

Norwegian response to CMI's questionnaire on Ship Financing Security Practices

NB! Responses are based on laws in force as per 1 November 2016

1 MARITIME AND OTHER CONVENTIONS

1.1 Has your jurisdiction ratified the 1952 and/or the 1999 Arrest Convention or neither?

Norway has ratified the 1952 Arrest Convention. Norway has also signed the 1999 Arrest Convention, but the 1999 Arrest Convention has not been ratified by Norway.

1.2 If your jurisdiction has not ratified either of the aforementioned conventions, what categories of claim can be brought by way of arrest¹ of a vessel?

Norway has ratified the 1952 Arrest Convention. The terms of the 1952 Arrest Convention have been incorporated to the Norwegian Maritime Code of 1994 (the "NMC"), see in particular Chapter 4 of the NMC. Please, however, note that additional requirements apply, most importantly a general requirement that the claimant can show a probable cause for the arrest, i.e., it is not sufficient merely to have a claim falling into the category "maritime claim" in order for the court to accept an arrest in Norway.

1.3 In particular, can arrest be made:

(a) by a mortgagee of a vessel registered under the laws of your jurisdiction?

Yes, see section 92(2)(p) of the NMC.

(b) by a mortgagee of a vessel registered under the laws of a different jurisdiction?

Yes, as long as the following requirements set out in section 74 of the NMC are fulfilled:

- (i) The mortgage is established and registered in accordance with the laws of the vessel;*
- (ii) The foreign register is a publicly accessible register keeping the relevant documentation, and such documentation/transcripts can be provided by the keeper of the registry; and*
- (iii) The foreign register and/or a transcript therefrom identifies the mortgagee or states that the mortgage is issued "for order", includes the amount secured by the mortgage, the date of the mortgage and other information relevant to establish priority.*

1.4 Has your jurisdiction ratified the 1926 and/or the 1993 Maritime Liens and Mortgages Convention or neither?

¹ The term 'arrest' is used throughout for convenience but it is acknowledged that this may not be a concept known to the laws of all jurisdictions. If in your jurisdiction the equivalent concept is attachment or something else, please briefly explain.

Norway has ratified, but later withdrawn from the 1926 Maritime Lien and Mortgages Convention. The rules in the NMC are based on the International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages, Brussels 1967.

1.5 If your jurisdiction has not ratified either Maritime Liens and Mortgages Convention does your jurisdiction recognize foreign maritime liens? If so what types of claim are recognised as maritime liens?

Claims recognised as maritime liens are set out in section 51 of the NMC and are limited to claims for:

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

1.6 Does the law of your jurisdiction incorporate the 1961 Hague Convention Abolishing the Requirement for Legalisation of Foreign Public Documents?

Yes, Norway is party to the 1961 convention so that documents can be “legalised” by way of apostille where applicable.

2 NATURE OF THE SHIPS' REGISTER

2.1 Is the ships' register² in your jurisdiction a register of legal title?

Yes.

2.2 Does the ships' register in your jurisdiction (whether or not a register of legal title) provide for registration of the interest of a demise charterer in circumstances where legal title is registered in another jurisdiction (the 'underlying register').

No, bareboat registration of a vessel is not possible in Norway (neither “in” nor “out”.) However, it is currently being discussed to open up for bareboat registration of vessels in the Norwegian International Ship registry (“NIS”).

2.3 If your jurisdiction does provide for registration of the interest of a demise charterer, does it provide for registration or notation of a mortgagee registered on the underlying register?

² The term 'ships register' means a specialist register only for ships.

N/A as bareboat registration is currently not possible.

2.4 Does your jurisdiction allow a vessel registered in the ships register in the name of the holder of legal title also to be registered in another jurisdiction in the name of a demise charterer? If so is such registrations permitted when the vessel is subject to a mortgage registered in the ships' register in your jurisdiction and is the consent of the mortgagee required?

As stated in our response to question 2.2, no form of bareboat registration is currently possible in Norway.

2.5 Please describe (briefly) the criteria for registration of a vessel on the ships' register in your jurisdiction, with particular reference to eligibility or not for registration of different types of assets employed in offshore oil and gas exploration, production, processing and storage.

Norway has two ship registries, the Norwegian Ordinary ship Registry ("NOR") and the Norwegian International Ship registry ("NIS"). The differences between the two registries are mainly related to ownership requirements and trading restrictions. As part of NOR, the ship registries also offer the possibility to register vessels under construction.

In addition to vessels, floating mobile offshore units (including drilling units, accommodation units, FSOs, FPSOs, FDPSOs and well intervention units) may be registered in both NOR and NIS.

3 FORMALITIES FOR MORTGAGE REGISTRATION

3.1 Does a mortgage in respect of a vessel registered in your jurisdiction need to:

(a) attach documents, such as a loan agreement, evidencing the obligations secured?

No. In practice the registry's standard mortgage form is (always) used. This is a form of mortgage which does not necessarily reflect the underlying facts (Nw. gjort panteobligasjon/akkomodasjonsobligasjon).

(b) set out in detail the circumstances giving rise to a right of enforcement?

No. In practice the registry's standard mortgage form is (always) used. As stated above, this is a form of mortgage which does not necessarily reflect the underlying facts. The standard form includes a list of enforcement grounds, but in case of enforcement the terms of the loan agreement will prevail.

3.2 Does a mortgage in respect of a vessel registered in your jurisdiction need to be notarised and/or legalised?

If the owner of the vessel is a foreign entity, the signatures must be notarised and confirmed by legalisation/apostille. If the owner is Norwegian, it is sufficient that the signature is witnessed and made in accordance with the signature provisions registered in the Norwegian Register of Business Enterprises (either directly or by Power of Attorney).

3.3 What are the registry fees in order to have a mortgage registered against a vessel registered in your jurisdiction?

The registration fee is currently (November 2016) NOK 2 258 (approximately USD/EUR 200). A transcript of the ownership and encumbrances costs NOK 579 (approx. USD/EUR 50).

3.4 Is registration indefinite or is there any requirement for re-registration after a certain period?

The registration is in principle indefinite, i.e., there is no system for provisional registration of vessels in Norway.

3.5 In your jurisdiction is a mortgage of a vessel required to be registered only in the ships register or, in addition, in another register? If so, please give brief details.

Mortgages are only registered in the ships register. No other registration is possible or required (at least as long as the owner of the vessel is a Norwegian entity, other requirements may apply to foreign owners in accordance with foreign law).

4 INFORMATION CONCERNING SECURITY INTERESTS IN SHIPS

4.1 Please advise if information concerning security interests in ships registered in your jurisdiction is publicly available, and if so, how it may be obtained, including the following issues, as applicable.

Yes, the ship registries are open to the public and searchable on www.nis-nor.no. Information about registered ownership and encumbrances can be obtained free of charge by such search. If an official transcript is required, this would cost NOK 579.

(a) Does a person seeking such information need the authorization of the vessel owner to get such information?

No.

(b) Does your jurisdiction certify the accuracy of the information?

The ship registry certifies that the information provided in an official transcript reflects the registered information, but the registry can of course not guarantee that the registered information is in accordance with the underlying facts.

(c) How much time is generally required to obtain such information?

A transcript can be obtained on demand with same day delivery.

4.2 May a vessel subject to a security interest be sold by the owner prior to the release of the security interest, and if so, under what conditions or circumstances.

Unless the registered mortgagee has consented to the sale or is repaid as part of a forced sale, the sale of a mortgaged vessel cannot be registered as long as the mortgage attach to the vessel.

5 ARREST OF A CHARTERED VESSEL

5.1 Does your jurisdiction allow a mortgagee to arrest vessels on bareboat charter or time charter?

Yes. Please, however, note that the debtor of the claim must be the owner of the vessel arrested. This means that a vessel on a bareboat charter can as a general rule not be arrested in order to secure claims against the bareboat charter. The only exception is claims giving right to a maritime lien which are deemed to be claims against the owner, see our answer to question 1.5 for a list of such claims.

5.2 Under the laws of your jurisdiction, could the mortgagee incur any liability in tort, delict (or similar) to charterers or cargo interests if the mortgagee arrests the vessel when it is subject to charter and/or carrying cargo (on the grounds of interfering with the contractual relationship between owner and charterer or bill of lading holder)?

Pursuant to section 32-11 of the Norwegian Civil Procedure Act of 2005 (Nw. tvisteloven), the mortgagee may become liable for damages in case of a wrongful arrest. The liability for damages is a starting point only applicable to loss by the direct defendant (here: the owner), but the claims against the owner from its contractual parties can be part of the owner's loss. In accordance with Norwegian background law, it is also possible that the mortgagee may become liable towards other parties but the mortgagee must then typically have been (at least) negligent in its behaviour.

5.3 What are the procedures or requirements, if any, applied to the cargo on board a vessel that has become subject to judicial sale in your jurisdiction? Must the cargo be discharged before sale, and if so, who bears the costs and risks of such discharge?

Yes, the vessel must be emptied before delivery of the vessel can be completed. If necessary a mortgagee can request the court's approval to arrange for the discharge. The cost of the discharge must initially be borne by the person requesting the discharge (typically the mortgagee), but the cost will then usually be added to the mortgagee's mortgage claim in accordance with section 1-5(a) of the Norwegian Pledge Act of 1980 (Nw. panteloven). See also sections 11-15 cf. 11-14 of the Norwegian Enforcement Act of 1992 (Nw. tvangsfullbyrdelsesloven) for further terms on procedure and cost coverage relating to preparation for sale of the vessel.

6 PRIORITY ISSUES BETWEEN MORTGAGES REGISTERED IN THE SHIPS' REGISTER IN YOUR JURISDICTION

6.1 Does your jurisdiction have a system of "priority notice" to enable priority to be reserved for a period before actual registration of the mortgage?

No, but it is possible to pre-place the mortgage with the registry in order to allow simultaneous registration of the mortgage and the vessel. The mortgage can be dated

prior to the registration date, but priority will in any event only be given from the time of actual registration.

6.2 Once a mortgage is registered in your jurisdiction is it possible for a subsequent mortgage to be registered without the consent of the first registered mortgagee?

It depends on the terms of the first mortgage, but pursuant to the standard mortgage form the consent of the first mortgagee is required for the registration of any subsequent mortgages.

6.3 When there are two or more registered mortgages what determines their priority?

The time of registration, see NMC section 23.

6.4 Is there any doctrine of notice such that the priority of a registered mortgage is deferred to that of an earlier but unregistered mortgage of which the registered mortgagee has notice?

Yes, pursuant to section 24 of the NMC an earlier right shall rank prior to a later registered right if the latter is voluntarily acquired, and the acquiring party at the time his right was registered "knew or ought to have known about the earlier right".

6.5 Can a second registered mortgagee exercise enforcement remedies without the consent of the first registered mortgagee?

Yes, but a forced sale of the vessel can only be completed upon request by the second mortgagee without the first mortgagee's consent if the claim of the first mortgagee is fully covered by the sales price, see section 11-20 cf. 11-14 of the Norwegian Enforcement Act of 1992 (Nw. tvangfullbyrdelsesloven.)

6.6 Does your jurisdiction have a system for registration of security or liens other than mortgages, whether consensual or non-consensual? If so, please describe.

A consensual registration must be done by way of a mortgage. In addition purchase options may be registered. Other rights, such as liens or charter parties are not eligible for registration. A non-consensual registration is only possible if the underlying claim for such security or lien has been confirmed to exist by a court. If so, a legal mortgage (Nw. utlegg) can be registered in accordance with Chapter 7 of the Norwegian Enforcement Act of 1992 (Nw. tvangfullbyrdelsesloven).

7 GENERAL ENFORCEMENT ISSUES

7.1 Does your jurisdiction make a distinction between the enforcement of mortgages registered under the flag of your jurisdiction and the enforcement of any other foreign mortgages?

In principle no, but if the vessel is a foreign-flagged vessel the Norwegian court and execution officer must involve the registrar of the flag state in the process. This may cause extra procedural steps and delays.

7.2 Is it necessary for the mortgagee to obtain a judgment in your jurisdiction on its claim under the loan agreement or other applicable debt instrument before it can enforce that mortgage?

A registered mortgage is in principle sufficient evidence to have the mortgage enforced, but once the court has preliminarily decided to continue with a sale of the vessel the owner of the vessel will be given a chance to protest before the court makes its final decision.

7.3 If so, how long is it likely to take to obtain a judgment if the claim is contested? Will the local court expedite the proceedings having regard to the ongoing costs of maintaining the vessel?

The judicial sales process consists of two stages. At the first stage, the claimant files a petition for judicial sale of the vessel. The court will then give the owner an opportunity to present its case where after the court will grant or reject the petition for judicial sale. The second stage consists of the sales process, which will either be by auction or by ordinary (judicial) sale through a court-appointed administrator (normally a shipbroker). The claimant decides whether the final offer is to be affirmed by the court, upon which the court will affirm or refuse the bid. Finally, the court will distribute the sales proceeds. The time needed to get the court's approval for a sale of the vessel will depend on the court's workload, appeal of court decisions and the vessel's market. A fair general assessment suggests that the first stage should be completed between one and three months and the second stage between two and six months after the petition for sale was made.

7.4 Will the court in your jurisdiction accept jurisdiction for the mortgage claim under Article 7 1952 Arrest Convention, or equivalent domestic legislation in your jurisdiction?

As long as the vessel is in Norway, the court will accept jurisdiction for the mortgage claim. However, a foreign flagged vessel in innocent passage cannot be arrested in Norway unless the claim giving basis for the arrest arose while the vessel was in Norwegian waters (which will never be the case for a mortgage).

8 JUDICIAL DECISIONS AND APPEALS

8.1 Do all courts in your jurisdiction have authority to sell vessels free of maritime liens and prior claims, or is such authority limited to special courts, such as admiralty courts?

We do not have admiralty courts in Norway. Forced sales are thus dealt with by the general courts. The request for a sale must be made to the court in the district where the vessel is or is expected to arrive, see section 95 of the NMC cf. section 11-3(2) of the Norwegian Enforcement Act of 1992 (Nw. tvangfullbyrdelsesloven).

8.2 What formalities, including evidence of claim, or evidence of notice, are required to affect the sale of a vessel free of liens and prior claims?

In order to be entitled to apply for a judicial sale of a vessel one must be the beneficiary of a registered mortgage or other registered lien in the vessel and one's claim must be "qualified" for enforcement under the Enforcement Act of 1992 (Nw. tvangfullbyrdelsesloven) and due for payment. The claims that are qualified for enforcement under the Enforcement Act are typically, in addition to mortgages, final and

binding judgements and arbitration awards. If the judgment or award orders that the vessel be sold, a judicial sale may be petitioned for directly, without the need first to obtain an enforcement lien. See also answer to question 7.3 above.

8.3 If the owner presents an appeal against judgment, will the court make an order for sale of the vessel before that appeal has been heard and decided?

See response to question 9.3 regarding the possibility of a sale of the vessel “pendente lite”.

9 SALE PROCEDURE

9.1 Can a mortgagee enforce his mortgage in your jurisdiction by applying for a judicial sale by auction?

Yes, as stated in our response to question 7.3 above the sale can be done either by auction or by ordinary (judicial) sale through a court-appointed administrator (normally a shipbroker).

9.2 What are the criteria for an application for a judicial sale by auction and what is the procedure and timetable for such an application and sale?

See our response to question 7.3 above.

9.3 Will the court in your jurisdiction order a sale of the vessel pending judgment (pendent lite), recognising that the vessel is a wasting asset?

When a ship has been arrested, the owner does no longer have legal rights to dispose of the ship. On the other hand, an arrest does not give the claimant the legal rights to dispose of the ship or seek enforcement in and to the ship. Consequently, enforcement is subject to a final award on the merits of the substantive claim and thereafter proper enforcement proceedings. However, the courts can agree to a sale “pendente lite” if the arrest holder requests it, and it is necessary to avoid substantial decrease in the value of the ship. The mortgagee requesting the sale may, however, be asked to put up security, see section 6-5 of the Enforcement Act of 1992 (Nw. tvangsfullbyrdelsesloven).

9.4 Will the court in your jurisdiction fix a minimum bid price (reserve price) for the vessel and will the amount of that minimum bid price be disclosed to interested parties? What happens if the maximum amount bid for the vessel is lower than the reserve price?

No system with reserve price is in place in Norway. The offered price must, however, be accepted by the claimant and cover liens with higher priorities. If the offered price does not cover liens with higher priorities, a sale cannot be completed without their acceptance, see section 11-10 of the Enforcement Act of 1992 (Nw. tvangsfullbyrdelsesloven).

9.5 Can the owner or other creditors influence the amount of the reserve price?

N/A as no system with reserve price exist.

9.6 What arrangements will be made for public advertisement of the sale?

Usually the sale will be done through a shipbroker using his or her standard channels for advertising the sale.

9.7 To what extent is it possible for the owner or other creditors to influence the timetable or procedure for sale?

Limited possibilities, but if they agree on the procedure and claim it will of course be a more straight forward process than if any of make objections/appeals.

9.8 Can a mortgagee enforce its mortgage in your jurisdiction by applying for a court approved private sale? If so, what are the criteria for an application requesting the court to approve a private sale and what is the procedure and timetable for such an application and sale?

Sale through a broker is as private as it gets if the court's help is sought under Norwegian law. Non-consensual enforcement without following the rules of the Norwegian Enforcement Act of 1992 (Nw. tvangsfullbyrdelsesloven) is not possible.

9.9 Can a mortgagee bid its debt (animo compensandi) so as to allow a set off of the debt against the purchase price (and provide security for the claims of potential prior lien holders)? Or does a mortgagee (or its preferred bidder or buyer) have to pay the full price in cash?

Yes, a mortgagee can bid its debt so as to allow for set off of the debt against the purchase price, but claims with higher priority must be settled in cash and security may be requested for potential claims.

10 SALE PROCEEDS

10.1 Will the sale proceeds be held in an interest bearing account?

Yes, see section 11-27 of the Norwegian Enforcement Act of 1992 (Nw. tvangsfullbyrdelsesloven).

(a) Will they be held in the currency of the sale or will they be converted into local currency?

As a starting point the sale will be made in Norwegian Kroner (NOK), but it is possible to agree on settlement in a different currency if this is deemed appropriate in the circumstances. The court fees will have to be covered in NOK.

(b) Will the proceeds of sale ultimately be subject to any exchange control or similar restrictions (and/or court fees) when they are paid out? If so, what is the procedure and likely timetable for obtaining permission to remove the funds?

No exchange control will apply. Court fees and other costs incurred as part of the sales process will be deducted. Such costs will be published as part of the proposed settlement. The funds will be released once the court's decision on distribution and sale is binding, see section 11-38 of the Norwegian Enforcement Act of 1992 (Nw. tvangsfullbyrdelsesloven).

11 PRIORITIES GENERALLY

11.1 Are priorities determined under local law (*lex fori*), or the law of the jurisdiction in which the claim arose (*lex causae*), or the law of the flag of the vessel?

Priorities are determined by local law (lex fori). If the law of the flag of the vessel has a wider range of maritime claims than Norway, these will be accepted as claims, but without the benefit of a special priority.

11.2 If local law, where does the mortgagee rank amongst other maritime claims in the order of priority and which are those claims which rank prior to the mortgagee. Do the claims which rank ahead of a mortgage in your jurisdiction vary depending on whether the mortgage is:

(a) a mortgage of a vessel registered under the laws of your jurisdiction?

(b) a mortgage of a vessel registered under the laws of a different jurisdiction?

Only maritime claims also giving rise to maritime liens rank ahead of registered mortgages. See our answer to question 1.5 for a list of maritime liens recognised under Norwegian law. The maritime liens are given priority in the order listed in our response to 1.5.

There is no difference between a mortgage of a vessel registered under the laws of Norway and a vessel registered under a foreign flag.

11.3 Are there any special rules on priority for local creditors?

No, in principle all creditors are treated equally independent of their nationality. It is, however, assumed that only claims of Norwegian public authorities enjoy the special priority set out in section 9-4 of the Norwegian Creditor's Recovery Act of 1984 (Nw. dekningsloven).

11.4 Is it necessary for claimants to introduce their claims prior to the date of sale or within some specified period thereafter?

Yes, pursuant to section 11-16 of the Norwegian Enforcement Act of 1992 (Nw. tvangsfullbyrdelsesloven) claimants are to receive a notice of the upcoming sale with a request to present their claim within a set date. The owner of the vessel/debtor is obliged to give the court information about known claimants. If such information is not provided, the owner of the vessel/debtor will be responsible for such claimants' loss. Once the sale is completed all monetary claims against the vessel will be deleted unless otherwise agreed with the buyer.

11.5 What is the timetable leading up to the distribution of the proceeds of sale?

Please see our response to question 7.3.

11.6 Is the distribution order decided by the court?

Yes, see section 11-36 of the Norwegian Enforcement Act of 1992 (Nw. tvangfullbyrdelsesloven)

11.7 Is that order subject to a right of appeal?

Yes, see section 11-37 of the Norwegian Enforcement Act of 1992 (Nw. tvangfullbyrdelsesloven).

12 MORTGAGEE'S SELF-HELP REMEDIES

12.1 Under the laws of your jurisdiction does a vessel mortgage governed by and registered in accordance with such laws give the right to take the following enforcement steps without a court order in your jurisdiction?

- (a) to take possession of the vessel;
- (b) to appoint a receiver, manager or other party to operate the vessel;
- (c) to sell the vessel as mortgagee;
- (d) to sell the vessel as attorney in fact of the owner.

The above enforcement steps can only be undertaken with consent from the owner. Please, however, note that the concept of receivership is unknown to Norwegian law.

12.2 If, under the law of the ships' register (where that is a different law from the law of your jurisdiction) a mortgagee is given the right to take the enforcement steps referred to at (a) — (d) of 12.1 without a court order would its right to do so be recognised or prohibited in each case in respect of a vessel physically located in your jurisdiction?

An agreement between the mortgagee and the owner will as a starting point be recognised. The possibility of getting the court's assistance will still most likely be limited and would depend on, inter alia, the court's jurisdiction and whether the mandatory provisions of the Norwegian Enforcement Act of 1992 (Nw. tvangfullbyrdelsesloven) are deemed to apply. As stated above, Norwegian law only allows for consensual private enforcement.

12.3 Where answers to the questions in 12.2 are negative would the answers be different in each case if a court order were obtained in the jurisdiction of the ships' register?

The possibility of enforcing a foreign court order will depend on whether or not Norway has entered into a bilateral or unilateral agreement on enforcement with the relevant foreign state.

13 INSOLVENCY PROCESSES³

13.1 Has your jurisdiction adopted the UNCITRAL Model Law on Cross-Border Insolvency?

Norway has not adopted legislation based on the UNCITRAL Model Law on Cross-Border Insolvency.

13.2 Do the laws of your jurisdiction provide for recognition of foreign insolvency proceedings? (if the UNCITRAL Model Law has been adopted, in addition to its provisions)

Norway is party to the Nordic Bankruptcy Convention of 7 November 1933, pursuant to which insolvency issues regarding individuals or companies within the Nordic countries are governed. The other signatory parties include Finland, Iceland, Sweden and Denmark, but Iceland has not ratified the revised version of the convention of 1982. The Nordic Bankruptcy Convention gives extraterritorial effect to the decision of a court in another member state to commence bankruptcy proceedings and requires the same member state's bankruptcy legislation to apply in subsequent proceedings.

The Nordic Bankruptcy Convention is the only specific rules on cross-border insolvency adopted by Norway. In addition, Directive 2001/24/EC on reorganization and winding up of credit institutions (Credit Institution Directive) and Directive 2002/47/EC as amended by Directive 2009/44/EC on financial collateral arrangements (Collateral Directive) have been implemented in Norwegian law.

There is, however, an ongoing legislative process in place whereby regulation of the effect and acknowledgment of certain foreign insolvency proceedings will be included in the Norwegian Bankruptcy Code of 1984 (Nw. konkursloven). The new legislation is inspired by the EU Regulation on Insolvency Proceedings (EU) 2015/848, but several special "Norwegian solutions" have been chosen which may make the reciprocity and recognition more difficult than it could have been by either copying (EU) 2015/848 or basing the legislation on the UNCITRAL Model Law.

13.3 Do the laws of your jurisdiction provide that the enforcement of rights of secured creditors (such as the mortgagee of a vessel) can be stayed or suspended during applicable insolvency proceedings?

Yes, pursuant to section 117 cf. section 17 of the Norwegian Bankruptcy Code of 1984 (Nw. konkursloven), enforcement of rights of secured creditors (such as the mortgagee of a vessel) are stayed for the first 6 months of an insolvency proceeding.

13.4 Is the answer to 13.3 different if the insolvency proceedings did not originate in your jurisdiction but are foreign insolvency proceedings (being recognised in your jurisdiction by whatever means)?

³ If your jurisdiction is subject to the EU Insolvency Regulation and will be subject to the 'Recast' EU Insolvency Regulation, please so indicate—but also respond to the questions set-aside by applicable insolvency claw-back rules for transactions prior to insolvency?

It depends on the effect of the recognition. Currently only insolvency proceedings in the other Nordic countries are recognised in Norway, so insolvency proceedings originating in other jurisdictions will not benefit from the Norwegian rules on automatic stay.

13.5 If the mortgage over a vessel located in your jurisdiction is being enforced through a maritime court sale in circumstances where the owner of the vessel is subject to insolvency proceedings in your jurisdiction, do the maritime court sale proceedings take precedence over the insolvency proceedings, or vice versa?

The insolvency proceeding takes priority so that any ongoing forced sale proceeding of the vessel will be stayed.

13.6 Is the answer to 13.5 different if the insolvency proceedings did not originate in your jurisdiction but are foreign insolvency proceedings (being recognised in your jurisdiction by whatever means)?

Again, it depends on the legal effect of the foreign insolvency proceedings in Norway and how the planned changes to the law will play out. Currently sales proceedings will in most cases not be stayed merely as a result of the foreign insolvency proceeding. A protest from the foreign insolvency practitioner may, however, be respected.

13.7 If a vessel is sold in your jurisdiction through a maritime court sale is the mortgagee's claim to the sale proceeds subject to the risk of the mortgage being challenged or set-aside by applicable insolvency claw-back rules for transactions prior to insolvency?

A sale through the court will as the clear main rule not be subject to claw-back.

13.8 Is the answer to 13.7 different if the insolvency proceedings did not originate in your jurisdiction but are foreign insolvency proceedings (being recognised in your jurisdiction by whatever means)?

No, see our response to question 13.2 regarding recognition of foreign insolvency proceedings.

13.9 Do the insolvency courts of your jurisdiction have, or claim, extraterritorial jurisdiction, such as over vessels located in a different jurisdiction? If so, how?

Yes, pursuant to section 2-2 of the Norwegian Creditor's Recovery Act of 1984 (Nw. dekningsloven) all assets of the debtor wherever they are located are (claimed to be) confiscated by the bankruptcy estate. In practice it may, however, be difficult for the bankruptcy estate to enforce this extraterritorial jurisdiction.

14 LEASING⁴

14.1 In your jurisdiction is leasing of vessels common as a method of financing?

Yes, this is quite often used even though we do not have a general legal framework for leasing.

14.2 Do the laws of your jurisdiction give effect to a lease in accordance with the form of the document (formal approach) or is there a risk they will re-characterise certain leases as security interests (functional approach)?

Norwegian law would generally take a functional approach. This is certainly the case when it comes to looking at a structure/agreement for tax and accounting purposes, and it is generally also the case in respect of ownership and security interest.

A (financial) lease is seen to be very similar to a vendor's lien, and in order to ensure the lessor's rights to the leased property the starting point is that the formalities for establishing a vendor's lien must be followed for (financially) leased personal property. However, vessels and other registerable personal property is not subject to the general regulation in section 3-22 cf. section 3-15 of the Norwegian Pledge Act of 1980 (Nw. panteloven). There is therefore a lack of specific regulation on how a lessor's rights to a financially leased vessel can be secured under Norwegian law.

14.3 If the laws of your jurisdiction adopt a functional approach (14.2) please describe briefly how this is applied; also, please say whether your courts would adopt a functional approach even where the governing law of the lease follows the formal approach.

Norwegian law makes a distinction between financial leasing and operating leasing, so that if the lease – based on its terms – classify as a financial lease, the lessee will be deemed to be the owner for tax and accounting purposes. If the lease – again, based on the terms of the lease – is deemed to be an operating lease, the lessor is deemed to be the owner for tax and accounting purposes. In terms of ownership/security interest in a bankruptcy, the question is somewhat more difficult for financial leases. Both for financial and operating leases, the lessor will usually be the registered owner of the vessel and the general view is that the lessor (as the registered owner of the vessel) will be deemed as the “legal owner” of the vessel even if the lessee is owner for tax and accounting purposes. This view has, however, so far not been tested by the Norwegian courts as the bankruptcy estates have respected the registered ownership.

It is a question of Norwegian international private law whether the fact that the lease is governed by foreign law would have an impact on how a Norwegian court would view the

⁴ By 'leasing' is meant a demise chartering of a vessel where the holder of legal title ('lessor') is a financier rather than a commercial shipping company and the vessel is demise chartered to a shipping company ('lessee'). It might or might not involve the lessee having an option to purchase for a pre-agreed price or title automatically passing to the lessee at the end of the lease term. It covers both finance leases, where the lessee by one means or another has substantially the whole economic interest in the vessel and operating leases where the lessor retains some economic risk and interest in the vessel.

lease, and it is difficult to give a general answer to how this would play out in specific situations.

14.4 Do the laws of your jurisdiction permit the parties to the lease of a vessel governed by that law to expand by contract the rights and remedies of the lessor on default by the lessee? Or are such rights and remedies provided for exclusively by law?

As stated in our response to question 14.1 we do not have a general legal framework for leases in Norway. The starting point under Norwegian law is freedom of contract. However, when it comes to enforcement measures, the parties cannot agree in advance that the creditor shall have wider rights than those set out in the Norwegian Enforcement of Claims Act of 1992 (Nw. tvangsfullbyrdelsesloven), cfr. section 1-3 of this Act. However, once a default has occurred, the parties have contractual freedom to agree that the defaulted claim shall be settled in other ways than those prescribed by law.

14.5 Do the rights and remedies of the lessor of a vessel include steps to terminate the leasing and re-take possession of the vessel through self-help or is this only possible in your jurisdiction with the assistance of the court?

As stated in our response to question 14.1 we do not have a general legal framework for leases in Norway. Self-help would require cooperation by the lessee. If the lessee does not cooperate, assistance of the courts would need to be sought as enforcement through self-help is generally not allowed in Norway. The process of re-taking possession is, however, made somewhat easier as the leasing contract – as long as it fulfils certain requirements – is deemed to be a special enforcement ground pursuant to section 13-2 of the Norwegian Enforcement of Claims Act of 1992 (Nw. tvangsfullbyrdelsesloven). This means that the leasing contract is a “prima facie” evidence of the lessor’s right to re-take possession of the vessel.

14.6 Under the laws of your jurisdiction is a leased vessel considered to be an asset of the lessor or the lessee, or both?

As stated in our response to question 14.3 it would depend on the type of lease and to a certain extent also on whether you look at it from a tax and accounting law perspective or whether it is a question of deciding who the “legal owner” is in case of a bankruptcy of either the lessor or the lessee.

14.7 Under the laws of your jurisdiction what impact would an insolvency process (or different processes) in respect of the lessee have on the rights and remedies of the lessor of a vessel? Is this affected by the type and terms of the lease?

Please see our response to question 14.3 above. The bankruptcy estate will usually have the right to step into the lessee’s contracts (including a right to exercise any agreed purchase options in accordance with the agreed terms) and will often not be bound by terms stating that insolvency shall give the lessor a right to terminate the lease.

If the bankruptcy estate does not wish to continue an operating lease, a bankruptcy in respect of the lessee would give the lessor a right to take back the vessel and make a claim against the bankruptcy estate for the remaining payments under the lease. Any alternative

income that the lessor can secure by leasing the vessel to a new customer will have to be deducted from the lessor's claim.

If the bankruptcy estate does not wish to continue a financial lease, it is generally expected that the lessor (provided he is the registered "legal" owner of the vessel) will also have the right to take back the vessel even though the lessee is deemed to be the owner for tax and accounting purposes. This view is supported both by the fact that the lessor is the registered owner, the general rule that the bankruptcy estate of a lessee will not have a wider right to the vessel than the lessee itself had and "fairness" (e.g., that if the lessee had been the registered owner of the vessel, the lessor could have had a mortgage over the vessel). This view has, however, never been tested before the Norwegian courts as the registered ownership of the lessor has been respected by bankruptcy estates.

14.8 Under the laws of your jurisdiction can a lessor arrest a vessel which it leases? Can it join in arrest proceedings initiated by a third party?

As the registered owner of the vessel, the lessor cannot arrest the vessel, but the lessor can require the court's assistance to get access to the vessel pursuant to section 13-2 of the Norwegian Enforcement of Claims Act of 1992 (Nw. tvangfullbyrdelsesloven). Should the lessor for some reason not be the registered owner of the vessel, he can arrest the vessel in accordance with the general procedure found in the NMC, the Norwegian Enforcement of Claims Act (Nw. tvangfullbyrdelsesloven) and the Norwegian Civil Procedure Act of 2005 (Nw. tvisteloven).

As stated in our response to question 5.1 it will be very limited possibilities for third parties to arrest the vessel for claims against the lessee as long as the lessor is the registered owner of the vessel.

14.9 Under the laws of your jurisdiction what priority is given to the rights of a lessor of a leased vessel as against third parties with maritime liens/claims?

As the registered owner, the lessor would need to respect maritime claims giving rise to maritime liens, see our responses to questions 1.5, 5.1 and 11.2. Other maritime claims can only be made against the lessee as the deemed owner of the vessel and cannot be made against the lessor as registered owner of the vessel.

14.10 Do the laws of your jurisdiction recognise registered leases in respect of vessels registered in a different jurisdiction? If so, please give brief details.

It is not possible to give a general answer to this question as the response would depend on the specific circumstances.

14.11 In your jurisdiction is there generally a wish to promote leasing of vessels, including by reforming the law? If so please provide a brief explanation.

No.

15 RESERVATION OF TITLES

15.1 Do the laws of your jurisdiction treat the holder of title under reservation of title as the holder of a security interest?

Yes, reservation of title is deemed to be a security interest and the agreement must therefore be perfected in order to have legal protection against the owner's other creditors. It is, however, not possible to establish a security interest in a vessel through a reservation of title clause/arrangement. Pursuant to section 54 of the NMC, a possessory lien is available to ship yards and others doing work on a vessel as long as the vessel is in their possession. Other creditors must get a mortgage over the vessel if they want security.

15.2 Do the laws of your jurisdiction provide for reservation of title arrangements to be registered in the ships' register in any way different from a standard registration of the holder of title as registered owner? If so, please give brief details.

No, as it is not possible to reserve title to a vessel it is consequently not something that can be registered. Neither is a possessory lien applicable for registration.

15.3 If the laws of your jurisdiction do provide for reservation of title arrangements to be registered as referred to in 15.2, what rights and remedies are given to the holder of title?

N/A.

15.4 Do the laws of your jurisdiction recognise foreign reservation of title arrangements of a type referred to in 15.2? If so, please give brief details of how these arrangements would be recognised.

This would be a question of Norwegian international private law and the answer would depend on the facts. It is therefore not possible to give a general answer to this question.

16 MORTGAGE AND INSURANCE

Does a mortgage registered in your jurisdiction extend by law to vessel's insurance policies in the event of a casualty affecting the vessel?

Pursuant to section 7-1 of the Norwegian Insurance Contracts Act of 1989 (Nw. forsikringsavtaleloven), a registered mortgagee will be covered under the insurance. This provision is, however, not mandatorily applicable for vessels, see section 1-3 of the Act. The status of the mortgagee will thus be regulated by the applicable insurance terms. The most commonly used terms for hull insurance under Norwegian law, are those found in the Nordic Marine Insurance Plan of 2013. Chapter 7 of the Nordic Marine Insurance Plan provides an automatic cover of the mortgagee's interest under the insurance. This means that the mortgagee is co-insured, regardless of whether the insurer has received any declaration to that effect. In practice, the position of the mortgagee is often specifically regulated in the insurance contract. Such specific provisions in the contract will have priority over the rules in Chapter 7. If the position of the mortgagee is incomplete in some respect in such provisions, the rules of Chapter 7 may supplement them.

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