



Ship arrest in Norway

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The aim of this brief article is to set out the legal requirements for arresting ships and enforcing claims against ships in Norway. As we will explain more in detail below, Norway is a reliable jurisdiction where arresting ships may be done rather easy without incurring any substantial costs.

Norway is party to the 1952 Arrest Convention, which has provided the basis for the Norwegian legislation on ship arrests. Norway is also a signatory to the 1999 Arrest Convention, which came into force in 2011, but there are no imminent ratification process by the Norwegian authorities. As a civil law jurisdiction, Norway has incorporated the 1952 Arrest Convention (the “Arrest Convention”) into the Norwegian Maritime Code (NMC).

Arrest Procedure

The claimant must submit an application for arrest to the District Court with jurisdiction over the port where the ship has called, or is expected to call. Alternatively, if the owner/debtor is Norwegian resident, to the District Court in the judicial district where that debtor’s business is based.

The application may be forwarded to the Court prior to the vessel entering the

port, if evidence can be presented to show that the vessel is likely to call at a named port in the near future. The application has to specify the claim, the reason for the arrest (see below) and provide an outline of the arguments of the applicant. Supporting documents should also be attached to the application.

Supporting documents will normally be accepted in English language. The application will be dealt with by the Court either on the basis of the written application or at an oral hearing. For all practical purposes, the arrest of ships is always dealt with *ex parte*, as there is seldom time to arrange a hearing before the vessel departs. The ship owner may apply for a hearing after the arrested has been granted. Such hearing will normally be scheduled within a few days after the application for a hearing has been filed.

If the District Court accepts the application for arrest, the court will issue an arrest order. The decision is usually issued within twenty-four hours after receipt of the application. The arrest order is then served upon the Master of the vessel by the Bailiff (usually the local police), and the ship's certificates are detained by the Bailiff.

It is not necessary for the claimant to issue any formal Power of Attorney when instructing legal counsel in Norway in connection with the arrest application. Neither are there any substantial fees payable to the court in connection with an arrest application. The claimant needs to pay a fee to the Court in amount of NOK 2,930 (approx. EUR 275). In addition comes fees payable to the legal counsel preparing the arrest application and security for port dues, if applicable. We will address the question of security separately below.

Claims in respect of which a ship may be arrested

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. The closed list of maritime claims is found in section 92 of the NMC:

Section 92 Maritime Claims

A ship can only be arrested to secure a maritime claim. A maritime claim means a claim based on one or more of the following circumstances:

- a) damage caused by a ship in a collision or otherwise,*
- b) loss of life or personal injury caused by a ship or occurring in connection with the operation of a ship,*
- c) salvage and the removal of wrecks,*
- d) a charterparty or other agreement for the use or hire of a ship,*
- e) a charterparty or other agreement for the carriage of goods by ship,*
- f) loss of or damage to goods, including luggage, carried by ship,*
- g) general average,*
- h) bottomry,*
- i) towage,*
- j) pilotage,*
- k) goods or materials delivered anywhere to a ship for use in its operation and maintenance,*
- l) the building, repair or fitting out of a ship and costs and fees payable for docking,*
- m) wages and other remuneration due to the master and other employees on board in respect of their service on the ship,*

- n) a master's disbursements, including disbursements by shippers, charterers or agents on behalf of the ship or its owner,
- o) a dispute as to the ownership of a ship,
- p) a dispute between co-owners of a ship concerning its ownership, possession or use or the revenues from it,
- q) any mortgage on or security in a ship, except for a maritime lien.

In order to arrest a ship in Norway, the claim for which the creditor is seeking security needs to fall within the scope of section 92 of the NMC as listed above. If the claim falls outside the scope of section 92, and is not regarded as a maritime claim, it is still possible to arrest other assets than the ship itself, such as the bunkers on board, claims for hire payment, claims for insurance proceeds and bank accounts. From a practical viewpoint, the arrest of the vessel's bunkers may be as effective as arresting the vessel itself. However, the bunkers must be owned by the debtor, and it is important to keep in mind that under a time charterparty, the bunkers are normally owned by the Charterers, not the Owners.

If the vessel in question is flying Norwegian flag, it might also be possible to make a so called "register arrest". This is practical if the claim is not a maritime one, as this is not an arrest of the vessel as such, and section 92 of the NMC is not applicable. Under a "register arrest", instead of physically seizing the vessel, the arrest order is registered by the Norwegian ship registry and will prevent a potential sale of the vessel.

The 'balance of probability' - additional requirement for arrest

In addition to proving that the claim against the Owners falls within the closed list of maritime claims, the applicant must prove on a balance of probability that he has sufficient reason to arrest the ship (in Norwegian: "sikringsgrunn"). This is a requirement set out in the Norwegian Dispute Act, a provision which applies both to arrest of ships and other assets. The relevant rule is found in section 33-2 (1), which reads as follows:

"Arrest of assets of economic value can be decreed when the behaviour 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, and in contrast to many other jurisdictions, the mere existence of a maritime claim is not sufficient for arresting the vessel. The Claimant needs to convince the Court that the Owners prior and likely future actions in the



context of enforcing the claim would call for an arrest of the vessel. Typical grounds for the approval of a ship arrest include cases in which the debtor has tried to dissipate his assets or if the conduct of business indicates that there will be insufficient funds to pay creditors. It is normally sufficient to demonstrate that the debtor has failed to settle or respond to an undisputed claim after a number of reminders. It should be emphasised that it is the debtor's actions or omissions that are relevant; the fact that a debtor is financially weak does not in itself constitute a ground for arrest.

The Norwegian approach means that it is slightly more difficult to predict in advance whether the courts will grant an arrest. However, in practice the Courts do not normally apply this additional requirement very strictly, and an arrest of the ship is normally sanctioned without this requirement being a major obstacle.

Arrests based on mortgage claims and claims secured with a maritime lien

There is one important exemption from this additional requirement; a claimant whose claim is secured by a mortgage or lien on the vessel can arrest the vessel without showing any other cause for an arrest, provided the secured claim has fallen due. This rule is set out in section 33-2(3) of the Dispute Act. In practice, there are two different categories of claims that benefits from this exemption:

1. Claimants with loans secured by a registered mortgage on the vessel can arrest the vessel without any additional reason for arrest, other than the claim being due. The claimant would normally be a bank, acting as lender and mortgagee.
2. A claim secured by a maritime lien will also be entitled to arrest without this additional requirement. Maritime liens are recognized under Norwegian law, and the list of maritime liens in the section 51 of the NMC corresponds with the list in the 1967 Maritime Lien Convention article 4 no 1. The following claims will be secured by a maritime lien in Norway:
 - 1) wages and other sums due to the master and other persons employed on board in respect of their employment on the vessel;
 - 2) port, canal and other waterway dues and pilotage dues;
 - 3) damages in respect of loss of life or personal injury occurring in direct connection with the operation of the ship;
 - 4) damages in respect of loss of or damage to property, occurring in direct connection with the operation of the ship, provided the claim is not capable of being based on contract; and
 - 5) salvage reward, compensation for wreck removal, and general average contribution.

Ownership issues

In contrast to some jurisdictions, Norwegian law requires that the debtor/defendant must be the owner of the vessel that is being arrested. Unless being secured by a mortgage or maritime lien, claims against time or bareboat charterers do not give the right to arrest the vessel, as the vessel is not owned by the charterers. Norwegian legislators have deviated from the Arrest Convention on this point, as claims against bareboat charterers are subject to arrest pursuant to article 3(4) of the Convention. However, under a time charter or bareboat,



arresting the bunkers on-board is a possibility, as the bunkers usually are owned by the charterers.

The arrest of sister ships

The Norwegian rule on arrest of sister ships is set out in section 93(1) of the NMC:

“Arrests can only be effected against a) the ship to which the maritime claim relates, or b) if the owner of the ship to which the maritime claim relates is personally liable for the claim: other ships owned by that person at the time when the claim arose.”

In principle, the only ship that may be arrested is the one in relation to 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. It should, however, be noted that both 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 the vessels is organized with a holding company and single purpose companies as the registered owners of the respective vessels, the arrest of a sister ship will in principle not be possible under Norwegian law.

Piercing the corporate veil may in theory be possible under Norwegian law, but the principle of sister ship arrest has not been fully tested in the Norwegian courts. We believe that the Norwegian courts would most likely recognise the corporate structure, and would not be likely to pierce the corporate veil in connection with arrest of sister ships.

Security

When arresting a vessel in Norway, the question of security may arise in three different situations:

1. The claimant may be asked to put up counter security in order for the arrest to be granted.
2. The claimant may be asked to raise security for port dues that are being incurred during the arrest period.
3. The debtor may arrange for the release of the vessel by posting security.

Counter security

Starting with the question of counter security, the Court may in its sole discretion make the arrest order conditional upon the claimant providing security for wrongful arrest in a fixed amount. If such a request is made, the claimant must raise security by way of cash deposit with the court or by bank guarantee from a Norwegian bank.

However, the Courts rarely requires counter security to be posted, and the few exceptions are likely to be made where the Court is in doubt about the maritime claim and whether this is sufficient cause for arrest. The security is meant to be security for a potential claim for damages based on liability for wrongful arrest, which would usually be the loss of hire due to the arrest. The extent to which the claimant may be held responsible for any loss of hire suffered if the arrest is deemed wrongful has not been finally resolved, but we are of the opinion that it could be argued that the loss of hire should not be recoverable for a longer period than would allow the debtor to arrange for security and the release of the vessel; normally a few days.

Port dues

The claimant may be ordered to provide security for the port dues if the vessel is arrested while berthed, or moored, at facilities owned/operated by the municipal port authorities (the same rule applies if the vessel is moved to such port facilities while under arrest). According to section 97 of the NMC, the claimant must, within one week after the arrest order has been issued, arrange for security for the port dues. If the required security is not posted, the arrest can be lifted upon request from the port authorities. The security must cover the port dues for a period of at least fourteen days and must, in accordance with the Enforcement of Claims Act, be established either by way of a cash deposit or by bank guarantee from a Norwegian bank. Although port dues are not substantial, as they accrue on a daily basis, a lengthy arrest may lead to a significant liability.

Release of the vessel

If an arrest is granted, the debtor may arrange for the release of the vessel by putting up security. If the parties are unable to reach an amicable settlement, a commercial ship owner will normally raise security in order to have the vessel operating as quickly as possible. Most P&I Clubs will issue a Letter of Undertaking, and this is very often commercially acceptable as a guarantee in order to lift an arrest. It should, however, be noted that under the Norwegian Enforcement of Claims Act, this is not a security recognized by law. However, in most cases the arrestor will accept a Letter of Undertaking from a reputable P&I Club, and the vessel will then be released by agreement. However, if the claimant sticks firmly to Norwegian procedural requirements, the debtor may be forced to make a cash deposit or to arrange for a bank guarantee from a Norwegian bank.

Judicial sale proceedings

An arrest in Norway will not give an automatic right to initiate judicial sale proceedings of the vessel. An arrest in Norway only provides for security, and judicial sale proceedings are conditional upon the claimant having an enforceable claim in accordance with the rules of the Enforcement Act. In practice, this means that the claimant can proceed with the sale of the vessel only when a final and binding decision on the claim itself (the main proceedings) has been issued.

In Norway, a 'binding decision' would be a final judgment from the Norwegian courts, or, flowing from the Lugano Convention in the case of foreign judgments, a final court decision from a country within the EEA or EU. A foreign arbitration award is also enforceable in Norway in accordance with provisions of the Norwegian Arbitration Act. A creditor with a registered mortgage or a maritime lien can proceed on basis of the mortgage or lien itself (see above).

Under Norwegian law, the priority ranking of unsecured claims depends on when an execution lien is issued and attached to a property. This means that it may be important to quickly obtain a final judgment in the main proceedings, and thereafter register the claim in the vessel as an execution lien. What is important to note with respect to a ship arrest in Norway, is that the claimant holds priority from the time of the arrest, even if the final judgment and the execution lien are established later (save that the arrest will lapse after one year if sale proceedings have not been commenced within that time). The arrest of the vessel may therefore be an important tool for a creditor competing with other creditors when the ship owner lacks financial resources. In these circumstances, time is of the essence.

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