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# Shipping

## 2022

**Contributing editors****Kevin Cooper and Nico Saunders****MFB Solicitors**

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Lexology Getting The Deal Through is delighted to publish the 14th edition of *Shipping*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapter on India.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Kevin Cooper and Nico Saunders of MFB Solicitors, for their continued assistance with this volume.



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## NEWBUILDING CONTRACTS

### Transfer of title

- 1 | When does title in the ship pass from the shipbuilder to the shipowner? Can the parties agree to change when title will pass?

The question of when the title to a ship passes is subject to contractual freedom. This means that the parties are free to agree when the title shall pass from the shipbuilder to the shipowner. The parties normally agree that the title to a ship passes at the completion of the building process upon delivery of acceptance. This is also the standard regulation in article XI 1 of the Norwegian Standard Form Shipbuilding Contract (SHIP 2000). An alternative is to agree that the title shall pass to the shipowner during construction, either progressively or in stages. This will be a suitable solution for security should the shipbuilder be unable to provide a refund guarantee for any pre-delivery instalments.

If the parties have not agreed when the title shall pass to the shipowner, the question will be resolved on the basis of Norwegian background law. The Norwegian Sale of Goods Act of 13 May 1988 No. 27 (the Sale of Goods Act) applies to the purchase of ships. However, the act does not explicitly regulate when the title to goods, such as ships, passes. Thus, the passing of title has to be determined by what specific rights the seller and the buyer have in the goods at the different stages of the transaction process. If the seller no longer has the right to exercise retention and rescission, the title is normally considered to have passed. In general, the seller will lose its right to retention and rescission upon delivery.

The transfer of ownership to the ship will normally be evidenced by a bill of sale, a builder's certificate or both, and a protocol of delivery and acceptance.

The buyer will obtain legal protection against competing third parties, including protection against possible attachments from the creditors of the shipbuilder, by registering the ownership in one of the Norwegian registries (Norwegian Ordinary Ship Register or Norwegian International Register) or a foreign ship registry. If the parties agree that the transfer of title shall pass during construction, the ownership may be legally protected through registration in the Register of Ships under Construction (BYGG) until complete ownership is obtained.

### Refund guarantee

- 2 | What formalities need to be complied with for the refund guarantee to be valid?

Assessing the validity of a refund guarantee is, in principle, the same exercise as evaluating any other promise under Norwegian law. Legal commitment requires that the person giving the promise is authorised to bind the principal, or at least appear to have such powers. There are no formal requirements as to the format of the guarantee. However,

the guarantee has to constitute an intention to be legally bound. If the guarantee is unclear with respect to essential items of its content, such as the secured amount or under what conditions it becomes due, the guarantee is less likely to be considered as an intention to be legally bound by Norwegian courts. The same will be the case if the alleged guarantee undertaking is given in an unusual format.

### Court-ordered delivery

- 3 | Are there any remedies available in local courts to compel delivery of the vessel when the yard refuses to do so?

Local courts and enforcement authorities have the authority to enforce the definite delivery of the vessel. Definite delivery requires a ground for enforcement that must be enforceable. This will typically be an enforceable judgment or arbitration award stating that the yard is obliged to deliver the vessel in exchange for the buyer paying a specific amount to the shipyard. The process of obtaining a ground for enforcement is normally time-consuming.

If time is of the essence, the shipowner may seek to obtain temporary delivery of the vessel until a final decision is made by applying to the local courts for a preliminary injunction. To be granted a preliminary injunction, the shipowner has to substantiate that the claim for delivery is most likely to succeed, as well as a basis of security. A basis of security will be present when it is necessary to make a temporary arrangement to avert considerable loss or inconvenience. This may be the case if the shipowner has ordered the vessel to serve under a charter party and risks being in default under its terms owing to the shipbuilder's rejection of delivery. In addition, it is a requirement that the loss or inconvenience inflicted upon the yard by such a measure cannot clearly be disproportionate to the interests of the shipowner.

The court may also require the claimant to provide security for any compensation to the shipyard that the shipowner later may be found liable for. This could be a deposit of an amount that equals the shipbuilders demand payment or a bank guarantee.

### Defects

- 4 | Where the vessel is defective and damage results, would a claim lie in contract or under product liability against the shipbuilder at the suit of the shipowner; a purchaser from the original shipowner; or a third party that has sustained damage?

### Shipowner

Claims from the shipowner may, in principle, be based on the Sale of Goods Act. However, as the act is not mandatory, and the shipowner in practice always enter into a contract with the shipbuilder that provides for a regulation of liability, any claims will foremost be subject to the provisions of the shipbuilding contract. SHIP 2000 is the standard form contract most commonly used in Norway. Norwegian shipyards have

their own standard contracts; however, most of such contracts are in line with the principles of SHIP 2000. With respect to defects discovered before the delivery and acceptance, article VII (d) provides that the shipowner will be entitled to reject delivery provided that the deficiencies are not of minor importance or the shipbuilder is unable to rectify the matter within a reasonable time. The shipbuilder may, however, require the buyer to take delivery provided that the shipbuilder undertakes to rectify the defect as soon as possible and indemnify the shipowner for any loss incurred as a consequence thereof. With respect to deficiencies discovered after delivery, article X provides that the shipbuilder's liability is limited to remedy the defect itself, and that the shipbuilder shall have no liability for any damage or loss caused as consequence of the defect, except for repair or renewal of the vessel's parts that have been damaged as a direct and immediate consequence of the defect without any intermediate cause, and provided such part or parts can be considered to form a part of the same equipment or system. However, the limitation of liability only applies for as long the deficiencies are remedied within a reasonable time. If the deficiencies are not remedied within a reasonable time, the shipowner is entitled claim all remedies made available in the background law, being the Sale of Goods Act.

The shipowner will generally not be entitled to raise claims towards the shipbuilder based on rules of product liability as these do not cover damage to the product itself. Nor will the shipbuilder generally be entitled to claim compensation based on ordinary principles of tort law. This is because liability for unsatisfactory performance will normally be considered exhaustively regulated by the shipbuilding contract. To claim compensation based on ordinary principles of tort law the shipowner must justify that the negligent act being alleged to establish liability is not comprised by the contract in a wider sense, which generally will be hard to prove. That said, if the shipbuilder has breached the contract wilfully or by gross negligence, the Norwegian courts are likely to set aside any limitation of liability, making the remedies in the background law available to the shipowner.

### Purchaser

A purchaser who has taken legal assignment of the shipbuilding contract will be in the same position as the original shipowner with respect to making claims against the shipbuilder. Pursuant to SHIP 2000 article X fifth paragraph, the buyer can assign its rights under the warranty, but only subject to the shipbuilder's consent. Consent cannot, however, be unreasonably withheld or delayed. A valid reason for not giving consent may be that the assignment will lead to extra costs or additional work. If the purchaser has not taken assignment of the shipbuilding contract, the purchaser will, in principle, be in the same position as any other third party. This said, the purchaser may under certain conditions make direct claims against the shipbuilder based on general principles of Norwegian contractual law. A minimum condition to make such direct claim is that the purchaser was cautiously unaware of an eventual assignment restriction.

### Third party

A third party may make claims against the shipbuilder based on the provisions of the Norwegian Product Liability Act of 23 December 1988 No. 104 (the Product Liability Act), which is based on EC Council Directive 85/374/EEA. Pursuant to the Product Liability Act the shipbuilder is liable for personal injury or death caused by security defects in the vessel. The shipbuilder may therefore face claims from crew and other personnel being injured by unsecure installations on the vessel. Furthermore, the Product Liability Act states that the shipbuilder is liable for damage to property caused by security defects on the vessel. However, only to the extent the damaged property is intended and used for private use or consumption. For this reason, the shipbuilder is only likely to face claims for damage to property if the vessel's operations

involve consumers (eg, passenger ferries). Pure economic loss (not related to physical damage) is not in any case recoverable under the Product Liability Act.

In addition to claims based on product liability, the shipbuilder may face claims from third parties based on general principles of tort law. However, for a third party to be heard with such an allegation, the third party must justify that incurred loss is not too remote to be recognised as compensable and further that the damage has a causal connection to negligent behaviour by the shipbuilder (eg, during the construction), which generally will be demanding to prove.

Finally, the shipbuilder may be held liable by a third party based on rules of strict liability for products with inherent extraordinary risks, which have obvious parallel to the product liability.

## SHIP REGISTRATION AND MORTGAGES

### Eligibility for registration

- 5 | What vessels are eligible for registration under the flag of your country? Is it possible to register vessels under construction under the flag of your country?

### Registration of vessels

Vessels flying the Norwegian flag are either registered in the Norwegian Ordinary Ship Register (NOR) or the Norwegian International Register (NIS).

#### NOR

To be eligible for registration in NOR, the vessel has to be a Norwegian ship. A ship is considered Norwegian if, firstly, it has a sufficiently close link to Norway, demonstrated by the fulfilment of certain ownership and management requirements, and it is not registered in the ship registry of another country. The latter requirement applies to all ships, except for those that are bareboat registered in Norway.

Second, the ship cannot be registered in NIS.

Third, the ship has to be either 7 meters long, subject to a registration requirement under the Act of 26 March 1999 No. 15 relating to the right to participate in fishing and catching or used exclusively or mainly in trade.

Registration is mandatory for all vessels of 15 meters or more fulfilling the three above mentioned requirements.

#### NIS

To be eligible for registration in NIS, the vessel has to be categorised as either a self-propelled passenger or cargo ship, a hovercraft, a drilling platform or other type of mobile floating installation. Other types of vessels, such as fishing and pleasure vessels, cannot be registered in NIS.

NIS is open for registration for both Norwegian ships (see requirements above) and non-Norwegian vessels. However, for non-Norwegian vessels, there are some additional requirements with respect to the management of the vessel and the owner's representation in Norway.

Registration in NIS has certain disadvantages compared to registration in NOR, (eg, NIS-registered cargo and passenger ships are not permitted to carry cargo or passengers between Norwegian ports or to engage in regular scheduled passenger transport between Norwegian and foreign ports).

### Registration of vessels under construction

Vessels under construction in Norway or contracts for the construction of vessels in Norway may be registered in the Shipbuilding Register (BYGG), a sub-division of NOR, provided that the vessel's length is at least 10 metres. An application for registration must be made by the owner if the vessel is under construction, or by the buyer in the case of a shipbuilding contract.

## 6 | Who may apply to register a ship in your jurisdiction?

### Shipowner

#### NOR

A shipowner may apply to register a ship in NOR, provided that certain ownership and management requirements are fulfilled (in addition to the other eligibility requirements set out above). The ownership and management requirements are set out in the Norwegian Maritime Code of 24 June 1994 No. 39 (the Norwegian Maritime Code) section 1 (and in section 4 with respect to certain ships). The ownership requirements demonstrate that the ship has a genuine link to Norway.

If the shipowner is an individual, the person has to be a Norwegian national. If the vessel is owned by a company where the participants have unlimited liability for company debts, Norwegian nationals must hold at least 60 per cent of the company. If the vessel is owned by a limited partnership, Norwegian nationals must hold at least 60 per cent of the general partnership capital and at least 60 per cent of the limited partnership capital. If the vessel is owned by a company with limited liability, 60 per cent of the shares and their voting rights must be held by Norwegian nationals, the company's head office and registered address must be in Norway and the majority of the directors, including the board chairman, have to be Norwegian nationals who are resident in Norway and have lived in Norway for the past two years.

However, entities and nationals of another country within the European Economic Area (EEA) will receive equal treatment to Norwegian entities and nationals. It is a requirement that the vessel is a part of the shipowner's commercial activities established in Norway and that the ship is operated from Norway. A ship used for recreational purposes and for commercial activities may be owned by a person who is residing in Norway and is a citizen of a state connected to the EEA Agreement. If the shipowner does not have permanent residency in Norway, the shipowner shall appoint a representative resident in Norway who is a national of an EEA country with authority to accept legal process on behalf of the shipowner.

If the shipowner does not satisfy the ownership requirements, the Ministry of Trade, Industry and Fisheries, Maritime Department may grant dispensation. For as long as the applicant demonstrates that the vessel otherwise has a genuine link to Norway, our experience is that exemptions may be granted easily.

#### NIS

Shipowners being eligible to register a ship in NOR, may also apply to register a ship in NIS. In addition, NIS is also open for shipowners not qualifying for NOR registration. However, it is required that the shipowner have a representative in Norway that is able to accept writs on behalf of the shipowner. In addition, the technical or commercial management of the vessel has to be carried out by a Norwegian shipping company with its head office in Norway or by one of its management offices abroad.

### Bareboat charterer

#### NOR

A bareboat charterer is allowed to register a ship in NOR for a period of up to 10 years (not exceeding the term of the bareboat charter party), provided that the bareboat charterer meets the ownership and management requirements for NOR registration set out above and the ship is otherwise eligible for NOR registration.

#### NIS

A bareboat charterer may also register a ship in NIS for a period of up to 10 years (not exceeding the term of the bareboat charter party), provided that the bareboat charterer meets the requirements for NIS registration set out above, and the ship is otherwise eligible for NIS registration.

## Documentary requirements

### 7 | What are the documentary requirements for registration?

The documentation requirements for mandatory registration in NOR are:

- application for certificate of name;
- notification for registration form;
- tonnage certificate;
- confirmation of survey;
- documentation evidencing ownership (eg, original bill of sale, original builder's certificate or another title document).
  - if the vessel is a newbuilding, a builder's certificate and (usually) a protocol of delivery and acceptance are required;
  - signatures on a title document issued abroad must be notarised and thereafter legalised with an apostille;
- documentation of the shipowner's nationality:
  - all entities (not individuals) must submit a declaration of nationality demonstrating the fulfilment of the ownership requirements in the Norwegian Maritime Code section 1;
  - additional documentation requirements apply to non-Norwegian shipowners within the EEA who are not resident in Norway;
  - companies and private individuals have to fill in a form confirming the appointment of a Norwegian representative; and
  - companies have to provide a management agreement confirming that the vessel is a part of the shipowner's economic activities established in Norway and that the vessel is operated from Norway;
- statement of deletion or non-registration from the vessel's previous ship registry or country; and
- applicable ship certificates and certificates for maritime personnel.

The documentary requirements for registering in NIS are similar to those required for NOR, except for the shipowner not being required to declare national affiliation to Norway or another country within the EEA. However, foreign shipowners outside the EEA have to provide documentation confirming the appointment of a Norwegian process agent and documentation confirming that the vessel is operated by a Norwegian shipowner. The latter may be demonstrated by a management agreement. In addition, if the shipowner is a foreign registered company, the shipowner must produce corporate documentation equivalent to a Norwegian certificate of registration.

### Dual registration

#### 8 | Is dual registration and flagging out possible and what is the procedure?

Dual registration has been allowed in Norway since 1 July 2020. Vessels registered in NOR and NIS are allowed to be temporary bareboat registered in a foreign ship registry, and vessels registered under the flag of a foreign ship registry are allowed to be temporarily bareboat registered in NOR or NIS. The vessel shall sail under the flag of the state where the vessel is bareboat registered and will operate under the laws and jurisdiction of such state. However, private law aspects, such as ownership and mortgages over the vessel, remain governed by the primary register and the laws of that state.

To bareboat register a vessel in NOR or NIS, the bareboat charterer must prove the fulfilment of the same ownership and management requirements that apply to ordinary applicants. In addition, the bareboat charterer has to provide, among other things:

- a copy of the bareboat charter party;
- a transcript of the ship registry in the primary state that states who is the owner of the vessel and all other persons with rights in the vessel;

- written consent to bareboat registration in the relevant Norwegian registry from the shipowner and all others with registered rights in the vessel; and
- documentation from the ship registry in the primary state showing that the vessel is allowed to be bareboat registered in the relevant Norwegian registry and sail under the Norwegian flag.

Vessels sailing under the Norwegian flag are allowed to be bareboat registered in the registry of a foreign country, provided that the shipowner provides, among other things:

- a copy of the bareboat charter party;
- written consent to bareboat registration in the relevant foreign registry from the shipowner and all others with registered rights in the vessel; and
- documentation from the foreign ship registry showing that the vessel is allowed to be bareboat registered in the registry.

The time period for bareboat registration will be limited to the term of the bareboat charter party and can maximum be a period of up to 10 years, however, it is possible to apply for an extension.

### Mortgage register

#### 9 | Who maintains the register of mortgages and what information does it contain?

Ship mortgages are registered in ship registries (NOR, NIS and BYGG), which are subject to the administrative control of the Norwegian Maritime Authority. The registry contains information on registered rights in the vessel and their priority. If the mortgages registered contain clauses stating that sale and further mortgages are forbidden, this will also be noted in the registry.

## LIMITATION OF LIABILITY

### Regime

#### 10 | What limitation regime applies? What claims can be limited? Which parties can limit their liability?

Norway is a party to the 1976 Convention on Limitation of Liability for Maritime Claims (LLMC), and the amendment in the 1996 Protocol. The convention and the amendments are implemented in the Norwegian Maritime Code. The increased limits on liability announced by the International Maritime Organization on 19 April 2012 have also been implemented in the Norwegian Maritime Code.

The persons entitled to limit their liability include the shipowner, the ultimate owner, the charterer and managers, operators and salvors, as well as any person for whose act, neglect or default those parties are responsible, and the liability insurers of any of those parties. The right to limitation also applies internally between the mentioned parties, which, for example, means that the charterer will be able to limit liability for claims made by the owner.

The limitation regime is only available for claims associated with ships. To be defined as a ship, the construction must have certain minimum dimensions and must be capable of carrying passengers or goods.

The Norwegian Maritime Code section 172 and 172a describes the types of claims that liability can be limited. The legal basis for the claim is irrelevant (eg, a limitation is available irrespective of the claim being based on tort law, strict liability or contract). The right to limit liability applies to claims in relation to:

- loss of life or personal injury or property damage, provided that the damage has occurred on board or in direct connection with the operation of the ship or salvage;

- losses resulting from delay in the carriage by sea of goods, passengers or their luggage;
- other damage of non-contractual nature arising in direct connection with the operations of the ship or salvage;
- expenses to avert or minimise liability that otherwise would have been subject to the limitation regime, as well as loss due to such measures; and
- certain expenses related to clean-up measures after maritime accidents.

The Norwegian Maritime Code section 173 lists claims that are exempted from limitation:

- claims for salvage and general average contributions, as well as agreed remuneration for measures to avert or minimise liability and agreed remuneration for wreck removal, etc;
- claims relating to oil pollution damage, as these are subject to a different set of rules;
- claims relating nuclear damage;
- claims related to damages or injury caused to an employee being engaged in the operations of the ship; and
- claims for interests or costs associated with a claim for which liability can be limited.

### Procedure

#### 11 | What is the procedure for establishing limitation?

The right to limit liability is available irrespective of a limitation fund being established. Thus, the party being liable can invoke the right to limit claims made by the creditors without establishing a fund and is free to settle any claims directly and informally with the creditors. However, if a new creditor comes forward after the settlement, the debtor will remain liable and obliged to pay the new creditor as if the claim had been made before the settlement. This risk is avoided by establishing a limitation fund.

A limitation fund can only be established after the creditors have initiated legal proceedings to enforce a claim being subject to limitation or after the creditors have filed a petition for arrest to temporary secure such claim. The authority to establish a fund is given to the court where the arrest or other relief has been sought or in the district where arbitration proceedings are initiated. The fund is established by a court order made on the request of the liable party or its liability insurer and requires payment of the amount to which limitation is limited or other security. In practice, the latter will be an indemnity from the insurer. Once the fund is established, the creditors are given a deadline for notifying claims. Claims filed after the deadline will be disregarded. However, if the fund is released following a settlement, the claim will still be valid and can be pursued.

### Break of limitation

#### 12 | In what circumstances can the limit be broken? Has limitation been broken in your jurisdiction?

The Norwegian Maritime Code Section 174 incorporates article 4 of the LLMC and provides that liability cannot be limited if the liable person has caused the loss intentionally or through gross negligence and with the knowledge that such loss is likely. In the Supreme Court judgment Rt. 1989 p.1318 (p.1322) the court describes gross negligence as 'a clear deviation from ordinary reasonable expectable behaviour. There must be behaviour that is particularly blameworthy, where the person is significantly more to blame than where there is a question of ordinary negligence'. As to the second condition, it is not sufficient that the person who caused the damage ought to have understood that damage would probably result. To trigger unlimited liability, the person in question must in fact have had this knowledge.

Entities being subject to liability will be identified with the top management when assessing whether the limitations shall be broken. This means that if one of the top management has caused loss by gross negligence and with the knowledge that such loss was likely to incur, this will make the entity incur unlimited liability. However, it is unclear to what extent the liable entity will be identified with other employees and persons acting on its behalf. However, in legal theory, it is assumed that the negligent person at least must have a significant level of authority to be identified with the entity itself.

In Norway, there have been no Supreme Court cases where the limitation has been broken. Thus, it is unclear what happens with any fund that has been established. However, it is assumed that the liable person would be liable for the full financial loss and that the creditors are entitled to pursue compensation for any loss not covered by the fund.

### Passenger and luggage claims

#### 13 | What limitation regime applies in your jurisdiction in respect of passenger and luggage claims?

With respect to injury or damage to persons or luggage, the Norwegian limitation regime is based on the Athens Convention of 1974 (as amended by the 2002 Protocol), and Regulation (EC) 392/2009. The convention and regulation are implemented in the Norwegian Maritime Code Chapter 15, Part III. With regard to delay, the Norwegian limitation liability regime is mainly based on Regulation (EU) 1177/2010. The regulation is implemented in the Norwegian Maritime Code Chapter 15, Part IV.

## PORT STATE CONTROL

### Authorities

#### 14 | Which body is the port state control agency? Under what authority does it operate?

The port state control agency is the Norwegian Maritime Authority. The agency is subordinate to the Ministry of Trade, Industry and Fisheries and the Ministry of Climate and Environment. The Port State Control has the authority to inspect foreign vessels in Norwegian ports (mainland Norway and Svalbard) in order to verify that the vessel's condition and equipment are in compliance with provisions of international conventions and that the vessel is safely manned and operated in compliance with applicable international law.

The conduct of the port state control agency is regulated in the Regulation of 24 November 2014 no. 1458 on port State Control. The regulation is based on the Paris Memorandum of Understanding on Port State Control of 1982 and the EU Council Directive 95/21/EC, which gave the Paris Memorandum a legal framework. Today the regulation incorporates EU Directive 2009/16/EC with amendments and supplements, which replaced the EU Council Directive 95/21/EC. The regulation, inter alia, requires vessels calling at Norwegian ports to submit a notification of the estimated time of arrival, the actual time of arrival and the actual time of departure through the national reporting system SafeSeaNet.

### Sanctions

#### 15 | What sanctions may the port state control inspector impose?

The sanctions that the port state control inspector may impose are found in Chapter 4 of the Regulation of 24 November 2014 No. 1458 on port State Control and Chapters 8 and 9 of the Ship Safety and Security Act. The sanctions include:

- orders to implement measures to ensure compliance with requirements in statute or regulations within a specific time limit;
- coercive fines issued to the company or employer, as appropriate, for not complying with orders;

- withdrawal of certificates;
- orders stating that the ship must detain (detention notice), call at a new port or follow other instructions, and if necessary enforcement of such orders;
- stopping and boarding a ship while it is underway to carry out an inspection with a view to investigating a suspicion of non-compliance with international provision or requirements, and if necessary by force;
- denial access to Norwegian territorial waters; and
- violation fines on anyone who, on behalf of the company, willfully or negligently infringes relevant regulations.

In addition, the port state inspector may request the public prosecutor to pursue and investigate if an infringement of a regulation may be subject to criminal liability. Persons who have intentionally or negligently infringed certain regulations may be made to pay fines or imprisoned.

### Appeal

#### 16 | What is the appeal process against detention orders or fines?

The Regulation of 24 November 2014 No. 1458 on Port State Control section 21 provides that the company or the company's representative in Norway may lodge an appeal against a decision on a detention or refusal of access order made by the Norwegian Maritime Authority. Appeals shall be directed to the Norwegian Maritime Authority. The lodging of an appeal will not cause the detention or refusal of access to be suspended. The Norwegian Maritime Authority may reverse its own decision, or forward the appeal to relevant superior appeal authority, who will conduct a new substantive examination of the grounds for ordering detention or fines. The superior appeal authority will be the Ministry of Trade, Industry and Fisheries or the Ministry of Climate and Environment, depending on the area of law. A decision made by the appeal authority is final, and may only be challenged by instituting legal proceedings. Criminal convictions can be appealed to the Courts of Appeal.

## CLASSIFICATION SOCIETIES

### Approved classification societies

#### 17 | Which are the approved classification societies?

The Norwegian Maritime Authority has delegated its authority to carry out surveys, inspection and issuing statutory certificates to the following recognised classification societies:

- American Bureau of Shipping;
- Bureau Veritas;
- DNV GL;
- Lloyds Register of Shipping;
- RINA SpA; and
- Nippon Kaiji Kyokai – ClassNK.

The authority delegated to the classification society is regulated by a standard form class agreement, which is prepared in accordance with the European Union's Council Directive 94/57/EC on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations.

### Liability

#### 18 | In what circumstances can a classification society be held liable, if at all?

The classification society may be held liable towards the Ministry of Trade and Industry and the Norwegian Maritime Directorate (NMD) for being in breach of an obligation to perform a specific service under the

class agreement. If a court rules that NMD is required to compensate an injured party for loss or damage to property or personal injury or death, which is proven to be caused by a wilful act or omission or gross negligence of the classification society or any person that act on their behalf, then the classification society shall indemnify NMD for to whole amount being payable to the party suffering loss. If the loss, however, only is considered to be caused by a negligent act or reckless act or omission of the classification society or any person acting on their behalf, then the liability to compensate NMD shall be limited to €5 million for personal injury or death or €2.5 million for loss or damage to property.

The classification society may also be held liable towards the shipbuilder or the shipowner for being in default of a contractual obligation to perform a certain service, such as ensuring compliance with class rules. However, classification societies usually limit their liability in the contract. Shipbuilders or shipowners being in a contractual relationship with the classification society will generally not be entitled to claim compensation based on ordinary principles of tort law, as the liability for unsatisfactory performance is considered exhaustively regulated in the contract. To claim compensation based on ordinary principles of tort law, the act alleged to establish liability must not be comprised by the contract in a wider sense, which will generally not be the case. This said, if the classification society has breached the contract willfully or by gross negligence the Norwegian courts are likely to set aside any limitation on liability, making the remedies in the background law available to the shipbuilder or shipowner.

Other parties, not being in a contractual relationship with the classification society, may hold the classification society liable based on information liability, which can be considered as a sub-group of ordinary tort liability. Making a claim based on information liability might be relevant in a situation where a classification society wrongfully has issued a certificate that the buyer of a ship has taken into consideration when accepting the purchase price.

The Supreme Court has stated that three requirements have to be fulfilled to hold a party liable for a loss based on information liability. First, there has to be misleading information provided through negligent behaviour in a professional context. Second, the party suffering the loss must have reasonable grounds to trust and rely on the information provided. Third, information has to be intended for the party suffering loss or at least to small group persons where the party pertains. However, currently, there are no examples in Norwegian case law where a classification society has been held liable on these grounds.

## COLLISION, SALVAGE, WRECK REMOVAL AND POLLUTION

### Wreck removal orders

#### 19 | Can the state or local authority order wreck removal?

The Norwegian Coastal Administration, the Norwegian Environment Agency and municipalities are given authority to order wreck removal under the Pollution Act or the Harbour and Naval Fairways Act. Both the acts open to direct an order for wreck removal to the responsible, which may cover other entities than the owner.

The Supreme Court has ruled that the liability regime in the Norwegian Maritime Code does not apply to orders for wreck removal, as the order is not a monetary claim. However, if the public or local authorities choose to carry out the wreck removal itself, and later claim the expenses refunded by the responsible, the claim will subject to the limitation regime. That said the liability regime in the Norwegian Maritime Code imposes an increased liability on wreck removal.

### International conventions

#### 20 | Which international conventions or protocols are in force in relation to collision, wreck removal, salvage and pollution?

With respect to collision, the Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels 1910 is implemented in the Norwegian Maritime Code.

With regard to wreck removal, the Norwegian parliament has signed the Nairobi International Convention on the Removal of Wrecks 2007 and adopted a new act to implement the convention. However, the act is not in force as it is pending ratification.

With respect to salvage, the international Convention on Salvage 1989 is implemented in the Norwegian Maritime Code Chapter 16.

With respect to pollution, the Ship Safety and Security Act incorporates the International Convention for the Prevention of Pollution from Ships of 1973, as amended by the 1978 Protocol (MARPOL 73/78) and subsequently amended by the 1997 Protocol. Further, the Norwegian Maritime Code incorporates the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001.

### Salvage

#### 21 | Is there a mandatory local form of salvage agreement or is Lloyd's standard form of salvage agreement acceptable? Who may carry out salvage operations?

The Norwegian Maritime Code Chapter 16 incorporates the international Convention on salvage from 1989 and contains detailed rules on salvage operations and the salvage award. However, pursuant to the Norwegian Maritime Code section 443 (1), the provisions in the chapter do not apply where alternative regulation has been agreed by way of a contract. As the provision does not make reference to a specific salvage contract, Lloyd's standard form of salvage agreement is acceptable and is often also used. That said, it is also allowed to agree on an alternative regulation.

This said the Norwegian Maritime Code section 443 (3) provides that a salvage agreement can be set aside or amended if the agreement is entered into under unreasonable pressure or exposure of danger and it will be unreasonable to rely on it, or where the agreed salvage award or special compensation is not reasonably proportionate to the salvage work that has been performed. The provision is seldom used in practice.

As a starting point, any person or legal entity may carry out salvage operations. However, the shipowner or master of the vessel being subject to salvage has the right to appoint the person who is going to perform the salvage operation and thereby reject other persons from conducting such operations. A party who disregards express and justifiable orders from the shipowner or master has no right to a salvage award or special compensation. If not, the shipowner of the disabled vessel appoints a particular salvor, the principle of 'first in time, first in right' will apply.

## SHIP ARREST

### International conventions

#### 22 | Which international convention regarding the arrest of ships is in force in your jurisdiction?

Norway is a party to the International Convention Relating to the Arrest of Sea-Going Ships 1952. The convention is implemented in the Norwegian Maritime Code Chapter 5 and hence is in force.

Norway has also signed the International Convention on the Arrest of Ships 1999. However, the Convention has not been ratified and is not implemented or in force yet.

## Claims

**23** | In respect of what claims can a vessel be arrested? In what circumstances may associated ships be arrested? Can a bareboat (demise) chartered vessel be arrested for a claim against the bareboat charterer? Can a time-chartered vessel be arrested for a claim against a time-charterer?

A vessel can only be arrested based on 'maritime claims' as listed and defined in section 92 of the Norwegian Maritime Code (unless a specific enforcement lien is granted in execution or satisfaction of a judgement). Maritime claims include claims such as crew wages claims, salvage claims, claims by shipyards or suppliers relating to construction, repair or equipment on the vessel, claims for damage caused by the vessel either in a collision or otherwise, claims relating to the loss of life or personal injury caused by the vessel, mortgage claims and ownership claims.

According to the Norwegian Maritime Code section 93 b), arrests can be made of associated vessels (other vessels that were owned by the person or entity that is liable for the maritime claim at the time the maritime claim arose). This right to arrest associated vessels does however not apply in case the maritime claim is based on disputes as to ownership of a vessel, or to a dispute between co-owners of a vessel as to the ownership, possession, employment or earnings of that vessel, where the arrest can only be effected against the vessel to which the claim relates.

In general, an arrest claim can only be made based on a claim against the owner, not against the bareboat charterer or a time-charterer of a vessel (unless the claim qualifies to be a maritime lien cf. the Norwegian Enforcement Act of 21 June 1992 No. 86 (the Enforcement Act) section 33-2 (3)).

According to the Norwegian Dispute Act of 17 June 2005 No. 90 (the Dispute Act) Chapter 33, the claimant must either prove that the debtor's behaviour gives reason to fear that enforcement of the claim otherwise will be lost or made significantly more difficult, or that enforcement otherwise has to take place outside of Norway (arrest ground), and that it is more likely than not that the claimant will succeed in its claim in a subsequent court case (balance of probability test). The aforesaid requirements do not apply to claims secured by a mortgage or maritime lien on the vessel if such claims have fallen due (Dispute Act section 33-2(3)).

## Maritime liens

**24** | Does your country recognise the concept of maritime liens and, if so, what claims give rise to maritime liens?

Yes, Norwegian law has the concept of maritime liens.

The Norwegian Maritime Code section 51 lists the claims that are secured by maritime liens in the vessel. These claims are:

- 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 vessel;
- 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
- salvage reward, compensation for wreck removal, and general average contribution.

A maritime lien in the vessel also arises if the claim is against the charterer, manager or any person to whom the owner has delegated its functions (eg, under a bareboat charter party).

The Norwegian Maritime Code section 61 lists the claims that are secured by maritime liens in the cargo. These claims are:

- a claim in respect of salvage reward and general average contribution;
- a claim arising in consequence of the fact that the carrier or the master in accordance with its statutory authority has entered into a contract, taken action or incurred expenditure on the account of the cargo-owner, and a cargo owner's claim for compensation for goods sold for the benefit of other cargo-owners; and
- a claim by the carrier arising out of the chartering agreement, insofar as the claim can properly be brought against the person claiming delivery.

## Wrongful arrest

**25** | What is the test for wrongful arrest?

If the claim ultimately fails, the claimant will be liable for loss that the defendant has sustained as a result of the arrest or as a result of the measures that have been necessary to avoid the arrest or have it set aside, see the Dispute Act section 32-11, first paragraph, first sentence. This applies irrespective of whether the claimant has acted negligently or not. The claimant will also be liable if it shows that the information provided by the claimant with respect to the grounds for security was false or misleading, to the extent the claimant has acted wilfully or with negligence (see the Dispute Act section 32-11, first paragraph, second sentence). Hence, in Norwegian law, there is a strict liability regime for wrongful arrest if the claim does not exist, and a liability regime based on negligence with respect to the ground for obtaining security.

## Bunker suppliers

**26** | Can a bunker supplier arrest a vessel in connection with a claim for the price of bunkers supplied to that vessel pursuant to a contract with the charterer, rather than with the owner, of that vessel?

No, the bunker supplier may not arrest the vessel if the claim is against the charterer and not the owner. However, the bunker supplier may be able to arrest the bunkers in such a scenario.

## Security

**27** | Will the arresting party have to provide security and in what form and amount?

Yes, the arresting party will be required to provide security for port dues that will accrue during the arrest. The security shall cover port dues for the next 14 days, the Norwegian Maritime Code section 97, paragraphs one and two. The court may at its own discretion make an exception to this requirement if the arresting party is the public authority of a country and this requirement does not apply in case of claims from crew secured by a maritime lien.

The arresting party may be ordered, at the court's discretion, to put up security for wrongful arrests cf. the Dispute Act section 33-3. The security amount will be set as a fixed sum high enough to cover likely loss suffered by the debtor relating to a wrongful arrest. In practice, the courts normally do not order counter-security to be put up; however, this will depend on the specific circumstances on a case by case basis. Relevant factors in the court's assessment include the certainty of the creditor's position or claim (the more uncertain the claim is, the more likely it is that the court will order security for wrongful arrest to be established, the magnitude of the damages the arrest may cause to the debtor, and the financial solidity of the arresting party, amongst other).

The forms of security acceptable are set out in the Enforcement Act section 3-4. The security can either be a cash deposit in a Norwegian bank, with an appropriate declaration by the bank to the enforcement authority, or a bank guarantee from a Norwegian bank or other financial

institution with the enforcement authority as beneficiary, without any expiry date of the guarantee. Other forms of security are not acceptable (eg, the arresting party cannot satisfy this requirement by providing a parent company guarantee or similar).

**28** | How is the amount of security the court will order the arrested party to provide calculated and can this amount be reviewed subsequently? In what form must the security be provided? Can the amount of security exceed the value of the ship?

The arrested party can avoid arrest by providing security for the arresting party's claim, see the Dispute Act section 33-5, third paragraph. The arrested party may also lift an arrest by providing security after the arrest has been granted. The security amount shall correspond to the amount for which the court has granted the arrest. The security must be in the form stipulated in the Enforcement Act section 3-4 (bank deposit or bank guarantee).

### Formalities

**29** | What formalities are required for the appointment of a lawyer to make the arrest application? Must a power of attorney or other documents be provided to the court? If so, what formalities must be followed with regard to these documents?

There are no specific formalities required for the appointment of a lawyer to make the arrest application (there are no requirements for notarised power of attorney or similar to be provided to the court). Consequently, an arrest application can be made quite swiftly. Provided that the necessary supporting documents are available to prove that the claim exists and that a ground for arrest exists, the arrest application can be filed on the same day as the instructions are received. The application will be submitted to Aktørportalen (the Norwegian courts' web-based portal), which is now mandatory to use for attorneys in most courts in Norway.

### Ship maintenance

**30** | Who is responsible for the maintenance of the vessel while under arrest?

The owner is usually responsible for the maintenance of the vessel while under arrest, while the arresting party is responsible for ensuring that the port dues that may accrue during the arrest period are paid, hence the requirement for security for port dues. The owner is, however, still responsible for the port dues towards the arresting party.

### Proceedings on the merits

**31** | Must the arresting party pursue the claim on its merits in the courts of your country or is it possible to arrest simply to obtain security and then pursue proceedings on the merits elsewhere?

There is no requirement for the merits of the claim to be pursued in Norwegian courts. Provided that the conditions for the arrest are satisfied, the vessel may be arrested for security only.

### Injunctions and other forms of attachment

**32** | Apart from ship arrest, are there other forms of attachment order or injunctions available to obtain security?

With few exceptions, it is possible to arrest all assets owned by the debtor, as security for monetary claims pursuant to the general rules on arrest in the Enforcement Act. An injunction order may be obtained for

non-monetary claims, as an interim security measure. Furthermore, the creditor can obtain a charge on assets belonging to the debtor, which also can serve as grounds for the forced sale of the assets, subject to the rules in the Enforcement Act.

With respect to the arrest of assets and injunction orders, a sufficient cause for the security measure must be demonstrated (the Dispute Act sections 33-2(1) and 34-1 respectively). Even though sufficient cause can be demonstrated, such security measures may be denied by the court on a discretionary basis if there are strong considerations in favour of not arresting the object or granting the injunction order.

### Delivery up and preservation orders

**33** | Are orders for delivery up or preservation of evidence or property available?

Orders for securing and accessing evidence before litigation has commenced can be obtained pursuant to the Dispute Act Chapter 28. To access or secure evidence pursuant to the Dispute Act section 28-2 there must be an impending risk of the evidence being lost or destroyed or significantly impaired or another reason that makes it particularly important to access or secure it.

It is also possible to obtain an order for the confiscation of an asset of the defendant to be taken into custody or administration as an interim measure pursuant to Chapter 34 of the Dispute Act. The reason for such confiscation must either be that the defendant's conduct gives reason to believe that the legal proceedings or the enforcement of the claim will be significantly impeded, or that it is necessary in a disputed legal region to prevent substantial damage or inconvenience or to avoid repercussions that the conduct of the defendant gives reason to fear.

### Bunker arrest and attachment

**34** | Is it possible to arrest bunkers in your jurisdiction or to obtain an attachment order or injunction in respect of bunkers?

Bunkers may be arrested in accordance with the same rules that apply to other assets. The claim must be against the owner of the bunkers, and a sufficient cause for the arrest must be shown. From a practical point of view, the arrest of the vessel's bunkers may be as effective as arresting the vessel itself. The courts may, at their own discretion, deny granting the arrest if the practical difficulties and inconvenience caused to the vessel owner or other third parties are disproportional to the interests of the arresting party.

## JUDICIAL SALE OF VESSELS

### Eligible applicants

**35** | Who can apply for judicial sale of an arrested vessel?

A judicial sale of a vessel arrested in Norway can inter alia be applied for by a beneficiary under a registered mortgage having a claim that is due for payment, or beneficiary under a registered enforcement lien in the vessel, see the Enforcement Act Chapter 11. An arrest of a vessel will not give the arresting party an automatic right to initiate judicial sale proceedings of the vessel.

To petition for an enforcement lien, the claim must be eligible for enforcement under the Enforcement Act, which means that the claim must have fallen due and the claim must be eligible for enforcement. Such basis for enforcement can, inter alia, be a final and binding judgment on the claim, a court settlement or an arbitration award. Foreign judgments from EU countries, Switzerland and Iceland will be recognised and enforced subject to and in accordance with the Lugano Convention. With regard to foreign arbitration awards, Norway is a party to the UN Convention on the Recognition and Enforcement of Foreign

Arbitral Awards 1958 and will recognise and enforce arbitral awards on the same terms. However, Norway has made the reservation that only awards made in the territory of another contracting state of the convention will be recognised and enforced.

### Procedure

**36** | What is the procedure for initiating and conducting judicial sale of a vessel? How long on average does it take for the judicial sale to be concluded following an application for sale? What are the court costs associated with the judicial sale? How are these costs calculated?

The claimant must file a petition for the judicial sale of the vessel. Unless the claimant already has a mortgage or enforcement lien in the vessel, the petition can only be filed after the enforcement lien is registered. The owner will be given the opportunity to present its case prior to the court deciding if it shall grant or reject the petition for judicial sale. At this stage, and up until one month after the petition has been served, the owner can avoid the judicial sale by paying the claim and the costs in connection with the proceedings, including port dues, court fees etc.

If or when the petition is granted, the court will decide whether the sale shall be carried out by auction (auction sale) held by the court or an enforcement officer, or by ordinary (judicial) sale through a court-appointed administrator (normally a shipbroker) (assisted sale), based on which procedure will give the highest sale price for the vessel. The claimant decides whether the final offer is to be affirmed by the court however the court cannot affirm the bid if the price in the bid does not cover all claims, if any, with higher priority than the claimant's claim. See the Enforcement Act section 11-28 (for assisted sale) and section 11-50 (for auction sale). Further, the court cannot affirm the bid if it considers that further efforts to effect a sale may result in a higher sale price, the Enforcement Act section 11-30. If and when the offer is affirmed, and after the sale proceeds are received, the court will distribute the sales proceeds according to the priority of the relevant claims. If the claimant's claim is not on first priority, all claims with higher priority will be covered to the full amount secured before the claimant's claim.

The timeline for a judicial sale process depends on several factors, most importantly the court's workload, whether the court's decision is appealed and whether the state of the sale and purchase market for the relevant vessel is liquid enough to get an offer that is acceptable. The court decision process on the judicial sale generally takes approximately one to three months, whereas the judicial sales process usually takes between two and six months.

The court fees for 2020 are:

- arrest petition: 2,930 kroner;
- enforcement petition (judicial sale): 1,289 kroner;
- additional fee if the court decides to carry out the judicial sale: 7,383 kroner;
- appeal to the appeal court: 7,032 kroner; and
- daily fees in the district court:
  - day 1: 5,860 kroner;
  - days 2-5: this amount will increase by 3,516 kroner per day; or
  - from day 6: this amount will increase by 4,688 kroner per day.

A judicial sale may also incur port dues and remuneration for the shipbroker or administrator.

### Claim priority

**37** | What is the order of priority of claims against the proceeds of sale?

If the claimant does not have highest priority on its security for the claim, all claims with higher priority will have to be covered to the full secured amount before the claimant will receive any proceeds of the sale cf. the Enforcement Act sections 11-20 and 11-21. This entails that the court cannot accept a bid if not all encumbrances in the vessel with higher priority than the claimant's security will be covered to the full amount by the bid.

The proceeds of the sale shall be distributed in accordance with 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 fee (if this has not been agreed to be covered by the buyer);
- maritime liens (in order of priority as listed in section 51 of the Norwegian Maritime Code, cf section 52 of the Norwegian Maritime Code);
- mortgages, similar registered encumbrances based in contract and enforcement liens (all including interest); and
- unsecured debt.

### Legal effects

**38** | What are the legal effects or consequences of judicial sale of a vessel?

All liens and encumbrances on the vessel, including maritime liens, will be extinguished by the judicial sale so that the buyer will have a clean title. However, if there are non-monetary rights registered in the vessel with higher priority than the claimant's claim, those rights will follow the vessel (eg, a registered pre-emption). For non-monetary rights with the same priority as the claimant or lower, such rights may be discharged by the court should it be necessary for the sale of the vessel, the Enforcement Act section 11-21, second paragraph.

### Foreign sales

**39** | Will judicial sale of a vessel in a foreign jurisdiction be recognised?

Norway is a member of the International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages 1967. If a judicial sale of a Norwegian vessel takes place in a foreign jurisdiction, such sale will be recognised provided the vessel is within the jurisdiction of a contracting state of the convention at the time of sale, and the judicial sale is performed in accordance with both the national law of that jurisdiction and the provisions of the convention, see the Norwegian Maritime Code section 76.

### International conventions

**40** | Is your country a signatory to the International Convention on Maritime Liens and Mortgages 1993?

Norway is a signatory to the International Convention on Maritime Liens and Mortgages 1993, but the convention has not been ratified and is not in force in Norway.

## CARRIAGE OF GOODS BY SEA AND BILLS OF LADING

### International conventions

41 | Are the Hague Rules, Hague-Visby Rules, Hamburg Rules or some variation in force and have they been ratified or implemented without ratification? Has your state ratified, accepted, approved or acceded to the UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea? When does carriage at sea begin and end for the purpose of application of such rules?

Norway is a signatory to the Hague-Visby Rules, the Hamburg Rules and the Rotterdam Rules. The Hague-Visby Rules are the only rules that have been ratified. The Norwegian Maritime Law Commission has recommended that the Rotterdam Rules should be ratified, but only after it becomes clear that this will be the new standard – presumably not before the US or the largest EU states ratify the Convention.

The Hague-Visby Rules have been implemented in the Norwegian Maritime Code, with certain modifications. With regard to the Hamburg Rules, the Norwegian Maritime Code has certain elements from it (the Hamburg Rules were of great importance when drafting the Norwegian Maritime Code, however, such elements were only implemented to the extent deemed compatible with the Hague-Visby Rules).

Norway has amended some of the rules so that the rights are more favourable for the cargo owners than the Hague-Visby rules stipulates unless expressly waived by the cargo owner. This relates particularly to the following two categories:

- the owner is responsible for the goods from the time and place when the owner is left in charge of the goods. This replaces the tackle-to-tackle principle of the Hague-Visby Rules, which only applies if the cargo owner expressly waives such right; and
- livestock and deck cargo are made subject to special liability provisions that cannot be contracted out of. For deck cargo, this includes that transportation of goods on deck with an express provision to transport below deck leads to loss of the liability limits set out in Chapter 13 of the Norwegian Maritime Code as well as strict liability for damage caused solely by the cargo being placed on deck. As regards transportation of livestock, the liability will follow the general liability rules in Chapter 13, unless loss or damage is caused by any particular risks associated with livestock.

### Multimodal carriage

42 | Are there conventions or domestic laws in force in respect of road, rail or air transport that apply to stages of the transport other than by sea under a combined transport or multimodal bill of lading?

Norway has domestic legislation that incorporates the Convention on the Contract for the International Carriage of Goods by Road 1956, the Convention concerning International Carriage by Rail 1980 (as amended by the protocols of 1990 and 1999) and the Convention for the Unification of Certain Rules for International Carriage by Air 1999, all of which Norway is a party to.

### Title to sue

43 | Who has title to sue on a bill of lading?

Any lawful holder of the bill of lading will normally have a title to sue pursuant to the Dispute Act, provided that the bill of lading is subject to Norwegian jurisdiction. The legal claim must be based in law, contract or tort, the claimant must have an adequate connection to the dispute, normally by having a legal or equitable interest, and legal proceedings must be reasonably required in order to maintain the claimant's rights.

### Charter parties

44 | To what extent can the terms in a charter party be incorporated into the bill of lading? Is a jurisdiction or arbitration clause in a charter party, the terms of which are incorporated in the bill, binding on a third-party holder or endorsee of the bill?

Provisions of the charter party may be invoked against a third party if the bill of lading includes a reference to such provisions and provided the relevant provisions are not contradictory to mandatory law.

The Norwegian Maritime Code contains specific limitations as to agreements in terms of legal proceedings. Any agreement in advance that limits the right of the plaintiff to have a legal dispute relating to the carriage of general cargo according to the relevant legal provisions settled by legal proceedings, is invalid in so far as it limits the right of the plaintiff at its own discretion to bring an action before the court at the place where:

- the defendant's principal place of business is situated, or place of residence if the defendant has no principal place of business;
- the contract of carriage was concluded, provided the defendant has a place of business or an agent there through whom the contract was concluded;
- the place of receipt for carriage according to the contract of carriage is situated; or
- the agreed or actual place of delivery according to the contract of carriage is situated.

This does not prevent an action from being brought before the court of the place designated in the contract of carriage with a view to legal proceedings.

If a bill of lading is issued pursuant to a charter party that contains a provision concerning the settlement of disputes by legal proceedings or arbitration, but the bill of lading does not expressly state that the provision is binding on the holder of the bill of lading, the carrier cannot invoke the provision against a holder of the bill of lading who has acquired it in good faith.

Further, an action concerning a contract for the carriage of general cargo in trade between two states can in any case be brought at the place or at one of the places to which the case has such connection as mentioned above or at another place in Norway agreed on by the parties.

The above does not apply if neither the agreed place of delivery nor the agreed or actual place of delivery is located in Norway, Denmark, Finland or Sweden, or if the Lugano Convention of 2007 provides otherwise.

### Demise and identity of carrier clauses

45 | Is the 'demise' clause or identity of carrier clause recognised and binding?

The main principle under the Norwegian Maritime Code is that the carrier remains liable under the relevant provisions as if the carrier had performed the entire carriage itself.

Depending on the circumstances, an 'identity of carrier' clause may be considered void as it contradicts the above principle, which in many cases is mandatory.

If it has been expressly agreed that a certain part of the carriage shall be performed by a named sub-carrier, the carrier may, however, make a reservation exempting itself from liability for any loss caused by an event occurring while the goods are in the custody of the sub-carrier. The burden of proving that the loss was caused by such an event rests on the carrier. Such reservation can nevertheless not be invoked if an action against the sub-carrier cannot be brought before a court competent in according to the Norwegian Maritime Code.

## Shipowner liability and defences

### 46 | Are shipowners liable for cargo damage where they are not the contractual carrier and what defences can they raise against such liability? In particular, can they rely on the terms of the bill of lading even though they are not contractual carriers?

If the carriage is performed wholly or in part by a sub-carrier, the carrier in general remains liable as if the carrier had performed the entire carriage itself. The carrier may however make certain reservations while the goods are in the custody of the sub-carrier.

If both the carrier and the sub-carrier are liable, they are jointly and severally liable.

If the bill of lading issued contains other terms than those stated in the chartering agreement and this increases the liability of the carrier, a voyage charterer or time charterer shall hold the carrier harmless.

## Deviation from route

### 47 | What is the effect of deviation from a vessel's route on contractual defences?

The Norwegian Maritime Code does not address specifically deviation (as opposed to previous legislation). The general regulation in terms of breach of contract and liability will apply.

If a vessel intentionally deviates from its route, this will normally be considered a breach of contract.

Under the Norwegian Maritime Code, the carrier is liable for losses resulting from the goods being lost or damaged while in its custody (unless the carrier shows that the loss was not due to its personal fault or neglect or that of anyone whom the carrier is responsible), including as a result of the delay. If the goods have not been delivered within 60 days of the day when they should have been delivered, damages can be claimed for loss of goods. The carrier is, however, not liable for losses resulting from measures to rescue persons or reasonable measures to salvage ships or other property at sea.

## Liens

### 48 | What liens can be exercised?

Under the Norwegian Maritime Code, claims against an owner are in general secured by maritime liens against the vessel, in so far as they relate to:

- 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 vessel;
- 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
- salvage reward, compensation for wreck removal, and general average contribution.

A maritime lien also arises against the vessel if the claim is against the shipowner, charterer, manager or any person to whom the owner has delegated its functions.

Under the Norwegian Maritime Code, a maritime lien is attached to cargo for the security of:

- a claim in respect of salvage reward and general average contribution;
- a claim arising in consequence of the fact that the carrier or the master in accordance with its statutory authority has entered into a contract, taken action or incurred expenditure on the account of

the cargo-owner, and a cargo owner's claim for compensation for goods sold for the benefit of other cargo owners; and

- a claim by the carrier arising out of the chartering agreement, insofar as the claim can properly be brought against the person claiming delivery.

The carrier in general also has a right of retention in the cargo until the receiver has either paid the claims or given security for them.

A lien or mortgage may also be established by agreement. There are separate requirements in order to have such security perfected.

## Delivery without bill of lading

### 49 | What liability do carriers incur for delivery of cargo without production of the bill of lading and can they limit such liability?

A receiver can only demand delivery if the receiver deposits the bill of lading and issues receipts as and when the goods are delivered.

If the carrier delivers the cargo without presentation of a bill of lading, and a bill of lading holder later appears, the carrier has no defence and will be liable towards the holder of the bill of lading.

The carrier cannot avoid liability by referring to the fact that the position was carefully considered prior to delivery. The carrier can also not rely on contractual exemptions or limitation clauses.

If the goods are delivered to a receiver that does not present a bill of lading, the carrier should request an undertaking or a guarantee (letter of indemnity). If a holder of a bill of lading later appears and directs a claim towards the carrier, the carrier can claim indemnity under such undertaking or guarantee.

## Shipper responsibilities and liabilities

### 50 | What are the responsibilities and liabilities of the shipper?

The Norwegian Maritime Code distinguishes between the 'sender', being the person who enters into a contract with a carrier for the carriage of general cargo by sea, and the 'shipper', being the person who delivers the goods for carriage.

There are several provisions under Norwegian law setting out the responsibilities and liabilities of the shipper and the sender. The main responsibilities and liabilities under the Norwegian Maritime Code are as follows.

The goods shall be delivered by the shipper at the place and within the period of time as indicated by the carrier. It shall be delivered in such a way and in such a condition that it can be conveniently and safely brought on board, stowed, carried and discharged.

The shipper is responsible to the carrier for the accuracy of the statements relating to the goods entered in the bill of lading at the request of the shipper. If the shipper has undertaken to indemnify the carrier for losses arising from the issuing of a bill of lading containing incorrect information or containing no reservation, the shipper is, nevertheless, not liable if the issuing was intended to mislead an acquirer of the bill of lading.

If the goods need to be handled with special care, the sender shall in due time give notice thereof, and state the measures that may be required.

If the sender renounces the contract before the carriage has commenced, the carrier is entitled to damages for loss of freight and other losses. If the sender or the receiver requests interruption of the carriage and delivery of the goods elsewhere than at their destination, the carrier is entitled to damages for loss of freight and other losses

If the goods are delivered to the receiver without payment of such claims against the sender as the receiver should have paid, the sender remains liable, unless the delivery entails losses for the sender and the carrier must have realised this.

Dangerous goods shall be marked as dangerous in a suitable manner. The sender shall in due time notify the carrier and the subcarrier to whom the goods are delivered of the dangerous nature of the goods and indicate the necessary safety measures. If the sender otherwise is aware that the goods are of such a nature that their carriage may involve danger or significant inconvenience to persons, ship or cargo, the sender shall also give notice of this fact.

The sender is not liable for losses caused to the carrier or subcarrier, including damage to the ship, which arises without any fault or neglect on the part of the sender personally or of anyone for whom the sender is responsible. No one the sender is responsible for is liable for losses that arise without any fault or neglect of that person personally or that of anyone for whom such person is responsible.

If the sender has delivered dangerous goods to the carrier or a subcarrier without informing them of the dangerous properties of the goods and the necessary precautions, and if the person receiving the goods is not otherwise aware of their dangerous properties, the sender is, however, liable to the carrier and to any subcarrier for costs and other losses in consequence of the carriage of such goods.

## SHIPPING EMISSIONS

### Emission control areas

**51** | Is there an emission control area (ECA) in force in your domestic territorial waters?

International Convention for the Prevention of Pollution from Ships (MARPOL) Annex VI is implemented in Norwegian law.

The North Sea area is designated as an ECA under Regulation 14 of MARPOL Annex VI.

Norway has also adopted certain specific regulations for SO<sub>x</sub> and NO<sub>x</sub> emission, including in the Norwegian world heritage fjords.

### Sulphur cap

**52** | What is the cap on the sulphur content of fuel oil used in your domestic territorial waters? How do the authorities enforce the regulatory requirements relating to low-sulphur fuel? What sanctions are available for non-compliance?

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

The following sulphur emission cap applies through MARPOL:

- outside an ECA established to limit SO<sub>x</sub> and particulate matter emissions: 0.5 per cent m/m (on and after 1 January 2020); and
- within an ECA (as per above, the North Sea area is designated as an ECA) established to limit SO<sub>x</sub> and particulate matter emissions: 0.10 per cent m/m.

In addition, there are certain specific requirements (including as a result of the EU Sulphur Directive):

- for ships or movable installations moored at berth or at anchor in port: 0.10 per cent m/m;
- for passenger ships sailing on a route to or from harbours in the European Economic Area that are located in Norwegian territorial water or economic zone: 1.50 per cent m/m; and
- for ships in Norwegian world heritage fjords: 0.10 per cent m/m.

There are various sanctions available, including orders, fines, withdrawal of permits, detentions as well as prison in case of serious breaches, typically in case of gross negligence or wilful misconduct.

## SHIP RECYCLING

### Regulation and facilities

**53** | What domestic or international ship recycling regulations apply in your jurisdiction? Are there any ship recycling facilities in your jurisdiction?

The EU Ship Recycling Regulation (Regulation (EU) 1257/2013) on safe and sound ship recycling is implemented in Norwegian law.

The Basel Convention, implemented in the European Economic Area through the Waste Shipment Regulation (EU 1013/2006), is also implemented in Norwegian law and is applicable to ships being taken out of service and considered waste.

There are also several more general regulations, such as those related to health, safety and the environment, that will cover ship recycling.

Under the EU Ship Recycling Regulation ships flying the flag of a member state may be recycled only in ship recycling facilities included in the European List of ship recycling facilities. Seven recycling facilities in Norway have been included on the European List.

Norway is also a signatory to the Hong Kong International Convention for the safe and environmentally sound recycling of ships (the Hong Kong Convention). The Convention has not yet entered into force.

## JURISDICTION AND DISPUTE RESOLUTION

### Competent courts

**54** | Which courts exercise jurisdiction over maritime disputes?

The ordinary courts of Norway have jurisdiction over maritime disputes that are subject to the jurisdiction of Norway, provided the parties have not agreed otherwise. There are three court instances: the district courts, the courts of appeal and the Supreme Court. The first court of instance is the relevant district court. Decisions by the district court may be subject to appeal to the courts of appeal. A decision by the courts of appeal may be subject to appeal to the Supreme Court.

The parties may agree that an agreement or a matter shall be subject to arbitration.

### Service of proceedings

**55** | In brief, what rules govern service of court proceedings on a defendant located out of the jurisdiction?

Norway has ratified the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, and the convention has been implemented in Norwegian law. Service of court proceedings on a defendant located out of the jurisdiction may be completed in accordance with the regulation of the Convention.

### Arbitration

**56** | Is there a domestic arbitral institution with a panel of maritime arbitrators specialising in maritime arbitration?

Maritime agreements are often agreed between the parties to be subject to arbitration. In Norway, maritime arbitration has previously been subject to ordinary ad hoc arbitration, which remains the most common way of solving a dispute under arbitration, however, with a practice to nominate maritime specialists as arbitrators.

In 2017, the Nordic Offshore and Maritime Arbitration Association (NOMA) was established on the initiative of the Danish, Finnish, Norwegian and Swedish Maritime Law Associations. This has provided

Norway with an arbitration venue that will serve as an alternative to, for example, arbitration in London, and is a natural choice when an agreement is governed by Norwegian law or another Nordic law.

NOMA has established separate rules for the arbitration based on UNCITRAL Arbitration Rules, as well as Best Practice Guidelines.

While NOMA is a relatively newly established institution, it is gaining traction. Nordic players are increasingly opting for NOMA as a dispute resolution mechanism, and the NOMA Best Practice Guidelines are often used in non-NOMA ad hoc arbitrations, being recognised as a codification of Nordic best practice.

New fast track arbitration rules were established by NOMA in 2021.

### Foreign judgments and arbitral awards

#### 57 | What rules govern recognition and enforcement of foreign judgments and arbitral awards?

In Norway, both domestic law and treaties govern the recognition and enforcement of foreign judgements.

Norway is a party to several international treaties for the recognition and enforcement of foreign judgements. It should be mentioned:

- the convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters of (the Lugano Convention);
- the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards;
- the convention between Norway, Denmark, Finland, Iceland and Sweden on recognition and enforcement of judgments in civil matters; and
- bilateral treaties and treaties within specific legal areas.

### Asymmetric agreements

#### 58 | Are asymmetric jurisdiction and arbitration agreements valid and enforceable in your jurisdiction?

Asymmetric jurisdiction and arbitration agreements are, in principle, valid and enforceable between commercial parties.

There are certain possibilities to having such agreement set aside such as under the European Convention on Human Rights article 6, as well as under the Contract Act where there are certain limited possibilities to set aside contracts in whole or in part if it will be considered unreasonable or contradictory to sound business practice to enforce the agreement.

### Breach of jurisdiction clause

#### 59 | What remedies are available if the claimants, in breach of a jurisdiction clause, issue proceedings elsewhere?

The judgment may be challenged and not recognised in accordance with the provisions of relevant treaties, such as the Lugano Convention section 11 (Recognition).

#### 60 | What remedies are there for the defendant to stop domestic proceedings that breach a clause providing for a foreign court or arbitral tribunal to have jurisdiction?

If there is an agreement between the parties for a foreign court or arbitral tribunal to have jurisdiction, the Norwegian courts will, in most circumstances, be considered to not have jurisdiction over the case, and the case shall then be rejected by the courts.

## LIMITATION PERIODS FOR LIABILITY

### Time limits

#### 61 | What time limits apply to claims? Is it possible to extend the time limit by agreement?

The general limitation period under Norwegian law is three years.

Special circumstances and special regulation may entail other limitation periods or extensions, or both. The Norwegian Maritime Code contains certain special rules relating to time limitation that will supersede the general rules. Certain examples: Claims for salvage reward or special compensation, claims related to collision and claims that arise under a passage contract are subject to a time limitation of two years. Claims for a share of a salvage reward or of special compensation, claims in connection with the carriage of goods or of incomplete or incorrect statements in a bill of lading and claims in connection with the general average are subject to a time limit of one year.

The debtor may agree to an extension of the time limit for three years at a time, up to a maximum of 10 years from the original expiry. It can, however, not be agreed in advance that time limitations shall not apply.

### Court-ordered extension

#### 62 | May courts or arbitral tribunals extend the time limits?

No. Commencement of legal proceedings will suspend the time limitation.

## MISCELLANEOUS

### Maritime Labour Convention

#### 63 | How does the Maritime Labour Convention apply in your jurisdiction and to vessels flying the flag of your jurisdiction?

The Maritime Labour Convention has been ratified by Norway. The Maritime Labour Convention is implemented in the Ship Labour Act and the Ship Safety and Security Act.

Both acts apply to vessels flying the flag of Norway (however, the regulation may also apply to other vessels).

The Norwegian Maritime Authority (NMA) issues the DMLS Part I. The shipowner should complete the DMLC Part II. The NMA or one of the recognised organisations (RO) (typically certain nominated classification societies) will complete an MLC inspection upon request by the shipowner, following which the MLC certificate will be issued. The MLC Certificate is issued based on the issued DMLC Part I, DMLC Part II and the completed MLC inspection.

### Relief from contractual obligations

#### 64 | Is it possible to seek relief from the strict enforcement of the legal rights and liabilities of the parties to a shipping contract where economic conditions have made contractual obligations more onerous to perform?

The main principle under Norwegian law is the principle of contractual freedom. There are limited possibilities to seek relief from the strict enforcement of the legal rights and liabilities of the parties.

There is a possibility to set aside contracts in whole or in part if it will be considered unreasonable or contradictory to sound business practice to enforce the contract. Norwegian courts will, however, rarely use this possibility to revise contracts between professional parties – this possibility will only be applied by the courts in exceptional circumstances.

## Other noteworthy points

65 | Are there any other noteworthy points relating to shipping in your jurisdiction not covered by any of the above?

Norway has a tonnage tax regime, being a special tax regime for the shipping industry where qualifying shipping companies are exempt from tax on their shipping income. Instead, the companies within the regime pay a moderate tax calculated on tonnage owned – and to a certain extent leased – by the company. The regime is only available for Norwegian (private and public) limited liability companies. The regime is 'ring fenced', meaning there are strict rules governing what assets a company within the regime must and can own, and also on what business can be conducted. In broad strokes, a company within the regime can only conduct business in the form of owning and operating qualifying vessels; which are traditional shipping vessels and offshore service vessels (the operation and capabilities of the latter must be limited against 'core' oil production activities). To qualify, a company within the regime must directly or indirectly own a minimum of 3 per cent of the qualifying vessel. A tonnage taxed company may also own certain permitted assets, such as listed securities, but other assets than 'qualifying' and 'permitted' assets are disqualifying. Although shipping income is tax exempt, certain financial income will be taxable, such as interest income and certain currency gains, etc.

## UPDATE AND TRENDS

### Key developments of the past year

66 | Are there any emerging trends or hot topics that may affect shipping law and regulation in your jurisdiction in the foreseeable future?

The Norwegian parliament has approved changes to the Norwegian Maritime Code and the Act on the Norwegian International Ship Register to allow for temporary bareboat registration of vessels in and out of the Norwegian ship registries (NOR and NIS).

As of 1 July 2020, vessels registered in NOR and NIS are allowed to be temporary bareboat registered in a foreign ship registry, and vessels registered under the flag of foreign ship registry are allowed to be temporary bareboat registered in NOR or NIS.

The amendment provides flexibility and increases the attractiveness of the Norwegian ship registries. The change may also increase the attractiveness of sale-leaseback transactions for Norwegian shipowners.

### Coronavirus

67 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

The Norwegian Government has implemented several regulations on maritime activities as a response to the coronavirus pandemic. As the regulations are amended frequently, a maritime actor is advised to check the websites of the Norwegian Maritime Authority and the Norwegian Coastal Administration for information on up to date version of applicable regulations:

The following is an overview of the relevant regulations in force as of 21 April 2021.

### Entry to Norwegian ports

Norwegian ports are open for the transport of goods. Certain local police districts have imposed shore leave restrictions, but generally, the loading and unloading of goods is allowed in ports. For further

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details on local shore leave restrictions, please visit the websites of the Norwegian Police.

### Crew changes

The general principle is that only Norwegian citizens are permitted to enter Norway. However, an exception is made for foreign seamen en route to – or from – active service with an identity card as specified in section 2-8 of the Immigration Regulations, or a Philippine Seafarer's Identification and Record Book or a Philippine national passport as specified in section 3-1 (j) of the Norwegian Immigration Regulations.

Personnel, as categorised above, shall register their contact information prior to arrival in Norway, and carry out an entry quarantine. The entry quarantine applies to both leisure and working hours. However, after having tested negative for SARS-CoV-2 on a test taken during the first 24 hours after arrival in Norway, as well as a PCR test that was taken no earlier than three days after arrival in Norway, the seafarer can start working. At this time, quarantine only applies for leisure. The quarantine is completed after 10 days, or when they test negative on a PCR test taken no earlier than seven days after arrival in Norway.

Quarantine on board the vessel can only be carried out in a single cabin. The employer is responsible for organising and carrying out tests for SARS-CoV-2. In the event that the seafarer tests positive for SARS-CoV-2, the seafarer shall go into isolation, and the employer shall notify the municipality where the person resides, or most recently resided if the vessel has left the port. Vessels arriving in Norwegian ports suspecting or having confirmed infection of SARS-CoV-2 on board shall report this to the Norwegian authorities in accordance with the provisions of section 4 of the Norwegian regulations relating to notification of and measures in the event of serious incidents affecting international public health.

### Coastal voyages

The Norwegian government has passed certain regulations specific to coastal voyages. Before a shipping company that offers coastal voyages within Norway's territorial boundaries can start operating it must submit a plan to the Norwegian Directorate of Health, describing how the company will ensure compliance with the applicable infection control

requirements. The Norwegian Directorate of Health may approve the start of a coastal voyage if the shipping company's plan as mentioned satisfactorily describes how the shipping company fulfils infection control requirements.

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