in a non-contractual claim arising out of tort, claims for compensation for total loss by condemnation and the obligation to mitigate loss.

Norwegian sanctions against Russia

Norway supports the transatlantic sanctions against Russia. Since the Russian attack on Ukraine, the EU has implemented sanctions that Norway has supported and implemented more or less into Norwegian law. The Norwegian sanctions against Russia have already had consequences for Norwegian companies and become a subject in Norwegian courts. One such case concerned the cruise vessel *Havila Capella*, owned by Havila Kystruten.

Havila Capella was temporarily put out of service as an effect of the sanctions against Russia. The vessel was financed through a Hong Kong leasing company that is owned by the Russian financing firm GTLK, which in turn is owned by the Russian Ministry of Transport. GTLK is listed as the formal owner of the vessel, due to the financial leasing model used for *Havila Capella*. Therefore, *Havila Capella* was formally owned by a sanctioned Russian entity.

In April 2022, *Havila Capella* 's insurance providers terminated the vessel's insurance and their part in the financial leasing of *Havila Capella*, as a consequence of the sanctions against Russian interests. The Norwegian Foreign Affairs Ministry granted a dispensation from the sanctions for the use of the vessel, but not dispensation from the requirements to procure mandatory insurance for the vessel. In its rejection of dispensation, the Norwegian Foreign Affairs Ministry stated that the insurance of the vessel would entail money being placed at the Russian owner's disposal, thus constituting a benefit.

It was therefore not possible to operate the vessel legally, without valid insurance. Havila Kystruten brought the issue to court, by seeking arrest in the vessel to get ownership, and for forced use to be able to insure the vessel.

In June 2022, Hordaland County Court decided to grant Havila Kystruten both arrest in *Havila Capella* and forced use for a period of up to two years, giving Havila Kystruten the possibility to insure the vessel and operate her as intended.

Even though companies in Norway strictly abide by the sanctions against Russia, this case shows that sanctions can affect companies negatively in unexpected ways. Despite the general consensus being that companies support the sanctions, the sanctions can create new situations

that are difficult for companies to predict and manage.

Arrest based on foreign judgment

Another case regarding arrest that has been passed by Borgarting Court of Appeal is the case between Viking Engineering Pte. Ltd. ("Viking") and Bjornar Feen ("Feen"). Although it concerns the arrest of securities rather than the arrest of a ship, the case is highly relevant in the shipping space given the court's assessment of the legal weight of a foreign court decision.

The case initially concerned a shareholder and share purchase agreement between Viking and Feen. Viking had obtained a final and binding decision against Feen from the Singapore courts for the payment of SGD13,202,500, but Feen tried to evade enforcement by escaping to Norway and transferring all his assets in Singapore to his son. Viking therefore took enforcement steps and applied for an arrest against Feen's assets in Norway.

In the arrest case before Borgarting Court of Appeal, Feen argued that the court had to consider whether the judgment from Singapore was legally binding in Norway, and whether it was probable that Viking would succeed with the same claim before the Norwegian courts.

The Court of Appeal upheld the judgment from Oslo City Court, and noted that it did not matter that the judgment from Singapore was not legally binding in Norway, as it was considered as evidence that Viking had a claim against Feen, thus substantiating the main claim, which is one of two main requirements for obtaining an arrest under Norwegian law. The court did not agree with Feen's claim that it was necessary to consider whether a new trial of the main claim before the Norwegian courts would be successful, as this was not relevant for the use of the Singaporean judgments as proof that Viking had a claim against Feen.

The judgment shows foreign court judgments may still be used as proof of a valid claim in relation to an arrest in Norway even if they are not directly legally binding in Norway.

Choice of law in a non-contractual claim arising out of tort

An enlightening case regarding choice of law was passed in September 2022 by Gulating Court of Appeal. The case was appealed, but was rejected by the Supreme Court, and the Court of Appeal's judgment is therefore final and binding.

The vessel *M. V. Cerulean* had engine breakdowns in 2016 and 2019. The owner of the vessel, Starleena Shipping Pte. Ltd., had hull and machinery insurance, which covered the costs of repair.

In Norway, the insurance companies took legal action against the producer of the engines, Bergen Engines AS, which was also responsible for handling claims for the engines it produced on behalf of Rolls-Royce Marine AS. The insurance companies also took legal action against Kongsberg Maritime AS, as the seller of the motors. Both claims were recourse claims for the insurance payments for the two breakdowns, which the insurance companies claimed were caused by faults in the design of the motor. The court decided first on the question of choice of law, independent of the material claim.

Bergen Engines AS and Kongsberg Maritime AS claimed that Singapore law governed the claim. The claim was for damages arising out of tort, and the Court of Appeal stated that there are no

Norwegian laws or regulations that regulate the choice of law in respect of claims for damages arising out of tort. However, the court stated that the clear starting point is that it is the place the damage occurred that decides the choice of law for compensation outside contract. For cases where the damaging action (the mistake in design under production of the motor in Bergen, Norway) and the damages (the breakdown of the motor in an Indian port in 2016 and in the Arabian Sea in 2019) occurred in different places, the court decided that EU Regulation Rome II would be applicable.

Rome II, Article 4, No 1 states that it is the country where the direct damages occur that decides the choice of law. As the direct damage occurred in two different places in this case, leading to the law of two different countries being applicable, the court decided to solve the question based on the flag state of the ship as a supplementary criterion. This was founded on the Commission's Explanatory Memorandum and EU case law. The flag state of the vessel was Singapore, and therefore Singapore law governed the claim.

This case illustrates a trend of increasing reliance on EU legal sources in Norwegian case law. It also shows that the flag state of the vessel in particular situations may prove decisive for the choice of law. In this case, the particular situation was that the place where damage occurred was governed by the laws of two different states. However, it is likely that this principle may have broader usage in future cases.

Claim for compensation for total loss by condemnation

In July 2022, Agder Court of Appeal passed a judgment regarding a claim by owners Champion Shipping AS for total loss by condemnation in accordance with Section 11-3 of the Nordic Marine Insurance Plan. The case was appealed, but was rejected by the Supreme Court, and the Court of Appeal's judgment is therefore final and binding.

The claim arose as the tanker *Champion Express* had a severe engine breakdown in the Indian Ocean in 2018. The vessel was insured by Gard Marine & Energy Limited, as well as several underinsurance companies. Two alternative ways of repair were suggested: one would be replacing parts, the other installing a new engine. Installing a new engine would only fulfil the tier II level requirements regarding NOx pollution, and not the tier III level requirements that were applicable to new vessels. The question was thus which alternative method was to be used to calculate the "costs of repairs".

The owner claimed condemnation of the vessel to its insurers. The Nordic Marine Insurance Plan states that a vessel is condemnable if the costs of repair amount to at least 80% of the insurance value. The owner included the costs of installing a new engine in its calculation, which would require a NOx-reducer to be installed. The total cost of a new engine and the installation of a NOx-reducer, which would not fit in the vessel in its current state and would therefore require re-building, amounted to more than 80% of the insurance value.

Gard and the insurance companies disputed the claim and stated that it should be the costs of repair that should be considered, and that repairs would not require a NOx-reducer to be installed. In the case before the Court of Appeal, the insurance companies withdrew their principal argument and agreed that the engine should be replaced.

Therefore, the case before the Court of Appeal only consisted of whether the owner could be exempt by dispensation from a NOx-reducer when changing the motor, in accordance with the MARPOL Convention, and if so whether the costs of installing a NOx-reducer should be included in the repair costs.

The Court of Appeal stated that the owner had a duty to loyally and actively contribute to obtain a dispensation from the MARPOL Regulation, to mitigate loss.

The Court of Appeal found it probable that the owner was entitled to be exempted from the requirements of installing a NOx-reducer in accordance with Annex VI of the MARPOL Convention. There were no other risks that were relevant to conclude that the vessel should be fitted with a NOx-reducer.

The costs of buying and installing a NOx-reducer were therefore not included in the condemnation costs, in accordance with Section 11-3 of the Nordic Marine Insurance Plan. Therefore, the costs were considerably lower than the limit, and there were no grounds for condemnation.

The judgment emphasised the general obligation for a party to loyally contribute to mitigate loss under Norwegian law. In this particular case, that obligation included contributing to economically efficient solutions and to mitigate costs in regards to the condemnation evaluation.

Obligation to mitigate loss

Further on the subject of a party's general obligation of loyalty, a notable judgment has been passed by Hålogaland Court of Appeal. The case was appealed, but was rejected by the Supreme Court, and the Court of Appeal's judgment is therefore final and binding.

Arctic Wolf AS is the owner of the vessel *Arctic Wolf*, which is equipped to fish for live snow crabs. When the vessel was dry-docked for class approval and wielding works, a fire started. The fire was put out but started again shortly thereafter, which led to the vessel burning down. The owner of the vessel received the insurance payment from its insurance company.

The owner of the ship repair yard where the vessel was dry-docked, Frydenbø Havøysund AS, brought a claim before the courts for payment for incurred repair costs, dock rent and dock fees that Frydenbø had paid in advance on behalf of Arctic Wolf. Arctic Wolf rejected the claim and brought a counterclaim against Frydenbø for damages for economic loss caused by the fire.

The Court of Appeal divided the case into two separate parts – the first part concerned the basis for the claim for damages, and the second part concerned the determination of the amount of damages. In the first part, the Court of Appeal passed the sentence that Frydenbø was liable for the economic loss of *Arctic Wolf* caused by the fire. The Court of Appeal found that Frydenbø had been grossly negligent, which contributed to the fire. Arctic Wolf was acquitted from the claim for payment for repairs, but was found liable to pay for dock rent and dock fees.

The second part of the case concerned the assessment of damages. Arctic Wolf claimed that the costs of repairing the vessel amounted to a minimum of NOK40.9 million, and that NOK10 million, as paid out by insurance, should be deducted from that amount. These amounts were not disputed. Furthermore, Arctic Wolf claimed up to NOK30 million in damages for loss of income from fishing.

The Court of Appeal emphasised that, in calculating the economic loss, it is important to take into account the obligation to mitigate loss. Arctic Wolf did not manage to substantiate the claim in damages for loss of income from fishing, and the Court of Appeal emphasised that the costs for fishing should be deducted from the income, and that it was likely that the costs would be higher than the income. Therefore, this part of the claim was rejected.

Arctic Wolf's main claim for economic loss caused by the fire included future income that the company would have had if the vessel could have continued to fish for snow crabs. Frydenbø claimed that covering the vessel's market value would sufficiently cover the loss. Frydenbø further argued that Arctic Wolf should have purchased a replacement vessel, which could be cheaper than repairing the vessel, and in any case would have mitigated Arctic Wolf's losses.

The Court of Appeal agreed that the possible opportunity to purchase a substitute vessel to mitigate loss should have been considered. It found that, during the time in question, there were several vessels that could have served as substitute vessels.

The Court of Appeal therefore found it blameworthy that Arctic Wolf had not purchased a suitable substitute vessel to mitigate loss. It also stated that it was reasonable to require Arctic Wolf to do so, even though at the time it should have purchased a substitute vessel Arctic Wolf had not yet claimed damages from Frydenbø and did not yet know the extent of damages.

Therefore, the awarded damages were reduced to the loss that Arctic Wolf would have incurred had a substitute vessel been purchased.

The Court of Appeal therefore found that the economic loss that should be compensated was the re-purchase costs, in accordance with Arctic Wolf's claim, even though it was substantially lower due to its obligation to mitigate loss. The market value, as claimed by Frydenbø, was therefore not relevant, even though this was a lower amount.

This case highlights the importance of mitigating losses under Norwegian law, even prior to assessing a potential legal claim for damages, as long as damages have been ascertained.

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