

Norwegian rules of 2020 on registration of bare boat charter parties

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Contents

1	THE PURPOSE OF THIS ARTICLE	9
2.	THE BACKGROUND FOR THE NEW RULES	9
2.1	The purpose of the registration.....	9
2.2	Some historical facts.....	10
2.3	The charter party issue.....	10
2.4	The international ship register (NIS).....	11
2.5	The amendments of 2020	11
3	BARE BOAT REGISTRATION IN NORWAY OF FOREIGN VESSELS (FLAGGING-IN)	13
3.1	Introduction.....	13
3.2	The consequences – public law and private law	13
3.4	The requirements for registration of the bare boat agreement	14
3.4.1	What is a bare boat agreement?.....	15
3.4.2	The length of the agreement	15
3.4.3	The bare boat charterer.....	15
3.4.4	What kind of vessels?	16
3.4.5	Primary registration state is in principle irrelevant	16
3.4.7	Documentation and formal registration	17
3.4.8	De-registration.....	17
3.5	Drilling platforms and moveable constructions.....	20
3.6	Registration of bare boat charter parties in NIS.....	20
4	NORWEGIAN REGISTERED VESSELS – BARE BOAT REGISTRATION IN A FOREIGN COUNTRY (FLAGGING-OUT) ..	21
4.1	Introduction.....	21
4.2	Vessel registered in NOR – requirements for flagging-out	21
4.3	Permission expired	22
4.4	Platforms and constructions.....	24
4.5	Vessels, platforms and constructions registered in NIS	24
5	FURTHER ON NON-PERFORMANCE AND ENFORCEMENT OF CLAIMS.....	24
5.1	Introduction.....	24
5.2	Owner – charterer.....	25
5.3	Owner and mortgagees	25
5.4	Maritime liens and enforcement liens.....	26
5.5	Forced sale of the vessel by a Norwegian court.....	27

1 The purpose of this article

In 2020, Norway enacted rules on the registration of bare boat charter parties: a vessel registered in a Norwegian register (we have two) may – while still retaining the Norwegian registration – be registered in the register of a foreign state, on the basis of a bare boat charter party. Conversely, a vessel registered in a foreign state – being on a bare boat charter party – may also be registered in a Norwegian register. In simple terms, this has the following effects: the public law rules are transferred to the state of the bare boat register, while the private law rules on ownership to and encumbrances on the vessel are not changed and remain as registered in the original register (the primary register). The purpose of this article is to provide an outline of the rules and their implications – after some introductory remarks on registration and the background for the new rules.²

2. The background for the new rules³

2.1 The purpose of the registration

Ship registration serves two objectives: it gives the state the possibility of controlling the public law aspects of shipping – with regard to both state obligations as well as rights. Consequently, ship registration should be obligatory. The other objective is of a private law character and is two-fold: the contractual counterparty to the owner ought to be able to determine whether the person appearing to be the owner is really the owner, and whether there are other rights conflicting with his own *in rem* right to the vessel. A creditor of the owner has similar interests: Is the debtor the owner of the vessel, and what is the value of an attachment on the

² The translations of Norwegian texts are the responsibility of the author.

³ For more details, see Falkanger, Bull & Brautaset, *Scandinavian Maritime Law* (4th ed. 2017) pp. 55 et seq.

vessel? These private law interests can hardly indicate an obligation to register ownership and encumbrances on the vessel.

2.2 Some historical facts

The first Norwegian ship register – to use the concept in its modern sense – was established by an act of 1901. It was structured on the principles of land registration, but with a far better system. In the years that followed, there was a kind of competition between the two registers regarding the best solutions. A major reconsolidation in the shipping sector came in 1973,⁴ based on the modern land registration rules, and the 1973 rules have been transplanted into the Maritime Code of 1994.

2.3 The charter party issue

In 1973, an important issue was whether registration of charter parties should be allowed. The maritime committee's proposal, which was eventually enacted, was that neither voyage/time charter parties nor bare boat charter parties could be registered. This was due to considerations of specific performance: registration implies the right to demand specific performance of the contract. In *Leie av skib* (1969) p. 580 I have summarized this as follows:

“Regarding ordinary charter parties the committee finds that regardless of the present legal regime the best argument *de lege ferenda* is that specific performance cannot be demanded. The committee acknowledges that circumstances are different for straightforward bare boat charters, but it is nonetheless proposed that such agreements cannot be registered, because ‘it is legally-technically difficult to distinguish between bare boat charters and voyage/time charters.’”

⁴ By changes in the Maritime Code of 1893.

2.4 The international ship register (NIS)

At the time of the shipping crisis in the 1980s, the Norwegian rules on registration obligations were strict: registration required the vessel to be owned by either a Norwegian citizen or a Norwegian company (with detailed rules on shareholding etc.), and if these requirements were met, there was an obligation to register the vessel in the Norwegian register. De-registration and transfer to a foreign register was dependent upon official permission, which initially was not easily obtainable. The crisis prompted demands for a more flexible system – for reasons similar to those indicated below in favour of bare boat registration: minimizing costs, increasing revenue. The outcome was a new register: the International Ship Register (NIS). The rules applying to vessels registered in the NIS are – from the owner’s point of view – better, see for the details Falkanger, Bull & Brautaset *op.cit.* pp. 69-71. However, there are some trading restrictions – first of all, trading between Norwegian ports is not allowed for vessels registered in the NIS, nor is regular passenger transport to and from Norway.

2.5 The amendments of 2020⁵

The background to the amendments in 2020 – finalized in an act of April 17 2020 No. 28 – are given and discussed in the *travaux préparatoires*.⁶

The main reason for bare boat registration is that from a commercial point of view it may be preferable for a vessel to sail under a particular flag – without the possibility of having the vessel registered in the relevant state in the traditional manner. In the hearing, previous to the 2020 amendment, it had been emphasized that, typically, this is a situation where the relevant state has a legal system that does not give sufficient

⁵ There is a number of contributions to the problems relating to registration of bare boat charter parties. Regarding the situation in Norway some years back there is a still very informative contribution by Mats E. Sæther, *Bareboat (“parallel-”) registrering av skip – i jus og praksis*, Marius No. 297 (2003).

⁶ Prop. 32 L (2019-2020) and Innst. 148 L (2019-2020). To the following, see in particular Prop. 32 L (2019-2020) pp. 10-11.

security for those having ownership or legal rights in the vessel, or else that the relevant state has inadequate rules regarding the enforcement of claims.

Another reason for bare boat flagging-out is where the bare boat charterer has preferences relating to the flag of the vessel. Such out-flagging makes it possible for a Norwegian owner to charter out the vessel on terms satisfying the interests of the bare boat charterer, while at the same time securing the interests of the mortgagees, as their rights remain registered in the Norwegian register.

Furthermore, bare boat chartering may be used in order to obtain market access. Norwegian shipping interests have indicated that this is one of the main arguments for flagging out. One important factor in many cases is that operating costs (primarily crew costs) can be substantially reduced by having a non-Norwegian flag.

Regarding bare boat charters in a Norwegian register, the Norwegian shipping society has pointed out that this is of particular interest when banks require a Norwegian flag, or operators on the Norwegian shelf demands a Norwegian flag. Another possibility would be where a Norwegian shipping company bare boat charters a foreign registered vessel for service between Norwegian ports.

In the following, I shall discuss the consequences of the amendments; firstly with regard to flagging-in, as this topic is dealt with first in the Maritime Code (MC).⁷

⁷ The Maritime Code of June 24 1994 No. 39.

3 Bare boat registration in Norway of foreign vessels (flagging-in)

3.1 Introduction

Before discussing the requirements for flagging-in, it is necessary to give an outline of the consequences of the registration, as the interpretation of the requirements will, it is submitted, depend to some extent on the consequences. The discussion in 3.1-3.5 concerns registration in the ordinary ship register (NOR); the discussion of whether the NIS rules are different is postponed to 3.6.

3.2 The consequences – public law and private law

The flagging-in is regulated in MC Section 40. The consequences of such registration are briefly stated in paragraphs three and four:

“A vessel registered in accordance with this Section is subject to Norwegian jurisdiction and shall fly the Norwegian flag.

Mortgages and other proprietary rights in a bare boat registered vessels cannot be registered.”

In addition, paragraph five entitles the Ministry of Trade, Industry and Fisheries to impose further rules “on bare boat registration, hereunder requirements to the bare boat charter party, documentation and process”. This has been done by amendments in Regulation 593/1992 on the registration of vessels in the Norwegian ordinary ship register (NOR).

The public law aspect is explained in the *travaux préparatoires* in this way:

“The bare boat state has an exclusive right to exercise jurisdiction and control over the vessel, and as a result it will be subject to the law of the bare boat state regarding operation, security, manning and environment. The vessel will fly the flag of the bare boat state

for the period that the vessel is on bare boat charter” (Prop. 32 L (2019-2020) s. 20).

What is not specifically mentioned, but is obviously included, is criminal law jurisdiction in conformity with the rules in the Penal Code.⁸

The private law consequences are summarized in the *travaux préparatoires*:

“[O]wnership and rights remain registered in the primary state during the whole period the vessel is bare boat registered” (Prop. 32 L (2019-2020) p. 5).

“Rights” include voluntary rights (typically sales contracts and mortgages) as well as liens (maritime/enforcement liens) and conservatory attachments.

3.4 The requirements for registration of the bare boat agreement⁹

In this 3.4 we provide an outline of the various requirements for bare boat registration according to MC Section 40.

⁸ See Penal Code (Act 28/2005) Section 4 letter c: The criminal legislation applies to acts committed “on Norwegian vessels including aircraft, and drilling platforms or similar moveable installations. If a vessel or installation is in or above the territory of another state, the criminal legislation applies only to an act committed by a person on board the vessel or installation”. A vessel flying the Norwegian flag is in this respect “Norwegian” – see the United Nations Convention on the Law of the Sea (UNCLOS) of 1982 Art. 91. On reservations regarding requisitions, cf. Sæther *op.cit.* p. 43. This question is mentioned in Prop. 32 L (2019-2020) p. 19: The Ministry “agrees that it should be considered whether there is a need to amend the Act on Requisition [Act June 29 1951 No. 19] Section 1 under which ships may be requisitioned”.

⁹ MC Section 20 paragraph one states that documents “relating to a maritime lien on a ship or the lease or chartering of a ship”, cannot be registered, see 2.3 above. It has obviously been overlooked, that there is a need for some modification of the section.

3.4.1 What is a bare boat agreement?

As mentioned in 2.4 above, the borderline between a time charter and a bare boat charter may be difficult to draw. MC gives no definition or indication, but in the *travaux préparatoires* it says that a bare boat charter is a contract whereby

“a lessee (a bare boat charterer) assumes the total responsibility for the operation of the vessel, its equipment and manning from the owner, and operates the vessel for his own account and at his own risk. The bare boat charter gives the charterer both commercial and technical command over the vessel, and thus the charterer is considered to be the owner [Norwegian “reder”¹⁰] in relation to the maritime code, the ship working law and the ship safety law” (Prop. 32 L (2019-2020) p. 7).

3.4.2 The length of the agreement

The registration is for the length of the charter, but initially for not more than ten years. The period may, however, be extended by the registrar for periods of up to five years upon request of the charterer submitted at the earliest six months before the expiration of the ongoing period. There is one restriction connected with the necessary consent from the primary register and third parties – see 3.4.6 below; such consent may be time limited, and if so, the registration period is correspondingly defined.

3.4.3 The bare boat charterer

The charterer may be either a person or a company, and requirements regarding nationality and domicile follow from the reference to MC Sections 1 and 4. The main rule is that a charterer, being a limited company, must have its head office in Norway, the majority of the directors have

¹⁰ In the translation of the MC into English in MarIus No. 435 (2014), the preface explains that there is no equivalent English term: “The ‘reder’ is the person (or company) that runs the vessel for his or her own account, typically the owner or the demise charterer. Time charterers and voyage charterers are not considered ‘reders’.”

to be resident in Norway and 60 percent of the share capital with corresponding voting rights should be in Norwegian hands.

3.4.4 What kind of vessels?

Section 40 limits the type of vessel or construction that is eligible for registration. The vessel must have a length of 15 meters or more, and be a passenger or cargo vessel; e.g., a fishing vessel is excluded from registration.

3.4.5 Primary registration state is in principle irrelevant

A bare boat charter party for an unregistered vessel cannot be registered in Norway. Where the vessel is registered – whether in a state with strict and effective control or in a new “flag of convenience”-state with scant shipping competence – is immaterial.¹¹ However, in order to register in Norway a SOLAS-Confirmation is necessary: A “declaration of safety” issued by one of the approved classification societies must be presented.

Registration in Norway with transfer of jurisdiction must of course be coordinated with the state of the primary register. The solution is that consent is required from the primary register, see paragraph two no. 4 on “documentation from the ship register in the primary state showing that the vessel is temporarily allowed to be bare boat registered and fly the Norwegian flag”. Whether such documentation will be given depends upon the law of the primary state, and the effect of the Norwegian registration will be within the limits set in the permission.

In addition, there has to be written consent from the owner and all holders of rights (paragraph two no. 3), which must be understood as being consent from those who, according to the primary register, are the owner and holders of rights.¹²

¹¹ The Danish rules are restrictive on flagging-out. Registration is accepted in all EU- and EØS-states and some named states. There is no similar restriction on flagging-in.

¹² Prop. 32 L (2019-2020) p. 28.

3.4.7 Documentation and formal registration

Registration is dependent upon a request in writing being made by the bare boat charterer, together with:

- a copy of the bare boat charter party,
- documentation that the charterer complies with the nationality requirements in MC Section 1 (see 3.4.3),¹³
- excerpt from the primary register showing owner and holders of rights,
- documentation of consent from third parties (see 3.4.6),
- documentation from the primary register that bare boat registration is accepted (see 3.4.6).

If the ship register requirements are satisfied, the vessel will be a special entity in the register, and a certificate of nationality will be issued.¹⁴

A transcript from the register (headed: “vessel information”- Norwegian: “fartøysinformasjon”) will, in addition to the technical details of the vessel, provide information on the primary register, the owner, the bare boat charterer and the date of the bare boat charter party, as well as on who is now ISM-responsible.¹⁵

The decisive moment for transference to Norwegian jurisdiction is the actual registration.

3.4.8 De-registration

Seven de-registration reasons are listed in MC 40a letters a-f.

Letter a prescribes de-registration when “the bare boat charter party ceases”. This may happen for a number of reasons; some of them are also

¹³ For further details, see the home page of Sjøfartsdirektoratet (Norwegian Maritime Authority).

¹⁴ Regulation 593/1992 Section 7d. See also Section 7c that such certificate shall include date of the expiry and the charterer’s name and address.

¹⁵ The ISM-code – International Safety Management Code – is based on IMO Resolution A.741 (18) of 4 November 1993 with an Annex, which provides the content of the actual code. The code implements a system of “internal control” for the shipowner.

covered in the following letters. Letter a appears primarily aimed at the basic rules on the time length of the registration, see 3.4.2.

Letter b says that de-registration shall take place when “the conditions for registration according to Section 40 paragraph one no longer exist”. This includes the reasons related to letter a, as well as a number of other reasons. An example is where the charterer no longer fulfills the nationality requirements in MC Section 1 – a situation that may exist for a long period without being known to the register.

Letter c concerns a party’s request for de-registration. Originally, the Ministry proposed that a request had to come from the charterer. However, the shipping industry pointed out that one of the greatest challenges regarding bare boat registration is that holders of rights fear that the charterer may prevent de-registration – typically, where the owner cancels the charter party and the charterer resists the cancellation. This was accepted by the Ministry, and the rule is now that de-registration may follow from a request by either the owner or the charterer.

We may have a situation where one of the parties gives notice of cancellation, while the other party denies that there are grounds for cancellation. Here the system appears to be that the notification is accepted, and the dispute has thereafter to be decided according to the rules governing the contract – see 4.3 below. On this point we would refer to what the *travaux préparatoires* say on disputes regarding flagging-out, and this must, it is submitted, have similar application regarding flagging-in.

Letter d requires de-registration when the vessel “according to the law of the primary state no longer has the temporary right to sail under the Norwegian flag”.

Letters e and f concern notifications to the register. When a vessel is lost or scrapped, there is a duty on the owner to notify the register, no later than 30 days after the event, cf. MC Section 13. Such notice is grounds for de-registration. If notice is not given and the registrar becomes aware of this fact, de-registration will take place, however, not before the owner has had the opportunity to express his views.

A striking fact in Section 40a is that, except in letters c and e, there is no mechanism for activating the de-registration process,¹⁶ and this makes it even more pressing to raise the question of the exact moment for re-establishing Norwegian jurisdiction. Is it when the deletion is made in the register, or when the material grounds for registration are no longer present? The question is discussed in Prop. 32 L (2019-2020) pp. 26-27 regarding flagging-out (see 4.3), but not regarding flagging-in. It is, however, reasonably clear that the Ministry was of the opinion that the time of deletion is decisive, as otherwise the 30 days notification-rule will not make sense. If this is accepted, we may have a situation lasting for a long period where Norway has given orders to the vessel and imposed fines, when e.g. the nationality requirements for the charterer have not been present. The guidance or restrictions that may follow from conventions and general international law, are not mentioned in the *travaux préparatoires*.¹⁷

When de-registration is effected, the *travaux préparatoires* say that the registrar “ought” to notify the primary register.¹⁸ It is somewhat surprising that such a rule is not obligatory. Without information, the primary register state may believe that questions of seaworthiness etc. still are supervised by Norway.

¹⁶ In contrast, see MC section 40b imposing a duty on the owner to notify the register that the charter party has ended.

¹⁷ In, for example, the ordinary land register, the situation is that there are rules on deletion, e.g., deletion occurring at a defined period after registration. If such ground for deletion has been overlooked, no material rule is affected; as from the time that deletion could have been deleted, the encumbrance is considered as not being registered. And when deletion is dependent upon a notification, e.g., from the mortgagee that the mortgage shall be deleted, it is clear that the actual time of deletion is decisive. But as regards the state, e.g. in taxation matters, the question is who is *the real owner* (and in such assessment, registration is only one fact amongst many), and this is also the case when the creditors try to attach a debtor’s assets.

¹⁸ Prop. 32 L (2019-2020) p. 31.

3.5 Drilling platforms and moveable constructions

A bare boat charter for a moveable drilling platform or construction may also be registered. Before indicating the rules, it is necessary to quote MC Section 507 first sentence on the general rules on registration:

“Drilling platforms and similar mobile constructions which are not regarded as ships and are intended for use in exploration for, or exploitation, storage or transportation of, subsea natural resources or in support of such activities, are considered Norwegian if they are owned by any person mentioned in Section 4 paragraph one and have not been entered into the register of another country.”

The possibility of registering bare boat charter parties for drilling platforms and other constructions must be read in conformity with this description. For example, a bare boat charter for an installation used in connection with aqua culture activities cannot be registered. Otherwise, the requirements for registration are the same as for passenger and cargo vessels, although with the modification that the nationality requirements in Section 4 are not as strict as those in Section 1.¹⁹

3.6 Registration of bare boat charter parties in NIS

Bare boat charter parties can be registered in the NIS, see the NIS Act (Act 48/1987) Section 14 – with rules similar to those applicable for the ordinary register (NOR), as described above. There is, however, one important exception regarding nationality, see Section 1, that is referred to in Section 14. If the bare boat charterer does not comply with the requirements of MC Section 1, registration is still possible if the charterer is:

- a limited company with its head office in Norway, or
- a partnership with a managing owner complying with the rules in MC Chap. 5, or

¹⁹ The main rule is that the charterer must be a Norwegian national, or a partnership or a company that for at least 60 percent is owned by Norwegian nationals, or other company registered in Norway.

- when the owner does not satisfy the above requirements but has a representative, as described in MC Section 103, with authority to receive legal process service on behalf of the owner.

4 Norwegian registered vessels – bare boat registration in a foreign country (flagging-out)

4.1 Introduction

The rules on flagging-out from a Norwegian register are basically structured the same as the rules on flagging-in. Therefore, the description here is shorter, following the same order: first looking at vessels registered in NOR, then platforms and constructions, and finally some words on NIS-registration.

4.2 Vessel registered in NOR – requirements for flagging-out

MC Section 40c states that the same type of vessels, platforms or constructions described in 3 as being registered in Norway may, upon request from the owner, be given permission to bare boat registration in a foreign ship register. The time limitations are similar to those in MC Section 40 paragraph one (see 3.4.2). The right to grant extensions is in the hands of the registrar, and according to the *travaux préparatoires* it is also the registrar who has the competence to give the initial permission.²⁰ What the registrar must take into consideration before giving permission, is primarily whether the necessary documentation is adequate. He is not entitled to deny registration because he considers registration in state A as being “unfortunate”.

²⁰ Prop. 32 L (2019-2020) p. 26,

A permission requires documentation (paragraph two):

- a copy of the bare boat charter party,
- a written consent to the flagging-out from the owner of the vessel and “all those having rights in the vessel”, which probably means all those with registered rights, and
- documentation from the foreign register that bare boat registration there is accepted. There is no requirement as to what kind of rules are applicable in the selected register state and how effectively the rules are followed up.

The consequences of flagging-out are described in paragraphs three and four:

(i) For a temporary period, the vessel has the right to fly the flag of the bare boat register state. During such period, the vessel shall not be considered Norwegian, see MC Section 1 paragraph six. The vessel is not allowed to use the Norwegian flag, and furthermore, the vessel shall not have a Norwegian nationality certificate.

(ii) Paragraph four states that mortgages and other registered rights are not affected, and that such rights as are created during the flagging-out period may be registered in the Norwegian register.

Finally, paragraph five entitles the Ministry to issue regulations, similarly to those in Section 40 paragraph five.

The register transcript (headed: “vessel information”- Norwegian: “fartøysinformasjon”) will, in addition to the technical details of the vessel, including the name of the owner, state that the vessel is also registered in a named state on the basis of a bare boat charter party for an identified period. The transcript will give information on the registered encumbrances– all in order of priority. One of the encumbrances is the bare boat charter party, with information on the charterer.

4.3 Permission expired

The parallel to de-registration in flagging-in situations (Section 40b), is that the flagging-out permission is no longer valid, cf. Section 40c. The

vessel is now entitled to fly the Norwegian flag and is within Norwegian jurisdiction in public law matters (paragraph two).

The permission expires:

(i) When the charter party ends. This may be due to a number of reasons: the time stated in the contract has expired, the contract is cancelled by the owner or the charterer, the vessel is lost, a forced sale has extinguished the contract, or the parties have amicably agreed to terminate the contract.

(ii) When the vessel no longer is “temporarily entitled to sail under the flag of the foreign register”. Whether this will happen depends primarily upon the rules of the bare boat state.

The owner of the vessel is under a duty to notify the Norwegian register as soon as possible and at the latest 30 days after the end of the charter party. Here there is a subsidiary rule: where notification is not given in accordance with this, but the registrar becomes aware from other sources that the contract is ended, he may delete the charter party – but only after giving the owner the opportunity to express his view.

The owner may contend that the registration should be deleted, e.g. because the charter party is cancelled, but the charterer disagrees. According to MC Section 40c, deletion follows from the owner’s notification, and protests from the charterer are irrelevant. The *travaux préparatoires*²¹ say that contractual issues between the owner of the vessel and the bare boat charterer, including whether the bare boat charter party is rightfully cancelled, are matters that the parties will have to resolve *later* in the courts of the agreed venue.²²

As indicated above, the question of the exact time of reestablishing Norwegian jurisdiction is discussed in Prop. 32 L (2019-2020) pp. 26-27. Do the rights and obligations for Norway exist from the end of the per-

²¹ Prop. 32 L (2019-2020) p. 27.

²² If the court decides that cancellation was unwarranted, the remedy is damages for the loss suffered by the charterer. In principle, there is also the possibility of demanding specific performance – when registration now is accepted, the contra arguments indicated in 2.3 are no longer valid. However, specific performance occurring a long time after the declaration of cancelling and deletion from the register appears to be practical only in very special circumstances.

mission period/end of the charter party, or is the moment of deletion decisive? The discussion makes it reasonably clear that the answer is the latter. Nor in this connection is international law mentioned.

4.4 Platforms and constructions

When platforms and constructions – as defined in 3.5 – are bare boat chartered, the rules on flagging-out are as stated in 4.2.

4.5 Vessels, platforms and constructions registered in NIS

The rules in NIS-Act Section 16 are similar to those in MC Section 40c. Permission to flagging-out for up to 10 years, with extension possibilities, can be given by the registrar when the owner presents a similar set of documents, and the effects are the same.

Section 17, on cessation of permission to flag-out, has rules similar to those in MC Section 40c.

5 Further on non-performance and enforcement of claims

5.1 Introduction

The question is how the system with two registers and the division of law – private law connected with the primary register, and public law with the bare boat register – affect questions of non-fulfilment of contractual obligations. We need to consider two aspects: the owner – charterer relationship, and the relationship between the owner and others than the charterer who have rights in the vessel. Finally, we consider questions on the enforcement of claims.

Obviously, the rules that may be relevant may well differ from country to country. Accordingly, it is necessary to limit the discussion – with the guiding principle: what can a Norwegian court decide?

5.2 Owner – charterer

When there is an alleged breach of the contractual terms – fundamental or of a minor character – the question of relevancy may depend upon the governing law. Here the parties have freedom to choose the law to be applied, and this is usually already decided in the charter party.

As mentioned above, de-registration may be at the owner's initiative – despite the charterer's protests. In a court trial on a later date, the decision may be that e.g. the cancellation was unwarranted. Here, the remedy is damages for the loss suffered by the charterer. In principle, there is also the possibility of demanding specific performance; since the registration of bare boat charter parties is now in principle accepted, the contra arguments indicated in 2.3 are no longer valid. However, specific performance which only occurs a long time after the declaration of cancelling and deletion from the register, appears practical only in very special circumstances.

5.3 Owner and mortgagees

In most instances, the vessel is mortgaged before the vessel is bare boat chartered, and it may be further mortgaged during the charter period. These encumbrances will be in the Norwegian register when flagging-out and in a foreign register when the vessel is flagged-in.

A mortgage may have clauses on the nationality of the vessel and/or restrictions regarding registration. Such clauses (covenants) may prevent bare boat registration or set limits (e.g., on period or state of registration). The mortgage agreement may include a number of other clauses to protect the interests of the creditor – all of them with the possibility of declaring foreclosure in the event of breach. In addition, there are of course general principles that in case of a breach may lead

to enforcement. Before we move onto some remarks on Norwegian law with regard to the enforcement of claims, it is first necessary to say a few words about liens.

5.4 Maritime liens and enforcement liens

In conformity with the Brussels Convention of 1967, a number of claims are secured by a maritime lien on the vessel (MC Section 51): wages to master and crew, port dues, damages as a result of collision etc., provided the “reder” is the debtor. The Norwegian word “reder” covers – as explained in 3.4.4 – the bare boat charterer.²³ In other words, the vessel may be encumbered – and as a first priority lien – by an act of the charterer. This is one of the owner’s risks connected with bare boat chartering. According to the Norwegian rules, a maritime lien cannot be registered (MC Section 20). On the recognition in Norway of foreign maritime liens, see 5.5 below.

The number of maritime liens is limited and these encumbrances are characterized by the connection between the claim and the vessel. However, a vessel may serve as security for other claims – with or without a link to the vessel – created by the decision of the enforcement authority, see Code of Enforcement (Act 86/1992 – CoE) Chap. 7 on enforcement liens.

For now, it is sufficient to refer to CoE Section 7-1 on attachment of the debtor’s property. Assuming that the object is the vessel and the charter party, an enforcement lien for claims against the owner is a lien on the vessel and is registered in NOR when the vessel is flagged-out. A claim against the bare boat charterer is a lien on the charter party and is registered accordingly in NOR (as an encumbrance on the rights flowing from the registered bare boat charter party).

²³ We have other claims secured *ex lege*, see e.g., the Liens Code (Act 2/1980) Chap.6, but they are of minor importance in our context.

5.5 Forced sale of the vessel by a Norwegian court

A demand for a forced sale may be presented for a number of reasons. We limit the scope for this discussion to late payment: a claim, secured by a mortgage, an enforcement lien or a maritime lien is not paid in time. We need not to go into the many and in some respects complicated rules in CoE.²⁴ It is sufficient to say that if there is “an enforcement ground” defined in CoE Section 11-2 (typically, a registered mortgage or a registered enforcement lien), the vessel may be sold at a forced sale under the auspices of a court. The competent court is the court where the vessel is or “is expected to arrive in the near future” (CoE Section 11-3) which means that the place of registration or the flag of the vessel is not material. However, if the flag is not Norwegian there are some “niceties”.²⁵ In particular, MC Section 74 on the recognition of mortgages and liens on foreign vessels and Section 75 on choice of law should both be noted.

²⁴ For a short overview, see Falkanger, *Forced Sale of Vessels according to Norwegian Law*, SIMPLY 1999 (= MarIus No. 247) pp. 3-27.

²⁵ See article mentioned in the preceding note pp. 25-27.