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INFORMATION SHEET on Foreign Arbitration Clauses and Full Court of Appeal of Federal Court of Australia decision in Norden v Gladstone Civil

Question - What is a foreign arbitration clause?

Answer - It sets out the agreement made between the parties to a maritime contract to arbitrate disputes arising between them under that contract, where the place nominated for arbitration is not an Australian city. The procedural arbitration law that will apply will be the law which applies in that foreign city. This agreement is separate from, and independent of, that contract.

Question – Why is a foreign arbitration clause ineffective when contained in a “sea carriage document”, which is referred to in section 11 of the Australian COGSA (**COGSA**) and which relates to the carriage of Australian export and import cargo?

Answer – COGSA states that such a clause in such a sea carriage document is not effective where it excludes the jurisdiction of Australian courts. As a foreign arbitration clause does just that, where such a clause is contained in a sea carriage document, that clause is ineffective.

Question – What did the Full Court of Appeal of the Federal Court of Australia decide in *Dampskibsselskabet Norden A/S v Gladstone Civil Pty Ltd* [2013] FCAFC 107 (**Norden**) given on 18 September 2013?

Answer - The Court decided that:

- a voyage charterparty is not a sea carriage document as referred to in section 11 of COGSA, and
- a foreign arbitration clause contained in a voyage charterparty for the carriage of Australian import or export cargo is effective.

Question – What is the implication of the decision?

Answer – The implication is that a maritime arbitration award relating to disputes arising under a voyage charterparty for the carriage of Australian export or import cargo, which contains a foreign arbitration, will be enforceable in Australia.

The information in this Information Sheet does not constitute, and cannot be treated, as legal advice and parties are recommended to take their own legal advice in respect of this information.