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The shipping year 2019 -
from a BAHR perspective

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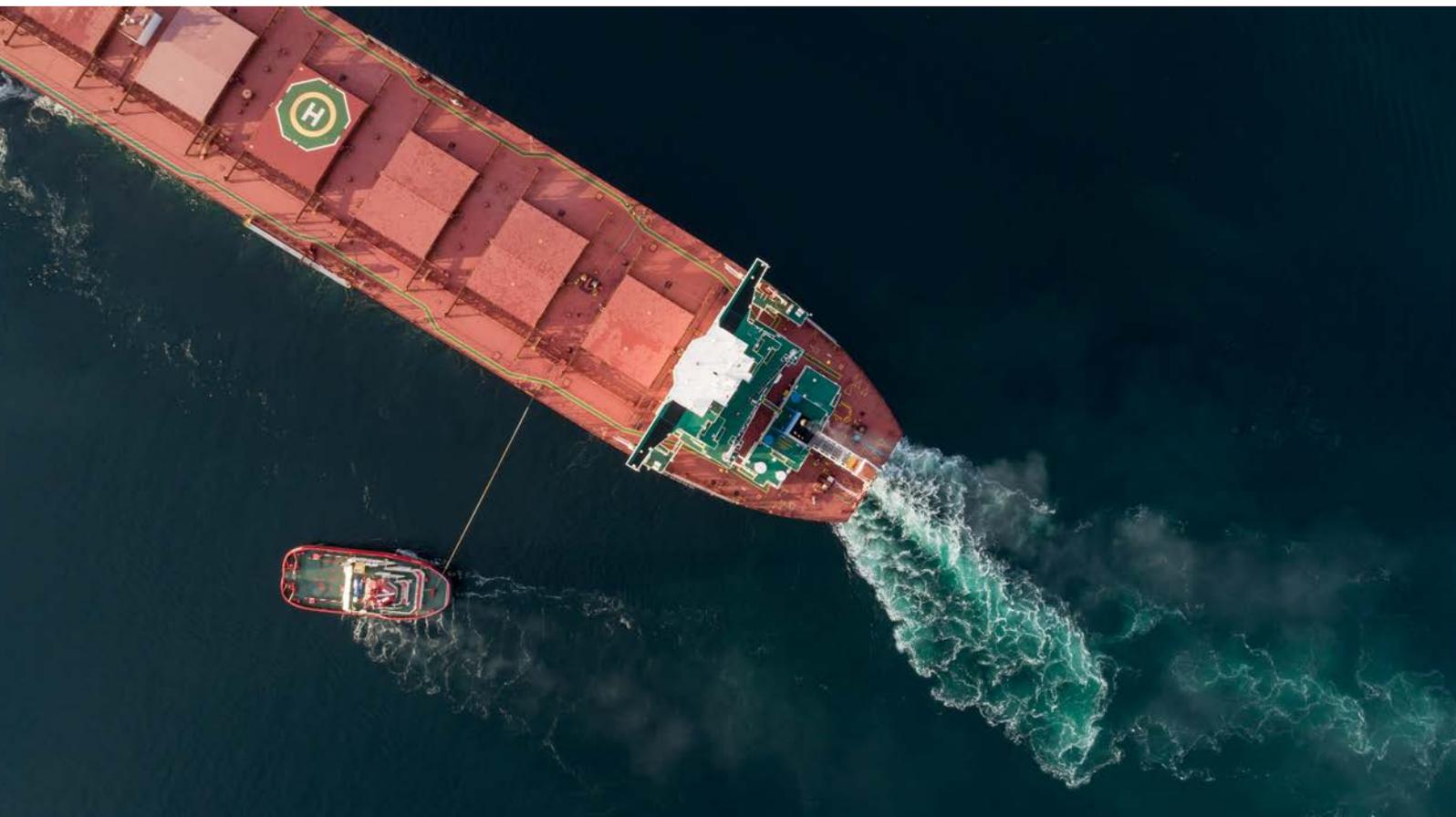
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The shipping year 2019 – from a Bahr perspective

An industry in transition

Shipping is an industry characterised by cycles and volatility. When and how the cycles occur – as well as their duration – varies between the markets and is affected by a number of factors. The cycles influence rates and earnings, which again have an impact on access to capital and investments.

The shipping industry is currently undergoing some of the most fundamental changes we have seen in many years – with “technology” and “climate” as key headlines.

This creates both opportunities and challenges for the industry. Norwegian players are well positioned for these changes and already well underway with adopting their business.

It is difficult to predict where the shipping industry will be in ten to twenty years. What we can assume is however that the shipping companies of the future will be significantly different from the ones we see today.

BAHR’s assistance to shipping clients the last year has naturally been impacted by the cycles and volatility of the various market

segments – as well as by the changes going on in the industry.

Technological development

Technological development has traditionally been relatively slow in the shipping industry. However, this has changed significantly in recent years – and we are likely seeing the beginning of a technological revolution in the industry. This technological revolution will significantly transform the future shipping industry – and Norway as a leading shipping nation is at the forefront of these developments.

The ferry market in Norway is definitely part of this technological development – with the world’s first fully electric ferry in operation and the world’s first hydrogen ferry in the pipeline.

The autonomous solutions being developed within the shipping industry are also examples of the technological development. A shipping industry based on autonomous vessels would represent a major transformation of traditional shipping operations. Yara Birkeland, the world’s first fully electric and autonomous

vessel, the result of a collaboration between Yara and Kongsberg Gruppen, is an example of this autonomous development. We can also mention Massterly, the world's first autonomous shipping company, a joint venture between Wilhelmsen and Kongsberg Gruppen. These examples also show the industry players teaming up to drive technological development – something we expect to see more of in future.

These technological developments offer many opportunities - but also challenges – for the industry. Shipping companies will as an example be more exposed to cyber risk – which makes their infrastructure vulnerable.

The regulatory and contractual frameworks are not adapted to the technological developments currently ongoing in the shipping industry - e.g. with regard to autonomous vessels. Liability is one example, typically subject to subjective culpa. Conditions for liability as well as insurance terms will have to be adapted to these developments. We also see a need for amendments to, standard terms and conditions generally applied by the industry.

“The green shift”

“The green shift” also impacts the shipping industry – and is closely linked to the technological developments. Although shipping is an environmentally-friendly form of transport compared to alternatives,

the industry is nonetheless a major source of greenhouse gas emissions. Changes towards more environmentally-friendly solutions in the industry have in recent years been driven by a number of stakeholders, including the authorities, capital, customers, suppliers and shipping companies themselves. Together – this has facilitated the green shift we are now seeing in the industry.

Norway is – with its position in the technological developments - well placed to be at the forefront of also this green shift.

We have in recent years seen shipping companies making a number of changes and improvements to their vessels that will contribute to reduce greenhouse gas emissions. IMO 2020 – a set of regulations from the International Maritime Organisation (IMO) – should be mentioned, as it imposes new and stricter requirements on the sulphur contents of marine fuels and is an example of how regulatory amendments are compelling more environmentally-friendly solutions. We have over the last few years seen the entire industry preparing for these regulatory amendments that entered into force 1 January 2020. A number of shipping companies have installed scrubbers, while others have chosen to use more environmentally-friendly fuels.

Even in the absence of mandatory regulations, we see new vessels being ordered with solutions on the basis of choices made by shipping companies themselves.

One driving factor is the fact that capital sources are also pushing more environmentally-friendly solutions in the market. One example is the Poseidon Principles launched in 2019. These principles are an initiative from leading shipping banks requiring banks to, inter alia, measure the climate footprint in their shipping portfolio and publish the results. DNB and Nordea are among the banks that are signatories to these principles. Both the Poseidon Principles and the UN Global Compact's Principles for Sustainable Ocean Business, recently launched during the UN high-level week, are expected to accelerate the adoption of more environmentally-friendly solutions and contribute to the environmental focus in the shipping industry.

Offshore – from oil to wind

We are also seeing a shift in the offshore industry – where a number of players are turning their business towards offshore wind.

The Norwegian Shipowners' Association's Maritime Outlook Report 2019 shows that three out of ten shipping companies currently have activities in the offshore wind market. These are primarily offshore service companies, of which six out of ten state that they have activities in this market. In the survey by the Norwegian Shipowners' Association, 27 percent of the shipping companies state that the offshore wind market is of interest for their operations over the next five years, and 55 percent of the offshore

service companies state that they are considering activity in the offshore wind market over the next five years.¹ This illustrates the current interest in this market segment.

In September 2019, Menon Economics published a report on the potential value associated with the development of a Norwegian based floating offshore wind industry.

Their analyses show that it would be feasible to capture up to 20 percent of the global market, which in a high scenario represents values of NOK 117 billion.²

This market is – at least for the time being – dependent on subsidies for the industry to be developed further.

It appears however to be increasing political support for the developments of this industry in Norway. As an example, Equinor was recently offered 10-figure funding from Enova for the floating offshore wind farm Hywind Tampen.

The political landscape and global instability

The political landscape – and sanctions – impact the shipping industry.

Trade disputes and sanctions cause uncertainty in the market, which affect both rates and the conduct of the market players, and add to the volatility of the industry. The trade dispute between the US and China is an obvious example – the uncertainty surrounding Brexit is another.

Global instability, including terrorism and regional armed conflicts in several areas, also gives rise to security challenges that impact the industry.

The shipping year in BARR – some reflections

In 2019 we have in general seen a positive development within the shipping industry – and the industry appears to have largely overcome the oil crisis which hit it in 2014. We see an increasing interest from the capital, compared to preceding years. We also see improvements for the offshore companies, although it is evident that this market still have challenges.

The Norwegian Shipowners' Association's member survey for 2019, published in connection with the Maritime Outlook Report 2019, also shows cautious optimism in the industry. The report shows that the total turnover of the shipping companies increased by 11 percent from NOK 206 billion in 2017 to NOK 229 billion in 2018 and that more

than half of the shipping companies expect the results in 2019 to be stronger than in 2018.³

We have experienced an increase in the number of shipping transactions over the last year. A number of investors are attracted by shipping companies that are in the forefront of technological developments and/or the green shift. We also see that there has been – and still remains – a need for consolidation in several markets. This has boosted the number of transactions – both in the form of company acquisitions and in the form of vessel acquisitions.

We have also seen increased access to equity for the shipping industry. Oslo is an attractive hub for Norwegian and international shipping companies seeking to raise capital, with a recognised equity marketplace (the Oslo Stock Exchange) and bond market with



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standard bond loan terms (Nordic Trustee). We have assisted on a number of projects that end up in Norway because of Oslo's strong capital marketplace for the shipping industry. Also in this area we see the capital being attracted by shipping companies and projects that are taking the lead on technological developments and/or the green shift. We are for example seeing an increased appetite for offshore wind investments. Several capital sources – on both the equity side and the debt side – are earmarked for green projects. This is likely only the beginning of an increasing trend. One of the challenges we see is how to measure which projects qualify for the “green” capital – and to monitor compliance with the requirements. The regulatory and contractual frameworks will need to be refined to adopt to this trend over the coming years.

In the debt market we are still seeing restrictive access to capital for shipping companies. The tendency is still for banks to prioritise the major shipping companies and relation clients. In the Norwegian Shipowners' Association's Maritime Outlook Report 2019 we see that the shipping companies find access to capital limited. There are nonetheless large variations between the various segments – with offshore service companies facing the greatest challenges.⁴

As a result of limited access to bank loans, we see leasing being increasingly used by the shipping companies to finance their vessels.

We see the Chinese leasing providers continuing to capture an increasing proportion of the financing market, but BAHR has also had the pleasure of working with several other and new leasing players over the last year.

Following the oil crisis in 2014, the Norwegian authorities had focus on and initiated renewal of the Norwegian domestic ferry fleet. This was initiated by the authorities to secure jobs in the supply industry, but also as there was a considerable need for fleet renewal. The public tenders involved new technology requirements, which have contributed to the technological and green developments in the whole shipping industry. The introduction of new technology has been accompanied by increased complexity, which has also given rise to disputes between shipping companies and shipyards. BAHR has been working on a number of such disputes over the last year.

A number of shipping companies in the offshore market have undergone financial restructuring following the oil crisis in 2014. We have seen a reduction in the number of restructurings over the last year. Several shipping companies have postponed the restructuring in anticipation of market improvement – and are on borrowed time. A number of players in this market are still facing significant financial challenges. We have recently noticed some improvement in the offshore market, but there is still excess capacity and many

vessels are laid up. A new round of restructurings is therefore taking place in the offshore market.

An important industry for Norway – where Norwegian law and dispute resolution have an international position

The maritime industry is one of Norway’s key industries – and Norway plays a major role in this industry internationally. Ranked by fleet value, Norway is the world’s fifth largest shipping nation.⁵ “The leading maritime nations of the world”,⁶ ranks Norway in a shared fourth place – after large nations like China, the US and Japan. The Oslo Stock Exchange also has a unique position within the global shipping industry.

The maritime industry has large potential for growth. Sintef recently published a report on “Future Opportunities in Maritime Industries”.⁷ The main purpose of the report, which was prepared by Sintef on behalf of the Norwegian Shipowners’ Association and the Confederation of Norwegian Enterprise (NHO), was to evaluate the outlook for generating value and jobs in maritime industries in Norway towards 2050.

The report demonstrates a large growth potential – estimated at around NOK 900 billion in 2050. Offshore wind and carbon capture are among the areas identified with great potential.

A natural consequence of Norway’s key role in shipping, is that Norwegian law and Norwegian

dispute resolution have gained a recognised position in the industry. Norwegian law is extensively used – not only by Norwegian players, but also by international players where the transaction has a Norwegian angle.

In “The leading maritime nations of the world”,⁸ Norway is ranked second in the category “Maritime Finance and Law”, which illustrates Norway’s leading role in this area. The changes we are now seeing in the industry will impact the existing regulatory framework. It is important that Norwegian regulations – and Norwegian lawyers – are on top of these changes and contribute to driving these developments within the legal area.

The establishment of the new Nordic Offshore and Maritime Arbitration Association (NOMA) has also provided us with an arbitration venue that will serve as an alternative to, for example, arbitration in London, and is an obvious choice when an agreement is governed by Norwegian or Nordic law. We are now increasingly seeing Nordic players opting for NOMA as dispute resolution mechanism in transactions, which is making Norwegian and Nordic lawyers even more relevant.

The shipping industry is currently undergoing some of the most fundamental changes we have seen in many years

1, 3, 4, 5 Norwegian Shipowners’ Association “Maritime Outlook Report 2019”
2 Menon publication no. 69/2019
6,8 Menon Economics and DNV GL “The leading maritime nations of the world 2018”
7 Sintef report “Future Opportunities in Maritime Industries”

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