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Norway: Law & Practice and Trends & Developments

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NORWAY

Law and Practice

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Kvale Advokatfirma DA (Kvale) is a leading commercial law firm that has provided assistance to Norwegian and international businesses since 1988. It is particularly renowned for assisting some of Norway's largest companies with their most important and complicated cases. Kvale's lawyers have extensive experience in negotiations, dispute cases before the ordinary courts and arbitration. With a broad understanding of the shipping industry, the firm assists in all specialist areas of maritime law, ranging from purely private law disciplines such as charterparties and other types of maritime contract law, maritime casualties and maritime insurance to public law issues such as pollution liability and sanctions law. The team litigates cases before the ordinary courts and in arbitration. Kvale's extensive international network of contacts also enables it to assist clients with litigation assignments outside of Norway.

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KVALE

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 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 (the "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 European Economic Area (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. To be eligible for registration, the owner must satisfy the conditions for a vessel to be regarded as a Norwegian ship (even 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 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 foregoing 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 Ship-Building 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 metres 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 metres 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.

It should also be noted 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 is a Norwegian registered company, it must be signed according to the certificate of company registration; and
- if the mortgagor 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.

From 1 January 2024, the NOR, NIS and BYGG register allows for fully electronic and fully automatic registration of ships and rights in ships. This requires access to the nationally used platform BankID, which is a personal electronic identification used for identification and signing online. This option significantly reduces processing time.

If the electronic option is not used, 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 the International Maritime Organization (IMO) number of the vessel on 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

The Norwegian Parliament adopted legislation in 2018 to implement the 2007 Nairobi International Convention on the Removal of Wrecks. On 11 February 2025, the Nairobi Convention entered into force in Norway.

Norway is also party to the 1973/1978 International Convention for the Prevention of Pollution from Ships (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 Comité Maritime International (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 temporarily secure such a claim. In such instances, 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).

2.5 Seafarers' Safety and Owners' Liability

Norway ratified the Maritime Labour Convention on 10 February 2009, and it came into force on 20 August 2013. The Convention is implemented in Norwegian law through the Ship Labour Act and the Ship Safety Act, along with their associated regulations.

The Ship Labour Act applies to workers who perform their duties on Norwegian vessels, with its primary objective being to ensure safe labour conditions, equal treatment and the promotion of general welfare for the workers and the work environment. The Ship Safety Act applies to all Norwegian ships and extends to foreign ships within Norway's territorial waters, economic zone and continental shelf. The overarching objective of the Act is to safeguard life and health, the environment and valuable material by facilitating good ship safety and safety management.

3. Cargo Claims

3.1 Bills of Lading

Although Norway is a signatory to the Hauge-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). Norway recognises an assignment of title to sue.

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

The key provisions governing 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 of 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 its 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 of 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 the 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 provides an exhaustive list of the following claims that are protected 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 enjoy 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 whose arrest is sought. 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. The charterer does not have the authority to bind the vessel indepen-

dently. 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 their original form, 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

Applying 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 of 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 (protection and indemnity) 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. All arrests and forced sales are carried out by public district courts in co-operation with the local enforcement office.

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 of 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 Chap-

ter 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. Claims for indemnities for personal injury of a passenger is recognised as a maritime lien in accordance with the Norwegian Maritime Code Section 51.

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 foregoing 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 that 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-Owners' Income Tax Relief

7.1 Exemptions or Tax Reliefs on the Income of Ship-Owners' 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 NTT 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 controlled foreign corporations (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 Non-Performance, the IMO 2020, Trade Sanctions and the War in Ukraine

8.1 Force Majeure and Frustration

The wording of the specific force majeure clause is decisive for whether certain events, such as global illness, epidemics or pandemics, constitute force majeure.

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 of the contract or statute applicable;
- consideration of the underlying cause for the hinderance;
- the 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.

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

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.

8.3 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 sanctions imposed 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.

To operate the vessel, Kystruten therefore brought the issue to court, seeking arrest of 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.

8.4 International Conflict(s)

The Norwegian Ship-Owners' Association has reported that the war in Ukraine has had a significant impact on the Norwegian shipping indus-

try, and has resulted in increased costs, delivery and supply complications, security risks and reduced availability of seafarers.

Further, the Russian invasion has largely disrupted the maritime routes from Ukraine via the Black Sea, inevitably causing delays and cancellations. Consequently, numerous freight and transport contracts have been rendered unfulfillable. Given these challenges, most affected businesses have opted for voluntary contract revisions or sought freight and transport agreements with alternative entities. At this time, there has not been any substantive case law in Norway on non-performance of shipping contracts due to the war in Ukraine.

Over the last couple of years, there has been a significant growth of the "dark fleet", which transports sanctioned oil, including from Russia, and has been taking large volumes away from legitimate Norwegian markets. This fleet now accounts for a substantial portion of the oil transported by sea and significant exposure of the tanker fleet. In response to the geopolitical risks and the war in Ukraine, companies such as Frontline have refused to transport Russian oil, citing the high risk involved. Despite a weak tanker market and low contracting activity, several Norwegian shipping companies have seen their share prices rise. However, there has been little contracting of new builds due to insufficient market rates.

9. Additional Maritime or Shipping Issues

9.1 Other Jurisdiction-Specific Shipping and Maritime Issues

The latest and most significant update to the Norwegian Maritime Code was the proposal and acceptance of Norway's Ministry of Trade, Industry and Fisheries of updates to maritime and ship safety laws to enable electronic registration of ships and maritime rights. The revisions aim to streamline the process, reduce priority conflicts between electronic and paper submissions and modernise notification methods for registration issues. The changes also allow certain financial institutions to handle mortgage document deletions electronically. Additionally, the ship safety law will be amended to allow fines for those in shipping management and captains who fail to comply with safety and security measures. The system for electronic registration came online on 1 January 2024.

Previously, the practice required that original documents had to be sent by mail. The new change has shortened the processing time and the registration of rights is now more practical to carry out.

During 2023, changes in the Maritime Code section 232 were also suggested to clarify that the entire limitation fund should be distributed to claimants, irrespective of interest on claims. This follows a Supreme Court decision which affected the fund distribution after the MV Full City disaster. The aim is to ensure polluters pay and victims are fully compensated. The suggested changes are still being processed.

Trends and Developments

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Kvale Advokatfirma DA (Kvale) is a leading commercial law firm that has provided assistance to Norwegian and international businesses since 1988. It is particularly renowned for assisting some of Norway's largest companies with their most important and complicated cases. Kvale's lawyers have extensive experience in negotiations, dispute cases before the ordinary courts and arbitration. With a broad understanding of the shipping industry, the firm assists in all specialist areas of maritime law, ranging from purely private law disciplines such as charterparties and other types of maritime contract law, maritime casualties and maritime insurance to public law issues such as pollution liability and sanctions law. The team litigates cases before the ordinary courts and in arbitration. Kvale's extensive international network of contacts also enables it to assist clients with litigation assignments outside of Norway.

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KVALE

Assessing Shipbroker Negligence: An Analysis of a New Ruling From the Norwegian Frostating Court of Appeal

There is a scarcity of case law that specifically addresses the liability of shipbrokers for negligence in their brokerage activities. This is in in contrast to other brokerage sectors, such as insurance and real estate, where the higher courts in Norway have provided several guiding rulings. However, these precedents are not entirely applicable to the shipping industry due to the distinct and fundamental characteristics thereof, and to the unique nature of each brokerage situation.

Norwegian law does not codify the liability within the broker-client contractual relationship. Instead, any assessment of liability in this context is subject to a general test of tort, which is comprised of three standard requirements: the grounds for liability (which could be based on law, contract or non-statutory negligence), the presence of economic loss and the establishment of factual and legal causation.

In Norway, there is an expectation that professionals such as lawyers, accountants and brokers will adhere to a high standard of care. These individuals are held responsible for financial losses that arise from their negligence or failure to provide competent advice. This responsibility is based on a stringent, unwritten standard of care that also, in some situations, surpasses any specific contractual obligations. These professionals have an inherent duty to act with care, which extends beyond the agreed terms of service. A breach of this duty can result in liability for any financial harm caused.

It is common practice for these professionals to maintain insurance to cover such potential losses. In general, this type of liability has come to be considered as a separate branch under the theme of negligence, with its own name: "professional liability" (*profesjonsansvaret*). Several well-known Supreme Court of Norway judgements form the basis for the assessment of this professional liability.

When assessing a professional's prudency to determine whether negligence has taken place, the Supreme Court of Norway has established that one must look to any relevant standards or code of conduct established for the relevant profession. The evaluation of a broker's negligence should therefore take into account the established standards of practice set by The Norwegian Shipbrokers' Association. These standards were notably referenced in a recent ruling by the Frostating Court of Appeal (case number LF-2023-72628-1), which provides valuable insight into the interpretation of a shipbroker's duty of care.

While rulings from the Court of Appeal do not carry the same legal binding force as those from the Norwegian Supreme Court, they are nonetheless significant. The legal system in Norway places a strong emphasis on the predictability and consistency of legal interpretations, and thus the Court of Appeal's decision is likely to exert influence and serve as a reference point in future cases of a similar nature.

The dispute at the heart of the matter

The case in question involved Stormfuglen Holding AS, a company owned by two sisters who were approaching retirement and had no heirs to continue their business. They were intent on selling their fishing vessel, MS Stormfuglen, and sought to do so privately to avoid the spotlight of public attention. To facilitate this private sale, they engaged the services of Atlantic Marine AS (AM), a brokerage firm.

The broker from AM accepted the task but did not formalise the agreement in writing. Initially, the plan was to sell the vessel along with its fishing quota, but the negotiations eventually pivoted to the sale of Stormfuglen AS, the company that owned the vessel, to a consortium of shipowners led by Kings-Bay AS. The sale was finalised for NOK270,433,390, a figure that reflected a discount for the buyers.

A dispute emerged when AM issued an invoice to Stormfuglen for a broker commission of NOK3.2 million. Stormfuglen made only a partial payment, which led AM to issue a bankruptcy warning. In response, Stormfuglen initiated legal action against AM and the broker, alleging poor execution of brokerage services. The district court found in favour of Stormfuglen, ordering AM and the broker to pay damages and dismissing AM's claim for the unpaid portion of the commission. Both parties filed appeals, and the case was escalated to the Frostating Court of Appeal.

The Frostating Court of Appeal's decision

The court underscored that the broker firm and broker, as a professional party, was bound by a strict duty of care. This standard is rooted in established legal practice, which dictates that professionals are expected to uphold the norms and standards of their profession, to which both contractual parties and third parties can reasonably expect adherence.

The broker (and the employer he was associated with) was found to have acted contrary to the best interests of the seller, Stormfuglen. Without the seller's consent, the broker granted exclusive rights to a buyer group and established a price without conducting a proper market consultation. This was viewed as a significant deviation from the professional conduct expected, particularly in light of the standards set by The Norwegian Shipbrokers' Association.

The court took into account the ethical rules and service guidelines provided by the Norwegian Shipbrokers' Association. According to these standards, a shipbroker is entrusted with several critical duties. Primarily, a shipbroker is obligated to secure the best possible financial outcome for their client, which entails striving to maximise the client's interests in any transaction. Furthermore, it is incumbent upon the shipbroker to negotiate the most favourable terms and conditions for their client, ensuring that the client secures the best possible deal.

Moreover, a shipbroker must avoid any situations that could lead to a conflict of interest with their client. By doing so, they preserve their professional integrity and guarantee that their actions are solely in the client's best interest.

Lastly, a shipbroker is expected to maintain open lines of communication, ensuring that all information is relayed to the client. They must also accurately convey the client's wishes and instructions to the other parties involved. These rules are designed to maintain trust and professionalism within the shipbroking profession.

The court highlighted the broker's responsibility to communicate effectively and provide all relevant information to the principal (seller). The broker was found to have failed to share crucial market information with the client – information that could have significantly influenced the decision-making process regarding the sale.

The court criticised the broker for drafting a contract that obligated the seller to an asset sale if an agreement on share sale pricing was not reached, without obtaining the seller's clear

acceptance in a written and agreed form. The court deemed this to have limited the seller's negotiating power and potentially reduced the sale price.

The court determined that the client, Stormfuglen, had suffered an economic loss as a result of the broker's actions. The price per 100 base tons of fishing quota, which was sold along with the company owning the vessel, was substantially lower than the prevailing market price. Additionally, the buyer was granted an excessive discount on shares, which was not aligned with the seller's best interests.

The court concluded that there was a direct causal link between the broker's negligent actions and the financial loss incurred by Stormfuglen. It was deemed likely that a higher sale price could have been achieved had the broker adhered to professional standards.

The majority of the court found the broker's negligence to be gross due to his prioritisation of the buyer group's interests over those of the seller, which represented a significant departure from the expected standard of care. The court concluded that the broker seemed to be more interested in pleasing the buyers rather than acting in the best interest of the client.

The court estimated the economic loss by comparing the actual sale price with the potential market price that could have been attained with proper brokerage services. The court also took into account the possibility of a more favourable outcome had the seller not been constrained to an asset sale.

The court noted that under the law, both the employer (AM) and the employee (the broker) could be held liable for the damages caused.

In conclusion, the Frostating Court of Appeal found that the broker, identified as A, acted negligently and in a manner that grossly deviated from the professional standard expected of him, resulting in economic loss for Stormfuglen. The court ruled that the conditions for compensation were met, and Stormfuglen was entitled to damages for the financial loss incurred.

Key takeaways and the broader implications

The court's decision places significant emphasis on the ethical rules and service guidelines provided by the Norwegian Shipbrokers' Association. The overarching theme is the broker's obligation to prioritise the customer's best interests. One of the main arguments supporting this, from the Frostating Court of Appeal's perspective, was that the broker granted exclusivity to a group of buyers at a set price that had not been authorised by the client. Although the client was concerned with maintaining confidentiality, she clearly stated that she had never granted any exclusivity. Her mandate was for the broker to reach out to as many potential buyers as possible and to maintain an overview of the interested parties.

Additionally, the court viewed the broker's failure to adhere to regular standards of formality and verifiability unfavourably. The broker did not formalise an assignment confirmation between the client and broker. Furthermore, the broker did not obtain a formal approval of engagement with the buyer, as an email that could be deemed as a formal offer was sent to potential buyers without presenting it to the client (seller) before sending it.

Moreover, the court highlighted the broker's lack of transparency and the insufficient flow of information to the client. The client was not adequately informed about the sales process,

which is a critical aspect of the broker-client relationship. The court also concluded that the broker had not made sufficient effort to ensure that the client understood the value of the asset she was selling. This was underscored by the testimony of two expert witnesses in the matter, who described a more prudent approach to ensuring that the client is duly informed of the value of the sales objects.

The ruling also has significant implications for brokerage firms, as it establishes that both the employer and the employee can be held liable for damages caused by negligence. Brokerage firms must ensure that their employees are well-versed in the ethical rules and service guidelines provided by the Norwegian Shipbrokers' Association and that they adhere to these standards diligently.

To summarise, a broker must pay special attention to the ethical rules and service guidelines provided by the Norwegian Shipbrokers' Association. This means that the broker must ensure that:

- the brokering is conducted in the client's best interest;
- the brokering process is transparent and verifiable, with written confirmation;
- the client is kept duly updated throughout the process; and
- the client is made fully aware of the item's value or is at least urged to seek this information elsewhere.

In light of other case law regarding broker liability, the ruling is consistent with the development of strict professional responsibility. This is especially notable considering that some judges in the court found that the broker had acted with gross negligence. The ruling also aligns with the high standards to which brokers in other professional fields are held, in terms of their professionalism and their duty of care towards their clients.

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