Norway

Advokatfirmaet CLP DA

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1 Overview

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

The Norwegian lending market is still recovering from the steep drop in oil prices and the consequential financial distress for many borrowers in the shipping/offshore sector, which started in 2014. Several of the largest Norwegian banks have significant exposure to the shipping/offshore market, and are involved with ongoing processes of restructuring and rescheduling of debt, of which the outcome is still uncertain. With oil prices rising again (February 2018), the situation is improving. Norwegian banks are also obliged to be compliant with the EU Capital Requirements Directive (2013/36/(CRD IV)) and the Capital Requirement Regulation (575/213 (CRR)), which has forced some Norwegian banks to reduce their lending exposure in order to comply with capital adequacy rules. The real estate market, both private housing and commercial property, is, however, strong, and many banks have continued to increase their lending within the real estate sector. On the leveraged side, we see an increase in deals with a light covenant structure, with favourable pricing for the borrower. It will be interesting to see whether Norwegian (and other Nordic banks) will be able to compete with foreign banks on the applicable terms going forward.

Where the Norwegian bank market may not have been as active as before in terms of new deals, the Norwegian bond market has provided substantial financing, and reached an all-time high in 2017. Real estate and shipping are some of the sectors that have taken large parts of this market, and banks are financing themselves through the issuance of covered bonds. In addition to availability, there are some cases where the bond market has been able to compete with the bank market in terms of pricing.

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

In November 2016, CigitalGroup (owned by HgCapital) as borrower, secured a NOK 3,674 million-equivalent (as subsequently upsized by an additional NOK 600 million) facility from Norwegian banks DNB Bank ASA as Agent and Security Agent, and DNB Bank ASA and Skandinaviska Enskilda Banken AB (Publ) as Bookrunners, Mandated Lead Arrangers and Lenders, for the purpose of financing the acquisition of parts of the Visma-group. The transaction marked one of the largest software buyouts in Europe.

The restructuring of the "Norske Skog" debt, and the negotiations between the various groups of creditors also raised much attention this year, before the company went into bankruptcy proceedings at the end of 2017. Also, the restructuring of Seadrill Limited's debt, which bank debt is mainly governed by Norwegian law, has raised attention in the industry and is still ongoing.

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)?

According to the Norwegian Limited Liability Companies Act, and the corresponding Norwegian Public Limited Liability Company Act of 13 June 1997 (hereinafter collectively referred to as the "NLC"), a private or a public limited liability company can provide guarantees for the benefit of its parent company or another company within its corporate group (Nw: *konsern*). This, however, only applies where such parent company is a Norwegian company, or where such other company within its corporate group has a parent company incorporated in Norway. In cases where there is not a Norwegian parent company, the company may only provide such guarantee if the guarantee will benefit the financial interest of the group of companies which the company forms a part of. It is not sufficient that the guarantee benefits only the company which the guarantee is provided in favour of, it will also need to benefit at least one other company of this group. Guarantees may also generally be provided to the benefit of other members of its corporate group, but, unless it satisfies the requirements above, such guarantee will be heavily restricted and subject to procedural requirements, which makes their value limited.

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?

According to the NLC, the board of directors of a Norwegian company may not take any actions which may give certain shareholders or other parties an unreasonably advantage at the cost of the remaining shareholders or the company. Providing a guarantee/security without sufficient corporate benefit may constitute such unreasonable advantage, and will, in such case, be prohibited. A breach of this prohibition may result in the guarantee/security being deemed invalid and/or unenforceable, unless the beneficiary

was in good faith, acting diligently. The relevant director(s) may also, in addition to or as an alternative to such invalidity and/or enforceability, be held liable for damages incurred by the company, its shareholders, or its or the company's creditors.

2.3 Is lack of corporate power an issue?

Neither each separate director, nor any member of the company's administration, has general corporate power to bind a company in respect of providing guarantees or security, unless it is otherwise stated in the company's articles of association. Providing guarantees or security will often be considered a matter of significance to the company, and need therefore to be approved by the company's board of directors. The board of directors can then delegate such powers to any director, members of the administration, attorneys or others, in which case such person will be acting on the authority granted by the board of directors. If, for example a board member has acted without the necessary approval of the board of directors when issuing a guarantee, such guarantee may be invalid, unless the beneficiary was in good faith, acting diligently. Consequently, we generally advise clients to obtain evidence of corporate power by way of a board resolution approving such guarantee, and the authorisation of the person acting on behalf of the company in relation thereto to avoid any subsequent dispute relating to corporate power.

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

No governmental consents are required for a company to provide a guarantee, nor are there any filings or other formal requirements. Generally, shareholders' approval is not required, but for guarantees that do not fulfil the requirements described above under question 2.1, shareholders' approval is necessary to ensure the validity and enforceability of such guarantee. As mentioned, this is not very practical.

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

There are no net worth, solvency or other absolute limitations on the amount of a guarantee, provided that sufficient corporate benefit is always present. However, when a guarantee is provided for the benefit of a financial institution, the guarantee needs to contain a cap which represents the highest amount which can be recovered pursuant to such guarantee. The parties to a guarantee are free to agree on the amount of such cap, and are not bound by net worth, solvency or similar limitations when doing so.

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

There are no such restrictions applicable to the enforcement of a guarantee.

3 Collateral Security

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

Norwegian law only allows for assets specifically listed in relevant legislation to be used as collateral for a lending obligation. These include, *inter alia*, real estate, shares, aircraft, vessels, rigs, claims (including bank accounts, insurance claims, loans, receivables, etc.), inventory and machinery & plant. Norwegian law does not allow for a general floating charge covering all assets of the company, as is the case in many other jurisdictions.

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?

As mentioned above, a general all-asset floating charge is not possible. However, drafting wise, it is possible to include all assets which are to be pledged into one general security agreement as opposed to having numerous security agreements. All assets which are to be covered by that agreement will need to be sufficiently identified according to their relevant legal requirements, and perfection of the security will need to be done in relation to each type of asset (registration, notification, etc.) as applicable.

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

Yes, this can be done. Security over real property (ownership, rights under leasing agreement and certain other rights) is established by the parties entering into a mortgage agreement, which is perfected by registration with the land register on a designated mortgage form. The mortgagor may typically continue to use the real property irrespective of the mortgage for as long as no event of default has occurred.

Security over machinery and plant (including equipment) is also established by the parties entering into a mortgage agreement, which is perfected by registration with the register of movable assets on a designated mortgage form. The machinery, plant and equipment is then mortgaged collectively as a pool of assets, and the mortgagor may continue the use of its machinery and plant, and may sell and/or replace items within the pool of assets in accordance with ordinary course of business. The mortgagor may not dispose the entire pool of assets as such without breaching the provisions of the Norwegian Mortgage Act of 8 February 1980 (the "**Mortgage Act**"). As the mortgagor is able to dispose of assets within the ordinary course of business, a mortgagee may want to take separate mortgages in certain assets forming part of the plant, machinery and equipment of the mortgagor, if such assets are considered of particular importance to the mortgagee. Such separate mortgages can be taken as a non-possessory mortgage over cars, movable production machinery used by contractors, certain railway equipment (locomotives etc.), certain agricultural equipment, and certain fishing equipment. Other forms of plant, machinery and equipment will need to be mortgaged and perfected by way of the mortgagee taking possession of the asset, so this is less practical if such equipment is used in the business of the mortgagor.

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

There are two ways of taking security over receivables under Norwegian law. The first is the pledge of identified claims against named debtors, which the mortgagor has, or may have, in the future. These claims can be assigned pursuant to an agreement which identifies the relevant claims, and perfected by way of notification of the assignment to the debtor.

It is also possible to take collateral security over receivables in general, by way of floating charge. This is possible for receivables that a charger has, or may have, in the future, and which are compensation from the sale of goods or services in the business of the chargor. For these receivables, the debtors do not need to be notified for the purpose of perfection, as perfection is obtained by registration in the register of mortgaged movable assets. The debtors will of course need to be notified if and when the security is enforced.

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

Yes, this is both possible and practical. Security is established by the entering into of a security agreement between the pledgor and the pledgee, and perfection is obtained by way of notification to the account bank. The account can remain un-blocked at the pledgor's disposal until an event of default has occurred, or the parties can agree to block the account for as long as the security is in place. In cases where the account bank is also the pledgee, security can also be established by an agreement of set-off.

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?

Security can be taken over shares in Norwegian companies. Shares are not in certificated form. For shares in private limited liability companies, perfection is obtained by way of notification to the company whose shares are pledged. The company should then register the security in its shareholders register, but this registration is not a perfection requirement. Security over shares in private limited liability companies is not subject to registration in any public register. For shares in a public company whose shares are registered with the VPS (a securities register), the security will need to be registered in the VPS in order to be perfected.

The appropriate choice of law for security over shares in a Norwegian company is Norwegian law. As long as the Norwegian law perfection requirement is fulfilled (notification or registration as per above), a court of law may respect New York or English law as the governing law document for such security, but this is not something we see in the current loan market.

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

Security can be taken over inventory as a pool of assets, pursuant to an agreement between the pledgor and the pledgee. The agreement needs to be registered in the register of mortgaged movable assets in order to obtain perfection. The security permits the pledgor to use the inventory, and to dispose of and/or exchange parts of the inventory in accordance with its ordinary course of business. Our summary under question 3.3 above regarding machinery and plant applies correspondingly to security over inventory.

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 Norwegian company can grant a security interest for its own obligations as borrower, and a security interest and/or guarantee for the obligations of other borrowers. We refer also to our reply under question 2.1 above.

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?

No such fees are relevant in Norway, save for registration fees for certain security (ref. above). None of these registration fees correlate in any way to the value of assets being secured, and the fees are not significant.

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?

The various filings/registrations will generally be completed within a matter of hours or days, and, in our view, do not involve a significant amount of expenses, ref. above.

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

In general, no. If security is granted by a company which engages in regulated activity, or the asset itself is used in regulatory activity, regulatory restrictions and consents may be relevant.

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

There are no such special priorities or concerns to be considered, and, unless otherwise agreed between the parties, the security will not be affected by the continuous utilisation and re-payment under such facility.

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

There are no such relevant requirements for the creation of any security. For security perfected by way of registration, the registration forms may need to be signed by one or two witnesses, and the register may need proof of authorisation of the signatory before registering and perfecting the security.

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, restrictions apply. The relevant NLC states that a private limited liability company may only guarantee or provide security to the extent the same is available as permitted distribution from the company. Any financial assistance shall be provided on customary business terms, and sufficient security shall be provided for the claim for repayment if the guarantee is honoured and/or the security enforced. Financial assistance can only be provided for shares which are fully paid-up. There are also certain procedural requirements (credit assessment, preparation of statement from the board directors, approval by general meeting, etc.) which needs to be complied with. For public limited liability companies, the same restrictions and requirements apply, and the statement from the board of directors has to be filed with the Norwegian Register of Business Enterprises. Consequently, it is not practical for a company to support borrowings incurred to finance or refinance the acquisition of its shares.

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

The same rules as set out above also applies for shares of a parent company.

(c) Shares in a sister subsidiary

No financial assistance restrictions 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?

There is no Norwegian legislation that permits an agent or a trustee to enforce loan documentation or security in its own name. However, the Norwegian Supreme Court has recognised the right of a bond trustee to enforce the loan documentation and security/ guarantee in a case where the bond documentation clearly assumed this, and where the court found that there was a sufficient practical need for the trustee to have these rights. The concept has not been tested for agents in bank loans, but it is likely that the same concept will apply if the other merits of such case are similar. It is, however, difficult to say something certain about the extent of the Supreme Court's decision in this case, so lenders may want to join legal proceedings as claimants in order to be certain that the court will accept the lawsuit.

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?

This is not applicable, please see question 5.1 above.

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?

Provided that the transfer of the loan is permitted pursuant to the underlying loan agreement, the only requirement in order for the loan and guarantee to be enforceable by Lender B, is that the borrower and guarantor is notified of 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?

As of today, there is no withholding tax in Norway. Politicians have notified that withholding tax may be implemented in the future, but it is uncertain whether this will ever be implemented, and if so, in which form.

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 preferentially or punitive taxes for foreign lenders.

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?

No, a foreign lender will not be deemed tax resident (or otherwise taxable) in Norway solely due to a loan or a guarantee/security.

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.?

From a Norwegian law point of view, the granting of a loan or the signing of a loan agreement will not require any signatures to be notarised and consequently not trigger any notarial fees. If the loan document is to be filed abroad (for instance as an attachment to foreign law security), the lenders may need to notarise and legalise their signatures, but the notarial cost will then be incurred in the foreign lender's jurisdiction on that jurisdictions notarial rates.

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.

There are no such adverse consequences.

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?

As a general principle, Norwegian courts will recognise the parties' choice of a foreign law as the governing law of contract, insofar as such governing law does not contravene with Norwegian fundamental legal principles ("*ordre public*"), or relates to an area where Norwegian law is mandatory, which is typically relevant for legislation relating to consumer protection. There are, however, exceptions for matters relating to bankruptcy, for instance the validity and effectiveness of a pledge/charge/assignment, and hardening periods relating thereto. In these cases, Norwegian courts may not apply the choice of law which has been agreed between the parties, but instead apply Norwegian law and Norwegian rules when considering the effectiveness of such document. If a Norwegian court does apply foreign law, the judgment made on this basis will be enforceable by Norwegian courts.

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?

Norwegian courts may enforce foreign judgments either on the basis of 1) a convention or agreement between Norway and the relevant foreign state, or 2) on the basis of a written agreement between the parties to the dispute where the parties have agreed that the foreign court has jurisdiction over the claim (with certain exceptions applying for consumer contracts). Norwegian courts will recognise and enforce a judgment given by English courts on the basis of the 2007 Lugano Convention. For judgments by New York courts, Norwegian courts will recognise and enforce the judgment if New York jurisdiction has been agreed between the parties, as set out in alternative 2); subject, however, to the "*ordre public*" exception mentioned in question 7.1 above.

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?

If there is no legal defence to the payment, we assume that the hearing itself will not take more than one day. The timing for scheduling the hearing will depend on the workload of the court, which varies from court to court. In the district court of Oslo, which is the largest district court in Norway, it currently takes approximately six months from the service of first process until the hearing is scheduled. The court should then decide on the case within one month following the hearing, and the defendant has one month to appeal the judgment before it is final and enforceable. The enforceable judgment can then be filed with the local enforcement authorities, who will attach a distraint on relevant asset(s) of the debtor, a process which can take up to several months (again depending on the workload of the enforcement authorities). Timing for realisation of the asset varies significantly depending on the asset (real estate, ship, amounts credited to a bank account) and again the workload of the enforcement authorities, but one should expect at least a few months for this step as well.

If the claim is un-disputed, the creditor may also send a statement to the debtor, describing the basis for the claim and its amount. If the debtor does not object to this statement, the statement will have the same status as an enforceable judgment. If the claim is documented by way of a debenture (Nw: *gjeldsbrev*), which satisfy certain formal requirements set out by law, such debenture can be enforced directly without having to obtain a judgment.

If the foreign judgment qualifies for direct enforcement, this will have the same status as an enforceable Norwegian judgment. The timing for enforcing the foreign judgment will therefore be similar to enforcing a Norwegian judgment, with a few months to attach the distraint on the asset, and a few additional months for the realisation.

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?

Collateral security shall be enforced in the way that generates the highest revenue. This can include realisation by way of an auction, if and when the enforcement authorities considers this to provide the highest revenue, but it can also include handing the asset over to the pledgee for a set price. For enforcement of real estate, the district court will need to consent to the sale, which can delay the process for months, and which may affect the value of the real estate. Regulatory consents are generally not required. However, if the relevant asset is subject to a regulatory consent (i.e. the property is used for regulated activity), consent by the relevant authority may also need to be obtained.

For some assets, Norwegian law permits simplified enforcement. According to the Norwegian Act on Financial Collateral (implementing EU directive 2002/47/EF) (the "**Financial Collateral Act**"), parties to a security agreement can agree on the method of enforcement, which can include, *inter alia*, transfer of ownership from the pledgor to the pledgee without the involvement of any enforcement authorities. For the purpose of this act, financial collateral will include cash deposits, financial instruments (shares, bonds, etc.) and debt receivables, but will not include, for instance, real estate.

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?

A foreign plaintiff may be required to provide collateral for its potential liability for legal costs. No such requirement applies for foreclosure of collateral security.

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 Norwegian Bankruptcy Act has the concept of a moratorium, but it is not widely used in complicated debt structures. A moratorium will not affect the security of creditors, to the extent the claim is covered by the estimated value of the collateral, which value is set by the debt committee responsible for the moratorium. The secured creditor can challenge the valuation through the courts. When a moratorium is present, a secured creditor cannot commence separate enforcement proceedings against the debtor, save for enforcement pursuant to the Financial Collateral Act (see above question 7.4).

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

Yes, an arbitral award granted pursuant to the rules of the Norwegian Arbitration Act of 14 May 2004 will be recognised and enforced against a company without re-examination of the merits. The same applies for foreign arbitral awards which pursuant to the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards can be enforced without re-examination of merits.

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?

A secured lender cannot enforce its rights to any collateral for as long as bankruptcy proceedings are ongoing, as the bankruptcy estate has the sole right to realise assets of the company. This does not apply to collateral which has been established pursuant to the rules of the Financial Collateral Act, see question 7.4 above, where the secured lender can seize the asset directly from the pledgor also where the pledgor is subject to bankruptcy proceedings. The bankruptcy estate may choose to transfer the collateral to the pledgee if it can be assumed that the claim of the pledgee exceeds the value of the collateral. The bankruptcy estate will then set a value of the collateral which by which the pledgee's claim will be reduced.

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 bankruptcy estate can use clawback in certain cases where security has been granted during relevant hardening periods that are not expired at the time bankruptcy proceedings are opened. Hardening periods apply where security is granted for a debt which was incurred before security was provided (in which case the hardening period is three months), irrespective of whether the preferred creditor was in good faith or not. A less practical hardening period applies for security where the pledgee has acted in bad faith and contributed to the weakening of the financial position of the debtor (in which case the hardening period can be up to 10 years).

Certain creditors have preferential rights in a bankruptcy situation, but these are only preferred over other unsecured claims, and do not affect collateral security. However, the bankruptcy estate has a preferred security right in any assets which are subject to collateral, limited to 5% of the value of each of the collateral assets, but not to exceed 700 times the court fee (currently totalling NOK 791,000). Proceeds realised from this security may only be used to cover any necessary costs associated with the bankruptcy estate.

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

Norwegian banks, credit institutions, insurance companies and pension companies are, according to the Norwegian Financial Institutions Act of 10 April 2015 (the "**Financial Institutions Act**"), excluded from bankruptcy proceedings. Instead, these institutions will be taken under public administration, with a view to ensuring a sufficient financial basis for the continued operation of the institution, a sale of whole or parts of the institution to another similar institution, or its liquidation.

Norwegian municipalities (Nw*: kommuner, fylkeskommuner*) are, according to the Norwegian Municipalities Act of 25 September 1992, excluded from bankruptcy proceedings. Instead, the municipality may be taken under public administration until the financial status is sufficiently sound for control to be handed back to the local authorities.

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?

As mentioned above under question 7.4, security established pursuant to the Norwegian Financial Collateral Act can be enforced outside of court in such manner as the parties have agreed.

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, the submission by a Norwegian company to a foreign jurisdiction will generally be legally binding and enforceable under Norwegian law. Exceptions can be found in consumer protection legislation, in which case the submission to a jurisdiction other than Norway may be set aside by Norwegian courts.

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

If a foreign party has waived its sovereign immunity, the waiver of such will be binding on Norwegian courts to the extent such waiver is permitted and enforceable pursuant to the laws of the relevant party's jurisdiction, and pursuant to international law.

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?

Lending is a licensed activity in Norway, and may not be undertaken unless the lender holds a licence as a bank, credit institution or finance institution. An exception applies for lending done on a non-recurring basis. Although the scope of this exception is unclear, it is narrow, and anything more than one loan may require a licence.

Lenders incorporated in Norway will need to fulfil certain requirements set out in the Norwegian Financial Institutions Act in order to obtain a licence. These requirements relate to capitalisation, ownership, management/operation, etc., and the lender will be subject to supervision by the Norwegian Financial Supervisory Authority. Lenders holding a relevant licence in another EU/EEC state, may provide lending services in Norway on the basis of their home country licence, and be subject to supervision by their local financial supervisory authority. Foreign lenders outside of the EU/EEC may provide lending services in Norway provided that they obtain an authorisation (as opposed to a full licence) from the Norwegian financial authorities. The authorisation will permit for the same activities that the entity performs in its home state, and is granted on the condition that the company is subject to satisfactory supervision in their home state, and that such foreign supervisory authority cooperates with Norwegian financial authorities. There are also certain other formal requirements that needs to be complied with.

An institution providing lending services without the sufficient licence or authorisation, may be liable for fines, or, in certain serious circumstances, persons associated with the institution may risk imprisonment of up to one year.

There is no licence requirement for acting as agent under a syndicated facility, unless the agent also performs other services in relation to that syndicate (lending, payment services, etc.) which are licensed.

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 not.

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Ragnhild Steigberg is a finance lawyer with extensive experience with bank loans and bond issues. She assists lenders, borrowers and arrangers in bilateral and syndicated facilities and bond issues with a main focus on real estate financing, shipping/offshore and acquisition financing. Ragnhild also has extensive experience with complicated debt restructurings and insolvency matters, and advises financial institutions on regulatory matters.

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