

## SHIP ARREST IN NORWAY (Questions 1 to 9)



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### 1. Please give an overview of ship arrest practice in your country.

Arresting a ship is relatively straight forward matter under Norwegian law, and can be arranged quickly at a reasonable cost. Vogt & Wiig law firm can act in arrest cases in all Norwegian Courts/ports. The claimant must submit an application for arrest to the District Court where the ship is located or is expected to arrive, alternatively to the District Court in the judicial district where the debtor (the owner of the vessel) resides, if the ship owner is Norwegian. The application has to specify the claim, the size of the claim, the arrest ground and provide an outline of the allegations of the applicant. Documentation supporting the allegations is not mandatory, but should be provided. A well presented case with supporting evidence increases the probability of obtaining an arrest award ex parte. The Courts will however normally accept documentation in English.

The applicant must further prove upon a balance of probability that he has a maritime claim, that an "arrest ground" is present and that the averments for arrest are fulfilled. This is a requirement that is not found in the Arrest Convention and it is imposed in addition to the rules of the Arrest Convention. What constitutes an arrest ground is set out in the Norwegian Dispute Act section 33-2 (1) which reads: "Arrest of assets of economic value can be decreed when the behavior of the debtor gives reason to fear that the enforcement of the claim otherwise will either be made impossible or made substantially more difficult, or has to take place outside the Kingdom". In short this means that the Norwegian Courts is provided with the discretion as regards whether or not an arrest shall be granted.

If arrest is granted, the Courts issue an arrest decree which states the name of the parties, the claim, the maximum amount the claim shall be secured for and the arrest ground. The Courts notifies the enforcement authorities, which ensure that the ship does not leave the harbor and reports the arrest to the ship register.

### 2. Which International Convention applies to arrest of ships on your country?

The 1952 Arrest Convention applies. The convention is incorporated in the Norwegian Maritime Code, the Enforcement of Claims Act and the Dispute Act. Norway has also signed the 1999 Arrest Convention, but this convention has not yet been ratified. At this point in time, the Norwegian Ministry of Justice and the Police was not able to indicate when such ratification will take place.

### 3. Is there any other way to arrest a ship in your jurisdiction?

If a vessel is flying Norwegian flag, it may be arrested by way of so called "register arrest". This is practical if the claim is not a maritime claim, as this is not an arrest of the vessel as such, and section 92 of the Maritime Code is not applicable. A register arrest means that instead of physically seizing the vessel, the arrest is registered as an encumbrance in the ship register. If a creditor fears that the vessel may be sold, and thereby he loses the only object that may provide security for the claim, this can be an effective alternative to arresting the vessel. A register arrest prevents a sale of the vessel but may not provide an offer of immediate security.

### 4. Are these alternatives e.g. saisie conservatoire or freezing order?

In addition to the rules of arrest, there are two other important sets of rules under which a vessel may become legal security for a claim. Firstly, there are the ordinary rules on liens and mortgages. Under these rules a claim is secured by a right in the ship. Such security can have its legal basis in contract, a decision by the enforcement authorities or statute. Secondly, there are rules that may

give a creditor a right of retention, e.g. a yard retain a vessel until the bill is paid. The right of retention may be based in contract or law.

#### 5. For which types of claims can you arrest a ship?

All maritime claims as listed in article 1 (1) of the Arrest Convention, with the addition of compensation for wreck removal, may be the basis for an arrest of the ship. These different maritime claims are listed in section 92 of the Norwegian Maritime Code.

However, a register arrest (see section 3 above) and arrest of other assets than the vessel, e.g. bunkers and insurance proceeds, may be granted for any type of monetary claims.

#### 6. Can you arrest a ship irrespectively of her flag?

Yes.

#### 7. Can you arrest a ship irrespectively of the debtor?

No, the debtor has to be the owner of the vessel that is being arrested, cf. the Maritime Code section 93(4). Norwegian legislators have deviated from the Arrest Convention on this point, as claims against bareboat charterers may not give raise to arrest of the vessel itself as per article 3(4) of the Arrest Convention. However, as mentioned in section 9 below, claims against the bareboat charterer and the time charterer may give raise to arrest of other assets, e.g. the bunkers onboard the vessel.

#### 8. What is the position as regards sister ships and ships in associated ownership?

In principle, the only ship that may be arrested is the one out of which the claim arises. However, in accordance with the Arrest Convention, Norwegian law recognizes the right of sister ship arrest. If vessel A and B are owned by the same legal entity, and this legal entity is the debtor for the claim, either of the vessels may be arrested, even if the claim only arises out of vessel A. It should be noted that both the vessels in principle must be owned by the same legal entity in order to enable an arrest of the sister ship. If the ownership of vessels is organized with a holding company and single purpose companies as the registered owner of each vessel, arrest of a sister ship will in principle not be possible under Norwegian law.

#### 9. What is the position as regards Bareboat and Time-Chartered vessels?

As mentioned above, claims against time- or bareboat charterers do not give the right of arresting the vessel, as the vessel is not owned by the charterers. The legal principle that the debtor has to be the owner of the ship is set out in section 93 (4) of the Maritime Code: "Arrest can only be effected if the ship can serve as an object for the enforcement of a claim according to the general provisions of the Enforcement of Claims Act." Turning to the Enforcement of Claims Act, section 11-4 and 7-1, it is clearly said that the debtor must be the legal owner of the asset that is being arrested.

This means that an arrest of the vessel is not a remedy at hand where the Claimant has a claim against the bareboat charterer or the time charterer of the vessel. However, on bareboat chartered vessels, the bunkers onboard are normally owned by the charterer. This is often also the case under a time charter, and arresting the bunkers onboard may be an effective remedy where the claim is not against the owner of the vessel.



*\* Ingar Fuglevåg was born in 1970, and has been with Vogt & Wiig since 1999, a firm which is constantly ranked in the 1st category of shipping lawyers in Norway in the Legal 500. He became a partner of the firm in 2005. Ingar is one of the partners of the shipping department of Vogt & Wiig, and specialises in shipping/admiralty law and insurance law. Ingar litigates insurance disputes, casualty disputes, including P&I and cargo disputes both in arbitration proceedings and before the Courts in Norway. Ingar has given lectures on Maritime law to Lloyds Maritime Academy as well as at Norwegian forums, such as Nor Shipping, The Norwegian Maritime Law Association and the Norwegian School of Management – BI.*

## SHIP ARREST IN NORWAY (Questions 10 to 20)



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### 10. Do your Courts require counter-security in order to arrest a ship?

Section 33-3 of the Dispute Act provides that the court can require the claimant to deposit securities as a condition for the implementation of the arrest. The security is fixed at the courts discretion.

### 11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Section 92 (2)(q) of the Maritime Code exempts maritime liens from the definition of a maritime claim. However, as a general rule, a maritime lien will fall within the other categories of the definition in section 92 (2). Consequently, there is usually no difference in respect to arresting a ship for a maritime claim and a maritime lien.

### 12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes, maritime liens are recognized under Norwegian law. The provisions on maritime liens are found in the Maritime Code section 51. However, the 1967 Maritime Lien Convention is not effective in Norway.

### 13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

Kluge law firm recognize the need for swift action in cases regarding arrest of ships, and we will normally be able to arrange for arrest of a vessel in any Norwegian port within 24 hours after receiving necessary documentation.

### 14. Do you need to provide a POA, or any other documents of the claim to the Court?

No. It is advisable and sometimes even required that the claimant appoints legal counsel to represent him with the claim. According to the law, an application for an arrest can be submitted orally to the courts, but this is more theoretical than practical and it is normal procedure to issue a written petition signed by either the claimant or his legal counsel.

### 15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

There are no formal requirements as to what documents can be presented to the courts. However, it is advisable to submit any documentation relevant to the substantive claim together with the petition. This increases the chance of a successful arrest, as in most cases the claimant must prove the substantive claim on a balance of probabilities.

### 16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Yes. Subject to any agreements on venue or arbitration, legal proceedings regarding the substantive claim can be instituted in the courts of the judicial district where the ship has been arrested.

### 17. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The defendant can request the courts to fix a time-limit by which the claimant must institute legal proceedings. If no such time-limit has been fixed by the court, the period will be one year from the issue of the arrest order. If proceedings are not instituted within the time-limit, the arrest order will

be quashed. The courts can, at their own discretion, extend the one-year time limit if a request is submitted within the time-limit.

#### 18. Do the Courts of your country acknowledge wrongful arrest?

Yes. Section 32-11 of the Dispute Act imposes on the claimant a wide-ranging duty to indemnify the defendant for any economic loss he has suffered if the claim did not exist at the time of the arrest. The same applies if the claimant by negligence or intent has given wrongful or misleading information regarding the "ground for arrest".

#### 19. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

As a general rule, the shareholders of a company with limited liability will not be personally liable for the obligations of the company.

However, the courts will make an overall evaluation and, in exceptional circumstances, the possibility of piercing and lifting the corporate veil cannot be ruled out. Important factors in the overall evaluation will be whether it would be unreasonable towards the creditor to uphold the corporate veil in the particular situation, or whether the companies have been mixed in such a way that the upholding of the corporate veil does not deserve preservation from the courts.

#### 20. Is it possible to have a ship sold *pendente lite*; if so how long does it take?

When a ship has been arrested, the effect of the arrest is that the owner loses his complete control over the ship. This means that the owner cannot decide to sell the ship as long as the arrest is upheld.

An arrest does not give the claimant the right to a compulsory fulfilment. Such sale would require an enforcement ground. The claim is considered to be *pendente lite* until a legally binding judgement has been delivered by the courts. As a consequence, the claimant cannot demand that the ship is sold *pendente lite*. However, the courts can permit this if the arrest holder requests it, and it is necessary to avoid substantial decrease in value.

