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Enforcement of Judgments 2021

Norway

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Law and Practice

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1. IDENTIFYING ASSETS IN THE JURISDICTION

1.1 Options to Identify Another Party's Asset Position

In order to identify the asset position of another party in Norway, there are several public registers available that a claimant might check. The Brønnøysund Register Centre is a government body under the Ministry of Trade, Industry and Fisheries, and consists of several different national computerised registers. The most important and usable register is the Register of Business Entities, which contains information such as annual reports and financial statements for most Norwegian companies, but also foreign companies that are operating in Norway. The information will usually be updated as per the preceding year. It is searchable by company name or company registration number. The financial information and copies of the financial statements are not available free of charge, but some websites provide abstracts of the information for free, such as proff.no. The Brønnøysund Register Centre also holds the Register of Bankruptcies, which contains information about Norwegian companies where bankruptcy proceedings have been instituted, the trustee in the bankruptcy estate and relevant information in order to report a claim to the bankrupt estate.

In addition to the Brønnøysund Register Centre, other publicly available registers that a claimant might check include the following.

- The Norwegian Ship Register (NOR) and the Norwegian International Ship Register (NIS), which contain information about the ownership of vessels and to what extent vessels are mortgaged. It is searchable by both the owner's name and the vessel's name.
- The Vehicle Register, which contains information about the ownership and leasing agreements of cars, and to what extent cars are

mortgaged. It is searchable by the vehicle's plate number.

- The Property Register, which contains information about the ownership of property/real estate, and to what extent properties are mortgaged. It is searchable by property (either by cadastral numbers or by street addresses).
- The Securities Registry, which contains information about the ownership of financial instruments, and to what extent financial instruments are mortgaged.
- The Movables Register, which contains information about mortgages and distraints in movables, registered by debtors (not by assets); attachments on earnings and decisions resulting in "nothing to distraint" are also registered in the Movables Register, but this information is not publicly available.
- The Petroleum Register, which contains information about licensees and operators of production licences, and to what extent they are mortgaged.
- The Power Line Register, which contains information about the ownership and mortgage rights of mains power lines; however, this register is infrequently used.

No asset disclosure orders are available; however, in connection with a distraint, the Norwegian Enforcement Office will investigate what assets the debtor has and may order the debtor/defendant to provide information necessary for enforcing the claim, and to give access to his/her private estate, business premises, etc.

If there is a risk that another party will dispose of its assets to the detriment of the claimant, the claimant may obtain an attachment (*arrest*) in the other party's assets as a preliminary measure to secure the claim. The other party will then be prohibited from disposing of the attached asset in a way that harms the claimant's position. Such an order may be issued without prior notice to

the debtor if necessary if delay would pose a risk.

2. DOMESTIC JUDGMENTS

2.1 Types of Domestic Judgments

In Norway, two types of domestic judgments are available, in principle. The term judgment (*dom*) is used on the courts' rulings on the merits of the disputed claims brought before them, including the courts of appeal's rulings on appeals against judgments.

To clarify, Norwegian law distinguishes between three different forms of rulings:

- judgments (*dom*);
- interlocutory orders (*kjennelse*); and
- decisions (*beslutning*).

Interlocutory orders and decisions apply to rulings rejecting a case due to lack of jurisdiction, legal cost awards or rulings on procedural issues, for example. Such rulings may also be enforceable, equivalent to an enforceable judgment – for instance, legal cost awards providing for the losing party to pay an amount of money to the winning party (awards made by way of an interlocutory order).

The two main types of judgments (*dom*) are:

- declaratory judgments, which constitute a binding declaration in relation to a legal relationship between the parties and the judgment; this type of judgment cannot be enforced as such, but may nevertheless give grounds for the forced surrender or transfer of property, for example; and
- enforceable judgments, which provide for the parties to do, refrain from or endure an act, such as paying an amount of money to the other party.

In general, judgments are legally binding and enforceable when they no longer can be appealed, either because there is no higher court instance or the time limit for appealing the judgment has lapsed.

Monetary judgments are partly enforceable before they are final, as they can be used to obtain a lien over the other party's assets to secure the claim as soon as the time for payment has passed, even if the judgment is being or can be appealed. The same applies to interlocutory orders awarding money to one of the parties – eg, legal cost awards. The debtor may avoid the lien by providing security (bank deposit or bank guarantee) for the claim.

In the case of default by the defendant, another type of judgment is available, but a default judgment is nevertheless either a declaratory or an enforceable judgment (deciding the claim). Default judgments may be obtained upon application from the claimant, if the defendant does not submit a defence in time, does not attend the court hearing (through a representative), or fails to perform other important procedural acts determined by the relevant court. The judgment shall be based on the grounds for the claimant's petitions for relief, as long as these grounds are not evidently wrong.

Despite not being a judgment by the court, in-court settlements are also relevant here, due to such agreements being enforceable similar to an enforceable judgment. In-court settlements are entered in the court record, signed by the parties and the member(s) of the court, stating precisely what the parties have agreed and containing a time limit for performance. The time limit is crucial in order for the settlement to be enforceable.

Temporary judgments are also available while awaiting a judgment (or a settlement) regarding the disputed claim, depending on the circum-

stances. These rulings do not decide the main claim brought before the court, only the security claim, so are made in the form of an interlocutory order (*kjennelse*). Nevertheless, they are enforceable while awaiting a final and binding outcome of the matter. Preliminary injunctions are rulings that may be obtained to secure both monetary and non-monetary claims. The injunction can either force the other party to do, refrain from or endure an act as a preliminary measure, or to sustain an attachment over one or more of the other party's assets.

Preliminary injunctions are enforceable immediately, provided that the other party does not voluntarily adhere to the injunction within the possible deadline set by the court.

2.2 Enforcement of Domestic Judgments

In order to enforce a domestic judgment in Norway, the claimant has to file a petition for enforcement to the local enforcement office. There is no (extra) notice period with which the claimant has to comply before initiating the enforcement process of its claim, as the procedure is for enforcing a promissory note debt, etc. It is sufficient that the judgment is rendered and the awarded claim has fallen due.

In order to enforce monetary judgments, the following procedure generally applies.

- The first step – a petition for an execution lien (*utlegg*) over the debtor's assets is sent to the local enforcement office. The legal venue is determined by the domicile of the debtor, or by the location of its assets. The enforcement office will then search for assets, often by involving the debtor, and sometimes by involving the claimant as well. If specific assets are listed and requested in the claimant's petition, the enforcement officer will rarely make much effort in searching for fur-

ther assets. When the enforcement office has searched for the assets available, it will put an execution lien over the asset(s) that are most feasible for recovery purposes.

- The second step – after the execution lien has been obtained, a petition for enforcement of the attached assets must be sent to the local enforcement office. The local enforcement office will then arrange for a forced sale of the assets, or give other instructions necessary to make sure that the money derived from the assets is released and paid to the claimant, depending upon the type of asset that is attached.

Similar sorts of procedures apply for other types of domestic judgments.

The following sorts of enforcement are also available, obviously depending on the type(s) of assets that the debtor has ownership or other rights to, and over which the enforcement office has put an execution lien:

- forced surrender, sale or redelivery of movables;
- forced surrender or sale of financial instruments;
- forced assignment of monetary claims against third parties;
- forced payment of money available;
- forced sale of IP rights, issuance of third party licences and/or assignment of rights pursuant to licence agreements with third parties;
- forced rental of assets other than those mentioned above and/or assignment of rights under such agreements;
- forced sale of assets registered in an assets register;
- forced transfer of property into a mortgagee's use and possession;
- forced sale of tenancy or occupation right documents;

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- decisions on obligations to act (other than those mentioned above), including daily or weekly penalties; and
- penalties to force surrender of movables and securities.

If a claimant expects the debtor to be insolvent, either before starting the enforcement process or after receiving a “nothing to restrain” decision from the enforcement office, the claimant may (instead) file a petition for bankruptcy with the local district court. This is provided that the claimant’s claim is not adequately secured with a mortgage over one/more of the debtor’s assets. A “nothing to restrain” decision obtained against the debtor within the last three months before the petition for bankruptcy would be regarded as a presumption of insolvency, meaning that the debtor bears the burden of proving his/her solvency. In order to enforce a domestic judgment in Norway against a debtor that is presumed to be insolvent, the following procedure generally applies.

- The first step – a petition for bankruptcy is sent to the local district court. The petitioning creditor would also have to provide some security for the estate’s expenses (currently approximately NOK60,000 – this amount may be recovered if there are sufficient means in the bankruptcy estate). The court will then assess the conditions of the subject insolvency and decide on whether or not to commence bankruptcy proceedings.
- The second step – if the court decides to commence bankruptcy proceedings, the administrator of the estate will be nominated shortly after the commencement of bankruptcy proceedings, and all creditors are given a deadline to register their respective claims while the administrator searches for assets.
- The third step – in principle, the administrator of the estate will then decide whether to accept or dispute the claim. Provided that the

judgment (to be enforced by way of filing for bankruptcy) was rendered before the commencement of bankruptcy proceedings, the estate is bound by the relevant judgement.

- The fourth step – provided that the debtor has assets feasible for recovery purposes, the administrator will handle the recovery/sales process and calculate and pay out a dividend to all creditors that have registered their claim and been accepted by the administrator.

In the case of insolvency, a lien obtained less than three months prior to bankruptcy will not be binding for the bankruptcy estate. Even so, it might be worth pursuing an enforcement proceeding despite the debtor being insolvent in order to get a lien earlier than three months before any of the other creditors, or the debtor himself, petitions for bankruptcy. After three months, the lien will usually form sufficient security, also in bankruptcy.

2.3 Costs and Time Taken to Enforce Domestic Judgments

The length of enforcement proceedings depends both on the workload of the local enforcement office and on what (if any) objections the defendants makes to the enforcement proceedings. In general, an execution lien can be obtained within a few months from the request being sent to the court, and an enforcement of the lien can be obtained a few months after the execution lien was obtained.

Regarding the typical costs involved, there are no substantial costs payable to the court in connection with the application. The claimant needs to pay a fee to the court ranging from NOK1,319 to NOK4,200, depending on the type of enforcement and whether the enforcement has to be granted by the local enforcement office or the district court.

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If legal counsel are engaged for investigations, the drafting of papers, etc, additional fees will be incurred. Such fees vary, depending on the type of engagement, enforcement, etc.

The court fee and other necessary costs related to the enforcement may be retrieved from the defendant.

Finally, an execution lien alone will often result in a voluntary settlement of the claim, meaning there is no need for the second step as listed in **2.2 Enforcement of Domestic Judgments**.

2.4 Post-judgment Procedures for Determining Defendants' Assets

The enforcement office has the authority to order the defendant to disclose information about the assets the defendant holds and the location thereof. The enforcement office will also have access to a variety of registers over the defendant's holdings.

2.5 Challenging Enforcement of Domestic Judgments

A defendant may only challenge the enforcement of domestic judgements on the grounds that the judgment is not delivered from a court of law that issues that kind of judgment, or that the judgment is too vague to be enforced. Furthermore, a defendant may only raise objections to the claim set out in the judgment if those objections could not have been forward in the court case.

Objections related to service of the proceedings must be brought before the courts as a request to reopen the proceedings, and cannot be used as a challenge in the enforcement proceedings. However, if the judgment is a default judgment, then the reopening of the proceedings will affect the enforceability of the judgment. In the conciliation board, the formalities related to service of documents are less strict than in the ordinary courts of law, so a default judgment can be

made even though the defendant has not been made aware of the claim and proceedings at all. Such a default judgment may be considered a nullity and may not be enforced.

2.6 Unenforceable Domestic Judgments

Under Norwegian law, declaratory judgments cannot be enforced.

Furthermore, any judgment that is so vague or contradictory that the enforcement office cannot tell exactly what is to be enforced cannot be enforced.

As mentioned above, some judgements in default are not enforceable; reopening the proceedings due to objections relating to service will affect the enforceability of a judgment in default.

2.7 Register of Domestic Judgments

For the time being, no central register of judgments has been implemented or is available in Norway, but there are some websites where most Norwegian judgments are published and searchable, such as Lovdata.no and rettsdata.no.

The websites contain the full text of judgments, with both reasoning and conclusion. Sensitive judgments and judgments involving private parties are usually in an anonymised form, with A, B, C, etc, listed instead of the parties' names. Company names, however, will usually not be anonymous. To obtain the names for private parties, one may request a copy of the judgment from the court that delivered it.

A judgment debtor cannot get the judgment removed from such official websites by paying the debt as the purpose of the websites is to give access to case law for use in legal arguments.

3. FOREIGN JUDGMENTS

3.1 Legal Issues Concerning Enforcement of Foreign Judgments

Foreign judgments are only enforceable in Norway to the extent they follow from a treaty or bilateral agreement between Norway and the country where the judgment was made, or if they follow from statutory law.

The most relevant treaties for the enforcement of judgments in commercial disputes are as follows:

- the Lugano Convention of 30 October 2007 (Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters); and
- the bilateral agreement between Norway and the United Kingdom regarding recognition and enforcement of judgments in civil matters of 12 June 1961. Norway and the UK confirmed this bilateral agreement by an agreement of October 2020, which ensures the mutual recognition and enforcement of judgments in civil matters between Norway and the United Kingdom after the United Kingdom left the European Union, unless or until the UK becomes an independent party to the Lugano Convention after Brexit.

In the absence of any such applicable conventions or agreements between Norway and the foreign country, the recognition and enforcement of foreign judgments in civil and commercial matters are subject to the Norwegian Enforcement Act of 26 June 1992, together with the Norwegian Dispute Act of 17 June 2005.

Furthermore, the Norwegian Dispute Resolution Act (of 17 June 2005 no. 90), section 19-16, cf. the Norwegian Enforcement Act (1992) section 4-1 second paragraph (g), provides for a final foreign court judgment in a matter where the

parties have agreed in writing to the judgment of a foreign jurisdiction (for a specific matter or for matters arising out of a specific legal relationship – eg, a contract) being enforceable in the same way that a Norwegian judgment would be enforceable. In other words, a foreign judgment can only be enforced in Norway if the parties have agreed to the jurisdiction of the foreign court.

Changes to the Norwegian Bankruptcy Act came into force on 1 July 2021. The changes imply that judgments related to bankruptcy can be enforced in Norway to a greater extent. Prior to the changes, it was not possible to enforce such judgments in practice. One of the new requirements is that the foreign country recognises Norwegian bankruptcies.

3.2 Variations in Approach to Enforcement of Foreign Judgments

In Norway, the approach to the enforcement of foreign judgments will vary depending on the sort of obligation that is sought to be enforced, but does not vary by different types of judgments. However, petitions for the enforcement of any foreign judgment have to be filed with the district court instead of directly with the enforcement officer.

In general, the foreign judgment will not be subject to a retrial and the Norwegian court will not review the merits of the foreign judgment. A foreign judgment will not be reviewed with respect to its substance, and the Norwegian court will not undertake any review of the facts or the law of the foreign judgment.

3.3 Categories of Foreign Judgments Not Enforced

See **3.6 Challenging Enforcement of Foreign Judgments**.

3.4 Process of Enforcing Foreign Judgments

In order to enforce a foreign judgment or award in Norway, the creditor must file a request for enforcement with the competent district court. The legal venue is determined by the domicile of the debtor or the location of its assets. The judgment to be enforced must be attached to the request, either the original or a duly certified copy. The creditor must also provide a Norwegian translation of the judgment.

The court will undertake a preliminary assessment of the legitimacy of the application and then give notice to the debtor, with a two-week deadline for commenting on matters of importance for enforcement of the claim. Once this period has expired, the court may decide whether to grant the application and send it to the enforcement authorities or to reject it. Once the application of enforceability has been granted, enforcement is made pursuant to the local rules of enforcement in the Norwegian Enforcement Act. The court will send its decision to the bailiff for execution and the enforcement authorities will then decide when to search for assets and enforce the judgment or award pursuant to the application.

For judgments under the Lugano Convention, no deadline to respond will usually be given to the debtor before the court decides that the judgment is enforceable and then sends it to the enforcement authorities.

Judgments on monetary claims are normally enforced by submitting an application for attachment with the debtor's assets to the local enforcement office. The enforcement office can grant the attachment for any assets belonging to the debtor, including bank accounts, real estate, movable property and claims against third parties. The application for the attachment may be

filed in conjunction with the request for enforcement, and in the same document.

3.5 Costs and Time Taken to Enforce Foreign Judgments

The timeline for the enforcement of foreign judgments will be about the same as for domestic judgments, but some extra time must be expected to obtain the declaration of enforceability.

The costs involved will also be more or less the same, in addition to any required translation costs.

If more than one local enforcement office is competent to enforce the judgment, it might be worth investigating the normal case-handling time for each of the local enforcement offices, in order to choose the one that is most efficient.

3.6 Challenging Enforcement of Foreign Judgments

The foreign judgment must be enforceable in its country of origin in order to be enforceable in Norway; whether or not this requires the judgment to be final and binding depends on the rules of the country of origin. The creditor will have to provide proof of this to the court.

Foreign judgments will not be recognised in Norway if they are contrary to Norwegian mandatory laws or offensive to the Norwegian legal system (*ordre public*). A breach of fundamental rules of civil procedure in Norway can be relevant in this respect, and if the judgment was given in default of appearance of the defendant, it is a requirement that the documents instituting the proceedings were duly served on the defendant.

Furthermore, foreign judgments will not be enforced in Norway if such enforcement would violate the terms of the treaty upon which the enforcement is based.

4. ARBITRAL AWARDS

4.1 Legal Issues Concerning Enforcement of Arbitral Awards

All arbitral awards are enforceable in Norway, regardless of the country of origin and whether or not there is a treaty entered into between Norway and the country of origin. Hence, there is no requirement for the Arbitral Award to be from a country that is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention on Arbitration).

4.2 Variations in Approach to Enforcement of Arbitral Awards

In Norway, there is a different approach to enforcing domestic arbitral awards and foreign arbitral awards: domestic arbitral awards follow the rules of domestic judgments, while foreign arbitral awards follow the rules of foreign judgments. Please see previous sections that further outline these variations, especially **2.2 Enforcement of Domestic Judgments** and **3.4 Process of Enforcing Foreign Judgments**.

4.3 Categories of Arbitral Awards Not Enforced

Please see **4.6 Challenging Enforcement of Arbitral Awards**.

Also, declaratory arbitral awards cannot be enforced, and the same applies to awards that are too vague to be enforced – see item **2.5 Challenging Enforcement of Domestic Judgments** for more detail.

4.4 Process of Enforcing Arbitral Awards

In order to enforce a foreign arbitral award in Norway, a petition to declare the award enforceable must be sent to the local district court. After the district court has declared the award enforceable, the petition will be sent to the local

enforcement office for enforcement in the same manner as domestic judgments.

4.5 Costs and Time Taken to Enforce Arbitral Awards

The timeline for the enforcement of foreign arbitral awards will be about the same as for domestic judgments, but some extra time must be expected to obtain the declaration of enforceability.

The costs involved will also be more or less the same, in addition to any required translation costs.

4.6 Challenging Enforcement of Arbitral Awards

The options available for challenging arbitral awards are as follows:

- one of the parties to the arbitration agreement lacks legal capacity, or the arbitration agreement is invalid under the laws to which the parties have agreed to subject it or, failing such agreement, under the law of the jurisdiction in which the arbitral award was made (the arbitration clause is considered a separate agreement and may be valid/invalid regardless of whether or not the rest of the agreement is valid/invalid);
- the party against which the arbitral award is being invoked was not given sufficient notice of the appointment of an arbitrator or of the arbitration, or was not given an opportunity to present its views on the case;
- the arbitral award falls outside the scope of the jurisdiction of the arbitral tribunal;
- the composition of the arbitral tribunal was incorrect;
- the arbitral procedure was contrary to the law of the place of arbitration or the agreement of the parties, and it is obvious that this may have had an impact on the decision; or

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- the arbitral award is not yet binding on the parties or has been set aside, permanently or temporarily, by a court at the place of arbitration, or by a court in the jurisdiction whose laws were applied in determining the subject matter in dispute.

The courts shall, of their own accord, refuse recognition and enforcement of an arbitral award if:

- the dispute would not have been capable of being determined by arbitration under Norwegian law; or
- recognition or enforcement of the arbitral award would be contrary to public policy (*ordre public*).

If a legal action to set aside an arbitral award has been brought before a court, the court may postpone the ruling on recognition and enforcement if it deems such postponement to be appropriate. In such case, at the request of the party demanding recognition or enforcement, the court may order the opposite party to provide security.

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of their time to contentious matters, representing clients across all industry sectors. The firm has one the largest disputes teams in Norway, which includes 12 lawyers who are admitted to the Supreme Court; all partners in the litigation team are admitted to the Supreme Court. In addition, the firm has 33 partners and 16 other qualified lawyers who regularly handle disputes before the courts.

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Trends and Developments

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Pursuing Insolvency-Related Claims in Norway and Enforcing UK Judgments Post-Brexit

On 1 July 2021, new rules in the Norwegian Bankruptcy Act came into force that regulate bankruptcies and reconstructions across national borders. These rules constitute material changes for the recognition and enforcement of bankruptcy proceedings across borders. This article will comment on the background for the rules, as well as some of the changes following the new rules.

On 13 October 2020, the Norwegian government announced that Norway and the United Kingdom had concluded an agreement regarding the mutual recognition and enforcement of judgments in civil matters, thereby ensuring a smoother transition for the countries' relationship post-Brexit. The treaty and its significance will be commented on in this article.

Insolvency-Related Claims in Norway

Introduction

Pursuing foreign insolvency-related claims in Norway can be somewhat challenging. Except for the Nordic countries, which will not be discussed in this article, up until July 2021 there have been no rules or treaties governing foreign insolvency-related claims. In general, insolvency-related claims could therefore not be pursued in Norway. The new rules in the Bankruptcy Act signal a material development for businesses and bankruptcy estates on the pursuing of insolvency-related claims against Norwegian companies or on assets situated in Norway.

Background – pursuing insolvency-related claims in Norway before the new rules

Foreign judgments can be enforced in Norway in the following circumstances:

- if the parties have agreed to the jurisdiction of the foreign court; or
- if there is a treaty between Norway and the relevant foreign country on the enforcement of judgments.

Generally speaking, there is only one treaty relevant to the enforcement of foreign commercial judgments in Norway: the Lugano Convention.

According to Article 1 item 2 b therein, the Lugano Convention does not apply to “bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings.” This implies that it also does not apply to judgments deriving from such proceedings, and that such judgments cannot be enforced in Norway. It does not matter whether the claim is adjudicated based on insolvency proceedings or ordinary court proceedings, as long as the claim itself is considered to be derived from insolvency rules.

In a decision of 28 June 2017 (HR-2017-1297-A), *ING Bank v The Bankruptcy Estate of Bergen Bunkers*, the Norwegian Supreme Court stated that one had to consider whether each claim in a case was sufficiently related to bankruptcy in order to fall within the scope of the exemption. The Supreme Court further stated that the assessment of the claims should be made in accordance with the guidance found in the ECJ

NORWAY TRENDS AND DEVELOPMENTS

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judgment *Gourdain v Nadler* (C-133/78), where the Court *inter alia* stated that “it is necessary, if decisions relating to bankruptcy and winding-up are to be excluded from the scope of the convention, that they must derive directly from the bankruptcy or winding-up and be closely connected with the proceedings.”

In a decision of 20 March 2019 (LA-2019-16503), Agder Court of Appeal considered whether a German judgment could be enforced in Norway, when the claim was brought in an ordinary suit but based on the insolvency-related rule in Article 64 of the German Limited Liability Company Act (GmbHG). The bankruptcy estate of Emerald Biodiesel Neubrandenburg GmbH had filed a claim for damages against the former CEO of the company, based on the fact that the CEO had made payments from the company after the company was insolvent. Pursuant to Article 64 of the GmbHG, the CEO could then be held liable. The claim was decided in the estate’s favour by a default judgment by the Landgericht Berlin in Germany. The judgment was then sought to be enforced in Norway, but the Norwegian Court of Appeal found that the claim was bankruptcy related, and therefore not enforceable in Norway.

Furthermore, Norwegian courts generally did not even recognise foreign insolvencies, with the effect that a foreign bankruptcy estate would have difficulties filing a claim before Norwegian courts if the claim was based on insolvency-related rules. This applied even if Norwegian courts in general had jurisdiction over the claim, which they would often decline if the bankruptcy estate was foreign. In other words, even if one could sue the Norwegian entity in Norway, Norwegian courts would not recognise the legal basis for the claim when it was based on foreign insolvency-related rules.

This meant that if a foreign estate wanted to claw back a payment made to a Norwegian compa-

ny, a foreign judgment on the claw-back claim would not be enforced, and a claw-back claim made before Norwegian courts would be a lost case. At least, this would apply if the claw-back claim was based on rules related to insolvency.

In order to be able to pursue insolvency-related claims in Norway, one possibility could be to structure (or restructure?) the claim as a regular civil claim not based on insolvency rules. This is obviously not always possible, but in some cases insolvency-related claims might also be based on regular civil rules. If it might be necessary to pursue an insolvency-related claim in Norway, either by enforcing a judgment on assets in Norway or by initiating proceedings in Norway, the basis for the claim must be thoroughly considered prior to initiating proceedings.

For instance, it could perhaps have been possible for the bankruptcy estate of Emerald Biodiesel Neubrandenburg GmbH, as mentioned above, to have structured its claim against the CEO as a claim based on tort (*delict*) and not on insolvency rules, and if so the judgment could have been enforced in Norway.

Changes to the Norwegian Bankruptcy Act related to international insolvency

Newly adopted rules related to international insolvency in the Norwegian Bankruptcy Act came into force in July 2021. With an increasing amount of businesses operating and owning assets in several countries, the changes mark a significant step towards the handling and facilitation of cross-border insolvency proceedings.

With the new rules, foreign insolvency proceedings are recognised with effect for assets in Norway if the proceedings are opened where the debtor has their main interests (Centre Of Main Interest – COMI). Furthermore, the proceedings must involve a joint debt prosecution that completely or partially deprives the debtor

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of his assets, in a process that is overlooked by an appointed trustee. Like several other countries, Norwegian law also introduces a principle of reciprocity, according to which recognition in Norway presupposes that the country in question also recognises Norwegian insolvency proceedings for foreign insolvency proceedings. Insolvency proceedings by private individuals are not covered by the rules.

As regards the debtor, the foreign estate's right of disposal over, and right of seizure of, the business's assets in Norway will follow the law of the country where the bankruptcy has been opened – ie, foreign law.

In other respects, assets in Norway will be in the same position as in a Norwegian lawsuit, which means, among other things, that the rights of creditors “and other third parties” to the debtor's assets will be regulated by Norwegian law, with some exceptions/clarifications, as follows:

- legal protection for voluntary legal foundations in assets in Norway must be established in good faith no later than the day before the announcement of the foreign insolvency proceedings in Norway, in order to stand up to the foreign estate;
- cancellation deadlines run from the announcement of foreign insolvency proceedings in Norway; and
- lien and other security rights in the debtor's assets that are validly established with legal protection according to Norwegian law face foreign insolvency proceedings unless they can be overturned.

Furthermore, the following questions will be regulated by Norwegian law:

- legal protection for voluntary legal establishment in property that was in Norway at the legal establishment;

- the reversal of a voluntary disposition if the asset was in Norway when the disposition was made; and
- questions about the right of suspension, right of cancellation, right of retention and sales lien in an asset that was in Norway when the right was invoked.

The new rules will make it easier to pursue some insolvency-related claims, either through the enforcement of foreign judgments or by initiating Norwegian proceedings.

For bankruptcies outside the scope of the changes, the rules outlined in the background section above still apply.

Enforcement of British Judgments in Norway in Civil Matters Post-Brexit

The United Kingdom left the European Union on 31 January 2020. On 13 October 2020, the Norwegian government announced that Norway and the United Kingdom had concluded an agreement to revive a bilateral treaty from 1961 regarding the recognition and enforcement of judgments in civil matters. The agreement ensures the mutual recognition and enforcement of judgments in civil matters, thereby securing one part of the future relationship between Norway and the United Kingdom.

The 1961 treaty was essentially replaced by the Lugano Convention, to which the United Kingdom will not remain a party after Brexit, unless it becomes an independent party thereto. The United Kingdom applied to join the Lugano Convention in April 2020. However, acceding to the Lugano Convention requires unanimous consent from all parties, including the EU. On 4 May 2021, the European Commission rejected the UK's application to join the Lugano Convention. Whilst the Commission's communication is advisory only, it seems likely that both the Parliament and the Council (with whom the

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final decision lies by qualified majority) will follow the Commission's lead. For the time being, the new agreement between Norway and the United Kingdom ensures the mutual recognition and enforcement of rulings in civil matters in Norway and the United Kingdom.

This enabling of enforcement is beneficial for both businesses and private individuals, ensuring a smoother post-Brexit transition. As an example, if a Norwegian company is awarded damages from a British company in a Norwegian court, this judgment may be enforced in the United Kingdom, thereby ensuring the payment of the damages.

The process for the recognition and enforcement of judgments according to the 1961 treaty is – broadly speaking – similar to the process according to the Lugano convention, albeit somewhat less accessible.

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Advokatfirmaet Simonsen Vogt Wiig is one of the largest law firms in Norway, with offices in the major cities in Norway and in Singapore. The firm's 180 lawyers represent clients within all industries and sectors, across all legal functions and areas of expertise. Simonsen Vogt Wiig has a standalone litigation and arbitration team of lawyers, separate from the firm's advisory departments. Its litigators dedicate

100% of their time to contentious matters, representing clients across all industry sectors. The firm has one of the largest disputes teams in Norway, which includes 12 lawyers who are admitted to the Supreme Court; all partners in the litigation team are admitted to the Supreme Court. In addition, the firm has 33 partners and 16 other qualified lawyers who regularly handle disputes before the courts.

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