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“Arrest in Denmark – Pros and cons “

Ladies and Gentlemen

It is an honour for me to be able to speak to you today on the topic of arrest of vessels in Denmark. So far we have had interesting speeches on arrest and other interesting maritime issues in other jurisdictions and now I am going to give you a short introduction to the advantages of arresting vessels in Denmark.

As you may know I have already submitted an article by the name "Arrest of vessels in Denmark" to the handbook on arrests in various jurisdictions published by Shiparrested.com and in this article you will find a summary of the legal framework for arresting vessels in Denmark. Some of the aspects I am going to touch upon now are also mentioned in my article in Shiparrested.com.

The first thing I would like to mention is that the rules in Denmark on arrests of vessels are based on the 1952-arrest convention, which many of you are fully familiar with. This means that the legal regime for arresting vessels in Denmark is quite similar to what you will find in other - at least European - jurisdictions, maybe except for the UK. This means that also in Denmark we may arrest vessels on the basis of

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maritime claims as defined in the arrest convention and incorporated in the Danish Merchant Shipping Act. As I trust that most of you are fully familiar with the type of claims that constitute maritime claims I am not going to go into further details on the Danish rules on arresting vessels.

One aspect that I know by experience differs from the position in other jurisdictions is the informal and efficient way the Danish courts deal with applications for arrest. As many of you are used to being required to provide authorised and legalised powers of attorneys to support that you are in fact acting on behalf of a client this is not required in Denmark. Furthermore, you are not required to provide original invoices, contracts, etc and not even certified copies of these documents. The court deals with applications for arrest in an informal way which means that a Danish lawyer does not have to provide documentation for acting on behalf of the creditor, and if ordinary copies of the invoices, contracts, etc are provided this is sufficient unless the debtor contests the validity of documents, e.g. by arguing that no invoices have been issued or a contract is unsigned.

In fact you are only required to forward a short application for arrest; one or two pages in which you briefly state the grounds for the claim of the creditor and you will then support the application by enclosing copies of unpaid invoices, contracts, etc and the details of the vessel e.g. a print out from Lloyds or Fairplay.

The court deals with the questions for arrest in a fast and efficient way which means that the arrests often may take place the same day provided that the application for arrest is submitted to the court in the morning.

As a main rule the creditor is - under Danish legislation - required to put up security equal to 5 days' loss of hire for the vessel. When submitting an application for arrest you need to provide an assessment of the daily hire for the vessel and of course to provide the security in the form of a guarantee issued by the bank, insurance company, P&I Club, etc. Although it is in the discretion of the court to decide whether the security is sufficient it is my experience that most Danish courts accept guarantees put up by a European bank or insurance company. Also in respect to the security, the Danish courts are acting in an efficient and smooth way.

One other aspect that differs from other jurisdictions that I would like to mention to you is the rule in the Danish Merchant Shipping Act. It states that you may not arrest a vessel unless that execution of the claim can be levied against the owner of the vessel meaning that the owner of the vessel must be liable for the claim unless the claim is secured by a maritime lien. This rule in the Danish Merchant Shipping Act unfortunately often excludes arrest of the vessel as the registered owner of the vessel is often not li-

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able for the claim. This is the situation if bunkers or other material or equipment have been ordered by the time charter of the vessel as the registered owner of the vessel will then not be liable for the payment. Unless the owner somehow has accepted preferably in writing that he may be liable for the debt of the time charter if it is not settled by the time charter.

What do you do in these situations?

I am familiar with the practise that the invoices are issued to "the owner of MV Vessel c/o the time charter of the vessel" and then the creditor later argues that the registered owner of the vessel is in fact liable for the claim. As you may realise, however, this is not a correct legal approach as the registered owner of the vessel is not liable for the debt even though the invoices appear to have been issued to him.

The alternative is to arrest the bunker equipment, etc rather than the vessel. Arresting such assets belonging to the time charter is, however, subject to an entirely different legal regime under the Danish Administration of Justice Act, and the main difference to the arrest of vessels under the Danish Merchant Shipping Act is that arrest under the Danish Administration of Justice Act is by far more restrictive than under the Merchant Shipping Act. In fact, it is required under the Danish Administration of Justice Act that the possibility of obtaining security for the claim at the latest stage would be considerably impaired if the arrest is not made. This is interpreted by the Danish courts in the way that it must be established that the debtor is trying to leave Denmark and to hide his assets for the creditors. As you may realise it is quite difficult to establish such a situation which means that the Danish courts are rather reluctant to grant arrest of other assets than vessels. The reason I mention this to you is that there is an alternative to arresting vessels in the situation where the registered owner of the vessel is not the debtor of the claim but arresting bunkers etc is rather difficult under Danish law, unfortunately.

I would also like to mention to you that in Denmark ship register arrest is possible, which means that the vessel is not physically detained whereas you obtain an arrest order from the court and forward it to the Danish ship register preventing a sale of the vessel. This kind of arrest is highly efficient if the vessel is sailing outside Danish waters and a sale of the vessel is suspected meaning that the prospects of the full recovery of the debt are rather poor if maybe the only asset of the debtor - the vessel itself - is sold. By registering the arrest order the owner of the vessel may not transfer title to the vessel to a different entity or person and he will then be forced to deal with the claim of the creditor if the owner exists on a sale of the vessel.

Lastly I would like to address the issue of environmental aspects in connection with forced sale of ves-

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sels. Recently I have dealt with a case on behalf of a Danish port in connection with arrest and subsequent force sale of a vessel. The vessel was in distress in the North Sea due to shifting of cargo and the vessel was salvaged to the Danish port. The owner, however, failed to pay port dues, etc and after some time the vessel and the crew was abandoned at the port. The port obviously wished to recover the outstanding harbour dues and thus arrested the vessel and in time applied for a forced sale of the vessel. Until the date of the auction the vessel was moored at the port without crew.

At the forced auction the vessel was sold to a foreign entity with the intention to scrap the vessel, most likely in India. Given the high attention in the Danish medias on Danish vessels being scrapped in India and the implications for the workers and environment of such scrapping of vessels, the Danish medias turned their attention to the sale of this vessel. Moreover, they had been informed that asbestos was hidden in the vessel e.g. in the insulation. The municipality of the town had to interfere when some politicians heard about the case and the risk of the vessel being exported from Denmark to India for scrapping. Upon instructions from the Danish Environmental Authorities the municipality commenced an inspection for asbestos in the vessel. The result was that the new owner of the vessel was not allowed to move the vessel despite the fact that he had bought the vessel at a forced auction free from encumbrances charges, etc. Finally the foreign buyer of the vessel was forced to sell the vessel to a Danish scrapper of vessels who was able to satisfy the strict provisions for scrapping vessels in Denmark.

This case illustrates the difficulties that one may face from an environmental point of view. The attention of both politicians and the medias on the environmental aspects of scrapping of vessels including the asbestos aspects may thus prevent a buyer of a vessel from exercising his rights to the vessel, as the authorities may prevent the new owner from leaving Denmark with the vessel for scrapping in e.g. India. My concern is that this case will prevent potential buyers from participating in forced sales of vessels as the risk of disputes with the environmental authorities are too high. This applies to old vessels, in particular, inside which asbestos is likely to have been used as insulation material. This is a sad development and it weakens the prospect of a successful recovery for the creditor if the buyers of a vessel for scrap is limited to domestic scrappers/buyers of vessels. One may fear that the buyers are not prepared to pay the same amount for the vessel if authorities limit the use of the vessel. I am interested in knowing whether you are facing similar problems with the environmental authorities in your countries?

Finally, I shall welcome any questions you may have to my speech or the article submitted by me to Shiparrested.com.

Thank you for your time and patience.

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Henrik Kleis, DELACOUR Lawfirm

Henrik Kleis, attorney-at-law and partner in DELACOUR Lawfirm.

Henrik Kleis, who is admitted to the Danish Supreme Court, is the author of several textbooks of transportation and of more than 300 articles on the subject.

With 130 employees DELACOUR Lawfirm is among the 10 largest lawfirms in Denmark, and has offices in Aarhus and Copenhagen. Through several years DELACOUR Lawfirm has raised its profile within the transport business in and outside Denmark, and is now considered to be among the leading lawfirms in Scandinavia.

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