

Norway Practice Bulletin 2019

Market Update

Welcome to Conyers' 2019 Norway Practice Bulletin. Our annual publication underscores the importance of the Norwegian market to our Bermuda corporate practice. This year we are also pleased to highlight some Norway-related transactions carried out by our offices in the British Virgin Islands and the Cayman Islands.

2018 was another challenging year for sourcing equity or new finance in the shipping and offshore sector. Private placements of shares, such as the Odfjell Drilling deal (right), continued to be the most viable option for raising capital.

The introduction of economic substance legislation in most of the offshore world has been a hot topic over the past few months. In this bulletin, we examine whether entities affected by Norway's tighter tax residency rules may find that Bermuda's new substance regime actually offers some benefits.

We remain committed to sustaining our highly valued relationships with Norwegian law firms, defence clubs, corporates and financial institutions through the publication of this bulletin and our regular visits to Norway.

Featured Transactions

BERMUDA

Stolt-Nielsen's US\$182 million LNG joint venture with Golar LNG and Høegh LNG

Conyers advised Stolt-Nielsen on the closing of its LNG joint venture, Avenir LNG Limited, with Golar LNG Limited and Høegh LNG joining as shareholders of Avenir. Avenir will use the funds to invest in small-scale LNG carriers, a small-scale storage terminal and regasification facilities.

Odfjell Drilling Ltd's acquisition and financing of Deepsea Nordkapp (formerly Stena MidMax)

Conyers advised Odfjell Drilling Ltd on a preference share and warrant issuance to an affiliate of Akastor ASA. The proceeds of this transaction assisted Odfjell in purchasing the drilling unit formerly called "Stena MidMax" from Samsung Heavy Industries for US\$505 million. The drilling unit, which is purpose-built for harsh environment areas, was renamed "Deepsea Nordkapp".

Conyers provided Bermuda legal advice to Odfjell Drilling Ltd in relation to its purchase of Deepsea Nordkapp, which is expected to start drilling operations on the Norwegian Continental Shelf in Q2 2019.

Odfjell Drilling Ltd's US\$175 million private placement

Conyers advised Odfjell Drilling Ltd on a private placement of 38,000,000 new common shares at a subscription price of NOK 36.00 per share, raising gross proceeds equivalent to approximately US\$175 million. The company subsequently carried out a repair offering, in light of the Norwegian principle of equal treatment of shareholders, directed towards shareholders not participating in the private placement. The new common shares have been listed on the Oslo Stock Exchange along with the Company's other common shares.

BW Tankers Limited's merger with Hafnia Tankers

BW Tankers Limited (BWT) completed a merger with Hafnia Tankers in January 2019, which created one of the largest product tanker companies in the world. The merger was completed under the laws of the Marshall Islands, with a new subsidiary of BWT merging with Hafnia Tankers. The surviving company, wholly-owned by BWT, subsequently merged into BWT, resulting in the combined company being a Bermuda company. BWT changed its name to Hafnia Limited and also sought a listing on the Oslo OTC market as part of the transaction. The combined company owns and operates over 100 product tankers.

BRITISH VIRGIN ISLANDS

Jefferies Financial Group's sale of its stake in Epic Gas to BW Group

Conyers advised Jefferies Financial Group on the sale of its stake in Epic Gas to BW Group as part of BW Group's US\$120 million takeover of Epic Gas. The sale was immediately followed by a tender offer by BW Group for all the remaining issued shares of Epic Gas.

Epic Gas, which is listed on the Merkur market in Oslo, is the owner and operator of a fleet of vessels for the transportation of liquefied petroleum gas and petrochemicals. BW Group is a global maritime group involved in shipping, floating gas infrastructure and deepwater oil and gas production with a fleet of over 165 vessels.

CAYMAN ISLANDS

Norwegian bank's debt restructuring transaction for a heavy installation vessel

Conyers advised one of Norway's largest financial services groups, on a 2018 restructuring transaction. A Cayman Islands purpose trust was established to hold the shares of a special purpose vehicle which was set up as a warehouse vehicle to facilitate a lender group acquiring a heavy installation vessel on a debt restructuring. The SPV was set up to hold the vessel for the benefit of the lenders, in a neutral offshore warehouse structure until a buyer could be found for the vessel.

Bermuda's Ship Registry

The Bermuda Shipping and Maritime Authority (BSMA) is a Category 1 member of the prestigious Red Ensign Group. It is able to register British ships of unrestricted type or tonnage. It supports a large proportion of gas carriers and tankers and retains expertise in container ships, bulk carriers and ro-ro ships. As of April 2019, the BSMA had on its registry a total of 132 commercial vessels aggregating 10.8 million gross tons.

Having ships registered in Bermuda will be viewed positively when determining whether a shipping company has fulfilled its requirements under Bermuda's new economic substance regime.

Conyers is the counsel of choice for ship registrations in Bermuda, and our lawyers have significant experience advising clients on all aspects of the process, which is supported by our excellent relationship with the BSMA.



BSMA Registry as of April 2019

132

COMMERCIAL VESSELS



aggregating over 10 million gross tons

213

YACHTS



aggregating over 67 thousand gross tons

Navigating Tax Residency and Economic Substance

The long-standing affinity between Norway and Bermuda looks set to continue, as tightened tax residency rules in Norway for non-Norwegian companies coincide with requirements for increased economic substance in Bermuda for exempted companies.

Shipping companies operating in Norway will no doubt be aware of the recently tightened rules on tax residency. Under the new rules, non-Norwegian companies are considered resident in Norway if the company's genuine and effective management is in Norway. The determination of the location of effective management takes into account where board-level decisions are made, where daily management is performed and other circumstances, such as where shareholder meetings are held, where the head office is and where the business activities of the company are performed.

At the same time, at the behest of the European Union, most international financial centres, including Bermuda, have introduced legislation mandating substance requirements for certain entities based in their jurisdictions. Failure to introduce such legislation meant being placed on the blacklist of uncooperative jurisdictions for tax purposes.

Companies that own, lease, operate or manage a ship that is used to transport goods fall within the scope of Bermuda's economic substance legislation. At least some of the following core income generating activities are expected to be undertaken in the jurisdiction of incorporation:

- Managing the crew (including hiring, paying and overseeing crew members)
- Hauling and maintaining ships
- Overseeing and tracking deliveries
- Determining what goods to order and when to deliver them
- Organising and overseeing voyages

The OECD has recognised the special nature of the shipping industry as significant income is derived in transit and that value creation that occurs from a fixed location is more limited than for other types of mobile business income. It is expected that this principle will be respected in the application of economic substance requirements for shipping activities.

Bermuda companies that have Norwegian principals need to navigate the Norwegian rules and ensure that they also have adequate substance in Bermuda for the purposes of the Bermuda economic substance regime. There is a strong incentive to ensure that management at board level is effectively carried out (i) outside of Norway to comply with the Norwegian rules, and (ii) in Bermuda to comply with Bermuda's economic substance regime.

Bermuda is in fact a particularly attractive operational base for any non-Norwegian shipping company looking to shift its effective management out of Norway. Some popular shipping jurisdictions, such as the Marshall Islands, are now blacklisted by the EU – and even if they were to put in place substance regimes and come off the blacklist, their location makes meeting substance requirements impractical. Bermuda's convenient location in the North Atlantic, quickly accessed from Europe and North America, is a big plus for board meetings. The island also boasts excellent professional services and infrastructure, and a Category 1 ship registry. Its maritime history and long-standing connections with Norwegian shipping are an added bonus.

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**BERMUDA
COMPANIES**
ON THE OB + N-OTC
COMBINED, WITH A
**TOTAL MARKET
CAPITALISATION**
OF
US\$13.8
billion

50%

OF **SHIPPING
COMPANIES**
ON THE N-OTC
ARE
**BERMUDA-
INCORPORATED**

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Chambers Global



Corporate & Finance
SOLE BAND 1 FIRM
with 17 Top-Ranked Lawyers

Legal 500



23 Bermuda
Lawyers Ranked
TIER 1
Corporate & Commercial

IFLR1000



10 Ranked
Corporate Lawyers

WWL Awards



Who's Who Legal
**BERMUDA FIRM
OF THE YEAR**

Contacts

Marcello Ausenda

Director
marcello.ausenda@conyers.com
+1 441 299 4954

Guy Cooper

Director
guy.cooper@conyers.com
+1 441 299 4938

Victor Richards

Director
victor.richards@conyers.com
+1 441 299 4926

Sophia Greaves

Director
sophia.greaves@conyers.com
+1 441 294 5929

David Stubbs

Associate
david.stubbs@conyers.com
+1 441 299 4915

CONYERS DILL & PEARMAN LIMITED

Clarendon House

2 Church Street

Hamilton HM 11

Bermuda

T: +1 441 295 1422

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For additional information about the content presented in this update or our service offerings, please contact one of our lawyers listed above.