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Norway

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1 Overview

1.1 What are the main trends/significant developments in the lending markets in your jurisdiction?

Benefitting from high energy prices, the Norwegian economy survived the financial crisis and later the European debt crisis and maintained stable growth contrary to many of its European neighbours. Until mid-2014, the Norwegian high yield bond market was booming, attracting national and international lenders.

During the summer of 2014, oil prices plunged, and at present (January 2017) prices remain below half of earlier levels. Needless to say, investments in the offshore industry which has driven economic growth in Norway for years have dropped significantly, and many suppliers to the Norwegian offshore industry are struggling. Almost two thirds of outstanding debt in the bond market was related to the oil and gas sector, and the borrowers' distress caused turmoil in the Norwegian high yield market. Similarly, banks have been forced to take losses even on secured loans. On the positive side, the Norwegian market for real estate transactions continues to be very attractive to international investors.

Consequently, the continuing trends in the Norwegian lending market for 2017 are less new loans and more restructurings and even bankruptcies. For new projects or financings we expect that the banks' and bondholders' requirements for security will be stricter, with a continuous decrease in "bankable" leverage. These trends apply in particular to the offshore and energy sector but are expected to influence other sectors as well.

1.2 What are some significant lending transactions that have taken place in your jurisdiction in recent years?

During 2016, Lundin Petroleum secured a seven-year reserve-based lending facility for up to USD 5 billion with a group of 23 international banks. The facility will enable Lundin Petroleum to develop the major oil field "Johan Sverdrup" which was discovered by Lundin in 2010. In April 2016, Norwegian ship owner Østensjø Rederi took delivery of the offshore vessel "Edda Freya" from Norwegian yard Kleven Verft. OCV "Edda Freya" is among the world's largest offshore construction vessels with an estimated new build cost of approximately NOK 1.4bn, i.e. approximately USD 170 million. The vessel was financed through a loan syndicate consisting of DNB, NIBC, GIEK and Eksportkreditt Norge. Later the same year, in September 2016, the Norwegian ship owner Solstad Offshore ASA took delivery of the gigantic pipeline laying vessel "Normand Maximus" from Norwegian yard Vard Brattvaag. VLS "Normand Maximus" is the largest and most expensive offshore vessel ever built in Norway with an estimated total cost of approximately USD 390 million. The vessel financing was syndicated by DNB, NIBC, Swedbank, GIEK and Eksportkreditt Norge.

We might also mention that the European Investment Bank (EIB) in December 2016 approved a EUR 800 million financing to a consortium comprising the Norwegian transmission system operator Statnett and DC Nordseekabel GmbH & Co. KG, each with a 50% share in the construction of a high voltage (HVDC) link connecting Norway and Germany across the North Sea.

2 Guarantees

2.1 Can a company guarantee borrowings of one or more other members of its corporate group (see below for questions relating to fraudulent transfer/financial assistance)?

Pursuant to the Norwegian Limited Liability Companies Act (the "**LLCA**") section 8-7, private limited liability companies (No: *aksjeselskap* or *AS*) may in most instances guarantee borrowings of one or more other members of its corporate group (No: *konsern*). The same applies to public liability companies (No: *allmennaksjeselskap* or *ASA*) pursuant to section 8-7 of the Norwegian Public Limited Liability Company Act (the "**PLLCA**", and together with the LLCA, the "**LLC Acts**").

The term "corporate group" is, however, quite narrowly defined in relation to limited liability companies. Pursuant to the LLC Acts, the term only includes groups whose holding company is a Norwegian limited liability company (AS/ASA). Where the holding company is not a Norwegian limited liability company, e.g. a Norwegian general or limited liability partnership or a foreign holding company of any kind, the company can only guarantee if such guarantee serves for the economic benefit of the group, i.e. for the benefit of at least one or more of the company's affiliates.

Should a company be required to guarantee for affiliates in scenarios other than the above, then the guarantee amount cannot exceed the distributable equity of the company and the company must receive adequate counter-security.

Similar restrictions as mentioned above apply to companies organised as limited liability partnerships (No: *Kommanditselskap*) pursuant to the Norwegian Partnership Act section 3-17. Other partnerships, such as general partnerships (No: *Ansvarlig selskap*), are free to guarantee borrowings of one or more members of its corporate group without any such restrictions.

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2.2 Are there enforceability or other concerns (such as director liability) if only a disproportionately small (or no) benefit to the guaranteeing/securing company can be shown?

Unenforceability might be an issue if the guarantee/security has been issued by a limited liability company contrary to the provisions of the LLC Acts Chapter 3, the provisions of which serve for the protection of the equity of the company. Chapter 3 imposes, *inter alia*, statutory obligations on the company to maintain its equity at a prudent level relative to its activities, to avoid exposing the company to unreasonable financial risks, and to enter into any intra-group transactions on an arm's-length basis, in addition to prohibiting distributions from the company in excess of distributable equity.

Except in cases where the guarantee obligation is deemed a direct distribution of equity, there is a condition for unenforceability that the guarantee beneficiary knew, or ought to have known, that the guarantee was provided contrary to the above-mentioned provisions and that enforceability would be contrary to good faith. If the company has provided the lender with a copy of minutes from a BOD meeting or general meeting (as appropriate) approving the guarantee/security and expressly stating that it is in the best interests of the company, the lender will normally be deemed to have acted in good faith.

Directors negligently approving or issuing a guarantee contrary to the LLC Acts Chapter 3, run the risk of liability towards the company, its shareholders or its bankruptcy estate if the guarantee is held to be enforceable against the company in accordance with the above. Negligent Directors of a general or limited liability partnership run the same risk of liability, although the Directors of a partnership do not have the same express statutory obligations to preserve the equity of the company.

2.3 Is lack of corporate power an issue?

Yes. Lack of corporate power might cause guarantees/securities to be held unenforceable. As mentioned in question 2.2 above, however, there is a condition for unenforceability that the guarantee beneficiary knew, or ought to have known, that the guarantee was issued by (a) person(s) lacking corporate power and that enforcement of the guarantee would be contrary to good faith.

The LLC Acts Chapter 6 contain strict provisions regarding corporate power to enter into any agreements or guarantees on behalf of a limited liability company. In addition to the Board of Directors (acting jointly), the general manager has corporate powers in matters of day-to-day character (except in matters of unusual character or of great importance). The by-laws of the company may authorise one or several Directors and/or the general manager to act singly or jointly on behalf of the company. The Board of Directors may also by board resolution issue "permanent" or *ad hoc* proxy or power of attorney.

Similar provisions apply to general and limited liability partnerships, *cf.* the Partnerships Act Chapters 2 and 3, however, so that each partner would have corporate power unless the company is formally registered with Board of Directors.

2.4 Are any governmental or other consents or filings, or other formalities (such as shareholder approval), required?

No governmental filings or formalities are required in connection with guarantee/security.

For most limited liability companies, the issuing of a guarantee would be deemed a matter of unusual character or of great importance. Thus, the matter must be approved by the Board of Directors and a BOD resolution should be obtained for the sake of good order.

Further, pursuant to the LLC Acts section 3-8, shareholder approval might be required for certain transactions with related parties, *inter alia*, a guarantee/security in favour of or for the benefit of a shareholder or its affiliates where the consideration from the company exceeds 10% (in case of AS) or 5% (in case of ASA) of the share capital of the company. For limited liability companies there are several exceptions to this requirement, e.g. where (i) the guarantee beneficiary owns 100% of the shares of the company, or (ii) the guarantee has been entered into as part of the company's regular business and on commercial terms.

For companies organised as limited liability partnerships (No: *kommandittselskap* or *KS*), the approval of the partnership meeting is required for any matter of unusual character or of great importance, such as issuing of guarantees in higher amounts or providing security over assets of material importance to the business of the company.

2.5 Are net worth, solvency or similar limitations imposed on the amount of a guarantee?

There are no such limitations imposed on the amount of the guarantee under Norwegian law. However, unlimited guarantees may be held unenforceable under Norwegian law, at least when issued in favour of a financial institution, *cf.* the Financial Agreements Act section 61. Guarantees issued in favour of financial institutions should therefore expressly state the maximum amount secured or to be secured by the guarantee.

2.6 Are there any exchange control or similar obstacles to enforcement of a guarantee?

As long as payment under the guarantee is made through a licensed bank or payment institution, there are no obstacles affecting the enforceability of the guarantee.

3 Collateral Security

3.1 What types of collateral are available to secure lending obligations?

The different collaterals that are available to secure lending obligations under Norwegian law are set out in the Mortgages and Pledges Act of 1980 (the "**MPA**"). According to the MPA section 1-2, paragraph 2, collateral security can only be validly agreed upon for assets which are specifically permitted by law. A general pledge of all assets would not be enforceable under Norwegian law.

The MPA permits that collateral security is agreed in, *inter alia*, real property, movable property, machinery and plant, inventory, vendor's lien, securities, financial instruments registered in a securities registry, shares and receivables. Assignment of contracts by way of security would not be enforceable under Norwegian law, as opposed to e.g. English law; however, earnings and other receivables under a specified contract may be pledged.

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3.2 Is it possible to give asset security by means of a general security agreement or is an agreement required in relation to each type of asset? Briefly, what is the procedure?

There is no concept under Norwegian law to give security by means of a floating mortgage over all the assets of a person or entity. The main rule under Norwegian law is that only individualised assets or assets which can be individualised may constitute collateral security. Some important exceptions are, however, recognised from this rule as the MPA opens up for the possibility to mortgage groups of certain specified assets, such as receivables (factoring), machinery and plant, inventory, farming products and fishery tools and thereby create a floating mortgage over such groups of assets.

3.3 Can collateral security be taken over real property (land), plant, machinery and equipment? Briefly, what is the procedure?

The MPA section 2-1 provides that collateral security can be taken over real property, registered rights in real property and undivided interests in real property. Leasing and owner-occupied units fall within this category. Unless otherwise agreed, the security encompasses the land (ground) and houses, buildings, plants, etc. on the ground. The mortgage is perfected by the registration of standard mortgage documents with the Norwegian Land Registry (No: *Statens Kartverk*).

Motor vehicles used in or determined for use in business activity, movable production machinery which are used or determined for use in construction business, and railway material used in or determined for use in railway traffic can be pledged as separate categories. The pledge can cover each vehicle or machine separately or be a fleet mortgage. The pledge is perfected by registration in the Register of Mortgaged Movable Property (No: *Løsøreregisteret*). Furthermore, there are some special provisions in the MPA sections 3-9 and 3-10 that certain assets related to farming and fishing equipment used in fishing industries may serve as collateral security. Perfection is obtained by registration in the Register of Mortgaged Movable Property (No: *Løsøreregisteret*).

A floating charge can also be established over an entity's operating assets, *cf.* the MPA section 3-4 (No: *driftstilbehørspant*) (e.g. machinery, plant and other equipment, certain intellectual property rights, such as rights in trademarks, patents and designs, acquired copyrights, plant breeders' rights and certain mineral exploitation rights, etc.). Perfection is obtained by registration in the Register of Mortgaged Movable Property (No: *Løsøreregisteret*).

3.4 Can collateral security be taken over receivables? Briefly, what is the procedure? Are debtors required to be notified of the security?

Receivables which the mortgagor (i) has on a named debtor, and (ii) which the mortgagor will obtain against a named debtor in a specified legal matter, *cf.* section 4-4, paragraph 1 can be mortgaged. Legal protection is obtained through notification of the debtor that the receivable is pledged. It is not a requirement under Norwegian law that the debtor has accepted the notice, but in practice banks often require such acceptance from the debtor to obtain evidence that the notification has been sent and that legal protection is obtained.

Pursuant to the MPA section 4-10, a business person or entity can pledge receivables which it has or will obtain in the future from sale of goods or services in its business or in a separate part of its business ("factoring"). This is done in a standard mortgage document. Legal protection is created by registration in the Registry of Mortgaged Movable Properties.

3.5 Can collateral security be taken over cash deposited in bank accounts? Briefly, what is the procedure?

Cash deposited in bank accounts is considered receivables and can be pledged in the same way as receivables on named debtors. Legal protection is established by way of notification to the debtor; in this case the bank.

There is a special regulation in the MPA section 4-4, paragraph 2 that cash on accounts in a credit institution can be pledged in favour of the credit institution. As regards consumers, such a pledge must be established through a written agreement and the pledge can only comprise cash on a specified bank account which has been set up in connection with the agreement.

3.6 Can collateral security be taken over shares in companies incorporated in your jurisdiction? Are the shares in certificated form? Can such security validly be granted under a New York or English law governed document? Briefly, what is the procedure?

Shares in limited liability companies, which are not registered in a securities register, can be pledged/mortgaged unless otherwise set out in the articles of association of the company, *cf.* the MPA section 4-2 a. Perfection is created by notification to the company that the share(s) is pledged.

If the company's shares are registered in a securities register, perfection is created by registration of the pledge in the securities register, *cf.* the MPA section 4-1, paragraph 3.

Partnership shares in Norwegian limited liability partnerships can also be pledged. Perfection is obtained by a transfer of the possession of the partnership shares to the pledgee and thus it is required that the partnership agreement allows for physical partnership shares to be issued.

Share certificates are no longer issued. Security over shares in Norwegian companies can validly be agreed regardless of whether the agreement is governed by New York or English law as long as the Norwegian law requirements for legal perfection are complied with.

When the company is notified that a share is pledged, this information shall without undue delay be recorded in the register of shareholders with a note of the day the information was added to the shareholders' register, the name, address and organisation number (if applicable) of the pledgee. The registration of the pledge in the shareholders' register does not in itself create legal protection for the pledge, as this is created already by notification of the pledge to the company. If the company's shares are registered in a securities register the shareholders' register is replaced by the registration in the securities register.

3.7 Can security be taken over inventory? Briefly, what is the procedure?

Business companies or persons can pledge their inventory pursuant to the MPA section 3-11. The security must either encompass the entire inventory of the pledger or a certain specified part of the inventory which operationally is separated from the other inventory and appears to be an independent unit. The pledge is a floating security and covers the inventory or parts of the inventory from time to time. Legal

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protection of the mortgage is created by way of registration on the name of the owner in the Register of Mortgaged Movable Property (No: *Løsøreregisteret*), *cf*. the MPA section 3-12, paragraph 1.

3.8 Can a company grant a security interest in order to secure its obligations (i) as a borrower under a credit facility, and (ii) as a guarantor of the obligations of other borrowers and/or guarantors of obligations under a credit facility (see below for questions relating to the giving of guarantees and financial assistance)?

Yes, a company can grant security in order to secure its obligations as (i) a borrower under a credit facility, and (ii) a guarantor of the obligations of other borrowers and/or guarantors of obligations under a credit facility, subject, however, to the limitations which apply to intra-group guarantees and financial assistance, as further described under question 4.1, being complied with.

3.9 What are the notarisation, registration, stamp duty and other fees (whether related to property value or otherwise) in relation to security over different types of assets?

Except for nominal fees for registration in applicable registries, which are limited, no stamp duty or similar fees or taxes are or will become payable in connection with execution of the pledge.

3.10 Do the filing, notification or registration requirements in relation to security over different types of assets involve a significant amount of time or expense?

No, the time and expense required for the filing, notification or registration required to create legal protection of security is limited.

3.11 Are any regulatory or similar consents required with respect to the creation of security?

No, this is not applicable.

3.12 If the borrowings to be secured are under a revolving credit facility, are there any special priority or other concerns?

No. Collateral security will be provided as security for any and all amounts from time to time outstanding under the revolving credit facility, and the lender's priority in and to the security will depend on the time and date of legal perfection, unless otherwise agreed to in the facility agreement. Time and date of drawdown of the secured loan(s) currently outstanding is not relevant in this respect.

3.13 Are there particular documentary or execution requirements (notarisation, execution under power of attorney, counterparts, deeds)?

If the pledgor is a company or entity, the declaration of pledge must be signed in accordance with the signatory provisions of the company/entity or pursuant to a power of attorney which is executed in accordance with the signatory provision. Further, most standard mortgage documents provide that the signatures of the pledgor must be confirmed either by two witnesses or a notary, a lawyer, an auditor and certain other professionals. The same requirements as to form which apply to the execution of a declaration of pledge, will also apply to the execution of any power of attorney relating to the same document, meaning that the signatures on the power of attorney must be confirmed as well. If the pledgor is a foreign person or legal entity, it is required that the signature on the declaration of pledge or power of attorney be notarised and legalised.

4 Financial Assistance

4.1 Are there prohibitions or restrictions on the ability of a company to guarantee and/or give security to support borrowings incurred to finance or refinance the direct or indirect acquisition of: (a) shares of the company; (b) shares of any company which directly or indirectly owns shares in the company; or (c) shares in a sister subsidiary?

(a) Shares of the company

Yes, the LLC Acts section 8-10 contains strict restrictions on a limited liability company's ability to give financial assistance in relation to the acquisition of shares in the company. Firstly, the company may not provide financial assistance in excess of the distributable equity of the company. Secondly, the guarantee or security can only be provided on commercial terms and against satisfactory counter-security. Thirdly, the Board's resolution to provide such financial assistance has to be approved by a shareholders' meeting with a qualified majority. Fourthly, the Board has to provide the shareholders' meeting with a report of its considerations. Fifthly, and only in case of public limited liability companies, the Board's report has to be filed in the Norwegian Business Register prior to such financial assistance being provided.

For limited liability partnerships (No: *Kommanditselskap* or *KS*) the Partnership Act imposes a prohibition against financial assistance. Such prohibition does not, however, apply if the acquiring company is already, prior to such acquisition, within the same company group as the company. For general partnerships there are no prohibitions or restrictions on financial assistance in respect of acquisition of shares of the company.

(b) Shares of any company which directly or indirectly owns shares in the company

Yes, the same restrictions as outlined in (a) above would be applicable if the target owns sufficient shares/parts to be deemed a holding company of the company.

(c) Shares in a sister subsidiary

For limited liability companies, there are no prohibitions or restrictions on a company's ability to financially support the acquisition of sister companies.

For limited liability partnerships (No: *Kommanditselskap* or *KS*), however, the same prohibitions and restrictions, as outlined above, apply.

5 Syndicated Lending/Agency/Trustee/Transfers

5.1 Will your jurisdiction recognise the role of an agent or trustee and allow the agent or trustee (rather than each lender acting separately) to enforce the loan documentation and collateral security and to apply the proceeds from the collateral to the claims of all the lenders?

Although Norwegian law does not recognise the concept of a security trustee as such, the role of a security agent and/or facility

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agent acting on behalf of the lenders will be recognised. As long as enforcement does not involve legal proceedings, the agent will be able to act on behalf of the secured parties (from time to time) in relation to enforcement of security and application of proceeds against the claims of the secured parties.

A facility agent or security agent will normally not be entitled to initiate legal proceedings on behalf of the lenders. In relation to bond trustees acting on behalf of the bond holders, the Norwegian Supreme Court recently confirmed that the bond trustee was entitled to initiate legal proceedings in its own name. Whether this in certain circumstances might also be the case for agents acting on behalf of a large syndicate of lenders remains unprecedented. To avoid risk of dismissal we regularly advise that agents formally include the secured parties as claimants in any legal proceedings to the extent this is feasible.

5.2 If an agent or trustee is not recognised in your jurisdiction, is an alternative mechanism available to achieve the effect referred to above which would allow one party to enforce claims on behalf of all the lenders so that individual lenders do not need to enforce their security separately?

See question 5.1 above. Alternative mechanisms such as joint and several creditor status are theoretically available, but such alternatives are less practical than the appointment of a facility agent or a security agent to act on behalf of the lenders.

5.3 Assume a loan is made to a company organised under the laws of your jurisdiction and guaranteed by a guarantor organised under the laws of your jurisdiction. If such loan is transferred by Lender A to Lender B, are there any special requirements necessary to make the loan and guarantee enforceable by Lender B?

The answer to this question will in most cases depend on the wording of the facility agreement and the guarantee. The wording which is often used is that the loan is outstanding, and guarantee is issued in favour of the Finance Parties or Lenders, which is defined as the lender(s) from time to time. In these cases, the loan and guarantee would be enforceable by Lender B without further notice or other actions.

In other cases it follows from the guarantee that the guarantee is issued in favour of a named lender and that a transfer of the guarantee to another lender requires the prior approval of the debtor/guarantor.

If the facility agreement and guarantee has no wording indicating that the guarantee is issued in favour of an individual lender or that any lender would be covered, one would have to fall back on the background rules of law. According to Norwegian background law, the loan and guarantee can be enforced by Lender B if the debtor and the guarantor have been notified of the transfer. It is not required that the debtor and/or the guarantor approves the transfer.

6 Withholding, Stamp and Other Taxes; Notarial and Other Costs

6.1 Are there any requirements to deduct or withhold tax from (a) interest payable on loans made to domestic or foreign lenders, or (b) the proceeds of a claim under a guarantee or the proceeds of enforcing security?

At present (January 2017), there are no such requirements to deduct or withhold tax under Norwegian law.

6.2 What tax incentives or other incentives are provided preferentially to foreign lenders? What taxes apply to foreign lenders with respect to their loans, mortgages or other security documents, either for the purposes of effectiveness or registration?

There are no tax incentives to foreign lenders. No taxes apply to foreign lenders with respect to loans, mortgages or other security documents for the purpose of effectiveness or registration.

6.3 Will any income of a foreign lender become taxable in your jurisdiction solely because of a loan to or guarantee and/or grant of security from a company in your jurisdiction?

A foreign lender will not become taxable in Norway solely because of a loan to or guarantee and/or grant of security from a company in Norway. In order to become taxable in Norway, the foreign lender must be considered tax resident in Norway and would in such case be subject to normal tax on income or gains.

6.4 Will there be any other significant costs which would be incurred by foreign lenders in the grant of such loan/guarantee/security, such as notarial fees, etc.?

The signature of a foreign lender will rarely be subject to notarial confirmations, etc., unless specifically requested by one of the parties to the transaction. Registration fees might apply in the course of perfection of security granted by the Borrower, but this cost will be similar to Norwegian and foreign lenders.

6.5 Are there any adverse consequences to a company that is a borrower (such as under thin capitalisation principles) if some or all of the lenders are organised under the laws of a jurisdiction other than your own? Please disregard withholding tax concerns for purposes of this question.

No, there are no adverse consequences to a borrower if some or all of the lenders are organised under foreign jurisdictions.

7 Judicial Enforcement

7.1 Will the courts in your jurisdiction recognise a governing law in a contract that is the law of another jurisdiction (a "foreign governing law")? Will courts in your jurisdiction enforce a contract that has a foreign governing law?

Yes, Norwegian courts will generally recognise and apply foreign governing laws to the extent the parties have agreed to such governing law in the contract or such governing law is otherwise applicable. The enforcement of a contract with foreign governing law is subject only to: (i) such choice of law being agreed to for *bona fide* purposes; (ii) the application of overriding mandatory provisions in Norwegian law; and (iii) the application of such law would not be manifestly incompatible with the public policy (*ordre public*) of Norway.

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7.2 Will the courts in your jurisdiction recognise and enforce a judgment given against a company in New York courts or English courts (a "foreign judgment") without re-examination of the merits of the case?

The courts of Norway will recognise and enforce, without re-examination of the merits of the case, any final judgment against a company obtained in England and any other court of a country party to the Lugano Convention on jurisdiction and the enforcement of judgment in civil and commercial matters concluded on 30 October 2007 (the "**Lugano Convention**"), which is parallel to the European Union's Brussels Regulations 44/2001. Such recognition and enforcement would, however, be subject to Norwegian rules of public policy (*ordre public*) and certain circumstances where the judgment is given in default of appearance.

Further, the courts of Norway will recognise and enforce, without re-examination of the merits of the case, any final judgment against a company obtained in the state of New York or another state or country not being party to the Lugano Convention, if the relevant parties have agreed to such court's jurisdiction in writing and for a specific legal action or for legal actions that arise out of a particular legal relationship, in accordance with the Dispute Act section 19-16, *cf.* section 4-6, and if not in conflict with Norwegian public policy rules (*ordre public*) or internationally mandatory provisions.

As mentioned under question 7.7 below, Norwegian courts will also recognise and enforce arbitral awards given in England or New York (or any other jurisdiction).

7.3 Assuming a company is in payment default under a loan agreement or a guarantee agreement and has no legal defence to payment, approximately how long would it take for a foreign lender to (a) assuming the answer to question 7.1 is yes, file a suit against the company in a court in your jurisdiction, obtain a judgment, and enforce the judgment against the assets of the company, and (b) assuming the answer to question 7.2 is yes, enforce a foreign judgment in a court in your jurisdiction against the assets of the company?

(a) The time frame for obtaining a decision of a Norwegian court depends on the complexity of the case and the workload of the court. In most cases, a judgment in the first instance can be obtained within six months, and the recognition and enforcement proceedings may then be initiated when the ruling has become legally binding, which is a month after the ruling, unless the case is appealed. Enforcement is initiated by a petition to the Enforcement and Execution Commissioner (No: *Namsfogden*). The process of establishing distress over the company's assets should take approximately two to four months, and the realisation process has approximately the same time frame. If real estate is subject to a forced sale, special requirements apply; see question 7.4 below.

According to the Enforcement Act section 7-2 (f) a written claim against the defaulting party is considered a basis for enforcement of debt and the claim can be enforced directly by a petition to the Execution and Enforcement Commissioner (No: *Namsfogden*) without first obtaining a court judgment. If the company raises objections to the claim, however, the case will be referred to the Conciliation Board and/or the District court for judgment. If no objections are made, the Commissioner will establish distress on one or more of the company's assets, and the lender may then file a petition for a forced sale.

(b) The time frame for enforcing a foreign judgment which is recognised in Norwegian courts as more particularly described under question 7.2 above, would be approximately the same as for enforcing a Norwegian judgment. The enforcement of the claim will then be carried out by the Commissioner in accordance with the Enforcement Act, *cf.* the Enforcement Act section 4-1 (f) or (g).

7.4 With respect to enforcing collateral security, are there any significant restrictions which may impact the timing and value of enforcement, such as (a) a requirement for a public auction, or (b) regulatory consents?

Depending on the collateral, different assets have different time frames with regards to realisation. Forced sale of real estate has to be approved by the district court and this might take up to six months. The Enforcement and Execution Commissioner (No: *Namsfogden*) will then administrate the sale. Moreover, depending on the nature of the real estate, licensing requirements may impact timing and value of enforcements. For other assets, the Commissioner may initiate a forced sale without a judgment of a Norwegian Court if the requirements set out in question 7.2 above are met.

The Financial Collateral Act section 7 provides an exemption from the rules in the Enforcement Act and enables the parties to enter into an agreement that entitles the mortgagee to redeem the pledge immediately at market value.

According to the Enforcement Act, the forced sale of an asset is to be carried through in the way that provides the best possible economic outcome. It is generally up to the Commissioner to decide how the asset should be realised. Public auctions are an alternative if the asset is suitable for this. However, the Act also has provisions regarding handing over the asset to the secured creditor, which may be a good option if the market demand is lower than usual, and it is assumed that a sale will not achieve a reasonable price. In general, a forced sale will not result in a selling price in accordance with market value due to the circumstance that it is a forced sale.

7.5 Do restrictions apply to foreign lenders in the event of (a) filing suit against a company in your jurisdiction, or (b) foreclosure on collateral security?

According to the Dispute Act section 20-11, a party that does not have residence/registered office in Norway may under certain conditions be required to put up collateral for costs incurred in a court case. However, collateral cannot be required if it would be contrary to obligations to treat all parties residing abroad and parties resident in Norway that follows from international law, or if it would be disproportionate with regard to the nature of the case, the relationship between the parties or other circumstances. The EEA Agreement and the European Human Rights Convention has provisions that limit the range of this provision.

If such requirement is imposed, the case will not be heard until the requirement is met. This provision will also apply if the foreign lender has to bring the case before the court in order to foreclose on collateral security. However, there is no such requirement for initiating enforcement proceedings before the Enforcement and Execution Commissioner (No: *Namsfogden*); please see question 7.2 above.

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7.6 Do the bankruptcy, reorganisation or similar laws in your jurisdiction provide for any kind of moratorium on enforcement of lender claims? If so, does the moratorium apply to the enforcement of collateral security?

The main rule is that the mortgagee's rights, if established in accordance with the legal provisions applicable, are valid even if the company is taken under bankruptcy proceedings. However, the Debt Reorganization and Bankruptcy Act of 1984 have provisions regarding voluntary debt settlement and compulsory composition which may influence the mortgagee's security. The voluntary debt settlement requires acceptance from all creditors. Such proceedings require that the debtor files a petition to the District Court for debt settlement proceedings. The debt negotiations committee will submit a proposal for a composition. If the proposal entails that the creditors get more than 50% of their claims, such proposal requires that 3/5 of the creditors accept the proposal, and if the proposal is less than 50%, 3/4 of the creditors' votes are required. A compulsory composition also entails that mortgages or liens that are beyond the estimated value of the collateral will be annulled.

If the company has been taken under bankruptcy proceedings, claims can no longer be enforced by creditors unless the proceedings were initiated before the bankruptcy. However, if a creditor that has initiated enforcement proceedings that has resulted in distress over company assets within three months of the filing of bankruptcy, such distraints on assets will not be legally binding for the bankrupt estate according to the Act, section 5-8.

7.7 Will the courts in your jurisdiction recognise and enforce an arbitral award given against the company without re-examination of the merits?

Norway has ratified the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the "**New York Convention**"). Thus, arbitral awards obtained in any jurisdiction whether party to the New York Convention or not, will be recognised and enforced without re-examination of the merits of the case. However, recognition and enforcement of arbitral awards will be subject to, *inter alia*, arbitrability, Norwegian public policy rules (*ordre public*), internationally mandatory provisions and certain circumstances where the judgment is given in default of appearance.

8 Bankruptcy Proceedings

8.1 How does a bankruptcy proceeding in respect of a company affect the ability of a lender to enforce its rights as a secured party over the collateral security?

When insolvency proceedings have been initiated, secured creditors generally have a right to preferential treatment (No: *separatistrett*), i.e., the right to get coverage from the realisation of the asset in which the creditor has collateral, which leaves only a possible surplus of the realisation to be divided among other creditors. In general, only the appointed administrator may realise the company's assets, and the bankrupt estate also has a secured right to obtain 5% of the proceeds if this is necessary for the processing of the bankrupt estate, according to the MPA.

The Bankruptcy Act section 117 states that the realisation of assets shall be carried out in the manner that is expected to provide the best price for the asset. However, according to the Bankruptcy Act section 117 a, the administrator may sell the asset even if the value of the asset is less than the secured claim, if the asset is sold along with other assets, and the combined sale is expected to provide a better price than by selling each asset separately, or if the sale is part of a transfer of the entire business. Further, the Act section 117 b states that the administrator may decide that the asset has less value than the secured claim, and therefore revoke the seizure in the asset to the company. The asset is then placed at the debtor's disposal. However, the administrator may also revoke the seizure and by agreement transfer the asset to the mortgagee according to the Bankruptcy Act section 117 c. Such agreement shall be entered into based on the market value of the asset, and the mortgagee may then realise the asset.

8.2 Are there any preference periods, clawback rights or other preferential creditors' rights (e.g., tax debts, employees' claims) with respect to the security?

The Creditors Recovery Act of 1984 has provisions regarding both the priority of claims and clawback rights. In general, claims against the estate will be covered first according to section 9-2. The rank is then the preferential debts of first and second priority, according to sections 9-3 and 9-4. Thus, most employees' claims and tax debts will be covered first, in that order. However, some parts of the employee claims, and tax debts may be considered without priority according to sections 9-6 and 9-7.

As a main rule, the priority provisions will not affect a claim that is secure; in which case the mortgagees claim has the best priority in the collateral. However, security can under certain circumstances be set aside. The administrator may challenge a company act that has granted a creditor payment or security within a defined time period prior to the bankruptcy. The provisions are objective, in the sense that a creditor's good faith is irrelevant, and the time frame is then three months prior to the filing of the bankruptcy, unless the beneficiaries creditor is considered closely related to the company in which case transactions made up to two years prior to the bankruptcy can be set aside. According to section 5-7, security granted in order to secure existing debt ("old debt") and security for existing debt which has not received legal protection without undue delay, which took place later than three months prior to the bankruptcy, may be set aside. There is also a subjective provision in section 5-9 that applies to dispositions which are considered unfair if the creditor knew or should have known that the debtor was in a difficult financial situation, and the circumstances that made the disposition unfair. This provision is applicable to dispositions which took place up to 10 years prior to the bankruptcy.

8.3 Are there any entities that are excluded from bankruptcy proceedings and, if so, what is the applicable legislation?

A municipal entity (No: *kommunalt foretak*) cannot be taken under bankruptcy proceedings as such enterprise is not considered to be an independent legal entity. Further, a Norwegian Foreign Enterprise (No: *NUF*) is not considered an independent legal entity, but rather a branch of a foreign limited company, and does not normally have legal venue in Norway. A court may, however, commence bankruptcy proceedings against a company that has its principal place of business in Norway. Thus, if the foreign limited company is declared bankrupt based on the fact that its place of business is in Norway, the NUF will be processed as part of the bankruptcy proceedings.

The Bank Guarantee Act Chapter 4 has provisions entailing that financial institution and insurance companies cannot be declared bankrupt. Such enterprises will be subject to administration by the authorities.

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8.4 Are there any processes other than court proceedings that are available to a creditor to seize the assets of a company in an enforcement?

No. A creditor has to resort to legal proceedings in order to seize an asset of a company in an enforcement if rights are infringed or otherwise impaired. As stated above, there are different legal proceedings that may be initiated to enforce a claim, either by a petition to the Court to obtain a judgment or recognition of a foreign judgment, or a petition to the Execution and Enforcement Commissioner. Reference is also made to the provisions regarding debt settlement and compulsory composition in question 7.6 above.

9 Jurisdiction and Waiver of Immunity

9.1 Is a party's submission to a foreign jurisdiction legally binding and enforceable under the laws of your jurisdiction?

Yes, as long as such submission to a foreign jurisdiction has been made in writing and for a specific legal relationship, the party's submission to jurisdiction will normally be legally binding and enforceable. Please note, however, that certain statutory limitations to the parties' choice of jurisdiction might apply to, *inter alia*, consumer contracts.

Further, unbalanced jurisdiction clauses, e.g. jurisdiction clauses which are exclusive for one party (typically the borrower) and non-exclusive for the other party (typically the lender(s)), run the risk of being held unenforceable under Norwegian law.

If and to the extent that proceedings have already been instituted or are pending in a foreign jurisdiction at the time a matter is brought before a court in Norway, the courts of Norway shall stay or dismiss the Norwegian proceedings in accordance with the rules of the Lugano Convention and the Dispute Act section 18-1.

9.2 Is a party's waiver of sovereign immunity legally binding and enforceable under the laws of your jurisdiction?

Norwegian courts are bound by international law regarding sovereign immunity, and a party's waiver of sovereign immunity will be legally binding and enforceable to the extent permissible under applicable international law.

A general waiver of sovereign immunity might be held contrary to international law, for instance in respect of diplomatic immunity. Enforcement of assets protected by diplomatic immunity, for instance, might require an express waiver of immunity.

10 Licensing

10.1 What are the licensing and other eligibility requirements in your jurisdiction for lenders to a company in your jurisdiction, if any? Are these licensing and eligibility requirements different for a "foreign" lender (i.e. a lender that is not located in your jurisdiction)? In connection with any such requirements, is a distinction made under the laws of your jurisdiction between a lender that is a bank *versus* a lender that is a non-bank? If there are such requirements in your jurisdiction, what are the consequences for a lender that has not satisfied such requirements but has nonetheless made a loan to a company in your jurisdiction? What are the licensing and other eligibility requirements in your jurisdiction for an agent under a syndicated facility for lenders to a company in your jurisdiction?

Effective as of 1 January 2016, the Norwegian licensing requirements will follow the new Norwegian Financial Institutions Act of 10 April 2015. As a general rule, a licence is required for credit or financing services within the Norwegian territory. Granting of a licence would be subject to eligibility requirements relating to capitalisation, financial position, organisation and management. The eligibility requirements would be stricter for a lender seeking banking licence rather than seeking licence only for specific financing activities.

A lender would not be deemed to provide financing services in Norway (and require a licence) solely by its participation in a single loan to a Norwegian company. However, for lenders with an active approach to the Norwegian market and not only isolated Norwegian financings, the lender may be considered to provide financial services in Norway, which is subject to licensing requirements.

Many foreign banks and financiers are licensed to provide cross-border services in the lending market or to operate in Norway through a branch office. Normally, these are financial institutions which are subject to supervision by another EEA state and have permission to operate as financial institution in or from another EEA state, and thereby are allowed to offer loans in Norway. The Financial Institutions Act also permits easier access to licences for branch offices of foreign lenders outside of the EEA area, subject to satisfactory financial supervision in its state of incorporation.

Breach of licensing requirements will not cause the facility agreement to be unenforceable, but wilful or negligent breaches may be punishable by corporate fines or, in exceptional circumstances, fines or up to one year in prison for involved persons.

There are no particular licensing requirements for agents of syndicated loans as such, but normally the agent will also be one of the lenders and the same licensing and eligibility requirements will apply to the agent as to the other lenders.

11 Other Matters

11.1 Are there any other material considerations which should be taken into account by lenders when participating in financings in your jurisdiction?

No, there are no other material considerations which should be taken into account.

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Kyrre W. Kielland has broad experience in financing and other transactions within shipping, aviation and real estate. He advises banking institutions/lenders, companies and others with negotiations and the closing of financial transactions and complex loan and leasing structures.

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Further, Kyrre is regularly appointed as an external examiner at the Faculty of Law, University of Oslo and Lillehammer University College, within fields such as private international law, international commercial law and law of contracts.

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Anne Christine Wettre has long and extensive experience within insolvency, bankruptcy and restructuring. Her specialist fields are monetary claims, law of mortgages and pledges, enforcement, property law and value added tax. In addition she is regularly appointed trustee of bankruptcy estates by the City Court of Oslo.

Through her work with bankruptcy proceedings, Anne Christine has built up the unique ability to not only provide answers to purely legal issues, but also to find practical solutions that are specifically adapted to the client's business activities and the legal problems the client is facing. Furthermore, she has a significant ability to study and assess financial statements and other company documentation and also assist our clients with audits from the tax authorities.

Before she came to Ræder in 2007, Anne Christine held a position as a lawyer at the Norwegian division of Euler Hermes Credit Insurance. Through her vital role within compliance and contract law, she built up important skills within all aspects concerning the management of debt recovery activities.

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