The Legal 500 Country Comparative Guides

Norway: Shipping

This country-specific Q&A provides an overview to shipping laws and regulations that may occur in Norway.

For a full list of jurisdictional Q&As visit here
1. **What system of port state control applies in your jurisdiction? What are their powers?**

Norway is a member to the Paris MOU on Port State Control.

The scope of the PCS is set out in regulation FOR-2014-11-24-1458 on Port State Control and the PCS is carried out in accordance with the EU directives and regulations referred to in Section 4 of the regulation.

2. **Are there any applicable international conventions covering wreck removal or pollution? If not what laws apply?**

Norway is not a signatory to the 2007 Nairobi International Convention on the Removal of Wrecks. The Norwegian Parliament gave its consent to become a part of the Convention and the new Norwegian Maritime Code (hereinafter “NMC”) Chapter 10a, which incorporates the Convention into the NMC, is already passed by parliament. However, entering into force is dependent on ratification.

Until then, wreck removal is governed by the Norwegian Harbour and Fairway law sec. 35 et seq. as well as the Norwegian Pollution Act giving the authorities the power to order removal of the wreck by the registered owner of the vessel.

Regarding pollution, Norway is part of the 1973/1978 MARPOL Convention as incorporated into the Norwegian Ship Safety and Security Act Chapter 5.

Norway is furthermore a signatory to:

- the 1976 and 1992 International Convention on Civil Liability for Oil Pollution Damage; and
- the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage;

which are incorporated in NMC Chapter 10 and the Norwegian Pollution Act.

The 1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, as superseded by 2010 Protocol is enacted in NMC Chapter 11, but not in force, as the Convention is not yet in force.

3. **Are there any applicable international conventions covering collision and salvage? If not what laws apply?**

NMC Chapter 8 (sec. 161 - 164), which regulates questions regarding liability in case of
collision, is based on the CMI Collision Convention of 1910.

NMC Chapter 16 implements the IMO International Convention on Salvage of 1989, which Norway ratified in 1996.

4. Is your country party to the 1976 Convention on Limitation of Liability for Maritime Claims? If not, is there equivalent domestic legislation that applies? Who can rely on such limitation of liability provisions?

The 1976 Convention on Limitation of Liability for Maritime Claims, as amended by the 1996 Protocol, is implemented in NMC Chapter 9 (sec. 171 et seq.). According to NMC sec. 171, the “reder”, the shipowner, the carrier and the manager can rely on these limitations. The “reder” has no precise translation into English. In legal theory it is described as the person that operates the vessel on his or her account, typically the owner or the demise charterer.

5. If cargo arrives delayed, lost or damaged, what can the receiver do to secure their claim? Is your country party to the 1952 Arrest Convention? If your country has ratified the 1999 Convention, will that be applied, or does that depend upon the 1999 Convention coming into force? If your country does not apply any Convention, (and/or if your country allows ships to be detained other than by formal arrest) what rules apply to permit the detention of a ship, and what limits are there on the right to arrest or detain (for example, must there be a “maritime claim”, and, if so, how is that defined)? Is it possible to arrest in order to obtain security for a claim to be pursued in another jurisdiction or in arbitration?

Norway is party to the 1952 Arrest Convention. It signed the 1999 Convention but has not yet ratified it. The 1952 Arrest Convention is implemented in NMC Chapter 4 and in the Norwegian Disputes Act (hereinafter “NDA”) Chapter 33. A vessel can only be arrested to secure the maritime claims set out in NMC Sec 92 and which corresponds with art. 1 of the 1952 Arrest Convention. According to NMC Sec. 96, it is possible to arrest a vessel in Norway to secure a claim yet to be pursued in a foreign jurisdiction, irrespectively of whether Norway has a convention on enforcement of such judgement or not.

6. For an arrest, are there any special or notable procedural requirements, such as the provision of a PDF or original power of attorney to authorise you to act?

One will need to submit an arrest application to the local court where the vessel is located or expected to arrive in near future. The application must satisfy all general requirements for submissions to the courts and should include all the documentary evidence the claimant wants to rely on. Norwegian courts assume that a lawyer purporting to be representing a party is authorised to do so. However, the other party may request proof of such authorisation, but that rarely happens. If so, then a power of attorney may be necessary, but not from the outset of the proceedings. The court will normally also accept a copy unless there are reason to believe that the copy is not a true copy.
7. **What maritime liens are recognised?**

Maritime liens are recognised for claims regarding crew wages, waterway dues, certain noncontractual damages in respect of loss of or damage to property, salvage reward, compensation for wreck removal and general average contribution, cf. NMC sec. 51. These liens have first priority. In relation to each other, their priority is set out in NMC sec. 52. Salvage reward, compensation for wreck removal and general average contributions take priority over all other maritime liens.

A maritime lien give basis for arresting the vessel and an arrest of the vessel will protect time in respect of a maritime lien. If an arrest is not obtained within one year after the claim secured by the maritime lien arose, then the lien will fall away.

8. **Is it a requirement that the owner or demise charterer of the vessel be liable in personam? Or can a vessel be arrested in respect of debts incurred by, say, a charterer who has bought but not paid for bunkers or other necessaries?**

Arrest of a vessel on basis of a claim secured by maritime lien is possible irrespective of who the debtor is at the time of the arrest.

Where arrest is sought on basis of a maritime claim (i.e. a claim that is not secured by a lien but part of the type of claims that 1952 Arrest Convention recognise as maritime claims), then it is a requirement that the owner of the vessel is liable in personam. Hence, the vessel cannot be arrested for debts incurred by a charterer. This is also the situation for bunker claims where the charterer is the debtor, but in such cases it may under the circumstances be possible to obtain an arrest in the bunkers that is onboard the vessel (provided it is still the property of the liable charterer).

See question 9 for sister vessels.

9. **Are sister ship or associated ship arrests possible?**

Which vessels can be arrested is set out in NMC sec. 93. If the owner of the vessel is personally liable for the maritime claim, other vessels directly owned by the owner can be arrested. If anyone else than the owner, such as a charterer, is personally liable for the maritime claim, arrest may be taken in other vessels owned by that person.

10. **Does the arresting party need to put up counter-security as the price of an arrest? In what circumstances will the arrestor be liable for damages if the arrest is set aside?**

The arrestor must provide security for public harbour duties for at least 14 days c.f. NMC sec. 97. This does not apply if the vessel is arrested to secure the crew’s wages.
The court can pursuant to NDA sec. 33-3 decide that the arrestor must additional security. This is based on the court’s discretion. A main factor in the court’s assessment of whether additional security is needed is the prima facie probability of the existence of the claim for which the arrest is sought. Additional security is compulsory only in cases where arrest is given even though the arrestor has not substantiate the claim due to the urgency of the matter.

The arrestor is liable for damages without fault if the arrest is set aside or repealed due to the fact that the claim did not exist at the time of the arrest. The same applies if the request for arrest was unfounded as a result of the arrestor negligently or knowingly providing incorrect or misleading information regarding the basis for arrest c.f. NDA sec. 32-11.

11. **How can an owner secure the release of the vessel? For example, is a Club LOU acceptable security for the claim?**

The owner can secure release of the vessel at any time by providing security for the claim, satisfying the demands of Norwegian Enforcement Act sec. 3-4, see NDA sec. 33-4, 33-5, 32-12. The security must be either:

1. A payment to a fiduciary deposit in a Norwegian bank and the bank must submit a statement on the deposit and that it cannot be administered without consent from the relevant execution and enforcement authority.
2. A guarantee by a Norwegian bank or other entity covered by the Norwegian Act on Financial Institutions sec. 2-1. The guarantee must be an unconditional surety without any time limitations and addressed to the relevant execution and enforcement authority.

A Club LOU is not by law acceptable security for the claim unless the club falls in under item (2) above which is mostly not the case. However, Club LOUs are in practice very often accepted by the claimant as security.

12. **Describe the procedure for the judicial sale of arrested ships. What is the priority ranking of claims?**

Arrest of a vessel does not constitute a legal basis for a forced sale of the vessel. It serves only as a way of securing the claim and reserve priority against subsequent mortgages etc. until a judgement is obtained as basis for the forced sale.

The procedure for forced sales is provided for in Chapter 11 of the Norwegian Enforcement Act. The judicial sale of registered vessels is possible after an execution lien is obtained. A request for a forced sale shall be submitted to the local court where the vessel is located or is expected to arrive in near future.

If the court finds the claimant’s request for a forced sale acceptable, the court will have the
request served to the defendant and give a month’s notice to present his views on matters concerning the forced sale. The court will subsequently decide whether to consent to the arrest.

The actual sale will be concluded either by an administrator’s sale or an auction by the execution and enforcement authorities, cf. Norwegian Enforcement Act sec. 11-12 et. seq.

The sales revenue will be divided according to a ruling of the court, cf. Norwegian Enforcement Act. 11-36 with the following priority:

1. court costs, costs of the sale, including the sales administrator’s remuneration;
2. maritime liens with internal priorities according to NMC sec. 51 and sec. 52 (see question 7 above);
3. other liens and mortgages in temporal order

13. **Who is liable under a bill of lading? How is “the carrier” identified? Or is that not a relevant question?**

The carrier is liable under the bill of lading, cf. NMC sec. 299. “The carrier” is defined in NMC sec. 251 as the one contracted for the carriage of the cargo. The question who is “the carrier” is relevant to several questions linked to bills of lading.

14. **Is the proper law of the bill of lading relevant? If so, how is it determined?**

Norway has implemented rules on contracts of carriage based on the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, 1924, as amended by the Protocols of 1968 and 1979 (the Hague-Visby Rules). The proper law of the bill of lading is not relevant for the application of the Norwegian rules. In fact, the rules of NMC Chapter 13 on bills of lading apply depending on where the trade is being performed, cf. NMC sec. 252. NMC Chapter 13 applies to trade between the Nordic countries (Norway, Denmark, Finland and Sweden) or if:

1. the agreed port of loading is in a Convention State (meaning the Hague-Visby Rules, cf. NMC sec. 251),
2. the agreed port of discharge is in Norway, Denmark, Finland or Sweden,
3. several ports of discharge have been agreed and the actual port of discharge is one of these and is situated in Norway, Denmark, Finland or Sweden,
4. the transport document is issued in a Convention State, or
5. the transport document states that the Convention or the law of a Convention State based thereon shall apply.

15. **Are jurisdiction clauses recognised and enforced?**

In general, jurisdiction clauses are recognised, cf. sec. 4-6 NDA. For bills of lading, there are special rules set out in sec. 310 NMC, limiting the possible scope of jurisdictional clauses.
The claimant’s right to file a suit at the defendant’s seat, the place where the contract of carriage was concluded, the place of delivery according to the contract of carriage or the place of actual delivery cannot be limited by a jurisdictional clause. However, jurisdictional clauses in accordance with Lugano Convention art. 23 do not have to follow NMC sec. 310, as Lugano convention art. 23 takes precedence.

16. **What is the attitude of your courts to the incorporation of a charterparty, specifically: is an arbitration clause in the charter given effect in the bill of lading context?**

A jurisdictional clause or arbitration clause in a charterparty is only binding on the holder of the bill of lading (who has acquired it in good faith), if the bill of lading expressively states that the provision is binding on the holder of the bill of lading, cf. NMC sec. 310, 311.

In case of tramp bills of lading, provisions of the chartering agreement which are not included in the bill of lading cannot be invoked against a third party unless the bill of lading includes a reference to them, cf. NMC sec. 325.

17. **Is your country party to any of the international conventions concerning bills of lading (the Hague Rules, Hamburg Rules etc)? If so, which one, and how has it been adopted - by ratification, accession, or in some other manner? If not, how are such issues covered in your legal system?**

Norway uses three different ways of implementing conventions. It will either (1) render the Convention directly applicable, (2) transform the convention into its own law or (3) include the convention into the relevant law. Sometimes (4), it also adds parts of conventions to the relevant law, even though the convention was not ratified. The latter happened regarding to the Hamburg Rules, as you will find some parts in NMC Chapter 13 and 14.

Regarding the Hague Visby Rules, Norway used method (3) and implemented it in NMC Chapter 13 and 14.

18. **Is your country party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? If not, what rules apply? What are the available grounds to resist enforcement?**

Norway is a party to the 1958 New York Convention and ratified it in 1961. The provisions of the convention are incorporated in the Norwegian Arbitration Act 2004 and the Norwegian Enforcement Act. Grounds to resist enforcement follows from Section § 46 of the Arbitration Act:

Recognition and enforcement of an arbitral award may only be refused if
a) one of the parties to the arbitration agreement lacked legal capacity, or the arbitration agreement is invalid under the law to which the parties have agreed to subject it or, failing such agreement, under the law of the country where the award was made, or

b) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was not given an opportunity to present his views on the case, or

c) the award falls outside the jurisdiction of the arbitral tribunal, or

d) the composition of the arbitral tribunal was incorrect, or

e) the arbitral procedure was contrary to the law of the place of arbitration or the agreement of the parties, and it is likely that this has had an impact on the decision, or

f) the award is not yet binding on the parties, or it has been permanently or temporarily set aside by a court at the place of arbitration or by a court of the country under the law of which the merits of the dispute have been determined.

The court shall of its own accord refuse recognition and enforcement an award if

a) the dispute is not capable of settlement by arbitration under Norwegian law, or

b) recognition or enforcement of the award would be contrary to public policy (ordre public).

If the reason for refusing recognition or enforcement affects only part of the award, the court shall only refuse recognition or enforcement of such part.

19. **Please summarise the relevant time limits for commencing suit in your jurisdiction (e.g. claims in contract or in tort, personal injury and other passenger claims, cargo claims, salvage and collision claims, product liability claims).**

The general limitation period in Norway is three years from the earliest time the creditor had the right to demand performance, or in case of breach of contract, from the time of the breach, cf. sec. 2 and sec. 3 of the Norwegian Limitation Act.

Special limitation periods apply for certain maritime claims, rendering the regular three-year period inapplicable, cf. NMC sec. 501 et seq.

NMC sec. 501:
In respect of the following claims the time bars are:

1. for a claim for salvage reward or special compensation, two years from the day on which the salvage operation ended;
2. for a claim for a share of salvage reward or of special compensation according to Section 451 paragraph two, one year from the day on which notice was sent according to Section 451 paragraph four;
3. for a claim for damages arising from collision, two years from the day on which the damage was done;
4. for a claim for damages for a passenger’s loss of life or personal injury, two years from the day on which the passenger should have disembarked or did disembark; if the death took place after disembarkation, the limit shall be two years from the day of death but not more than three years from disembarkation;
5. for a claim for damages for loss of or damage to luggage, two years from the date of disembarkation or from the date when disembarkation should have taken place if that is later;
6. for a claim for damages for delay in the carriage of passengers or luggage or in the delivery of luggage, two years from the day on which the passenger disembarked or the luggage was brought ashore or delivered;
7. for a claim for damages for loss of or damage to or in connection with goods or for incorrect or incomplete statements in a bill of lading, one year from the day on which the goods should have been delivered or were delivered;
8. for a claim for damages for loss suffered by cargo being delivered without presentation of a bill of lading or to the wrong person, one year from the day on which the goods should have been delivered, or from the day on which they were delivered if this was done later;
9. for a claim for compensation for damage, loss or expense in general average, one year from the day on which the vessel reached port after the average, or, if the vessel was lost, from the day of the average;
10. for a claim for general average contribution, one year from the date of the average adjustment;
11. for a claim against any person who has become personally liable according to Section 53 paragraph two or Section 63 paragraph two or according to the Act Relating to Enforcement of Claims7 Section 11-16 paragraph two, the time limit for maritime liens applies.

With regards to recourse claims in connection with a claim referred to in paragraph one nos. 7 and 8, the time limit is one year counting from the day on which the claim was paid or on which a legal action for the claim was commenced. The same time limit applies to recourse claims in connection with such claim as referred to in paragraph one no. 3, nevertheless so that in respect of recourse in connection with a claim for personal injury the time limit for the recourse claim is always counted from the day on which the claim for damages was paid.