



DOING BUSINESS IN NORWAY

2008 / 2009



Wiersholm





ABOUT WIERSHOLM

Strategic and commercial legal advice, operational legal assistance and litigation: Wiersholm is an internationally oriented law firm which focuses on providing essential legal services to commerce and industry. Our business is founded on top quality legal expertise combined with energy, drive and commercial understanding. We use team work to draw upon the varied and substantial experience of our lawyers from the courts, the public administration and Norwegian and foreign business life. 125 lawyers and 50 other members of staff work together to provide a full range of high calibre solution-oriented commercial legal services.

ABOUT THIS PUBLICATION

Doing business in Norway contains a summary of the aspects of Norwegian law that are most likely to interest foreign companies or individuals that are contemplating doing business or engaging in commercial activities in Norway. A publication of this kind can obviously only provide a limited outline of certain legal areas. The information contained in the publication is not exhaustive. If you or your company are doing business in Norway – or if you are planning to do so – we recommend that you obtain specific professional advice before any action is taken. Any questions or concerns may, of course, be referred to Wiersholm.

All references are to the law in force per November 2007. You will find an updated version of this publication on our website: www.wiersholm.no

CONTENT

1	NORWAY AT A GLANCE	3
2	FORMS OF BUSINESS ORGANISATION	11
3	INVESTMENT REGULATION	19
4	FINANCING AND CAPITAL RESOURCES	25
5	GENERAL BUSINESS LAW CONSIDERATIONS	29
6	SHIPPING AND TRANSPORT LAW	43
7	PETROLEUM REGULATIONS	49
8	LABOUR LAW AND RELATED ISSUES	53
9	TAX AND ACCOUNTING	65
10	INTERNATIONAL ISSUES	73



NORWAY AT A GLANCE

1.1 Welcome to Norway

Norway is renowned for its rugged beauty with mountains, fjords and glaciers. It is the Land of the Midnight Sun. Norway is situated on the northern outskirts of Europe and comprises the western half of the Scandinavian Peninsula. It is the fourth largest country in Europe by area. The Norwegian mainland borders on Sweden, Finland and Russia, and consists of five geographical regions: Eastern, Southern, Western, Middle and Northern Norway. These regions are divided into a total of 19 counties.

Only approximately 21% of Norway's mainland is fertile soil. The rest is mainly mountains and fjords. 80% of the Norwegian mainland is located more than 150 metres above sea level and about one-third of the country is located above the Arctic Circle. However, the Norwegian climate is less severe than one might expect from its geographical location and only the extreme parts of the country have an alpine or arctic climate. The rest of the country enjoys temperate climatic conditions, thanks to the proximity of the Gulf Stream.

Despite its geographic size, Norway has a small population with only 4.68 million inhabitants. Most of the population lives in the southern half of the country, whilst the northern regions are sparsely populated. 22% of the population live in rural areas and 78% in towns and cities. The capital of Norway is Oslo, with a population of about 530 000 people.

The currency is the Norwegian krone (plural "kroner"), a currency which over the last few years has remained stable due to a strong economy. In March 2007, one US dollar equalled approximately NOK 6.28 and one Euro equalled approximately NOK 8.26.

Norway's official language is Norwegian, a northern Germanic language closely related to Danish and Swedish. For the most part, speakers of Norwegian, Danish and Swedish are easily

able to understand one another. English is taught in schools from a very early age, and most Norwegians speak English and, to some extent, German and French. Thus, foreigners seldom experience language problems when engaging in business relations with Norwegian companies.

1.2 Industry, trade and economy

In recent years, Norway has enjoyed substantial economic prosperity and it is listed as one of the richest countries in the world. Since 2001, the United Nations has consistently ranked Norway as having the highest standard of living in the world because of its high levels of education, democracy, income and public health. The primary reason for this prosperity is the discovery of oil and gas reserves on the Norwegian continental shelf in the 1960s and the consequent development of the country's oil and gas industry. The petroleum sector is by far Norway's largest industry and accounts today for 25% of the value creation in the country, twice the value creation of the manufacturing industry and around 17 times the total value creation of the primary industries. In 2005, crude oil, natural gas and pipeline services accounted for 52 per cent of the value of Norway's exports. The value of petroleum exports was NOK 445 billion, 35 times higher than the export value of fish. Through direct and indirect taxes and direct ownership, the state is ensured a high proportion of the value creation from the country's petroleum activities. In 2005, the state's net cash flow from the petroleum sector amounted to approximately 33 per cent of total revenues. Apart from the resources used to cover the non-oil budget deficit, the state's revenues from petroleum activities are allocated to a separate fund, the Government Pension Fund – Global. At the end of 2005, the value of this fund was NOK 1 399 billion.

Other profitable industries include the fishing, shipping, forestry and metallurgic industries.



The country's main trading partners are the Northern European countries. Due to its high volume of exports, Norway has developed a substantial trade surplus.

1.3 Foreign policy

Norwegian foreign policy has been characterised by a desire to play an active role in international affairs. Norway is a member of the United Nations, the OECD, the World Trade Organisation (WTO) and the Council of Europe. However, Norway is not, nor has it ever been, a member of the European Union (EU). The Storting has twice submitted applications for membership, first in 1972 and again in 1994. On both occasions, the citizens of Norway have rejected membership in referendums. As an alternative to membership of the European Union, Norway is party to the Agreement on the European Economic Area (EEA), which entered into force on 1 January 1994. The EEA Agreement replaced a free trade agreement between the EU and the European Free Trade Association ("EFTA"). Three of the EFTA countries - Austria, Finland and Sweden - have since joined the EU and a fourth EFTA

country, Switzerland, chose not to ratify the agreement. Currently, the only EFTA countries bound by the EEA Agreement are Norway, Iceland and Liechtenstein. As a member of the EEA, Norway is effectively bound by most EU legislation. The EEA Agreement is described in more detail in Chapter 10.2.

1.4 Entry visas and work permits

Nationals of EU/EEA countries are free to enter Norway and to work here. EU/EEA nationals may stay in Norway for a period of three months, which can be extended to six months in total, to seek employment provided they are financially self-sufficient. Once employment has been obtained, EU/EEA nationals will be granted a residence permit in accordance with EU/EEA provisions. An EU/EEA national who takes short-term employment in Norway not exceeding six months does not require a residence permit and is not required to report to the police. There are transitional rules for the citizens of Estonia, Hungary, Latvia, Lithuania, Poland, the Czech Republic, the Slovak Republic and Slovenia, all of

which joined the European Union on 1 May 2004. Amongst other things, the citizens of these countries must have a work permit before they commence work.

Certain specially skilled and seasonal workers who are not EU/EEA nationals have extended rights to apply for a work permit in Norway. In all other cases, however, nationals of non-EU/EEA countries must apply for entry visas and work and residence permits before taking up employment in Norway. An applicant may not enter Norway during the period in which the application for a work and residence permit is under consideration.

1.5 The constitutional framework

1.5.1 Introduction

Norway is a constitutional monarchy and the Norwegian Constitution of 1814 builds upon the principle of popular sovereignty, the principle of division of power and certain fundamental human rights and freedoms.

AS A MEMBER OF THE EEA, NORWAY IS EFFECTIVELY BOUND BY MOST EU LEGISLATION

1.5.2 The legislative and budgetary power: the Storting

The Constitution provides that the Norwegian people exercise their powers through the Storting. The Storting comprises 165 representatives and is elected as one body, but is split into two divisions, the Odelsting and the Lagting, where three quarters of the members form the Odelsting and one quarter form the Lagting. In all issues except legislative issues, the Storting operates as one body. When passing legislation, however, the Odelsting acts as a lower chamber with considerable powers to amend and reject draft legislation put before it by the government or members of the Storting, whilst the Lagting acts as an upper chamber with power only to accept or reject legislation that is put before it by the Odelsting. In matters of constitutional law, the Storting operates as one body.

The Constitution defines the main powers and duties of the Storting, including the right and duty to enact and repeal laws, impose taxes etc., open loans on the credit of the Kingdom and appropriate the monies necessary to meet the expenditure of the State. However, following the introduction of parliamentary rule, there are in practice no limits on the topics of public relevance on which the Storting may state its opinion. The powers of the executive have been so undermined that a majority in the Storting may, in practice, impose its will in any issue.

1.5.3 The executive power: the Cabinet and Central Administration

The executive power is vested in the King in Council (the Cabinet). The members of the Cabinet are chosen by the political party or coalition of parties in power and presented to the King. The current Norwegian government is a majority government representing the Labour Party, the Socialist Left Party and the Centre Party. The Prime Minister is Jens Stoltenberg.

More than half the members of the Cabinet must profess the official religion of the State (the Evangelical Lutheran faith). Each member of the Cabinet, except the prime minister, is normally put in charge of a ministry. All members of the Cabinet have one vote, except in the case of a tie when the prime minister has two votes. The prime minister is considered a *primus inter pares* – the number one amongst equals – and does not have the same strong position as prime ministers in other countries. The powers of the executive branch of government are stated in the Constitution. These include the power to collect taxes imposed by the Storting and to issue or repeal provisional ordinances

concerning commerce, tariffs, trade and industry and the police. The executive also has the power to control the management of the assets belonging to the State and to command the nation's military forces, assemble troops, wage war in the defence of the nation and make peace, conclude and denounce treaties and send and receive diplomatic envoys. The executive has the power to give directions for public church services and public worship, to choose and appoint all civil, ecclesiastical and military officials of certain categories and of a certain rank, and to pardon criminals. The powers stated in the Constitution are limited. In practice, however, the executive branch of government plays an important role in economic and social life in Norway. Many of the statutes passed by the Storting delegate to the Cabinet the right to regulate and supervise a large number of activities in society.

The day-to-day political decisions made by the Cabinet are prepared by the ministries and voted on at informal cabinet meetings. They are implemented through the Central Administration or through other public agencies, although they may also apply directly to private citizens. Today, Norway has 17 Royal Ministries, which together constitute the Central Administration: the Ministry of Agriculture and Food, the Ministry of Children and Equality, the Ministry of Culture and Church Affairs, the Ministry of Defence, the Ministry of Education and Research, the Ministry of Finance, the Ministry of Fisheries and Coastal Affairs, the Ministry of Foreign Affairs, the Ministry of Health and Care Services, the Ministry of Justice and the Police, the Ministry of Government Administration and Reform, the Ministry of Local Government and Regional Development, the Ministry of Petroleum and Energy, the Ministry of Labour and Social Inclusion, the Ministry of Trade and Industry, the Ministry of Transport and Communications and the Ministry of the Environment. In addition the prime minister has his own office and staff: the Office of the Prime Minister.

1.5.4 The judicial power: the Supreme Court and the court system

1.5.4.1 The Supreme Court

The judicial power is vested in the courts. The Constitution states that the Supreme Court of Justice shall pronounce judgement in the final instance. Its decisions cannot be appealed. However, the right to submit a case to the Supreme Court may be limited by statute (as indeed it is, see below). The Supreme Court is situated in Oslo and consists of 18 justices



under the leadership of the Chief Justice of the Supreme Court. When in session, the Supreme Court generally sits with five justices. Very occasionally, and in specific cases, the Supreme Court sits in plenary.

The Supreme Court hears appeals against judgements, and interlocutory appeals against procedural rulings (interlocutory appeals) of the Court of Appeal. Leave to appeal is required if the subject matter of the case has a value below NOK 100 000. As a general rule, leave will only be given if the case raises issues of importance beyond the scope of the case. Furthermore, appeals to the Supreme Court are subject to a screening process whereby leave to appeal may be refused if the Court finds that the appeal clearly will not succeed, or if the significance of the decision beyond the scope of the case in question or other circumstances do not justify the Supreme Court hearing the case. Leave to appeal may also be refused if it is clear that the appeal will only succeed if the Supreme Court quashes the appealed decision on a specific point to which direct presentation of evidence before the lower court was of decisive importance.

(Evidence before the Supreme Court is heard indirectly, i.e. it does not take place directly before the court judging the case.) Only a minority of cases are referred to the Supreme Court. The decision to grant leave lies with the Appeals Selection Committee, which is an independent part of the Supreme Court. The Appeals Selection Committee also gives rulings on interlocutory appeals relating to case procedure and various other judicial decisions stemming from the lower courts. The justices of the Supreme Court serve on the Appeals Selection Committee on a rota basis, three justices at a time.

1.5.4.2 The Courts of Appeal, the city and district courts and the conciliation boards

In addition to the Supreme Court, the Norwegian court system consists of six Courts of Appeal, 77 district and city courts, and more than 400 conciliation boards. These courts hear all types of cases. Conciliation boards have only civil jurisdiction, but the other three instances judge both criminal and civil cases of all kinds. There are a few specialised courts and tribunals for certain

types of cases, for instance the Labour Dispute Court, the Land Severance Tribunal and the Social Security Tribunal (a quasi-judicial administrative body that rules on appeals from decisions rendered pursuant to the National Insurance Act). However, the decisions of these tribunals can usually be brought before the ordinary courts on review.

The six Courts of Appeal are situated in Oslo, Hamar, Skien, Bergen, Trondheim and Tromsø. However, to a certain extent, the courts act as circuit courts for the regions that they cover and sit in other towns and cities where appropriate.

The Courts of Appeal are courts of second instance in civil cases and hear appeals against the decisions of the city and district courts. Without leave of the court, an appeal may only be brought if the subject matter of the case has a value in excess of NOK 50 000. As a general rule, leave will only be granted if the case raises important issues of principle beyond the scope of the particular case. The Court of Appeal also hears appeals against rulings of the district court on procedure and certain other judicial decisions, for example, enforcement, bank-

NORWAY IS DIVIDED INTO ABOUT 80 LEGAL DISTRICTS, EACH WITH ITS OWN CITY OR DISTRICT COURT.

ruptcy or probate orders, and injunctions, (interlocutory appeals). When in session, the court is normally composed of three professional judges, although either two or four lay judges may sit together with the professional judges at the request of the parties or at the court's own initiative.

The city or district courts are the ordinary courts of first instance. Norway is divided into about 80 legal districts, each with its own city or district court. The size of the city and district courts varies greatly. Oslo is by far the largest, with around 60 judges and 20 deputy judges. Most district courts are small, with only one or two judges and one or more deputy judges.

When in session, civil cases in the city and district courts are usually heard by one professional judge sitting alone. If one of the parties so wishes, or if the judge deems it desirable, the professional judge may be assisted by two lay judges or expert lay judges.

The city and district courts have both judicial and administrative functions. They hear both civil and criminal cases at first instance. They are generally full

jurisdiction courts, although the city courts in Oslo, Bergen and Stavanger have some specialised jurisdiction. The administrative functions of the courts include land registration, registration of deaths and the issue of probate and letters of administration, the functions of notary public, civil marriages and registration of homosexual partnerships.

In each of Norway's 433 municipalities, there is a conciliation board consisting of non-lawyers, who are selected in connection with local elections to the municipal council. When in session, the conciliation board sits with three conciliators. The conciliation board functions both as a mediation body and as a civil court. In civil cases, the conciliation board can be the court of first instance. Conciliation boards handle a large volume of cases, mostly debt claims, and enable disputes to be resolved in an expeditious and economical manner. Civil disputes must be brought before a conciliation board before a summons can be issued in the city or district court. There are a number of important exceptions to this rule, the most practical one being that conciliation proceedings are not necessary when both

parties have been legally assisted and both the plaintiff and his counsel believe that conciliation will not serve any purpose.

The aim of conciliation is to achieve a settlement. A settlement has the force of law and can be enforced in the same manner as a judgement. However, the conciliation board is also competent to pass judgement in most types of cases. Judgement may be passed on the basis of written submissions if the defendant does not contest the claim or enter a defence. If the conciliation board finds that a case is too difficult to decide, it may, on request, refer the case to trial in the city or district court. Judgements of the conciliation board may be appealed to the city or district court.

1.5.4.3 Judicial appointments

According to the Constitution, the Norwegian courts are independent of the other branches of government. Judges are appointed by the King in Council (Cabinet) on the recommendation of the Ministry of Justice. The Ministry is responsible for dealing with applications

ACCORDING TO THE CONSTITUTION, THE NORWEGIAN COURTS ARE INDEPENDENT OF THE OTHER BRANCHES OF GOVERNMENT

and interviews, etc. A special body serves in an advisory capacity in connection with the appointment of judges to the district and city courts and the courts of appeal. This body consists of three members appointed on the recommendation of the Norwegian Association of Judges, the Norwegian Association of Lawyers and the Norwegian Bar Association. The advisory body plays no part in the appointment of Supreme Court justices. Applications for vacant posts in the Supreme Court are discussed by all of the members of the Court and the Chief Justice makes an oral recommendation to the Ministry of Justice on the basis of these discussions.

Judicial appointments are non-political. Judges are appointed first and foremost on the basis of academic and personal qualifications. Judgeships are open to qualified lawyers from all occupations, but in practice they are primarily applied for and filled by persons from the government administration, the prosecuting authority and by members of the Bar. Judges in the superior courts will often have served as judges in the lower courts, but there is no regular system of promotion of judges from lower to higher courts.

Judges must retire from office at the age of 70. Otherwise, according to the Constitution, judges may only be removed from office by a court judgement. However, judges, including retirees, can be appointed for limited periods of time in order to cover temporary vacancies that may arise due to periods of leave and sickness, etc.

1.6 Central, county and local administration

There are three levels of administration in Norway. The first level is the State

Central Administration, which is subordinate to the Storting (see above). The second level is the county administration. Norway is divided into 19 counties, which are responsible for a variety of administrative, regulatory and service functions such as further education, transport, business development, planning, cultural affairs and dental health care. The third level is local administration. Norway is divided into 433 municipal districts. The municipalities are responsible for a number of services, including elementary and secondary education, social welfare, child welfare, care of the elderly and local infrastructure. Both the county administration and the local administration are led by locally elected politicians.

1.7 The legal system

Norway has a civil law system. The highest legal authority is the Constitution of 1814, which also serves as a limitation on the power of the Storting (national assembly) to pass legislation. Statutes and regulations passed by administrative bodies pursuant to authority delegated by the Storting (delegated legislation) rank after the Constitution in authority.

Pursuant to the EEA Agreement, Norway is bound by a large number of regulations adopted within the EU by the European Council and the European Commission. However, these regulations are not automatically binding in Norway. In order to become binding on Norwegian citizens, they must be transformed or incorporated into Norwegian law. Norway is also obliged through the EEA Agreement to implement all new EU legislation in the areas covered by the Agreement, see Chapter 10.2. for further details.

Although Norwegian law is largely based on statute law, some areas of law, including the law relating to damages, have been largely created by the courts. In most areas, however, the courts' decisions serve to interpret the statutes.

In principle, the decisions of the Norwegian courts are only binding on the parties to the case and the lower courts are not formally required to follow the decisions of superior courts in subsequent cases. However, the decisions of the Supreme Court in particular are treated as precedents and will be followed in later cases, both by the Supreme Court itself and by the lower courts. The Courts of Appeal and the city and district courts are particularly loyal to the decisions of the Supreme Court. If a chamber of the Supreme Court intends to depart from a previous Supreme Court ruling, two or more justices can insist on the case being heard in plenary.

The Courts of Appeal are in practice generally loyal to the rulings of parallel Courts of Appeal and, similarly, the city and district courts will usually follow such rulings. Being not bound, however, neither the Courts of Appeal nor the city or district courts will follow them if they consider them to be incorrect or that their application will lead to a result that is unreasonable in the circumstances.

Many commercial disputes, especially maritime, construction and offshore disputes, are resolved through arbitration. The parties to an arbitration agreement are almost entirely free to agree on how, where and by whom the arbitration shall be conducted. If the parties are unable to agree (or do not make specific reference in the agreement to the rules of any arbitration institute), the statutory provisions of the Arbitration Act 2004 will apply.



Arbitration is usually conducted before a panel of three arbitrators. The award of the arbitrators cannot normally be appealed and is enforceable as a court judgment. Norway is also a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitration Awards.

Traditionally, Norway has not been a location for arbitration like London, New York and Stockholm. However, there is a growing impression that Norway is a less expensive, more reliable and more efficient alternative for arbitration than many other locations, especially within the shipping industry where the most common arbitration locations are London and New York.

1.8 Legal advisers

Entry to the legal profession is exclusively through university education. Law studies usually take five to six years and result in a graduate degree in law. A law graduate must have a licence to practise after finishing Norwegian law school. This is usually obtained by working in a law firm for a period of at least two years. Graduates are required to litigate three cases before a national court before a licence will be issued.

A licensed practicing lawyer in Norway is called an “advokat”. An “advokat” may render advice to clients within all fields of the law. An “advokat” is also allowed to appear before all Norwegian courts. However, he or she must have a special license to appear before the Supreme Court. There is no distinction in Norway between practicing lawyers similar to the distinction between barristers and solicitors in the United Kingdom.



FORMS OF BUSINESS ORGANISATION

Businesses in Norway can be organised in a number of ways. Most businesses are organised as limited liability (joint stock) companies or partnerships. This chapter describes these different forms of business organisation.

2.1 Limited liability (joint stock) companies

2.1.1 Private and public limited liability companies

A limited liability (or joint stock) company is a company where none of the shareholders have personal liability for the company's obligations, undivided or for parts which altogether make up the company's total obligations. The shareholders' liability extends only to their invested capital.

A limited liability company may be established as a public or a private company. Whether the company is public or private depends on the articles of association and the information that is registered in the Norwegian Register of Business Enterprises. Private limited liability companies are governed by the Private Limited Liability Companies Act 1997 whereas public limited liability companies are governed by Public Limited Liability Companies Act 1997.

The provisions and content of the Limited Liability Companies Act and the Public

Limited Liability Companies Act are almost identical. There are, however, some differences, the main difference being that only public limited liability companies may invite the public to subscribe for shares. The minimum share capital requirement is also different. Some other differences are also identified below.

2.1.2 Formation requirements

The procedure for forming a limited liability company is quite simple. The subscriber of shares in the company (the founder(s)) must draw up a memorandum of association. The memorandum of association must contain the company's articles of association, details of the founders, the number of shares to be subscribed for by each founder, the price payable for each share, the deadline for paying the subscription price for the shares and the names of the company's directors and the company's auditor. The founder(s) and the subscriber(s) to the shares must be identical. Both public and private limited liability companies may have only one shareholder. In the event of a non-cash contribution for shares, the



requirements for public limited liability companies are slightly stricter than the requirements for private limited liability companies.

2.1.3 Share Capital

A public limited liability company must have a share capital of at least NOK 1 million, whereas the minimum share capital requirement for private limited liability companies is NOK 100 000.

2.1.4 Shares

Unless otherwise stated in the articles of association, the share capital shall be divided into one or more shares where all shares have the same nominal value. The shares carry a number of rights, both financial and organisational. All shares carry equal rights in the company.

However, the articles of association may provide for different classes of shares. In such cases, the articles of association must specify the differences between the share classes and the total nominal value of the shares within each class.

As a general rule, shares in public limited liability companies are freely transferable. However, the articles of association may impose restrictions on negotiability. In private limited liability companies, on the other hand, the general rule is the opposite: shares in private companies are not freely transferable. The

board of directors must approve all share transactions and the other shareholders have a right of first refusal in case of share transfers. However, exceptions from these restrictions may be made in the articles of association.

Where the transfer of shares is subject to approval or consent, either pursuant to statutory rules or pursuant to the articles of association, consent may only be refused on objective factual grounds. If the shares of a public limited liability company are listed on the stock exchange, the unreasonable refusal of consent could constitute a breach of the requirement in the Stock Exchange Regulations that shares quoted on a stock exchange shall be truly transferable.

2.1.5 Company bodies and authority

2.1.5.1 The general meeting

The highest authority in a limited liability company is exercised by its shareholders through the general meeting. As a general rule, resolutions are passed by a simple majority of the votes cast. However, a resolution to amend the articles of association requires the support of at least two-thirds of both the votes cast and the share capital represented at the general meeting. Certain resolutions have stricter majority requirements. Further the articles of association may provide stricter majority requirements than those laid down by statute.

2.1.5.2 The board of directors

As a general rule a limited liability company must have a board composed of at least three directors elected by the general meeting. However, the board of a private limited liability company with a share capital of less than NOK 3 million may have less than three directors. The boards of public limited liability companies must always have at least three members. If the company has a corporate assembly, the board must have at least five directors.

As a general rule, at least half of the directors must be resident in Norway or in an EU or EEA state.

A resolution of the board of directors usually requires the supporting vote of a simple majority of the directors who participate in the consideration of a matter.

The company's employees are entitled to representation on the board of directors if the company has more than 30 employees. The number of employee representatives on the board varies depending on the total number of employees and on whether the company has a corporate assembly. Employee directors have the same powers and responsibilities as directors appointed by the shareholders, but cannot be removed by the shareholders.

The duties of the board of directors include the duty to administer the company and to ensure that it is properly organised. The board is responsible for drawing up plans and budgets for the company's business and is under a duty to keep itself informed of the company's financial position and to ensure that the activities, accounts and asset management of the company are subject to adequate control. The board is also responsible for supervising the day-to-day administration of the company and the company's business in general.

Since 1 January 2006, both sexes must be represented on the board of directors of public limited liability companies. If the board has two or three members, both sexes must be represented with at least one member. If there are four or five members, both sexes must be represented with at least two members. If there are between six and eight members, both sexes must be represented with at least

three members. If the board has nine members, both sexes must be represented with at least four members. If there are more than nine board members, each of the sexes must be represented with at least 40%. These rules do not apply to board members elected by the employees. When two or more board members shall be elected among the employees both genders shall be represented. The same applies to deputy members. However, if one gender represents less than 20% of the total number of employees of the company at the time of the election, the above rules shall not apply. Since 1 January 2007 these rules apply equally to state owned private limited liability companies and wholly owned private limited liability companies of state owned private and public limited liability companies.

2.1.5.3 The corporate assembly

A limited liability company with more than 200 employees is required by statute to have a corporate assembly. However, the company and a majority of the employees or trade unions representing at least two-thirds of the employees may agree that the company shall not have a corporate assembly, even if the number of employees exceeds 200. Amongst other things, the corporate assembly is responsible for electing the board of directors and the chairman of the board, for supervising the board's and chief executive officer's administration of the company and for adopting resolutions in matters that concern major investments and reorganisation or restructuring of the operation of the company.

2.1.5.4 The chief executive officer

Public limited liability companies are required by statute to have a chief executive officer (CEO). Private limited liability companies with a share capital of at least NOK 3 million are also required by statute to have a CEO. Private limited liability companies with a share capital of less than NOK 3 million, on the other hand, may choose to have a CEO, but are not obliged to have one.

The CEO is responsible for the day-to-day

administration of the company's business, subject to the guidelines and instructions issued by the board of directors. If a private limited liability company with a share capital of less than NOK 3 million chooses not to have a CEO, the chairman of the board of directors is responsible for the day-to-day running of the company's business.

2.1.6 Liability for damages

A limited liability company's liability for damages is governed by the ordinary principles for determining damages in Norwegian law. Under the Limited Liability Companies Act and Public Limited Companies Act, a director, member of the corporate assembly, an investigator, the CEO or a shareholder may be liable for any loss or damage that he or she has intentionally or negligently caused to the person in question. A person may also be liable if he or she intentionally or negligently has contributed to causing such loss.

2.1.7 Protection of the company's capital

As owners of the company's shares, the shareholders have the company's assets at their disposal. However, because the shareholders are not liable for the company's obligations, there are certain limitations placed upon their power to dispose of the company's funds.

A limited liability company must at all times have an equity that is adequate in terms of the risk and the scope of the company's business. It is the true value of the company's equity that is relevant when assessing the issue of adequacy, not necessarily the equity in the balance sheet. If the company's equity is presumed to be less than adequate in terms of the risk and scope of the company's business, the board of directors must immediately consider the matter. The same duty exists if the equity appears to have been reduced to less than half of the share capital. The board must within a reasonable time, and at the latest within six months if the equity in a public limited liability company appears to have been reduced to



less than half of the share capital, summon the shareholders to a general meeting in order to inform them about the company's financial position and propose measures to provide the company with adequate equity. If the board of directors finds no basis for proposing measures to improve the limited liability company's equity, the board of directors must propose to the general meeting that the company should be dissolved.

The shareholders' powers to dispose of the company's assets are also limited by statutory provisions that restrict the payment of dividends. The amount that can be distributed as dividends is limited to the annual profit according to the adopted income statement for the latest financial year and other equity, after deduction for any uncovered losses, amounts entered in the balance sheet for research and development, goodwill and net deferred tax benefits, the total nominal value of own shares and certain credits and guarantees, and the part of the annual profit which pursuant to statute or the articles of association is to be allocated to a non-distributable fund or cannot be distributed as dividends.

The company may not distribute dividends if the equity according to the balance sheet is less than 10% of the balance sheet sum.

The shareholders' powers to dispose of the company's assets are also limited by statutory provisions regulating the gifts that can be given by a company to its shareholders or others and loans from the company to its shareholders.



2.1.8 Minority protection

The Limited Liability Companies Act and the Public Limited Companies Act are based on the principle that resolutions of the company are passed by the shareholders at the general meeting by a simple majority of votes. However, both statutes provide some protection to the minority shareholders. Accordingly, in some cases, the shareholders are protected by a requirement of unanimity.

Furthermore, a shareholder who holds one-third of the share capital can block resolutions to amend the articles of association and thereby any amendments to the company's share capital.

Shareholders who represent at least one-tenth of the share capital in a private limited liability company, and at least one-twentieth of the share capital in a public limited liability company, may require an extraordinary general meeting to be convened.

Following a resolution by shareholders who represent at least one-tenth of the share capital represented at the general meeting, a shareholder may apply to the district court for an order compelling an investigation into the company's formation, administration or specified matters in the administration or accounts. Shareholders holding at least one-tenth of the company's share capital may in certain circumstances bring a claim for damages against the officers or other shareholders of the company on behalf of the company.

In private limited liability companies, an individual shareholder can, subject to certain conditions, call for his shares to be redeemed. In public limited liability companies, the company may make an offer to acquire the shares owned by shareholders who

each have so few shares in the company that the combined value of the shares according to the official price on the offering date does not exceed NOK 500.

The shareholders of both private and public limited liability companies may demand the liquidation of the company if any of its bodies has abused its authority or others representing the company have abused their position, and especially weighty reasons call for dissolution as a consequence of the abuse.

2.1.9 Own shares

Both public and private limited liability companies may, within certain limits, acquire their own shares by other means than subscription. Subscription for own shares is not permitted. The combined nominal value of the company's holding of own shares must not exceed 10% of the share capital. Furthermore, the acquisition of own shares must not result in the share capital after deduction of the combined nominal value of the holding of own shares falling below the minimum permitted share capital. A company may only acquire its own shares if its distributable equity according to the last adopted balance sheet exceeds the price that is payable for the shares. In addition, a company may only acquire its own shares if this is consistent with prudent and sound business practice, with due account for any losses that may have occurred after the balance sheet date or which may be expected to occur.

A company may only acquire its own shares if authority is given to the board of directors at the general meeting with a two-thirds majority vote. The resolution of the general meeting must be reported to and registered in the Register of Business Enterprises before any shares are acquired.

2.1.10 Compulsory acquisition of shares in subsidiaries

When a limited liability company, alone or through subsidiaries, owns more than nine-tenths of the shares in a subsidiary and is entitled to a corresponding part of the votes that may be cast at its general meetings, the board of directors of the

parent company may resolve that the parent company shall take over the remaining shares in the subsidiary. If the price cannot be agreed, it shall, as a general rule, be fixed by valuation at the expense of the parent company

2.1.11 Merger, demerger and dissolution of companies

There are two types of mergers: horizontal mergers, where two or more independent limited liability companies are merged together, and vertical mergers, where companies within a group of companies are merged. Horizontal mergers are effected either by absorption, which is the most common form of merger in Norway, or by incorporation of a new company. The decision as to whether to merge with another company is made by the shareholders.

The provisions concerning mergers between private limited liability companies and mergers where at least one of the companies is a public limited liability company are almost identical.

If the parent company owns all of the shares of the subsidiary, a vertical merger may be accomplished by a decision by the boards of directors of both the parent company and the subsidiary to the effect that the subsidiary shall be absorbed by the parent company. The initiating manoeuvre may be the compulsory acquisition of the subsidiary's shares.

In earlier company legislation, a demerger of a company could only take place through a share capital decrease. Today, however, there are specific and almost identical rules for demergers in the Limited Liability Companies Act and the Public Limited Liability Companies Act.

Limited liability companies may be dissolved if both the company and the business carried on by the company are brought to an end. A resolution to dissolve a company must be adopted by the shareholders with a two-thirds majority. A company may also be dissolved by court order. Before a company is dissolved, all obligations must be paid and the dissolution must be reported to the Register of Business Enterprises.

European public limited liability companies within the territory of the European Community may be set up in the form of a "Societas Europaea", abbreviated to "SE". European Council Regulation No 2157/2001 of 8 October 2001 on the Statute for a European Company was implemented into Norwegian law by the European Company Act of 1 April 2005, which entered into force on the same day. Council Directive 2001/86/EC of 8 October 2001 with regard to the involvement of employees is implemented into Norwegian law by government regulations of 1 April 2005.

The capital of an SE shall be divided into shares where no shareholder is liable for more than the amount he has subscribed. The capital shall be expressed in Euro and the subscribed capital must not be less than EUR 120 000. The company may, however, choose to express the capital in NOK.

An SE may be established in different ways. An SE may be formed through a merger provided that at least two of the merging companies are governed by the laws of different member states. Public and private limited liability companies with registered offices and head offices within the European Community may promote the formation of an SE-holding company provided that each or at least two of them are governed by the laws of different member states, or have for at least two years had a subsidiary company governed by the law of another member state or a branch situated in another state.

Companies may also form a subsidiary SE by subscribing for its shares provided that at least two of them are governed by the law of a different member state, or have for at least two years had a subsidiary company governed by the law of another member state or a branch situated in another member state. A public limited liability company may also be transformed into an SE if it for at least two years has had a subsidiary company governed by the law of a different member state.

A member state may provide for companies with head office outside the European Community to participate in the formation of an SE provided that the company

AN UNLIMITED LIABILITY PARTNERSHIP IS ESTABLISHED BY A PARTNERSHIP AGREEMENT. THE AGREEMENT MUST BE REGISTERED IN THE REGISTER OF BUSINESS ENTERPRISES

is formed under the law of the member state, has its registered office in that member state and has a real and continuous link with the member state's economy.

As a general rule, an SE will be governed by the law applicable to public limited liability companies in the member state in which the SE establishes its registered office. The main difference, however, appears when the SE wishes to transfer its registered office to another member state. Such a transfer does not result in the liquidation of the SE or in the creation of a new legal entity.

2.2 Partnerships

Partnerships are subject to the provisions of the Partnership Act 1985.

According to the Partnership Act, the term "partnership" refers to a commercial business established for the joint account of two or more partners, one of whom must have unlimited personal liability for the total obligations of the business. The term "partnership" also covers the situation where two or more partners have unlimited liability for parts of the obligations and the combined parts constitute the total obligations of the business.

2.2.1 Unlimited liability partnerships

The unlimited liability partnership is a legal entity with rights and obligations. The distinct characteristic of an unlimited liability partnership is that the partners are jointly and severally liable for all the obligations of the partnership. Both the partnership and the partners can be held directly liable for the partnership obligations, although creditors must first seek settlement from the partnership itself.

An unlimited liability partnership is established by a partnership agreement. The agreement must be registered in the Register of Business Enterprises. The partnership must have an official name containing the abbreviation "ANS" (ansvarlig selskap).

The partners exercise the highest authority in the partnership through the partnership meeting. Decisions are made by votes at partner meetings. Only the partners have voting rights and all resolutions require the unanimous supporting vote of all voting partners.

The partnership may agree to have a board of directors and/or a

chief executive officer to conduct the day-to-day administration of the partnership's business.

All the partners must agree to the admission of a new partner and a new partnership agreement must be drawn up and registered. The new partner is liable for all of the obligations of the partnership, old as well as new. A partner may only transfer its share in the partnership to another person if the partnership agreement entitles it to do so or if all the partners agree.

Unless otherwise agreed, each partner may resign from the partnership and require the other partners to purchase its partnership shares.

The partnership may be dissolved by the unanimous vote of the partners.

2.2.2 Unlimited liability partnerships with divided personal liability

The partnership agreement may provide that the partners in an unlimited liability partnership shall have divided personal liability for the obligations of the partnership, provided that the partners together cover the total of the partnership's obligations. The partnership itself is liable for all its obligations.

A creditor who seeks settlement directly from the partners of an undivided personal liability partnership may hold each of them liable for the total of the obligations. However, if the partners have agreed on divided personal liability a creditor may hold each partner liable only to the extent of his share of the liability and must seek to enforce the rest of the claim against the other partners in accordance with their share of the obligations.

An agreement on divided personal liability is only effective against a third party when it is registered in the Register of Business Enterprises, unless the third party knew or ought to have known of the agreement.

The official name of a partnership with divided personal liability must contain the abbreviation "DA" (selskap med delt ansvar).

2.2.3 Limited partnerships

A limited partnership is a partnership where the partnership

agreement provides for one or more “general” partners with unlimited personal liability in respect of the partnership’s obligations and one or more “special” partners with limited personal liability to a specified amount. The limited partnership is a legal entity and is itself liable for all its obligations.

A limited partnership is established by a written partnership agreement, which must be registered in the Register of Business Enterprises. The official name of a limited partnership must contain the abbreviation “KS” (kommandittselskap).

The partners are the limited partnership’s highest authority. However, unlike the partners in unlimited liability partnerships, the partners in a limited partnership cannot participate in the administration of the partnership. The partners must leave the day-to-day administration of the limited partnership’s business to the general partner or the board of directors.

2.2.4 Internal partnerships

An internal partnership is a partnership that does not act as such in relation to third parties. This form of partnership is rare in Norway.

The partners in an internal partnership may agree to be personally liable for the total of the partnership’s obligations or parts thereof. Between the partners, the partnership functions in the same way as an unlimited liability partnership with or without divided personal liability. Towards third parties, however, the partners may not give the impression that they are conducting the activity as a partnership. The partners conduct the activity personally and the rights of the partnership belong to the partners.

An internal partnership cannot have an official name or be registered in the Register of Business Enterprises.

2.2.5 Silent partnerships

A silent partnership is a limited partnership that does not act as such in relation to third parties. A silent partnership is established by a partnership agreement that provides that the silent partner’s participation shall not be apparent and that the personal liability of the silent partner is limited to a specified amount. The general partner is liable for all the partnership obligations.

A silent partnership has no organisation, but is controlled and managed by the general partner.

2.3 Non-corporate forms of doing business

2.3.1 Norwegian branches

A foreign company may conduct its business in Norway through a branch. Under Norwegian law, the Norwegian branch of a

foreign company is considered to be part of the foreign company and the foreign company is liable for all of the obligations of the branch.

A foreign company conducting business in Norway through a branch must be registered in the Register of Business Enterprises. The branch may have a separate name.

2.3.2 Agencies and distributorships

A foreign company may conduct its business activities in the Norwegian market through an agent. An agent is defined as a person or entity that conducts business activities on a continuing basis for the principal’s account and in the principal’s name. Agency relationships are subject to statutory regulations, many of which are mandatory. The Norwegian Agency Act is based on the European Council Directive 86/653/EC on the co-ordination of the laws of the Member States relating to self-employed commercial agents.

In an agency relationship, the principal is fully liable for all the obligations that arise from the agent’s activity. To trade commodities in the Norwegian market, the agent must be domiciled in Norway, or be an EU/EEA citizen.

A foreign company may also be represented in Norway through a distributor, i.e. a person or entity that purchases the principal’s products in his or its own name and for his or its own account, and re-sells the products on the Norwegian market in his or its own name and for his or its own account. The position of legal distributors in Norway is not regulated in statute and the relationship between the principal and the distributor is regulated by any agreement between them and general principles of contract law. The principal is not liable to third parties for obligations that arise from the distributor’s activity.



INVESTMENT REGULATION

Foreign investment is welcomed in Norway. The tax system is neutral towards foreign and local investments and there are few investment restrictions. This chapter describes the various investment incentives and investment regulations in Norway, the regulations of exchange control and the rules on mergers and acquisitions.

3.1 Investment incentives and regulation

3.1.1 General

There are a number of legislative provisions in Norway that are designed to support and encourage business activity and investment. In general, the legislation applies equally to both Norwegian and EU/EEA citizens and the same rights are often granted on a discretionary basis to the citizens of countries outside the EU/EEA. However, business and investment schemes in the fisheries and agricultural sectors are generally closed to foreigners. These schemes are therefore not discussed below.

The main promotional institution for investment in Norway is "Innovation Norway" (www.innovasjon Norge.no). Innovation Norway provides information on foreign market conditions to Norwegian-based businesses and information on Norwegian products and services to potential foreign buyers. Innovation Norway provides a service to most trades, although it does not cover the insurance and finance

trade, shipping, oil and gas development or public administration. Innovation Norway can provide and facilitate various types of financing in the form of traditional loans, loan guarantees, development plans and equity capital plans. Funding is usually given to small and medium sized businesses to meet their needs for risk capital and/or long-term capital. Innovation Norway also promotes export and co-operation between the export industries and the public authorities.

The Norwegian Guarantee Institute for Export Credit ("GIEK") (www.giek.no) also provides various types of export credits for companies that export from Norway to other countries. GIEK is administered by the Ministry of Foreign Affairs.

3.1.2 Tax incentives

Following a tax reform in 2004/2005, dividends paid to corporate entities and capital gains from the sale of shares by such entities are tax exempt. This so-called participation exemption rule



applies to both Norwegian entities and EU/EEA entities resident in Norway.

All employers in Norway are subject to compulsory contributions to the national social security scheme calculated on the employee's gross salary. In order to encourage business development and employment in the northernmost regions of the country, the rate of employer contributions has traditionally been differentiated according to employer's place of business. Norway is divided into five geographical zones. Zone 1 covers the most central parts of the southern part of the country. Zone 2 comprises less central parts of Southern Norway. Zone 3 mostly covers certain mountain regions in southern Norway. Zone 4 is made up of the most northerly part of southern Norway and northern Norway south of zone 5. Zone 5 covers the very northernmost part of the country, Nord-Troms and Finnmark.

The highest contribution rates apply in Zone 1 (14,1%) whereas in Zone V the rate is 0%. The rates also vary according to the total salaries paid by the employer, and the trade of the employer.

Apart from the two schemes mentioned

here – the participation exemption rule and differentiated employer's contribution rates - there are no special tax incentives for either domestic or foreign businesses. Chapter 9 contains a more detailed explanation of the participation exemption rule and of taxation in general.

3.1.3 Restrictions

There are few investment restrictions in Norway. Foreign entities may acquire shares or become partners in Norwegian companies. A Norwegian company may have 100% foreign ownership and there is no requirement of a local partner or minimum Norwegian shareholding.

Norway is not party to any bilateral investment treaties. The import and export of goods to and from Norway is fully regulated by the WTO Agreements and the Agreement on the European Economic Area ("EEA"). Many goods may be imported to Norway without restriction. However, there are a number of restrictions on food products, including fish and agricultural products. The import and export of industrial processed products is generally subject to the provisions of EU/EEA

regulations. The import of some clothing and textile products requires a licence if the products originate from outside the EU/EEA. The customs value of goods imported from non-EU/EEA countries is based on the provisions of the WTO Agreements.

3.2 Foreign exchange control

3.2.1 Regulations and reporting

Foreign exchange transactions are regulated by the Currency Control Act of 14 July 1950, much of which has been repealed in recent years. Banks and companies that engage in foreign exchange services require a license as a financial institution or a credit institution pursuant to the Financial Institutions Act of 10 June 1988. Such foreign exchange banks and foreign exchange companies are subject to strict statutory reporting requirements to an electronic foreign exchange database as laid down in the Foreign Exchange Register Act of 28 May 2004.

There is no foreign exchange control for payments of dividends, branch profits,

THE COMPETITION ACT GIVES THE NORWEGIAN AUTHORITIES POWER TO INTERVENE AGAINST ANTI-COMPETITIVE CONCENTRATIONS

royalties or service fees for foreign recipients. As a consequence, profits from direct investments may be freely transferred out of Norway. Furthermore, there are no restrictions on the holding of foreign currency by foreign or Norwegian citizens, individuals or companies. Domestic and foreign companies and individuals may open bank accounts in Norwegian banks without approval of the Central Bank.

3.2.2 Remittance of profits, dividends and payments

As mentioned in Chapter 3.2.1 above, profits on all types of investments may be freely transferred out of Norway. However, certain cross-border transactions have tax consequences (see Chapter 9.9 for further details). As a general rule, the company that distributes dividends and other contributions will normally be liable for the due payment of all taxes. As a consequence, there is an incentive for most companies to retain profits in the Norwegian entity.

3.2.3 Borrowing, lending and banking regulations

A foreign national or a company not registered in Norway may borrow money from Norwegian financial institutions. Similarly, Norwegian nationals and Norwegian registered companies may borrow money from foreign financial institutions. However, banks that transfer payments between a foreign national and a Norwegian national are subject to reporting requirements.

Banks that are established in another EU/EEA state may establish a branch in Norway or offer cross-border services in Norway simply by notifying the Financial

Supervisory Authority of Norway ("Kredittilsynet", www.kredittilsynet.no) and registering in the Register of Business Enterprises. Banks outside the EU/EEA may also be granted a licence to offer such services. Otherwise, the ordinary rules relating to the establishment of businesses in Norway also apply to banks, see Chapter 2.

3.3 Mergers and acquisitions

3.3.1 Restrictions on ownership

Mergers and acquisitions in Norway are largely regulated in the Norwegian Competition Act 2004, which regulates anti-competitive mergers and take-overs, and the Financial Institutions Act 1988, which regulates the acquisition of banks, insurance companies and other financial institutions. The provisions of these two statutes are to be applied without discrimination to citizens of the EU/EEA. The Securities Trading Act 1997 and the Limited Companies Act 1997 also contain provisions that are relevant to acquisitions under Norwegian law.

The acquisition of shares in a financial institution does not require the approval of the authorities provided the acquisition, together with any prior holding, will result in a shareholding of less than 10%. However, authorisation from the Financial Supervisory Authority of Norway (Kredittilsynet) in accordance with section 2-2 of the Financial Institutions Act is necessary for the acquisition of a "qualifying holding", that is, a holding that represents 10% or more of the capital or voting rights in a financial institution or which makes it possible to exercise significant influence on the management of the institution and its business. The same

applies to acquisitions whereby a qualifying holding reaches or exceeds 20, 25, 33 or 50% of the voting rights or capital in the financial institution, and to any other acquisitions that give controlling influence in the institution. Additional requirements must be satisfied if the financial institution will form part of a financial company group.

Special rules apply to the energy, fisheries and agricultural sectors.

3.3.2 Regulation of mergers and acquisitions

The Competition Act gives the Norwegian authorities power to intervene against anti-competitive concentrations. A "concentration" is deemed to arise where two or more previously independent undertakings or parts of undertakings merge. A concentration also arises where there is an acquisition of shareholding that results in a change of direct or indirect control over the target undertaking. The creation of a joint venture that performs on a lasting basis all the functions of an autonomous economic entity is also deemed to constitute a concentration.

The Norwegian Competition Authority ("Konkurransetilsynet", www.konkurransetilsynet.no) shall intervene against a concentration if it finds that it will create or strengthen a significant restriction of competition, contrary to the purpose of the Act. The purpose of the Act is defined in section 1 as "to further competition and thereby contribute to the efficient utilization of society's resources". The Competition Authority cannot intervene if there is a well-functioning Nordic or European market and the concentration or acquisition does not adversely affect Norwegian customers.

The Competition Authority can also intervene against an acquisition of holdings in an undertaking even if the acquisition will not lead to control of that undertaking. If an acquisition has been made through successive purchases, the Competition Authority may intervene against transactions that have taken place within two years from the date of the most recent acquisition.

The power to intervene is enforced through a system of notification. The Competition Act requires that all concentrations where the undertakings concerned have a combined annual turnover in Norway exceeding NOK 50 million must be notified to the Competition Authority. However, if only one of the undertakings concerned has an annual turnover in Norway exceeding NOK 20 million, notification is not required.

Notification to the Competition Authority must be made by the parties to a merger or the acquirer, as the case may be, by way of a standardized notification. Notification must be submitted at the latest when a final merger agreement has been entered into or control has been acquired. The purpose of the standardized notification is to inform the Competition Authority of the concentration and to provide information that can enable it to consider whether the concentration might raise competition concerns in Norway. If the notifying parties wish, a standardized notification may be submitted in English.

If the Competition Authority finds that a further examination of the concentration is necessary, it may order the submission of a complete notification of the concentration. Such an order may be issued no later than 15 working days after the Competition Authority has received the standardized notification or, where no standardized notification is required, no later than three months after a final acquisition. In other words, the Competition Authority has 15 working days following receipt of the standardized notification to examine the file and to decide whether to order a complete notification of the concentration.

The parties may also submit a complete notification on a voluntary basis, instead of submitting a standardized notification

first. The parties may wish to do this in order to seek clarification as to whether intervention will be considered. Voluntary notifications must satisfy the requirements for complete notifications.

If no order to submit a complete notification is made before the expiry of the time limit, the transaction is cleared. The standardized notification does not trigger a prohibition against implementation of the concentration. However, if the Competition Authority issues an order to submit a complete notification, or if the parties have submitted a voluntary complete notification, the concentration may not be implemented while the complete notification is being processed.

Supplementary rules on notification of concentrations to the Norwegian Competition Authority are found in a Government Regulation on the notification of concentrations.

Given that the conditions for intervention in the Competition Act are fulfilled, the Competition Authority must intervene within 100 working days from the receipt of the complete notification. This time limit can be prolonged by an additional 25 working days, if conditions for clearing the transaction are discussed with the parties.

“Intervention” by the Competition Authority may be in the form of prohibitions, orders, or conditional approvals. The Competition Act provides that the Competition Authority may prohibit a concentration or an acquisition and lay down the terms and conditions that must be fulfilled to achieve the purpose of the prohibition. The Competition Authority may also order shares or holdings acquired as part of a concentration or an acquisition to be disposed of and may require the parties in question to meet terms and conditions essential to alleviating restrictions to competition.

A decision to intervene against the concentration may be appealed to the Ministry of Government Administration and Reform within 15 working days. The Competition Authority must forward an appeal to the Ministry no later than 15 working days after its receipt. The Ministry must decide upon an appeal no later than 60

working days after receiving it. There is also a possibility of a political re-examination by the Government, which has to take place within one year from final agreement or acquisition of control.

3.3.3 Disclosure of major holdings of shares and rights to shares

The Securities Trading Act requires the acquirer of shares in a company quoted on the Oslo Stock Exchange to notify the Stock Exchange of any acquisition of shares and/or rights to shares to reach or exceed 1/20, 1/10, 1/5, 1/3, 1/2, 2/3 or 9/10 of the share capital, or an equivalent proportion of the voting rights. Similarly, the disposer of shares in a company quoted on the Oslo Stock Exchange must notify the Stock Exchange of any disposal that would cause its proportion of shares and/or rights to reach or fall below these thresholds. The same applies to the acquisition or disposal of subscription rights, options and similar rights. Notification must be given immediately after agreement on acquisition or disposal has been entered into.

3.3.4 Insider trading

The Securities Trading Act contains a general prohibition against insider trading. The subscription, sale, purchase and exchange of shares in a company that is listed on the Oslo Stock Exchange or in a company that has applied for listing, is prohibited for anyone who has information about the shares, the issuer of the shares or other factors, that is likely to influence the price of the shares and that is not publicly available or commonly known in the market.

Board members, members of the control committee, the auditor and senior management are also prohibited from dealing in such shares unless they have previously ascertained that no insider information is available to them. The same applies to the senior employees and board members of an undertaking in the same group who may normally be expected to have precise and confidential information about the listed company.

Norway has implemented Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse).

3.3.5 Investment funds

Norway has implemented Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS-directive). This means that investment funds complying with the directive can be passported into Norway according to the notification procedure in the directive.

The marketing of other open-ended securities funds is strictly regulated. Open-ended investment funds may only be marketed in Norway after application to the Norwegian Financial Supervisory Authority. As the conditions for obtaining an authorisation to market a foreign securities fund in Norway are very strict, foreign securities funds having the characteristics that are typical for hedge funds (among other things with respect to gearing, risk diversification and short positions, etc.) are at present, in practice prohibited from marketing in Norway.

There is currently a proposal from the Norwegian Financial Supervisory Authority regarding amendments to the Securities Funds Act and accompanying regulations that to some extent will permit the establishment of Norwegian hedge funds provided that certain conditions are met, and which will also significantly increase the possibility for marketing foreign hedge funds in Norway. According to the current proposal from the Authority an offer to subscribe for units in a hedge fund must be limited to "professional investors" as further defined in the proposal. The proposal introduces a significant liberalisation with regard to the allowed investment mandate. In order for private investors to be allowed to subscribe for units in a hedge fund they must have assets in the form of bank deposits and/or financial instruments amounting to at least NOK 5 000 000 and must subscribe for an amount of at least

NOK 500 000, which cannot be reduced later. The proposal has been criticized for being too restrictive as to which investors may subscribe, and a final proposal from the Ministry of Finance is expected this year. Thus, there is currently a significant degree of uncertainty as to what regulatory changes can be expected regarding marketing of foreign hedge funds in Norway.

3.3.6 Prospectus requirements

Norway has implemented the Prospectus Directive (Directive 2003/71/EC). This means that there is a prospectus requirement when transferable securities are offered to the public, unless the offer is made to fewer than 100 persons, the total amount of the offered shares is less than €100 000 or the minimum subscription is more than €50 000. There is also no need for a prospectus if the offer is made only to certain qualified investors. Note that for some qualified investors, it is an additional requirement that they have registered with the Oslo Stock Exchange as a professional investor.

3.3.7 Mandatory bid requirements

Anyone who through acquisition becomes the owner of shares representing more than 40% of the voting rights of a Norwegian company listed on the Oslo Stock Exchange is required by the Securities Trading Act to make an offer to the other shareholders to purchase all of their holdings in the company. The offer is subject to approval by the Oslo Stock Exchange before submission to the shareholders. The offering price per share must be at least equivalent to the highest price paid by the offerer for the shares in the six month period prior to the date the 40% threshold was exceeded, or the recorded market price at that date, whichever is the highest. If the acquirer acquires additional shares at a higher price after the offer is made, but prior to the expiration of the bid period, the acquirer must restate its bid at that higher price. Settlement must be guaranteed by a bank. A shareholder who fails to make the required offer is required within four weeks to dispose of

a sufficient number of shares to bring the obligation to an end.

In June 2007, the Storting passed a new Securities Trading Act to implement EU Directive 2004/39/EC on markets in financial instruments (MiFiD), EU Directive 2004/109/EC (the Transparency Directive) and EU Directive 2004/25/EC on takeover bids. When the 2007 Act enters into force, the 40% threshold will be reduced and the obligation to make an offer to the other shareholders for all of their holdings in the company will arise if anyone through acquisition becomes the owner of shares representing more than one third of the voting rights of a company whose shares are listed on a regulated market in Norway. A new obligation to make an offer to the other shareholders will arise in the event of succeeding acquisitions of shares which give the acquirer ownership of 40% and 50% of the voting rights.

The obligation will no longer only apply to the acquisition of shares in Norwegian companies, but also to the acquisition of shares in foreign companies whose shares are listed on a regulated market in Norway, but not on a regulated market in the country of registration. The rules will also apply to companies with a registered office in Norway that are only listed on a regulated market in another EEA state.



FINANCIAL AND CAPITAL RESOURCES

This chapter describes the different ways in which loans and other forms of credit can be secured, in particular mortgages, floating charges and contractual liens on stocks and bonds. It also describes the main conditions for listing on the Oslo Stock Exchange, which is the principal market for trading in shares, bonds and derivative instruments in Norway.

4.1 Loans and security

4.1.1 General

Bank loans and other forms of credit are often required by the creditor to be secured against assets belonging to the debtor or a third party. The most important forms of security in Norway are mortgages on specific property, floating charges over movables etc. and security over stocks and bonds. The main legislation on mortgages, floating charges and other forms of security in Norway is the Mortgage Act of 1980.

There are a number of assets registers in Norway where both proprietary and limited interests (including mortgages, charges etc.) can be registered. Certain registers, referred to as "real assets registers", are classified according to the type of property to which the rights pertain. The real assets registers include the land register, the ships register (including the Norwegian International Ship Register) and the aircraft register. There is also a securities register for securities in electronic book-entry form and a register

of mortgaged movable property, which includes sub-sections for charges over *inter alia* machinery and equipment (including patents and IP rights), inventory and goods, trade receivables and motor vehicles. These registers are not real assets registers as such. In many cases, legal protection for mortgages and floating charges against third party creditors requires registration in one of the sub-registers referred to above.

4.1.2 Mortgages

In Norwegian law, it is not possible to take security over all the present or future property of a debtor. However, a mortgage can secure future debt not yet incurred.

A mortgage is only legally protected against third party creditors of the mortgagor if the mortgage deed either specifies the specific amount or the maximum amount to be secured. A mortgage deed that does not specify the amount or the maximum amount to be secured by the mortgage will, however, still be valid between the parties to the deed. The amounts can be specified in Norwegian kroner or

in any foreign currency that generally has a quoted exchange rate in Norway.

Unless otherwise agreed in the mortgage deed, in addition to the secured amount, the mortgage also covers the costs of enforcing the mortgage claim, any unpaid interest accrued and any land duties that fell due within the two year period prior to legal enforcement, and any insurance premiums for the 12 month period prior to legal enforcement provided that the premium has been paid by the mortgagee. Where the mortgaged property is realised in connection with a bankruptcy, the mortgage also covers any costs the mortgagee may have in connection with the preservation and maintenance of the mortgaged property.

During the security period, the mortgagor retains ownership and title to the property. The property may be sold and may be mortgaged to others. Under a non-possessory mortgage, the owner has the right to use the property in the usual manner unless otherwise agreed or provided by statute. However, the mortgagor has an obligation to ensure that the property is maintained properly so that

the value of the mortgagee's security is not reduced. The mortgagor must also ensure that the property is insured in accordance with normal market practice. If moveable property has been delivered to the mortgagee (possessory mortgage), the mortgagee is responsible for the due care and supervision of the property. The mortgagee is not entitled to use the property for his own purposes unless agreed between the parties or there are justifiable legal grounds for doing so.

Under a non-possessory mortgage, the owner retains the right to any profit or other yield from the mortgaged property. However, the person holding a mortgage in securities, financial instruments registered in a securities register, redemption papers or non-negotiable money claims may collect and receive interest, dividends and instalments that fall due during the mortgage period and apply any amounts received to pay matured interest on the mortgage and matured parts of the principal. The mortgagor can request that any excess is paid to him.

In addition to requesting payment on the agreed due date, the mortgagee may demand the mortgage to be paid in the event of a fundamental breach of the interest and instalment payment. The mortgagee can also demand repayment of the mortgage if the mortgaged property is put up for compulsory auction, if public composition or bankruptcy proceedings are opened against the mortgagor or the owner of the mortgaged property, if the owner or mortgagor materially abuses his control over the mortgaged property or otherwise substantially neglects his obligation to maintain and insure the mortgaged property, or if the mortgaged property is accidentally lost or damaged to an extent that considerably reduces the value of the mortgagee's security.

4.1.3 Floating charges

The Mortgages Act provides for a number of different floating charges.

A business enterprise may create a floating charge on operating accessories that are used in or are designed for the business operation. "Operating accessories"

includes machinery, implements, tools, furnishings and other equipment, rights in trademarks, patents and designs and acquired copyright. The floating charge comprises the operating accessories in their entirety as they are at any time. If the business operation consists of several divisions that are operationally separate, the operating accessories of each division may be charged separately. A floating charge on operating accessories must be registered in the Register of Mortgaged Moveable Property in order to acquire legal protection against third party creditors.

A business enterprise may create a floating charge on motor vehicles that are used or intended for use in the business operation. Construction contractors may also create a floating charge over mobile construction machines that are used or intended for use in the enterprise's contractor business. A floating charge on motor vehicles and mobile construction machines must also be registered in the Register of Mortgaged Moveable Property in order to acquire legal protection against third party creditors.

Movables that are used or intended for use in agricultural operations (but that are not accessories to real or other property that can be registered in an assets register) and goods that are produced in the operations may be subject to a floating charge. Such movables include machines, implements, tools and other equipment except motor vehicles and mobile construction machines, crops and other harvested yield, livestock, seed grain, fertilizer, fuel and other consumables for the operation and packaging for the products of the operation. Similarly, movables that are used or intended for use in commercial operations from fishing and hunting vessels, but that are not accessories to the vessel, may be subject to a floating charge. The floating charge must be registered in the Register of Mortgaged Moveable Property in order to acquire legal protection against third party creditors.

Business enterprises may also create floating charges on the stock of goods used in the business. This includes stocks of raw materials, unfinished and

finished goods and merchandise, fuel and other consumables and packaging. The charge must comprise the stock in its entirety or a specific part thereof which is operationally separate from the rest and appears as an independent unit, and applies to such stock as it is at any time. A floating charge on stock must be registered in the Register of Mortgaged Moveable Property in order to acquire legal protection against third party creditors.

4.1.4 Contractual liens on stocks and bonds

Securities, including negotiable debt instruments, promissory notes, negotiable cheques and share certificates, may be charged by way of pledge by depositing the instruments with the pledgee or its nominee.

Financial instruments that are registered in a securities register can be charged by way of a registered security interest with the relevant securities register. Shares that are not registered in a securities register can be subject to security unless otherwise provided in the articles of association of the company whose shares are being pledged. Legal protection against third party creditors is obtained by notifying the company in which the shares are held. The company whose shares are pledged must then record the pledge in its shareholders register.

Life insurance policies may be charged by registration in the life insurance register.

4.1.5 Factoring – pledges overtrade receivables

The Mortgages Act contains provisions on factoring, whereby the debtor's non-negotiable money claims (trade receivables) are pledged as collateral. Factoring can only be used by business enterprises, not by private individuals.

Under a typical factoring arrangement, the pledgor authorises a finance company or bank to collect their trade receivables. The trade receivables encompassed by the factoring agreement can

relate to the entire business enterprise or to parts of it. The debtor or debtors need not be specified. Each debtor is notified of the pledge by the invoice sent to him stating that the claim is to be paid to the finance company. Such an arrangement may also be established without a finance company taking over the collection of the claims, thus creating a floating charge over present and future trade receivables.

A factoring agreement must be registered in the register of mortgaged movable property in order to acquire legal protection against third party creditors.

4.1.6 Security and priority

Security may be created in favour of more than one beneficiary. In principle, the priority between several mortgagees/pledgees is determined by the date and time when the security was established, i.e. the mortgage/charge that was first established will have first priority. However, there are two important exceptions to this rule. Firstly, the pledgor and the respective mortgagees may agree on the order of priority between them. Secondly, and of particular practical importance, the order of priority between mortgages and charges may be determined by the rules relating to legal protection against third party creditors. In particular, the order of priority between mortgages and charges which acquire legal protection against third party creditors through registration in a register is generally determined by the date of registration. This applies, for example, to mortgages in real property, which must be registered in the land register in order to acquire legal protection against third party creditors, and to mortgages in financial instruments that are registered in a securities register. Priority between several mortgages is then determined by the date of registration.

4.1.7 Sureties and guarantees

Sureties and guarantees enable the creditor to establish a claim against parties other than the principal debtor. Sureties and guarantees are regulated by general principles of contract law. The only

specific statutory regulations governing these agreements are certain mandatory provisions in the Financial Agreements Act of 1999 concerning guarantees given in favour of banks in connection with bank ending.

Guarantee agreements provide that if the guarantor is called upon to fulfil his obligation towards the creditor and is required to pay, he shall have a right of recourse against the principal debtor.

4.2 The Oslo Stock Exchange

The Oslo Stock Exchange ("Oslo Børs") is the principal market for trading in shares, bonds and derivative instruments in Norway. The Oslo Stock Exchange is part of the NOREX alliance, which also includes the Copenhagen Stock Exchange, the Stockholm Stock Exchange, the Helsinki Stock Exchange, the Iceland Stock Exchange, the Riga Stock Exchange, the Tallinn Stock Exchange and the Vilnius Stock Exchange.

The main conditions for a listing on the Oslo Stock Exchange are:

- The issuer must be a public limited company (ASA) or equivalent foreign company;
- The securities must be of public interest and likely to be the object of regular trading;
- The market value of the shares must be at least NOK 8 million for;
- At least 25% of the shares must be distributed amongst persons with no association to the company and who each own shares corresponding to at least one round-lot;
- The company must have existed and carried on operations for at least three years.

When applying for a listing, the company is required to prepare and file an introductory prospectus.

In general, the same conditions for listing apply to both Norwegian and foreign companies. However, foreign companies are required to enter into a listing agreement with the Oslo Stock Exchange. A company that is already listed on a foreign stock

exchange can obtain a secondary listing on the Oslo Stock Exchange and will then be exempt from certain listing requirements.

Trading on the Oslo Stock Exchange must be carried out through an authorised investment firm that is a member of the Oslo Stock Exchange. Member firms place orders in the trading system on behalf of their customers. The settlement period for shares traded on the Oslo Stock Exchange is three days (T+3), so that settlement takes place on the third trading day following the day on which the trade was executed.

Shares that are traded on the Oslo Stock Exchange must be registered with the Norwegian Central Securities Depository ("Verdipapirsentralen" or "VPS" (www.vps.no)) or other Norwegian securities depository. Norwegian shareholders are required to hold shares in Norwegian companies in their own name in the VPS system. Foreign shareholders may hold their shares through authorized nominees.



GENERAL BUSINESS LAW CONSIDERATIONS

Almost all commercial businesses give rise to or come into contact with issues of general contract law, the sale of goods, product liability, competition law and intellectual property rights. These and some other general business law considerations are described in this chapter.

AS A GENERALLY
RULE, THERE ARE
NO PARTICULAR
REQUIREMENTS OF
FORM AND BOTH
WRITTEN AND VERBAL
CONTRACTS ARE
BINDING.

5.1 Contract law

Norwegian law is based on the principle of freedom of contract, subject only to limited restrictions. Contracts, whether oral or written, are generally binding on the parties. The parties may seek to enforce legally binding contracts before the courts of law pursuant to the general rules of civil procedure.

While the parties are free to decide on the terms of the contract, the formation of contracts and the remedies available in the event of breach of contract are largely regulated in statute and case law. The formation of contracts, the validity of contracts and authority to act on behalf of another are largely regulated in the Contracts Act 1918, which applies insofar as it is not contrary to agreement between the parties, commercial practice or custom. Capacity to contract is regulated in the Guardianship Act 1927. Other provisions are to be found in special legislation, for example the Insurance Agreements Act 1989, the Sale of Goods Act 1998, the Consumer Credit Act, the Good Faith Acquisition Act, the Landlord and Tenant Act 1999 and the Competition Act 2004.

A contract is formed by offer or promise on the one hand and acceptance on the other. An offer or promise becomes binding on the promisor when it comes to the promisee's notice. The withdrawal of an offer or acceptance will only be effective if it comes to the notice of the other party either before or at the same time as the offer or acceptance, as the case may be.

As a general rule, there are no particular requirements of form and both written and verbal contracts are binding. Only a few contracts must be in writing, for instance contracts of employment. Even contracts for the sale and purchase of real property can be made verbally. However, contracts for the purchase of real property must be registered in the land registry in order to acquire legal protection against creditors and other third parties.

Persons below the age of 18 and persons who have been placed under legal guardianship do not, as a general rule, have capacity to enter into legally binding contracts. A contract that is entered into by a person who lacks legal capacity is void. Minors over the age of 15 and

A CONTRACT MAY ONLY BE TERMINATED UNILATERALLY IF THE OTHER PARTY IS IN MATERIAL BREACH

persons who are placed under legal guardianship have limited capacity to enter into employment contracts and to dispose of income that they have earned. Minors who run their own homes can also enter into contracts that are necessary for the ordinary running of the home and upbringing of children, except contracts for the rent of property.

A contract or a term of a contract will also be void if it is compelled by force or threats, fraud or deceit, or abuse of authority. A contract or term of contract may also be void on the grounds of mistake. More generally, a contract or a term of a contract may be void if, on account of circumstances that were known to one of the parties on the date when the contract was entered into, it would be contrary to honesty and good faith to enforce it.

In addition to the traditional grounds for invalidity, the Contract Act contains a general provision that gives the court power to review a contract and to modify it or set it aside in whole or in part if the court finds that it would be unreasonable or contrary to good business practice to enforce the contract. The provision has been applied carefully by the courts and only rarely in commercial relationships.

Freedom of contract includes the freedom of the parties to choose the law that shall apply to their contractual relationship. However, several statutes contain mandatory provisions that cannot be set aside through a choice of law. This is usually the case where the legislation is designed to protect the party with the weakest bargaining position in a contractual relationship. Examples of such legislation are the Agency Act 1992, which in particular protects the agent as the weaker part against his principal, the Landlord

and Tenant Act 1999, which protects the tenant as the weaker part against the landlord, and the Consumer Purchase Act 2002, which protects the consumer as the weaker part against the seller. These statutes provide that the mandatory provisions cannot be deviated from by choice of law if the relationship would be governed by Norwegian law in the absence of a choice of law. Furthermore, even non-mandatory provisions of law cannot be set aside by contractual arrangements that are contrary to the *ordre public* principle. This principle maintains the basic standards of respect for human life, society and dignity in accordance with Norwegian customs and traditions.

The interpretation of contracts in Norwegian law aims at finding the true intentions of the parties. The courts rely on a number of tools of interpretation, including the wording of the contract, the parties' assumptions, the background, the action of both parties before and after they entered into the contract and the purpose of the contract. The rules of evidence in Norwegian civil procedure entitle the parties to submit whatever evidence they wish and the courts are entitled to go beyond the contract itself in order to ascertain the true intentions of the parties.

The remedies for breach of contract can broadly be divided into two groups – those that can be implemented without the assistance of the courts and enforcement officers, and those that require the assistance of the courts. The first group includes the right of the injured party to withhold his own performance (e.g. to withhold payment for faulty goods), the right to withhold the other party's property as security (e.g. to withhold goods until payment is made) and unilateral termination. A contract can only be terminated uni-

laterally if the other party is in material breach.

The second group of remedies, which require the assistance of the courts, includes price reduction in circumstances where payment has already been made, judgement for payment of the contract price and compensation (damages).

As a general rule, an order to pay compensation requires that the party in default has acted negligently, i.e. that he can be blamed for the breach of contract (*culpa*). However, there are a number of areas of contract law where the standard of liability is stricter. In the area of sale of goods, for instance, the party in default is liable to pay damages unless he can show that the breach was due to an impediment beyond his control which he could not reasonably be expected to take into account at the time the contract was concluded. This so-called control liability is much stricter than liability on the basis of *culpa*.

5.2 Sale of goods

The sale of goods is regulated in the Sale of Goods Act 1988. The Act is the result of Nordic legislative cooperation and is strongly influenced by the United Nations Convention on Contracts for the International Sale of Goods 1980. The Act contains detailed rules on the rights and obligations of sellers and buyers, including the various remedies for breach of contract. Although the Act relates only to the sale of goods, it codifies many of the provisions of general contract law, not least the remedies for breach of contract.

The Sale of Goods Act contains provisions regarding, among other things, delivery and delay in performance, the risk of loss, the properties of the goods and non-conformity, the parties' rights



THE BUYER MAY ONLY CANCEL THE CONTRACT IF THE DELAY AMOUNTS TO A FUNDAMENTAL BREACH OF CONTRACT.

in the event of the other party's breach of contract, the obligations of the parties, anticipatory breach, cancellation, damages and preservation of the goods, etc. Some of the general rules are discussed below.

As a general rule, goods must be delivered at the delivery time that is specified in the contract. If no delivery time is specified, the goods shall be delivered within a reasonable time after the conclusion of the contract. If delivery is delayed and this is not due to the buyer or circumstances on his part, the buyer can, subject to certain conditions, either demand performance in accordance with the agreement, or cancel the contract and claim damages, or withhold payment of the price. The buyer may only cancel the contract if the delay amounts to a fundamental breach of contract. If the goods have been delivered too late, the buyer cannot cancel the contract unless he notifies the seller of the claim within a reasonable time after he was informed of the delivery.

The buyer may claim damages for the loss he sustains as a consequence of the seller's delay. The Sale of Goods Act distinguishes between direct and indirect loss. A

seller is liable for the buyer's direct loss unless the seller can show that the delay was due to an impediment beyond his control which he could not reasonably be expected to take into account at the time the contract was concluded or to avoid or overcome the consequences of. The seller is liable for the buyer's indirect loss when he has been negligent.

The goods must be in conformity with the contractual requirements as to kind, quantity, quality, other properties and packaging. Except as otherwise provided by the contract, the goods must be fit for the purpose for which such goods would ordinarily be used, or be fit for any particular purpose of which the seller knew or must have been aware at the time the contract was concluded. There is an exception to this rule if the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgement. The goods must have the same qualities as any samples or models that the seller has shown. They must also be contained or packaged in the customary or other proper manner adequate to preserve and protect them. Goods are defective if they

THE BUYER CAN REQUIRE THE SELLER TO RECTIFY ANY DEFECT AT THE SELLER'S EXPENCE, PROVIDED THIS CAN BE DONE WITHOUT THE SELLER INCURRING UNREASONABLE COST OR INCONVENIENCE.

are not in accordance with the contract or these provisions.

The buyer has a number of remedies if the goods are defective and the lack of conformity is not due to the buyer or circumstances on his part. However, the buyer has a duty to take action as soon as possible and may lose his right to invoke lack of conformity if he fails to complain to the seller of the lack of conformity within a reasonable time after he discovered or ought to have discovered it.

The buyer can require the seller to rectify any defect at the seller's expense, provided this can be done without the seller incurring unreasonable cost or inconvenience. The seller may instead deliver substitute goods. The buyer may in any event demand the delivery of substitute goods when the lack of conformity is fundamental. If the seller fails to rectify the defective goods, or if rectification is not accepted, the buyer is entitled to a price reduction in proportion to the defect. If the lack of conformity amounts to a fundamental breach of contract, the buyer is entitled to cancel the contract. The buyer must give the seller notice of cancellation within a reasonable time after he was informed or ought to have been informed of the lack of conformity. The buyer may also claim damages for the loss he sustains as a consequence of the lack of conformity of the goods. Again, the Sale of Goods Act distinguishes between direct and indirect loss. A seller is liable for the buyer's direct loss unless the seller can show that the non-conformity was due to an impediment beyond his control which he could not reasonably be expected to take into account at the time the contract was concluded or to avoid or overcome the consequences of. The seller is liable for the buyer's indirect loss when he has been negligent.

If in the unlikely event that a contract has been concluded without making provision for the price, the Sale of Goods Act provides that the buyer shall pay the price that is generally charged for such goods. The price is payable at the seller's place of business or residence. If the payment is to be made against the handing over of the goods or of documents, it shall be made at the place where the handing over takes place. If the contract does not state the time of payment, the buyer must pay upon demand, but not before the goods are handed over to him or placed at his disposal in accordance with the contract or the law. The buyer is entitled to examine the goods before paying.

If the buyer fails to pay or to take delivery of the goods by collecting or receiving them and this is not due to the seller or circumstances on his part, the seller has a number of remedies. He may maintain the contract and require the buyer to pay the price, unless payment is impeded by interruption of communications or payment transfers or other circumstances beyond the buyer's control that he cannot overcome. If payment is demanded then penalty interest may also be claimed. Alternatively, the seller may cancel the contract. The seller may only cancel the contract if the delayed payment constitutes a fundamental breach of contract, or if he has given an additional reasonable period of time in which to pay and the buyer has still failed to pay. If the goods have already been taken over by the buyer, the seller may only cancel if he has made a reservation to that effect or the buyer rejects the goods. If the buyer has taken possession of the goods, the seller's remedy for non-payment is to resort to debt proceedings, which fall outside the scope of the Sale of Goods Act.

The seller can claim damages for the loss caused by the delay in payment. Again, the Sale of Goods Act distinguishes between direct and indirect loss. The buyer is liable for the seller's direct loss unless the buyer can show that the delay was due to interruption of communications or payment transfers or other impediment beyond his control which he could not reasonably be expected to take into account at the time the contract was concluded or to avoid or overcome the consequences of. The buyer is liable for the seller's indirect loss when he has been negligent.

5.3 Product liability

Liability for defective and dangerous products is regulated in the Product Liability Act 1988. The Act is based upon and implements into Norwegian law the Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, as subsequently amended.

The Act is essentially designed to protect consumers and covers damage caused by death or personal injury and, subject to certain conditions, damage to property.

The Act imposes liability on the producer for damage caused by his "products". This covers all kinds of goods and movables, whether a natural or industrial product, raw material or finished product, part product or main product. However, the product must be made or supplied for sale as part of the producer's profession, business or equivalent activity. The Act covers products that have been incorporated in another movable or in real property (e.g. machinery parts, electric



components, concrete and substructures etc.) The Act covers waste resulting from production if the waste is supplied for sale as part of an activity that is covered by the Act. The Act also covers electricity. For instance, the Act will apply if high voltage electricity is delivered to a plant that requires low voltage electricity and this causes personal injury or damage to property. Land or rights in land, on the other hand, are not “products” within the meaning of the Act. However, as mentioned, construction elements that are incorporated into real property are deemed to be “products” within the meaning of the Act. Services, for instance financial advice and medical treatment, are not covered by the Act. The producer of the product used for medical treatment may, on the other hand, be liable.

The Act imposes liability on the “producer” for damage caused by a product made or supplied for sale as part of the producer’s profession, business or equivalent activity. Anyone who manufactures or produces a product is liable as a producer, as is anyone who presents a product as his own by placing his name, trademark or other distinguishing mark on the product

or its packaging. The term “producer” also covers the importer of products, including importers outside the EU/EEA. The Act also applies to a certain extent to suppliers in the retail part of the chain. Liability for the supplier can arise if the producer is not easily identifiable from the product and the dealer does not within a reasonable time, identify the name and address of the producer or previous dealer if required to do so by the injured person. The definition of producer is designed to ensure that there is always a person who can be sued in Norway pursuant to the Act. The injured party shall not be required to take out proceedings abroad in order to pursue his or her claim.

The Act does not regulate a person’s liability for dangerous products in his or her capacity as owner or user of a product. Nor does it regulate liability as a salesman. If the supplier is also the producer, he may of course be liable as a producer. He may also be liable according to the terms of a contract, or pursuant to the Sale of Goods Act, or pursuant to general principles of liability based on the law of damages which the liability as a producer does not cover.

The Act applies to “defective” products, that is, products that do not provide the safety that the consumer could reasonably expect (safety deficiency). If there is no difference between the user’s expectations and what actually happens, there is no safety deficiency. To determine whether a user has a reasonable expectation of safety, all matters relating to the product must be taken in account. The Act explicitly mentions presentation, marketing and foreseeable use. The basis of liability relates solely to the product itself, not to the circumstances of the producer. The relevant time for making the assessment is the time when the product was supplied for sale. The evaluation is partly objective: what would a person belonging to this group normally expect? A producer may thus be held liable towards some groups yet not others, e.g. children or older people. When considering the degree of safety the user can expect, considerable weight is attached to statutory instruments that describe the quality of products. A producer will normally be responsible for a product that causes injury and does not fulfil the quality requirements laid down in statutory instruments or branch



guidelines. However, the product may also have a safety deficiency even if the quality claims are fulfilled, e.g. as a result of the producer's advertising.

The Act applies to damage caused by death or personal injury and to damage to property. Damage to property may only be the subject of a claim if it was intended for private use or consumption and if it was used by the person who suffered the loss mainly for his own private use or consumption. The Act does not apply to damage caused to the product itself or damage which a component part causes to a product in which it was used before the product was supplied for sale. The total damage claimed by a person in respect of loss of property must exceed € 500.

The injured party is required to prove the damage, the defect in the product and the causal relationship between the two. The measure of damage is calculated in the same way as any other claim for compensation. As a general rule, the injured party shall receive compensation for the full extent of his financial loss.

There are some exceptions to the producer's liability. The producer is not liable if he can show that he did not supply the product for sale as part of his activities. Thus, the producer will not be liable if the product has been supplied following a theft from his warehouse. Nor is he liable if the safety deficiency did not exist at the time when the product was supplied for sale and there was no obligation to avert the damage or to minimize it afterwards. Thirdly, the producer will not be liable if the reason for the safety deficiency was that the product satisfied indispensable rules issued by a public authority. The producer should not, of course, be liable in damages for having complied with regulations issued by the authorities.

The Product Liability Act contains special rules relating to liability for injury caused to both humans and animals by a drug or during testing of a drug. Liability for the producer of drugs is not dependent on a safety deficiency. However, whether there is a safety deficiency is of major importance. If the injury is due to a safety deficiency, the producer is strictly liable for death and personal injury and, subject to the conditions referred to above, for damage to property. The only limitation is that the consequences must be foreseeable and related to the product. If there is no safety deficiency, the producer can also be liable for death, personal injury and damage to property, but there are several exceptions, particularly where the injury is not due to test injuries.

All producers of drugs are obliged through membership of the Drug Liability Association to be insured against drug liability. The same applies to drug importers if the producer does not have such insurance. Drug liability insurance applies directly for the benefit of the injured person.

The producer cannot disclaim his liability pursuant to the Act. Contractual clauses restricting or limiting liability are void. However, a contract between a producer and an importer regulating compensation for the importer which is responsible under the Act, is not necessarily void, provided the contract does not limit or restrict the user's right to compensation from the importer in accordance with the Act.

5.4 Product control and environmental information

Protection against damage to health and the environment from dangerous products is regulated in the Product Control Act of

1976, which imposes duties on the producers, importers, sellers and users of products that may cause such damage. The producer, importer, seller and user of products that may cause damage to health or the environment has a specific duty of care and must make all reasonable efforts to prevent and limit damage. The producers and importers of goods must also have knowledge as to whether the product may cause damage to health or the environment.

Following Norway's ratification of the Århus Convention on the Freedom of Access to Information on the Environment in 2004, the Product Control Act was amended to take account of this and to implement Council Directive 90/313/EEC of 7 June 1990 on freedom of access to information on the environment. At the same time, a new Act on the right to environmental information and public participation in decision-making processes relating to the environment (the Environmental Information Act 2003) was passed. Both statutes entitle the general public to ask questions of a producer, importer, seller and public office, etc. about products, factor inputs, methods of production etc. in order that they may evaluate the health or environmental risks connected to the product or the manufacturing process. The applicant need not state the reason for the request for information. As a general rule, the recipient of a request for information is obliged to respond. However, the duty to respond pursuant to the Product Control Act applies only to entities that deal with products that may cause damage to health or the environment. The duty to respond pursuant to the Environmental Information Act applies only to entities with input factors, products or manufacturing methods that may have an appreciable effect on the environment. Furthermore, the recipient is not obliged to disclose trade secrets. The recipient may also refuse a request that is clearly unreasonable.

The information may be provided in any appropriate form or format. The information must be adequate and comprehensible with due regard for the applicant's expressed need for information, if any. The request may be answered by referring the applicant to generally available public registers, reports and product labelling, etc. if this gives a satisfactory answer.

The recipient of a request for information must make a decision on the request and make the information available as soon as possible and by no later than one month after the request was received. The time limit is extended to two months in certain circumstances. The recipient must inform the applicant about the extension of the time limit and state the reasons for the delay and when a decision may be expected.

A refusal to disclose information must state the provision pursuant to which the refusal is made and must be accompanied by information on the right to request further grounds for the refusal and the right of appeal. Refusal of a request for information pursuant to both the Product Control Act and the Environmental Information Act may be appealed to the Appeals Board for Environmental Information.

5.5 Competition

The purpose of the Competition Act of 2004 is defined in section 1 as "to further competition and thereby contribute to the efficient utilization of society's resources".

Competition in Norway is supervised by the Competition Authority (Konkurransetilsynet ([www.konkurransetilsynet](http://www.konkurransetilsynet.no))), which is organised under the Ministry of Government Administration and Reform. The Ministry is the appellate body for the decisions of the Competition Authority and may also reverse decisions by the Competition Authority if they are invalid, even if the decision has not been appealed. The Ministry may order the Competition Authority to deal with a case, but it cannot instruct the Competition Authority in the decision of an individual case.

The responsibilities of the Competition Authority are defined in the Competition Act. The Competition Authority shall supervise competition in the various markets. Among other things, it shall ensure adherence to the prohibitions and orders of the Act. It shall also intervene where necessary against concentrations, implement measures to promote market transparency and enforce the competition provisions of the EEA Agreement. The Competition Authority shall also call attention to any restrictive effects on competition of public measures and, where appropriate, submit proposals aimed at furthering competition and efficient utilization of society's resources. The Competition Authority also has a duty to provide guidance on the interpretation of the Competition Act, its scope and its application in individual cases.

The Competition Act applies to trade in all kinds of business, except terms and conditions relating to work or employment. With this exception, it applies to all terms of business, agreements and actions that are undertaken, have effect, or are liable to have effect within Norway.

The Competition Act is partly harmonised with the competition rules of the EU, especially Articles 81 and 82 of the EC Treaty, which are mirrored in Articles 53 and 54 of the EEA Agreement. EU practice is therefore also relevant to the interpretation of the Competition Act.

In line with Article 81 of the EC Treaty and Article 53 of the EEA Agreement, the Competition Act contains a prohibition against agreements that restrict competition, e.g. cartels. All agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition are prohibited. In particular, the Act prohibits agreements that directly or indirectly fix purchase or selling prices or any trading conditions, agreements that limit or control production, markets, technical development, or investment, agreements that share markets or sources of supply, agreements that apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage, and agreements that make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations

INDIVIDUALS AND UNDERTAKINGS HAVE AN EXTENSIVE OBLIGATION TO COOPERATE WITH THE COMPETITION AUTHORITY AND TO PROVIDE INFORMATION

which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Any such agreements are automatically void. However, agreements that contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit are not prohibited. Such agreements must not impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives. Furthermore, the agreements must not afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

The Competition Act also contains a prohibition against the abuse of dominant position, in line with Article 82 of the EC Treaty and Article 54 of the EEA Agreement. Abuse of a dominant position is exemplified in the Act. The Act states that such abuse may, in particular, consist in directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions; or limiting production, markets or technical development to the prejudice of consumers; or applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

The Competition Authority may order undertakings or associations of undertakings that infringe the prohibition against agreements that restrict competition or the prohibition against abuse of

dominant position to bring the infringement to an end. The order may include any measure necessary to bring the infringement to an end. Structural measures may only be ordered if there are no equally effective behavioural measures or if a behavioural measure will be of great burden to the undertaking. In addition, the Competition Authority can impose administrative fines on the undertaking or report the infringement to the public prosecuting authorities.

The Competition Authority may also order interim measures if there are reasonable grounds to assume that there has been an infringement and there is a risk of lasting and irreparable damage to competition. An interim order cannot be made if the undertaking against which it is made would suffer damage or inconvenience that is clearly disproportionate to the interests protected by the order. Interim measures must be issued for a limited term, but may be prolonged if the risk to competition continues.

In cases that involve questions of principle or interests of major significance to society, the government may approve conduct that contravenes the prohibition against agreements that restrict competition or the prohibition against abuse of dominant position. It can also issue orders to bring an infringement to an end and reverse decisions of the Competition Authority.

The Competition Authority has extensive powers to obtain information and documents and to secure evidence. Individuals and undertakings have an extensive obligation to cooperate with the Competition Authority and to provide information. The Competition Act also gives the Competition Authority power to issue administrative fines for infringements of

the prohibitions of the Act. Alternatively, the Authority can report infringements to the public prosecuting authority in order that criminal sanctions can be imposed. Individuals and undertakings that cooperate with investigators may have their fines or punishment reduced according to a new leniency programme.

The Act contains rules on control of mergers and acquisitions (concentrations) and introduces a system of pre-merger notification. These rules are described in more detail in Chapter 3.3. The Competition Authority is required by the Act to intervene against a concentration if the Competition Authority finds that the concentration will create or strengthen a significant restriction of competition, contrary to the purpose of the Act.

5.6 Intellectual property

As in many other countries, the rules on the protection of intellectual property rights in Norway are very complex. Norway has engaged in the international cooperation in this area from an early stage and has ratified a number of international agreements, including the Paris Convention for the Protection of Industrial Property of 20 March 1883 as revised in Stockholm on 14 July 1967, the Berne Convention for the Protection of Literary and Artistic Works of 1886 as revised in Paris in 1971, the Universal Copyright Convention of 1952 as revised in Paris on 25 July 1971 and the Patent Cooperation Treaty (PCT) signed in Washington DC on 19 June 1970. Norway is not a member of the European Patent Organisation (EPO) but it seems likely that it may become a member from 1 January 2008.

Norwegian intellectual property laws are generally based on these international con-



ventions and go far to protect intellectual achievements. Many of the laws are the result of legal cooperation between the Nordic countries. In particular, the copyright laws in the Nordic countries are very similar. In addition, Norway has strived - and to some extent is obliged - to adapt its laws to EU legislation.

The Norwegian Copyright Act 1961 provides the statutory framework in this area. The Act regulates copyright protection of literary, scientific and artistic works of any type, other rights to performing artists' performances of works, databases and photographic pictures, etc. It also contains various provisions on privacy protection regarding photographs of a person and title rights, etc.

In addition to the Copyright Act, there are separate statutes governing patents, trademarks, company names and design, see the Patent Act 1967, the Trademark Act 1961 the Trade Name Act 1985 and the Design Act 2003. There is also a specific statute that regulates employees' rights to inventions, see the Act relating to the Right to Employees' Inventions 1970.

Copyright confers an exclusive right on the author to manage his work by producing

copies and by making it available to the public, whether in the original or in an altered form, in translation or adaptation, in another literary or artistic form, or by other technical means (the commercial rights). However, the author may not object to other persons using his work in such a manner that new and independent works are created. In addition to the commercial rights, the author has exclusive *droit morale* rights which, to some extent, cannot be assigned to a third party. This means that the author is entitled to have his name stated in the manner required by proper usage. Furthermore, there are certain limitations on the extent of the copyright in regard to private and educational use, use in health institutions and the right to quotation and special provisions regarding broadcasting, etc. Subject to the limitation ensuring the *droit morale* rights, the author may, wholly or partly, assign his right to dispose of his artistic work.

In principle, copyright lasts during the author's lifetime and 70 years after his death. The registration of the copyright is independent of the author's rights under the Copyright Act.

According to the Patent Act, the owner of an invention can apply for a patent. The patent includes the right to use the invention for commercial purposes. A patent can be maintained for up to 20 years from the date of application. An annual fee is required as long as the patent is maintained. Application for a patent must be made in writing to the Norwegian Patent Office. Patent agencies specialise in the application process. If an application is refused by the Norwegian Patent Office, the applicant has two months from receipt of the notice of refusal to seek judicial review from the Oslo City Court, which has exclusive jurisdiction in Norway over patent issues.

It is possible to obtain exclusive rights for a trademark (logo or other mark) by proving that it is well established in the market. However, the best protection is achieved by registering the trademark. By registering a design it is possible to acquire exclusive rights to use a new product design. Applications for a trademark or a design must be made in writing to the Norwegian Patent Office.

The applicant for a domain name under

IN BANKRUPTCY PROCEEDINGS ALL THE DEBTOR'S ASSETS TO WHICH THE CREDITORS HAVE ACCESS ARE CONFISCATED AND LIQUIDATED FOR DISTRIBUTION AMONG THE CREDITORS.

the Norwegian top-level domain “.no” must represent or be a part of an organisation that has an address in Norway and is registered as such in the Central Coordinating Register for Legal Entities. Each organisation may at any time register up to 20 domain names directly under “.no”.

5.7 Environmental and planning law

Norwegian law contains extensive regulations on the environment and planning. The Planning and Building Act 1985 and regulations laid down pursuant to the Act are the most important statutory instruments in the area of planning law and also contain important provisions on environmental protection. The Environmental Protection Act 1970, the Pollution Control Act 1981, the Forestry Act 2005 and the Svalbard Environmental Protection Act 2001 all contain provisions that are relevant to planning, building and the environment.

The regulatory provisions of the Planning and Building Act are divided into separate parts relating to planning at national, county and municipal level. The rules are detailed. The main principle in the Act is that planning and building must be carried out in a manner that safeguards the environment against needless destruction and damage and that any violation of planning and building regulations will be pursued. Those who act in violation of the Act can be held liable for damage. The Act also contains rules governing the process and handling of building projects.

The Pollution Control Act 1981 was established to prevent and reduce harm and nuisance from pollution. Section 1 of the Act states that the purpose of the Act is to protect the outdoor environment against pollution and to reduce existing pollution and waste. Environmental protection is not the only relevant consideration here. The Act shall secure a satisfactory environmental quality based on a balance of interests, which includes costs associated with any measures and other economic considerations.

Pollution is defined in the Act and has two aspects. Firstly, certain actions must be present. There has to be a discharge of solids, liquids or gases to air, water or ground. This discharge must be caused by human activity, not by nature itself. Secondly, there has to be a risk of adverse effects or impacts on the environment. The discharge has to affect the recipient. It is sufficient that the discharge may cause damage or nuisance to

the environment. Any damage or nuisance is relevant here, whether it affects humans, animals or nature itself.

The Act distinguishes between legal and illegal pollution. The basic principle and the main rule of the Act is that it is prohibited to possess, do, or initiate anything that may entail a risk of pollution, unless this is specifically permitted by law. The liability for damage caused by pollution is strict.

Pollution control in Norway is exercised by the Norwegian Pollution Control Authority (SFT), which is a directorate under the Ministry of the Environment. Almost all pollution activity in Norway is based on individual permits or licences issued by the pollution control authorities. Whether a permit is granted or not, depends on the professional judgement of the pollution control authorities.

The Pollution Control Authority exercises authority laid down in the Pollution Control Act, together with the county pollution agencies and the Ministry. The Pollution Control Authority also monitors and provides information about environmental development. It also acts as an expert and advisory body to the Ministry of the Environment and instructs and guides county governors within its area of responsibility. The Pollution Control Authority has the main responsibility for promoting Norwegian objectives in international environmental cooperation.

5.8 Bankruptcy

The main Norwegian insolvency legislation is found in the Bankruptcy Act and the Act on Creditors' Access to Assets, both from 1984. The Bankruptcy Act lays down the conditions for the opening of insolvency procedures and rules for the conduct of proceedings. The Creditor's Access to Assets Act regulates which assets the creditors of an insolvent estate have access to, cut-off dates, the priority between creditors and which claims are allowable. It also sets out the rules governing the debtor's contracts and auditing/revocation of certain insolvency motivated dispositions during the period leading up to insolvency.

Bankruptcy proceedings may be initiated in Norway by application of the debtor or an unsecured creditor. The applicant must show that the debtor is both insolvent, i.e. unable to pay debts as they fall due, and insufficient, i.e. that the debtors' liabilities exceed his assets. Acknowledgement by the debtor gives rise to a legal presumption for insolvency and insufficiency.



The same applies if there has been a general cession of payments, or if unsuccessful debt enforcement attempts have been made during the last three months, or if the debtor does not pay an undisputed due debt after he has been served with a bankruptcy notice demanding payment.

Debt reorganisation proceedings may only be initiated with the consent of the debtor. The debtor must be able to demonstrate that he is insolvent, but not likely to obtain a composition with his creditors. If an application for debt reorganisation proceedings is granted, it will generally stay a bankruptcy application for an initial period of three months, unless it is supported by at least three unsecured creditors representing at least 40% of the claims. Debt reorganisation proceedings consist of potentially three stages. The first stage involves an assessment of the debtor's financial situation. The debtor must prepare a composition proposal together with a court-appointed supervisory committee. The second stage comprises negotiations for a voluntary composition, dependent on full unsecured creditor approval. The court can waive the second stage if it finds that it is unlikely to succeed. This will often be the case. If no voluntary composition is reached, or none is attempted, the proceedings proceed to a third stage, which comprises negotiations for a compulsory composition, dependent on 60 or 75% unsecured creditor approval according to the proposed composition. Also this stage can be waived and the proceedings can move directly from the assessment stage to bankruptcy if the court finds it unlikely that the requirements for a composition will be met, or if the debtor gives up the attempt.

Following an application for bankruptcy proceedings, the court will call a hearing to decide whether the requirements have been met. The applicant must provide security for the costs of proceedings. If an application is upheld, bankruptcy is opened with retroactive effect from the time of the application. If the bankruptcy has been preceded by debt reorganisation proceedings, the bankruptcy will take effect from the time of such application. This date is referred to as the cut-off date. Debt reorganisation proceedings are opened by the court after a similar procedure. However, since debt reorganisation proceedings will generally stay a bankruptcy application for an initial period of three months, the evidence requirements are stricter.

In bankruptcy proceedings all the debtor's assets to which the creditors have access are confiscated and liquidated for distribution among the creditors. The debtor loses control of these assets from the time of application for bankruptcy. The bankruptcy is publicised and registered in public registries.

The practical side of bankruptcy proceedings is carried out by an estate board, which is appointed by the court, usually following consultation with the major creditors. The estate board is normally led by a lawyer, with representatives of the creditors and an employee representative if requested by trade unions. The members of the estate board have equal rights. The chairman, however, has the power to bind the board. The tasks of the board are to assess the assets of the estate, secure the assets and protect them against other pretenders; to collect outstanding claims; to preserve, enhance and realise the assets in the best possible manner; to compile and assess claims including

A FOREIGN BANKRUPTCY WILL, IN PRINCIPLE, HAVE NO EFFECT IN NORWAY, EXCEPT FOR BANKRUPTCIES INSTITUTED IN THE OTHER NORDIC COUNTRIES AND WHICH HAVE A DIRECT EFFECT ON THE DEBTOR'S ASSETS IN NORWAY

their priority; and to propose a dividend distribution for the court's approval. A separate auditor is normally appointed to audit both the debtor's business prior to bankruptcy and the business of the estate. The debtor is obliged to assist the court and the estate board.

In bankruptcy, unsecured creditors receive dividends on a strictly mathematical parity basis. However, certain claims have preferential priority. Priority is given to the costs related to the bankruptcy proceedings, certain pension and wage related claims for a period of up to six months, unpaid tax, VAT and national insurance contributions. On the other hand, some claims have priority after ordinary unsecured claims. These include interest on claims that falls due after the cut-off date, subordinated debt, penal taxes or fines and unfulfilled promissory gifts. Fully secured creditors generally remain unaffected by the bankruptcy. Creditors who in good faith had obtained an actual right of set-off prior to the cut-off date retain this right.

As mentioned, the debtor is obliged to assist the court in bankruptcy proceed-

ings and has party rights in the proceedings. After the proceedings are closed, the debtor remains liable for any debt that is not covered by dividend payments. A limited company that is declared bankrupt shall be dissolved and struck off the Register of Business Enterprises once the proceedings are closed.

Certain assets are exempt from liquidation in the bankruptcy. These include personal belongings, tools, clothes etc. up to a certain value and salary, contributions and compensation payment, etc. to the extent these are necessary for the upkeep of the debtor and his family. The debtor's right to retain a home to live in is also protected to a certain extent.

Certain of the debtor's dispositions prior to bankruptcy may be revoked. These include dispositions and transactions that are motivated by bankruptcy. Furthermore, all gifts, renunciations of inheritance, extraordinary payments of debts and provisions of security for existing debt during a given period prior to the cut-off date can also be revoked.

Any provision in a contract that gives the other party a right to terminate in case of

bankruptcy is generally not enforceable in Norway. This is because the bankrupt estate has an extensive right to accede to the debtor's contracts as long as these do not have a strong personal element. However, the other party may require the estate to declare its position and, if the estate does not accept termination of the contract, the estate will become party to the contract in the debtor's stead and its obligations to the other party will thereafter have priority as costs of the bankruptcy proceedings.

Bankruptcy can be opened in respect of all debtors domiciled in Norway, including the estate of persons domiciled in Norway at their death, and companies registered in the Register of Business Enterprises and/or having their principal place of business in Norway. Bankruptcy proceedings in Norway relate to the debtor's worldwide assets. However, assets abroad can only be accessed with the assistance of the debtor (which he or his directors have a duty to render) and/or foreign courts. Norway has treaties on bankruptcy with the other Nordic countries.



A foreign bankruptcy will, in principle, have no effect in Norway, except for bankruptcies instituted in the other Nordic countries and which have a direct effect on the debtor's assets in Norway. Foreign judgements are not immediately recognised or enforceable in Norway. Recognition and enforcement depends upon the existence of a bilateral or multilateral agreement with the foreign state in question. Nor are foreign judgements conclusive in determining claims in Norwegian bankruptcy proceedings, except if regulated by treaty. Norway has some such treaties on civil law judgements, notably with the UK and the Nordic countries. Notwithstanding, a judgement of a foreign court will usually have a strong evidential effect and may be held to constitute prima facie evidence of a claim, provided the foreign proceedings are deemed by the Norwegian court to be safe and not obviously flawed.



SHIPPING AND TRANSPORT LAW

Norway is a major maritime country and, not surprisingly, the laws relating to carriage by sea are highly developed. These rules and the rules relating to carriage by road, air and rail are described in this chapter.

6.1 Carriage by sea

6.1.1 Introduction

The carriage of goods and passengers by sea is regulated in the Norwegian Maritime Code 1994, in particular chapters 13 and 14 on the carriage of goods and Chapter 15 on the carriage of passengers. The Maritime Code 1994, which replaced the Maritime Code 1893, is the result of a Nordic cooperation. Norway, Sweden, Denmark and Finland have enacted national maritime codes based on this cooperation and the regulations in all four countries are the same in all material respects, except for the rules relating to domestic carriers.

Norway has ratified the Hague-Visby Rules. The Maritime Code, in particular Chapter 13 on the carriage of goods, is assumed to be in conformity with Norway's obligations pursuant to these Rules. However, the actual wording of Chapter 13 is based on the wording of the Hamburg Rules. Furthermore, issues that are not regulated in the Hague-Visby Rules are to a large extent regulated by

provisions similar to the provisions of the Hamburg Rules.

6.1.2 Carriage of goods

The relationship between the carrier and the owner of the goods is regulated in Chapter 13 of the Maritime Code, which applies to contracts for the transport of packed goods by sea when the goods are shipped under a bill of lading, seaway bill or other similar document evidencing the transport agreement.

Since the Maritime Code is intended to comply with the Hague-Visby Rules, the Norwegian provisions on bills of lading are the same as or similar to the bill of lading provisions in other countries that have ratified the Rules. However, the Maritime Code goes further than the Hague-Visby Rules and regulates areas on which the Rules are silent. The Maritime Code also gives stronger protection to cargo interests than in the Hague-Visby Rules. Furthermore, unlike in the other Nordic countries, the exception from liability for loss due to nautical fault and fire does not apply to contracts for carriage by sea in domestic trade in Norway.



Chapter 13 of the Maritime Code applies to contracts for the carriage of goods to which the Hague-Visby Rules apply, including contracts for the carriage of goods between Nordic ports. It also applies to the carriage of goods in domestic trade in Norway, i.e. between Norwegian ports. The provisions of Chapter 13 are mandatory for contracts for the carriage of goods between two states

- (1) when the agreed port of loading is in a Hague/Hague-Visby state, or
- (2) when the agreed port of discharge is in one of the Nordic countries, or
- (3) when several ports of discharge are agreed upon and the actual port of discharge is amongst the agreed ports and is in one of the Nordic countries, or
- (4) when the transport document is issued in a Hague/Hague-Visby state, or
- (5) when the transport document states that the Hague-/Hague-Visby Rules and thereby nationally enacted statutes of a Hague-/Hague-Visby state are applicable.

The period of the carrier's liability pursuant to the Maritime Code is longer than

in the Hague-Visby Rules. The carrier is deemed to be liable from the time he receives the goods at the port of loading until he delivers the goods to the recipient at the port of discharge.

The liability of the carrier when a bill of lading has been issued also differs from the Hague-Visby Rules to some extent. If the shipped goods are damaged or delayed upon arrival, the carrier is liable towards the owner of the goods unless he can prove that the damage or delay is not caused by his own or his servants' negligence. The Maritime Code places the burden of proof on the carrier. If the carrier cannot satisfy the burden of proof, the damage or delay is deemed to be caused by his negligence and he is liable for the loss.

In compliance with the Hague-Visby Rules, the bill of lading is deemed to be proof of what the carrier received at the port of loading. In a claim for damage, the owner of the goods needs only to show that the goods received are not in compliance with the description in the bill of lading. Against the shipper of the goods, however, the carrier can submit

proof that the goods were damaged when he received them. If the bill of lading has been transferred or endorsed, the carrier's liability is stricter. The carrier cannot avoid liability towards the endorsee by presenting proof that the goods were damaged when he received them from the shipper. To avoid liability, the carrier must make a note of the damage on the bill of lading.

Unlike the Hague-Visby Rules, the Norwegian provisions on the liability of the carrier also apply to damage or delay to deck cargo, provided that the carrier is authorised to place the cargo on deck. Authorisation may be contained in the terms of the carriage contract, or there may be a general commercial practice that the cargo can be stored on deck. Furthermore, certain types of cargo must be placed on deck pursuant to statute. If cargo is placed on deck without the necessary authorisation, the carrier's liability may be stricter than the liability pursuant to the general rules.

The provisions of the Maritime Code on limitation of liability are the same as in the Hague-Visby rules. However, higher

limits of liability apply if the carriage is only within Norway.

6.1.3 Transport under charter parties

The relationship between the charterer and the owner of the vessel under contracts of charter is regulated in Chapter 14 of the Maritime Code.

Unlike the provisions of Chapter 13, most of the provisions of Chapter 14 are not compulsory and may be set aside by contractual provisions. However, there are exceptions. In voyage charters for the carriage of goods between Norwegian ports and between inter-Nordic ports, the provisions of the Maritime Code on the liability of the carrier are mandatory and the parties cannot agree on alternative provisions. Thus, the liability of a carrier under a voyage charter between Norwegian ports and between inter-Nordic ports is the same as the liability of a carrier under a bill of lading. The provisions of the Maritime Code on the timeliness of claims under a charter party are also compulsory, as are the provisions on the timeliness of claims under a bill of lading.

Time charter parties, on the other hand, are not subject to compulsory regulation. However, if the relationship between the cargo owner and the carrier under a time (or voyage) charter is based on the issuance of a bill of lading, the compulsory provisions of Chapter 13 of the Maritime Code will apply to the owner's liability towards a third party in good faith holding the bill of lading.

6.1.4 Carriage of passengers and accompanying luggage

The carriage of passengers and accompanying luggage is regulated in Chapter 15 of the Maritime Code. The liability limits in Chapter 15 are the same as the limits in the Athens Convention of 2002.

6.1.5 Direct action under P & I insurance

The Norwegian Insurance Contract Act of 1989 entitles an injured party (e.g. a

cargo owner or a passenger) to take direct action against the carrier's P & I club in cases where the carrier is insolvent and jurisdiction can be established before a Norwegian court. The P & I club can claim the same defences against the injured party as it could against its member, except for defences relating to the carrier's acts or omissions subsequent to the insurance event (late reporting of claim and failure to mitigate losses, etc.) The terms of the Insurance Contract are mandatory. The Act provides that, in the event of bankruptcy, contractual provisions like "pay to be paid" clauses and other variations of contractual provisions that purport to exclude the right to direct action are void.

6.2 Carriage by road

6.2.1 Carriage of goods

The carriage of goods by road is governed by the provisions of the Road Carriage Agreements Act 1974. The Act is modelled on and implements the provisions of the Geneva Convention on the Contract for the International Carriage of Goods by Road (CMR) 1956, which is ratified by Norway. The Act applies to contracts for the carriage of goods by road both in Norway and between Norway and other convention states. Although the statutory rules are largely the same, there are some important differences between the rules for domestic and international carriage contracts.

The Road Carriage Agreements Act is compulsory for international road carriage contracts.

For contracts for the carriage of goods by road in Norway, the Road Carriage Agreements Act is compulsory for the benefit of the owner of the goods. This means that the parties may agree on terms that are more beneficial to the owner of the goods than those contained in the Act, but they cannot agree on terms that are less beneficial to the owner.

The contract of carriage must normally be confirmed in a consignment note that must contain certain information about

the goods and their carriage. The consignment note must be signed by the carrier after the goods have been delivered for carriage and provides proof of the agreed terms of carriage and that the carrier has taken possession of the goods. Any reservations that the carrier has about the goods or their condition must be stated in the consignment note. If the consignment note contains no specific reservations by the carrier, it shall be presumed, unless the contrary is proved, that the goods and their packaging appeared to be in good condition when the carrier took them over and that the consignment corresponded with what is stated in the consignment note. Thus, in a subsequent claim for damage to the goods, the courts will assume that the goods were in the condition stated in the consignment note unless the carrier can prove otherwise.

At the destination, the goods shall be delivered to the consignee stated in the consignment note against a receipt. As a general rule, however, the consignor has a right of access to the goods until the consignee demands delivery and can, for instance, order the carrier to deliver the goods to someone else. However, the consignor can give the consignee a right of access to the goods from the date of issue of the consignment note by stating this in the consignment note. In that case, the consignor has no right to redirect the goods to anyone else.

As a general rule, the carrier is strictly liable for the total or partial loss or damage to the goods occurring between the time when he took over the goods and the time of delivery, and for the late delivery of the goods. Where delivery is delayed by 30 or in some cases 60 days, the goods are deemed to be lost. There are some exceptions to the carrier's strict liability. For instance, the carrier is relieved from liability by reason of the defective condition of the goods, deficient instructions from the consignor and force-majeur events. In the event of total or partial loss of goods, compensation shall be calculated by reference to the value of the goods at the place and time at which they were accepted for carriage. However, the carrier's liability is limited to 17 SDR/kg for domestic transport and 8.33 SDR/kg for

international transport. The consignor can also claim certain carriage charges, customs duties and other charges incurred in respect of the carriage of the goods. The consignor may, against payment of a surcharge, declare in the consignment note a value for the goods exceeding the limits referred to above. In that case, the stated value shall be the maximum limit for the claim.

In case of damage, the carrier shall be liable for the amount by which the goods have diminished in value. The compensation cannot exceed the amount payable in the case of total loss if the whole consignment has been damaged or, if only part of the consignment has been damaged, the amount payable in the case of loss of the part affected. The maximum limits will not apply if the damage was caused by the wilful misconduct/gross negligence of the carrier, his servants or agents.

6.2.2 Carriage of passengers

The rights of passengers who are injured in road traffic accidents are regulated in the Automobile Liability Act 1961. The Act entitles passengers and other third parties who are injured by motor vehicles to make a direct claim against the insurance company of the vehicle in question, regardless of any fault by the driver.

6.3 Carriage by air

The carriage of goods and passengers by air is regulated in the Aviation Act 1993. The Act regulates both public and private civil aviation and also contains some provisions on military aviation.

Due to the international character of aviation, regulation is largely the result of bilateral and multinational agreements. Norway has ratified the Warsaw Convention for the Unification of Certain Rules relating to International Carriage by Air of 1929, the Hague Protocol of 1955 and the Montreal Protocols of 1975 which amend the Warsaw Convention. Norway has also ratified the supplementary Guadalajara Convention of 1961 and the Chicago Convention of 1944.

In 2003, Norway ratified the Montreal Convention for the Unification of Certain Rules for International Carriage by Air 1999, which modernises and consolidates the Warsaw Convention and related instruments. The Montreal Convention will apply between Norway and other States Parties that have ratified the Convention and will prevail over the rules that apply to international carriage in the Warsaw Convention and related instruments. The rules of the Warsaw Convention continue to apply between Norway and States Parties to the Warsaw Convention that have not ratified the Montreal Convention.

The Aviation Act 1993 as amended implements Norway's obligations pursuant to these conventions.

Pursuant to the EEA Agreement, Norway is obliged to implement EU aviation legislation. Thus, carriage by air between Norway and EU/EEA states, and in particular the rules relating to lia-

bility, are largely the same in Norway as in the other EU/EEA states. To a certain extent, the rules applicable within the EU/EEA states are more favourable than the rules laid down in the Warsaw and Montreal Conventions.

As a general rule, an air carrier is strictly liable for damage or death/injury to passengers and goods (cargo). Liability for death or injury to passengers applies insofar as the accident which caused the death or injury took place on board the aircraft or in the course of embarking or disembarking. Liability for damage to goods applies insofar as the event which caused the damage took place during the carriage by air.

The carrier's strict liability for death or injury to passengers is absolute. However, in the event of damage to goods, the carrier is not liable for damage caused by the inherent defects, quality or nature of the goods, defective packaging of the goods performed by a person other than the carrier, his servants or agents, an act of war or armed conflict, or an act of public authority carried out in connection with the entry, exit or transit of the goods.

The carrier's liability for loss and damage to goods (cargo) and for delayed goods is limited to 17 SDR/kg. However, limitations on liability for death and injury to passengers have been considerably reduced in recent years in accordance with European and international legislation. Today, in line with the Montreal Convention 1999 and Council Regulation (EC) No. 2027/97 of 9 October 1997 on air carrier liability in the event of accidents as amended by Council Regulation (EC) No. 889/2002, an air carrier cannot exclude or limit its liability for damages for death and injury to passengers not exceeding 100 000 SDR. However, the carrier is not liable for damages for death and injury to passengers that exceed SDR 100 000 if the carrier can prove that such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents, or that such damage was solely due to the negligence or other wrongful act of a third party. In other words, an air carrier is strictly liable for death and injury to passengers up to a limit of SDR 100 000, and has a subjective liability based on culpa for damage exceeding SDR 100 000.

6.4 Carriage by rail

6.4.1 Carriage of goods

Transport of goods by rail within Norway is governed by the Railway Liability Act of 1977 and the "Standard Terms for Cargo-Net" (currently the 2005 version).

The international carriage of goods by rail is governed by the International Rail Carriage Act of 2004, which differs from the COTIF Convention of 1980 in some respects.



6.4.2 Carriage of passengers and accompanying luggage

The Norwegian state is responsible for the carriage of passengers by rail in Norway. At present, the right to carry passengers by rail is almost exclusive to the Norwegian State Railway Company - Norges Statsbaner AS (NSB AS). Only one of the smaller lines in Norway is run on a competitive basis.

In its conditions of transport, NSB AS assumes liability for delay except where the delay is beyond the company's control. Liability is limited to an amount currently equivalent to approx. NOK 12,000. The liability of railway companies toward passengers and their luggage is governed by the Railway Liability Act 1977. The Act imposes strict liability on the railway company for death or injury caused by the railway to a passenger whilst on board the train and in the course of embarking and disembarking. The railway company is also strictly liable for damage to the passenger's luggage in so far as the passenger also suffered personal injury. If the passenger did not suffer personal injury, the railway company is liable for damage to luggage where such damage is caused by the fault or negligence of the railway company, its servants and contractors.

The railway company's liability for luggage and other personal items carried by or on the passenger is limited to an amount currently equivalent to NOK 30 300.



PETROLEUM REGULATIONS

Petroleum activities on the Norwegian Continental Shelf really started at the end of the 1960s with the discovery of the Ekofisk field in 1969. Today, there are 52 fields in production on the Norwegian Continental Shelf

7.1 Introduction

Today, there are 52 fields in production on the Norwegian Continental Shelf. In 2006, these fields produced 2.8 million barrels of oil (including NGL and condensate) per day and 88 billion cubic metres of gas, for a total production of saleable petroleum of 249 million cubic metres oil equivalents. Norway ranks as the world's fifth largest oil exporter and the third largest gas exporter, and as the tenth largest oil producer and seventh largest gas producer. It is estimated that less than one third of the petroleum resources have been produced.

The petroleum industry is Norway's largest industry and accounts for 25 per cent of value creation in the country. Petroleum activities have contributed significantly to economic growth in Norway and to the financing of the Norwegian welfare state. The State is ensured a high proportion of the values created from the petroleum activities through direct and indirect taxes and direct ownership. After more than 30 years of production, the sector has generated net revenues to the state in the order of NOK 3000 billion in current terms. In 2006, the State's net income from the petroleum sector amounted to approximately 36 per cent of total revenues. Beyond the resources used to cover the non-oil budget deficit, the State's revenues from petroleum activities are allocated to

a separate fund, the Government Pension Fund – Global. The current value of this fund is NOK 1784 billion.

Crude oil, natural gas and pipeline services account for about half of the value of Norway's exports. In 2006, the value of petroleum exports was NOK 509 billion, 15 times higher than the export value of fish. Enormous sums have been invested in exploration, field development, transport infrastructure and land facilities. At the end of 2006, this amounted to approximately NOK 2000 billion in current terms, while investments in 2006 amounted to NOK 95.7 billion, or 24 per cent of the country's total real investments.

The Norwegian Government has executive power over petroleum policy and is responsible to the Storting for this policy. Petroleum activities on the Norwegian Continental Shelf are governed by the Petroleum Act 1996, which regulates the grant of permits and licences to explore for, produce and transport petroleum and related activities. Taxation of subsea petroleum deposits is regulated in the Petroleum Taxation Act. The Norwegian offshore licensing system comprises a number of regulations and instruments which regulate in more detail the rights and duties of various parties in addition to those specified in the Petroleum Act and its regulations.

7.2 Title to petroleum reservoirs. Exploration and production

7.2.1 Title to petroleum resources

The Norwegian State has the proprietary right to all sub sea petroleum deposits and the exclusive right to manage the petroleum resources. Title to produced petroleum for limited periods is granted by the government through a production licence, see 7.2.2 below.

7.2.2 The licensing system

Before any petroleum activities can start on the Norwegian Continental Shelf, the relevant area must be declared open for petroleum activities by the Storting. At present, petroleum activities are permitted in most areas, and only certain areas in the northern part of Norway have not been declared open. The Storting has stated that in 2010 it will consider opening these areas for exploration.

The regulation of petroleum activities in Norway is based on a licensing system. Exploration and production licenses are normally awarded through licensing rounds held every second year. The Ministry of Petroleum and Energy invites applications for a certain number of blocks, and the licenses are awarded on the basis of open, objective and non-



discriminatory criteria. Based on the applications received and negotiations between the Ministry and each applicant, the Ministry puts together groups of companies for each license and nominates the operator, who is responsible for the daily conduct of operations in accordance with the terms of the license.

An exploration license is awarded for an initial exploration period of three years, unless otherwise specified. The exploration licence gives the right to explore for petroleum only. It does not give exclusive right to exploration, nor does it give preferential right to a subsequent production licence.

A production licence entails an exclusive right to exploration, exploration drilling and production of petroleum deposits in areas covered by the licence. The licensees become the owner of the petroleum which is produced. The award of a production license is conditional upon all the licensees concluding a Joint Operating Agreement and an Accounting Agreement that regulates the relationship between the parties. The system implies that the group of licensees is deemed to

be a joint venture. The Ministry may make the granting of a production licence conditional on the licensees entering into agreements with specified contents with one another.

A production licence is awarded for up to 10 years. A specified work programme and work obligation must be met during this period. The content of the work obligation varies and can include seismic surveying and/or exploration drilling. Provided that the work obligation is completed, the licensees are generally entitled to demand an extension of the licence, normally for 30 years.

A production licence may be granted to a body corporate established in accordance with Norwegian legislation and registered in the Norwegian Register of Business Enterprises (insofar as other requirements are not applicable pursuant to international agreements). In theory, a production license may also be granted to a physical person domiciled in the European Economic Area (EEA). Licenses are granted amongst other things on the basis of the applicant's technical competence and financial capacity, and purely

financial companies cannot be a licensee in Norway. Unless the Ministry decides otherwise, the licensee must have an organisation in Norway that is capable of managing the petroleum activities on the Norwegian Continental Shelf.

No royalty is charged for petroleum activities in Norway.

7.2.3 Reservoir unitisation

If a petroleum reservoir extends over more than one block with different licensees or onto the continental shelf of another state, effort shall be made to reach agreement on the most efficient coordination of petroleum activities on the reservoir and on the apportionment of the petroleum deposit. The same applies when, in the case of several petroleum reservoirs, joint petroleum activities would obviously be more efficient. Coordination measures have to be recorded in "unitisation agreements" prepared by the licensees and submitted to the Ministry of Petroleum and Energy for approval. The Government has made efforts to increase the efficiency of petrol-

eum activities on cross-border reservoirs that straddle the Norwegian and UK Continental Shelves, and a bilateral agreement has been signed regulating the process of governmental approval of such projects.

7.3 Gas activities

Gas activities have become an increasingly important part of the petroleum sector in Norway. Norwegian gas plays a key role in energy supply to Europe, meeting approximately 15 per cent of European gas consumption, with deliveries primarily to France and Germany but also to the UK, Belgium, the Netherlands, Italy, Spain, Austria, the Czech Republic, Poland and Denmark. The gas is mainly transported from the field to the consumer in pipelines. The Norwegian gas transport system is extensive, totalling more than 6 600 kilometres of pipelines.

All licensees on the Norwegian Continental Shelf are responsible for selling the gas that they produce. The State's oil and gas is sold by StatoilHydro ASA, in which the State currently has a 70.9% shareholding*.¹ The State's gas is sold by Statoil together with its own petroleum in accordance with instructions laid down by the Ministry of Petroleum and Energy.

Most of the transport system for Norwegian gas (the pipelines and terminals) is owned by the Gassled partnership, which ensures common ownership of the transport system among the major players in oil and gas production. Common ownership of the transport system ensures that the gas is transported as efficiently as possible. The State has the controlling interest in Gassled through Petoro AS, the licensee for the state's participating interest, and its interest in other participating companies, including Statoil and Norse Gas AS. Gassled encompasses all rich and dry gas facilities that are currently in use or are planned to be used to

any significant degree by parties other than the owners (third party use).

Gassled is operated by Gassco AS, which is responsible for operations, allocation of capacity and development of the transport system. Gassco is wholly owned by the Norwegian state.

The pipeline system is a natural monopoly, requiring enormous initial investments. Therefore, the gas transport tariffs are governed by special regulations from the Ministry of Petroleum and Energy to ensure that the economic returns are earned from producing fields and not from the transportation system. The oil companies' access to capacity in the transport system is based on their needs for gas transport. Transport rights can be transferred between users when needs change. Gassco is responsible for allocation capacity.

7.4 Health, safety and environment on the Norwegian Continental Shelf

There are a considerable number of requirements with regards to health, safety and environment in all stages of petroleum activities, and the level of health, safety and environment in all petroleum related activities shall be high. Regulations are laid down in the Petroleum Act, health, safety and environment regulations and guidelines, and in bilateral and international agreements. Responsibility for the regulations is divided between the Petroleum Safety Authority Norway, the Norwegian Pollution Control Authority and the Norwegian Social and Health Directorate. A number of permits and approvals are required, including permits in connection with production, exploration drilling, flaring and the use of mobile installations. Non-compliance is sanctioned by day fines. In the event of serious or repeated violations of the regulations, the Government has power to revoke a license granted pursuant to the Petroleum Act. Wilful or negligent violation of provisions or decisions issued in or pursuant to the Petroleum Act is punishable by fines or imprisonment.

7.5 Employment Regulations

As a general rule, employment on offshore and onshore petroleum installations is

subject to the ordinary labour laws applicable in Norway, see Chapter 8. However, some special rules apply to the industry while some of the ordinary rules, e.g. rules on overtime and maximum working week, do not apply. There are no restrictions on workers from the European Union, although such workers still need to apply for work and residence permits. Employees from outside the European Union may apply for a work permit and residence permit. However, applications are rarely granted unless the applicant is a specialist within his field and therefore similar employees are not to be found in Norway or in the European Union.

7.6 Petroleum taxation

Petroleum taxation is based on the Norwegian rules for ordinary corporation tax, but a special tax is levied on income from petroleum activities. The ordinary tax rate is the same as for onshore activities, 28 per cent, while the special tax is 50 per cent. The tax authority is the Ministry of Finance and the Petroleum Tax Office. Other important taxes linked to petroleum activities are the carbon dioxide tax and the area fee. The CO₂ tax rate in 2006 is NOK 0.79 per litre of petroleum or cubic metres of gas. The area fees accrue on all production licenses after the expiry of the initial period.

¹ * 2007 the petroleum activities of the Norwegian industrial public listed corporation Norsk Hydro ASA was merged with Statoil ASA as the assignee company into StatoilHydro ASA. The Norwegian State held 62,5 per cent of the shares in StatoilHydro ASA at the time of the merger. However, the Government decided to increase the ownership to 67 per cent.



LABOUR LAW AND RELATED ISSUES

Employees in Norway enjoy considerable statutory protection. The vast majority of employees in Norway are members of trade unions, and a majority of jobs in the private sector are with employers who are members of employers associations. Collective agreements are an important supplement to the statutory rules.

8.1 General

The relationship between employer and employee is largely regulated in statute. The Employment Act of 17 June 2005, which replaces the former Act from 1977, lays down minimum requirements for the work environment, the workplace, working hours, employment contracts, employment protection, dismissal, redundancy and summary dismissal. Other relevant legislation includes the Gender Equality Act 1978, the Discrimination Act 2005, the Civil Servants Act 1983, the Holiday Act 1988, the Temporary Lay-Off Act 1988 and the National Insurance Act 1997. In general, the legislation is designed to secure safe working conditions and to promote and strengthen employee protection.

8.2 Employment contracts

The general terms for wages and working conditions are largely governed by collective bargaining agreements between employers' associations - or the individual employer - on the one part and labour organisations on the other.

Collective bargaining agreements are binding and the parties to such agreements cannot enter into individual employment contracts that deviate from the terms of the existing collective bargaining agreements, regardless of whether the individual terms would improve or worsen the working conditions of the employee in question. However, the parties to an individual employment contract are free to agree to terms and/or conditions that fall outside the scope of the collective bargaining agreement. Norway does not have any statutory minimum

wage. However, wage levels and minimum wages are in general laid down in collective bargaining agreements. Minimum wages may also be imposed pursuant to the provision of the Act relating to General Application of Wage Agreement 1993, see Chapter 8.5.

The Employment Act requires that employment contracts be in writing. The contract must state factors of major significance for the employment relationship including a description of the place of work, the work to be performed, the duration and disposition of the agreed daily and weekly hours, length of breaks, the wage and wage payment procedures, supplements and other remunerations not included in the pay, for instance pension, the number of vacation days and the period of notice required upon termination of employment.

As a general rule, a contract of employment cannot be for a fixed term and will run until it is terminated by one of the parties. However, the chief executive officer of a company and other particular occupational groups may be employed on fixed term contracts.

Termination by the employer is subject to strict statutory requirements of fairness, see below. However, the Employment Act permits temporary employment contracts when "warranted by the nature of the work and the work differs from that which is ordinarily performed in the undertaking". This includes seasonal labour and projects. Other groups explicitly listed include trainees and locums. An employee who considers his/her temporary employment is in breach of the legislation may institute legal proceedings. If the court finds in favour of the employee,

TRADE UNIONS HAVE ENJOYED A POWERFUL POSITION IN THE NORWEGIAN LABOUR MARKET SINCE THE EARLY 1990's.

the employment shall as a general rule become permanent. The employee may, in addition or as an alternative, claim compensation in the same way as for unfair dismissal, see below. An employee who has been temporarily employed for four consecutive years enjoys the same employment protection as a permanent employee. The same strict rules that apply to temporary employment also apply, as a general rule, to employees hired from temporary staff recruitment agencies. Hiring of employees from companies whose objective is not to hire out employees are not subject to the same rules, however, the hirer is obliged to discuss the hiring, and in some cases enter into an agreement, with the employees' elected representatives.

An employment contract may provide for a probation period of up to six months to give the employer the opportunity to evaluate the employee's abilities. Dismissal during the probation period must fulfil the general statutory requirements of fairness (see below), or be based on the employee's adjustment to the work, technical/professional skills or reliability. The employee's protection against dismissal is not quite as strong during the probation period as after the expiry of this period. Furthermore, the employee is as a general rule not entitled to remain in his or her post during any legal proceedings, see below.

Outside the scope of individual employment contracts, labour legislation and collective bargaining agreements, the employer is generally free to organise and regulate the work requirements. However, the Supreme Court has stated that a general principle of objectivity and sound practice and procedures applies to decisions made by the employer according to his management prerogative. As a matter of

general employment law, employees are deemed to owe a duty of loyalty towards their employer.

Norwegian law contains extensive rules prohibiting discrimination. Discrimination in the workplace on the grounds of gender, part-time or temporary employment, religion or belief, ethnic or national origin, political affiliation, trade union membership, sexual orientation, disability or age is strictly prohibited. Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation has been implemented into Norwegian law, see Chapter 13 of the Employment Act and the Discrimination Act. The prohibition against discrimination applies in all matters relating to the workplace and employment, including job applications. The employer is not allowed to ask about or attach weight to a job applicant's or employee's religion, colour, national or ethnic origin, political affiliation, membership of a trade union, sexual orientation or cohabitation, disability or age unless these issues are relevant to the employee's work or to the job in question. The prohibition against discrimination against part-time and temporary employees was introduced in the 2005 Act and implements the Council Directive 97/81/EC on part-time work and Council Directive 99/70/EC on temporary employment.

In addition to protection against discrimination, part-time employees have a preferential right to an extended position in circumstances where the employer otherwise would have created a new position. The preferential right is subject to the employee being qualified for the post and that the exercising of the right does not cause significant inconvenience for the employer. In addition, a preferential

claim to new employment applies to employees who have been dismissed due to rationalisation measures or who have objected to transfer to a new employer in case of a transfer of undertaking, see below.

8.3 Trade unions

Trade unions have enjoyed a powerful position in the Norwegian labour market since the early 1900s. The two most important unions are the Norwegian Federation of Trade Unions (LO), representing employees, and the Confederation of Norwegian Business and Industry (NHO), representing employers. Both unions are umbrella organisations and consist of a number of smaller unions. They are actively involved in both political and judicial issues and have become powerful actors in Norwegian community and social life.

The most visible impact of the unions is the extensive collective bargaining agreements that have been developed between them. LO and NHO are involved in most of the collective bargaining agreements entered into in Norway and have developed the so-called Main Agreement. The Main Agreement is a framework agreement that contains the general rights and basic rules in the workplace. The Main Agreement is incorporated into the first part of all collective bargaining agreements entered into by affiliated organisations. Several of the central provisions of the Main Agreement have become so widely practised that they have subsequently been codified in legislation and are thus binding on the entire work force regardless of any affiliation with a trade union.

Collective bargaining agreements between employee and employer organisations usually have a duration of two years.



The Main Agreement and some other agreements oblige the parties to maintain industrial peace for the duration of the collective bargaining agreement. This means that measures such as strikes and lockouts, etc., may not be employed during labour conflicts until the collective bargaining agreement has expired.

Trade union negotiations during recent years have generally been peaceful and characterised by a large degree of consensus, although discussions relating to pension rights in recent years have led to strikes. In addition, the use of the National Wage Board to resolve conflicts has reduced the number of serious labour conflicts in Norway. Disputes about the validity or content of collective bargaining agreements and disputes arising out of the collective bargaining agreements are heard by a separate tribunal, the Industrial Court.

8.4 Working conditions

The Employment Act contains compulsory rules regarding the environment and conditions in the workplace. The provisions of both individual employment contracts and collective bargaining agreements may provide for additional employee protection.

In general, the Employment Act applies to employees at all levels. However, employees in management positions and employees in particularly independent positions are exempt from the statutory rules regarding working hours and overtime pay.

Working hours are generally limited to 40 hours a week or 9 hours a day. Additional restrictions apply to shift work, Sundays and holidays. Overtime must be compensated by overtime pay amounting to at least 40% of ordinary salary and is only permitted when there is an exceptional and time-limited need for it. The Act gives employees the right to flexible working hours insofar as this does not cause considerable inconvenience to the employer.

The Employment Act imposes a duty on the employer to provide a safe and secure working environment. An employer must provide good lighting, minimize noise and vibrations and ensure that the air quality indoors meets a certain standard. An employer must also take steps to secure the health and safety of employees against pollution, injury, fire, explosions etc. in the workplace. The Employment Act also emphasises the psychosocial working environment, and the employee shall not be subject to harassment or other improper conduct. The obligation to ensure compliance with the regulations in the Act will mainly rest with the employer. However, employees are obliged to take part in and cooperate on the implementation of measures to create a satisfactory and safe working environment.

The employer's responsibility is not limited to his own employees. The employer is also obliged to ensure a fully satisfactory working environment for contract workers and self-employed persons who perform tasks in connection with the employer's activities or installations.

Each workplace must appoint a personnel safety representative



CITIZENS OF COUNTRIES OUTSIDE THE EU/EEA MUST APPLY FOR A WORK PERMIT BEFORE ACCEPTING EMPLOYMENT IN NORWAY.

who shall ensure that these obligations are complied with. In addition, the working environment committee has particular duties and authorities in the health, security and environment work in the company. Working environment committees are obligatory for undertakings employing more than 50 employees and may also be required in smaller undertakings if demanded by one of the parties or the Labour Inspection Authority.

Safety and environmental standards in the workplace are enforced by the Labour Inspection Authority.

The 2005 Act introduced a right for the employee to raise concerns about malpractice in the workplace (whistle-blowing) and prohibits retributive action against the person who raises the concern. Any concerns must be raised in a proper and reasonable manner, which means that concerns should, as far as possible, be raised internally first. Nevertheless, the employee has a right to notify supervisory authorities or other public authorities. The employer has the burden of proving that a whistle-blower has acted in violation of the Act. If there has been any illegal retribution, the employee may claim a remedy regardless of whether the employer is at fault. The employer is required to establish routines and procedures at the workplace for internal whistle-blowing.

The 2005 Act introduced regulations in regard to control measures. Such measures must be objectively justified by circumstances relating to the undertaking and shall not involve undue strain on the employees. The employer shall discuss such measures with the elected representatives and provide information to the affected employees before implementing such

measures. Particular strict rules apply in connection with health information and medical examinations. The Personal Data Act 2000 applies to the employer's handling of information of personal data.

8.5 Foreign employees

The Employment Act applies to all businesses that employ people in Norway, regardless of the nationality of the employer or the employee. The EEA agreement provides citizens of EU/EEA countries with free access to the Norwegian labour market (see EU decree no. 1612/68 regarding the free movement of employees). Thus, employees from other EU/EEA countries working for Norwegian companies are employed on the same terms as Norwegian citizens, and job seekers from other EU/EEA countries can compete for positions in Norwegian companies on the same terms as Norwegians.

Citizens of countries outside the EU/EEA must apply for a work permit before accepting employment in Norway, see Chapter 8.4 above.

In order to prevent social dumping, minimum wages may be imposed pursuant to the provision of the General Application Act. According to the Act, the Tariff Board may decide that a nationwide wage agreement shall apply in full or in part to all employees carrying out certain work. Under regulations of 2005, the collective bargaining agreements for construction sites in Oslo and in some other counties have been made generally applicable, so that all employers are obliged to pay foreign workers at least the minimum wage prescribed in these collective bargaining agreements.



8.6 Employee participation in the management of the workplace and regulations regarding information and discussion

The Norwegian Constitution gives employees the right to participate in the management of the workplace.

Both the Limited Companies Act 1997 and the Public Limited Companies Act 1997 entitle employees to representation on the board of directors if the company has more than 30 employees. The number of employee representatives on the board varies depending on the total number of employees and whether the company has a corporate assembly. Employee directors have the same powers and responsibilities as directors appointed by the shareholders, but cannot be removed by the shareholders.

Limited companies with more than 200 employees are required to have a corporate assembly, where the employees have a right to be represented. However, the company and a majority of the employees or trade unions representing at least two-thirds of the employees may agree that the company shall not have a corporate assembly, even if the number of employees exceeds 200. Employee representation is limited to one third of the total number of the members of the corporate assembly, whilst two-thirds of the members are elected by the general meeting of shareholders of the company.

The Employment Act has several provisions regarding information and discussion. The main purpose of these regulations is to ensure that the employees receive updated and adequate information of relevance to their employment. Chapter 8 of the Em-

ployment Act implements Directive 2002/14/EC into Norwegian law and contains general provisions regarding information and discussions. These provisions only apply to companies that employ more than 50 employees. In addition, the Act has several provisions that will apply to particular situations, for instance in connection with collective redundancies and transfers of undertakings, see below. Furthermore, most collective agreements contain detailed regulations on the employer's duty to inform and consult the employees' representatives.

8.7 Holiday rights and holiday pay

Minimum holiday rights for employees are laid down in the Holiday Act, which grants an employee a minimum right of twenty-five working days' holiday per year. The term "working days" includes Saturdays. Employees over 60 years of age are entitled to an additional six working days' holiday leave. The holiday year runs from 1 January to 31 December. Many collective agreements, including tariff agreements between LO and NHO, grant extended holiday rights and five weeks' holiday is now quite common in Norway.

As a general rule, an employee is entitled to eighteen consecutive working days' holiday leave during the period 1 June and 30 September. An employee is also entitled to take the remaining seven working days' holiday together.

Employees are entitled to take holiday irrespective of whether they are entitled to receive holiday pay. On the other hand, an employee may normally refuse to take holiday in so far as he

NORWAY HAS AN EXTENSIVE SOCIAL SECURITY SYSTEM ENSURING FINANCIAL SUPPORT FOR ALL CITIZENS DURING TIMES OF ILLNESS AND UNEMPLOYMENT, ETC.

is not entitled to holiday pay that would compensate him for loss of salary during absence on holiday.

The employer must discuss the fixing of holiday dates and setting up of holiday lists with the employee or employees' representative well in advance of holidays. This must be done in due time before the holiday starts and at least two months before. However, it is the employer who makes the final decision if the parties disagree.

Holiday pay for a current year is calculated on the previous year's remuneration for work. Holiday pay amounts to 10.2% of the previous year's remuneration if the employee is entitled to twenty-five working days' holiday. The amount is 12% if an employee is entitled to five weeks' holiday under an individual or collective agreement. Holiday pay is paid on the last normal pay day before the main holiday, i.e. the summer holiday. The last pay day is normally in June. In June, the employees will receive holiday pay plus an amount equal to the difference between normal working days in June and the holiday pay, if any. An employee may nevertheless demand payment of holiday pay at the latest one week prior to the beginning of the holiday.

When employment is terminated, all holiday pay entitlements are to be paid on the last normal pay day before the post is vacated.

8.8 Social security

Norway has an extensive social security system ensuring financial support for all citizens during times of illness and unemployment, etc. The rules are contained in the National Insurance Act 1997.

Employees who are sick are entitled to sick leave and have the right to full compensation for the salary they would have earned during the period. Sick pay covers 100% of the salary, within an indexed maximum limit that currently amounts to NOK 400,872 per year (up to six times the Base amount – NOK 66,812 per 1 May 2007). There is a self-certification scheme whereby an employee is entitled to sick leave and sick pay for up to four periods of three days without having to provide a doctor's certificate. Any absence exceeding three days requires a doctor's certificate. The first 16 days of sick pay are paid by the employer, after which the obligation is transferred to the National Insurance. To reduce the period of absence and to encourage a faster return to work, both the employer and the employee are obliged to prepare a follow-up plan and the employee shall as a general rule as soon as possible try work-related activities. An employee can claim sick pay for up to one year. Longer periods of absence due to sickness are covered by rehabilitation pay and, if necessary, a disability pension.

Those who become unemployed have a right to unemployment benefits amounting to two thirds of their former salary. The maximal benefit basis is, as for sick pay, six times the Base amount.

Employees are also covered by the Occupational Injuries Insurance Act 1989. The provisions of this statute require an employer to insure his employees against occupational injury or illness. This insurance must provide full compensation for loss of income caused by injury or illness arising in the workplace.

Employees have the right to pay during maternity and paternity leave. The compensation is either 80 per cent of the salary for 54 weeks or 100 per cent for

44 weeks. For leave of absence due to adoption the compensation is either 80 per cent of the salary for 51 weeks or 100 per cent for 41 weeks. Compensation during this period is covered by the National Insurance. Parental benefits cover the loss of income within an indexed maximum limit of six times the Base amount, currently NOK 400,872 per year. Many public and private sector employers make up any differences between their employees' actual salaries and the statutory entitlement. The period of maternity/paternity leave may be shared by the parents in any way they see fit, provided however that three weeks before the birth and the first six weeks after the birth are reserved for the mother and six weeks are reserved for the father. Furthermore, parents have the right to take leave of absence for an additional year without compensation. Parental benefit may be combined with reduced working hours. The benefit is then reduced, but the period is extended.

Employees who return to work after maternity or paternity leave are entitled to the same position they held before the leave of absence. Employees are also entitled to take paid leave of absence for a certain number of days each year to care for their children when they are sick.

An employee has the right to an old-age pension upon retirement. The normal retirement age is 67. In addition, disability pensions are available to persons who become permanently disabled before the normal retirement age.

The Norwegian pension system is financed from income tax revenues. The state pension system is based on two principles. First, the pension is intended to ensure a minimum standard of living for its recipient. Secondly, it is intended to maintain the



recipient's accustomed standard of living. Pensioners who formerly earned high incomes will therefore in general be entitled to higher old-age state pensions than pensioners who formerly earned low incomes. The amount of the pension is based upon previous tax returns, which in turn are based upon the employee's taxable income.

Private pension plans have gradually become more common as a supplement to payments by the State. Several companies and labour unions have organised collective pension plans for their employees and members. Many employees are thus entitled to an "AFP" pension pursuant to a contractual pension scheme from 62 years of age. With effect from 1 July 2006, the Occupational Pension Schemes Act obliges all employers to have occupational pension schemes for their employees that give employees a right to an old-age pension in addition to the State pension. The employer is obliged to pay an annual contribution to the pension scheme for each employee. This contribution must constitute a minimum of 2% of the employee's salary.

8.9 Termination of employment

8.9.1 Ordinary dismissal and redundancy

As mentioned above, employment contracts are not generally limited by a period of time and most employment relationships are terminated either by resignation by the employee or dismissal by the employer.

The Employment Act provides that a dismissal must be objectively justified due to circumstances relating to the operation of the business, the employer or the employee. This applies to both individual and collective dismissals. The requirement is absolute and cannot be contracted out of. There is one exception to this rule: the provisions of the Employment Act relating to dismissal/redundancy do not apply to the chief executive officer of the company if he or she has contractually agreed to waive such rights in return for payment upon termination of employment.

Unlike in many European countries, Norwegian employment legislation does not specify or indicate by way of example

what kind of conduct on the part of the employee is sufficient to justify a dismissal. This must be determined on the basis of a consideration of all of the circumstances of the case. In individual dismissals based on the conduct of the employee, there is no statutory obligation to give a written warning or to consider other suitable available work for the employee, but these are circumstances that are often taken into account in the consideration of whether the dismissal was justified.

In cases of redundancy, both the rationalisation measures and the individual dismissals must be justified. The employer shall weigh the needs of the enterprise against the disadvantage for each employee. There is a statutory duty to consider whether the employee can be given suitable alternative work within the enterprise and dismissal will not be deemed to be justified if the employer has other suitable work to offer the employee. The requirement that the dismissal must be objectively justified also obliges the employer to consider less drastic alternatives than redundancy, for instance temporary lay-off. The law does not prescribe selection conditions other than the

THERE IS NO STATUTORY RIGHT TO SEVERANCE PAY IN NORWAY. THE ONLY PAYMENT THAT THE EMPLOYEE IS ENTITLED TO, IS PAYMENT DURING THE PERIOD OF NOTICE IN ACCORDANCE WITH THE TERMS OF EMPLOYMENT.

previously mentioned requirement that the notice must be "justified". The most common selection conditions are based on a combination of the principles of length of service and qualifications, at the same time as individual and social circumstances are taken into account. Employees with a considerable length of service and seniority enjoy stronger protection. Most collective bargaining agreements lay down a seniority principle that applies unless there are grounds for deviating from it. Employees who are made redundant have a preferential claim to new employment for 12 months after the expiry of the notice period, provided the employee is qualified for the vacant post and the employee has been employed by the company for a total of at least 12 months within the past two years.

Certain employees enjoy special protection against dismissal. Sick or injured employees cannot be dismissed on the grounds of sickness or injury during the first 12 months after the sickness or injury took place. Pregnant employees cannot be dismissed on the grounds of pregnancy and employees who are serving military or civilian service cannot be dismissed on the grounds of absence for this purpose.

Employees who are on maternity, paternity or adoption leave for up to one year, cannot be given notice of dismissal that becomes effective during this period.

In the case of collective redundancies, i.e. dismissal of more than 10 employees within a period of 30 days, the employer has a duty to inform and consult with the employee representatives. The Employment Act implements into Norwegian law Council Directive 75/129/EEC, as amended by Council Directive 92/56/EEC, relating to collective redundancies. An employer who is considering collective redundancies shall as early as possible hold meetings with the employee representatives with a view to reaching agreement in order to avoid a collective redundancy or to reduce the number of dismissals. The Labour and Welfare Service shall also be notified, cf. the Labour Market Act 2004.

Redundancies and other rationalisation measures must also be considered by the company's working environment committee, if such exists. Working environment committees are obligatory for employers that employ more than 50 employees. In case of reorganisation processes that cause changes of significance to the employee's

working situation, the employer is obliged to ensure the necessary information, participation and competence development that is required to ensure a fully satisfactory working environment. Whether the dismissal is individual or collective, the company is obliged to discuss the situation with the employee and his or her representative, if any, before making any decision to dismiss an employee. The purpose of the meeting is to give both parties the opportunity to present their case, to clarify any misunderstandings and, where appropriate, to discuss alternatives to dismissal e.g. a severance agreement. The employee is entitled to be assisted by an employee representative or any other self-appointed advisor at the discussion meeting.

There are strict procedural rules that have to be satisfied when dismissing employees. Failure to comply with the procedural rules shall, as a general rule, lead to a finding that the dismissal was unfair and unjustified. A notice of dismissal must satisfy certain formal requirements, including information about the employee's rights. It must be in writing and be delivered to the employee personally or by registered mail. The notice of dis-



missal need not contain a reason for the dismissal. However, the employee can request an explanation for the dismissal and it is therefore normal to give a short explanation for the dismissal in the notice.

The period of notice is often stipulated in the contract of employment. If not, the statutory period of notice is usually one month. Employees of senior age combined with a long period of service, are entitled to longer notice, up to a maximum of 6 months. Until notice of dismissal has been given, the employer cannot agree with the employee on a mutual notice period shorter than one month.

There is no statutory right to severance pay in Norway. The only payment that the employee is entitled to, is payment during the period of notice in accordance with the terms of employment. Notwithstanding, many employers choose to offer some kind of severance package including, for instance, job-training, education, release from the duty to work and severance pay, etc. The right to such benefits is normally conditional upon the employee entering into a termination agreement whereby the employee, *inter alia*, waives the right to institute legal pro-

ceedings pursuant to the Employment Act. Termination agreements may be entered into before the employee receives notice, or the parties may reach an agreement after notice is given.

An employee who considers a dismissal to be unfair or unreasonable may contest it and claim that it was invalid and/or claim damages. If a dismissal is contested, both parties can, within certain time limits, demand that negotiations are held after notice is given. Both parties may be assisted at such negotiations. If the negotiations are not successful, or if no negotiations are held, the employee may institute legal proceedings. Provided that the notice of dismissal complied with the formal requirements, the time limit for instituting proceeding is eight weeks from the conclusion of negotiations or, if negotiations were not held, from the date when notice of dismissal was received. If the employee's claim is limited to damages, the time limit for instituting proceedings is six months.

Provided that the employee institutes proceedings within eight weeks from the conclusion of negotiations or, if negotiations were not held, from the date when

notice of dismissal was received, and within the notice period, the employee is, as a general rule, entitled to remain in his or her post during any ongoing legal proceedings pending final resolution. This right includes the right to perform ordinary work tasks and to receive wages and additional benefits until the parties have reached an agreement or the case has been legally and finally settled. The employer can apply to the court for an order that the employee shall vacate his or her post after the expiry of the notice period. Such an order can be granted at the discretion of the court if it finds that it would be unreasonable for the employment relationship to continue pending judicial determination.

If the court finds in favour of the employee, the dismissal shall, as a general rule, be deemed to be invalid and the employee may continue in his or her employment. In exceptional circumstances, the court can, however, find that the employment shall be terminated, notwithstanding that the dismissal was invalid. The employee may also claim compensation for economic and non-economic loss as a result of the dismissal. Such compensation shall be at the discretion of the court having regard

THE PREVIOUS OWNER AND THE NEW OWNER ARE OBLIGED TO DISCUSS THE TRANSFER OF THE UNDERTAKING WITH THE EMPLOYEES' ELECTED REPRESENTATIVE AS EARLY AS POSSIBLE

to the employee's loss of income, any future losses and the other circumstances of the case. The employee may also be awarded legal costs.

8.9.2 Summary dismissal

An employer may summarily dismiss an employee, i.e. dismiss him without notice if the employee is guilty of a gross breach or other serious breach of the contract of employment. The Norwegian courts have adopted a strict approach in recent years and summary dismissals are only found to be justified in exceptional cases. The procedural requirements referred to above apply equally to summary and ordinary dismissals. However, an employee who contests the lawfulness of a summary dismissal is not entitled to remain in his post during any ongoing legal proceedings.

8.9.3 Suspension

The 2005 Act introduces a general right for the employer to suspend an employee with pay in circumstances where there are grounds to believe that an employee is guilty of conduct that could justify sum-

mary dismissal pending the result of investigations. An employee can only be suspended if the needs of the employer's business justify suspension. The employer is required to consider on an ongoing basis whether suspension is justifiable. An employee who considers the suspension to be unfair may institute legal proceedings and claim that the suspension is invalid. In addition, or as an alternative, the employee may claim compensation.

8.10 Temporary lay-offs

Temporary lay-offs are considered to be a less drastic measure than dismissal. Lay-offs are executed by suspending the employer/employee relationship in accordance with the employment contract. Although Norwegian legislation does not directly regulate the employer's right to lay off employees, certain rules have arisen from practice and the Main Agreement between LO and NHO. Even if an employer must also show good cause in the event of a lay-off, the burden is not as heavy as it is for dismissal. Still, the company must act reasonably in evaluating who should be laid off. An obligation to notify the Labour and Welfare Service

may also apply. The employer pays salary for the first 10 days of lay-off in case of full lay-off or a reduction of at least 40 per cent in the working hours. If the working hours are reduced by less than 40 per cent, the employer's period is 15 days. Employees who are temporary laid off are entitled to unemployment benefit.

8.11 Employee protections when the ownership of a company is transferred

The Employment Act contains extensive provisions on the rights of employees upon the transfer of an undertaking. The Act implements Council Directive 2001/23/EC – the Acquired Rights Directive. The provisions apply only where there is a transfer to a new owner, not where there is a transfer of shares alone. The transfer must concern an enterprise or part of an enterprise and must be as a result of a legal transfer or merger.

Where only a part or parts of an enterprise are transferred, the provisions apply only to employees who have a primary factual connection to the transferred part. Generally, employees who spend at least 50% of their



working time performing work tasks for the transferred part have a right to be transferred to the new owner. Hired workers and persons employed by an independent contractor who perform work for the transferred part, but who are not employees of the transferred part, do not have a right to be transferred to the new owner. The principal rule when an undertaking is transferred to a new owner is that the employment relationships of affected employees transfer automatically by law to the new employer with effect from the actual date of transfer, and that the individual employment terms and conditions of each employee remain unchanged after the transfer. The new employer is bound by the terms of the individual contract of employment, or of the employee's individual terms and conditions pursuant to an existing collective bargaining agreement until it expires or is replaced by a new collective bargaining agreement. The 2005 Act decides that the new owner will be bound by any existing collective bargaining agreement as a whole unless he makes an express reservation against the agreement. Regardless, the new employer may in some cases be bound by the previous owner's collective agreement based on general labour law principles

laid down in case law. The 2005 Act also obliges the new owner to maintain payment of insurance premiums that guarantee the employees' rights to old-age and invalidity benefits or benefits payable to surviving relatives in accordance with pension schemes. If the new employer has an existing pension scheme, he may elect to make this applicable to the transferred employees. If the employee's previous pension scheme cannot be continued after the transfer, the new employer shall ensure the transferred employees the right to further earning of pension entitlement through another collective pension scheme.

The previous owner and the new owner are obliged to discuss the transfer of the undertaking with the employees' elected representatives as early as possible. The Act specifies the information that is to be given, and the same information shall also be given to the affected employees. Most collective agreements also contain regulations in regard to information and discussion. The transfer of an undertaking in itself is not sufficient grounds for dismissing employees. Furthermore, the Employment Act contains provisions on the rights of employees' representatives' after a transfer.

The 2005 Act introduces a right for an employee to object to transfer to the new employer. This is not a right to remain employed by the previous employer. However, the Norwegian Supreme Court has found that an employee will be entitled to remain employed by the previous owner if the transfer implies substantial and real change in the employees' employment terms or conditions. An employee who exercises his or her right to object to the transfer has a preferential claim to new employment with the previous employer for one year from the date of the transfer. The preferential claim is subject to the employee being qualified for the vacant post and having been employed by the company for a total of at least 12 months during the two year period prior to the date of transfer.

0	0,00	255,00	203,00	66,00	66,00
70	+0,06	65,50	6,67	6,70	6,77
50	+0,70	12,40	12,50	12,50	13,10
50	+3,00	113,50	114,50	114,50	115,5
50	-0,75	50,50	53,00	53,00	52,7
70	-	7,70	8,00	8,00	8
5,00	-1,00	45,10	46,50	46,50	46,50
4,00	-0,14	5,29	5,00	5,00	5,00
50	-0,70	15,00	15,00	15,00	15,00
50	-0,20	20,00	20,00	20,00	20,00
		201,00	203,00	66,00	66,00
		255,00	264,00	55,00	42,00
		54,00	55,00	42,00	54,50
		260,00	260,00	260,00	260,00

TAX AND ACCOUNTING

Companies doing business in Norway may be subject to a number of direct and indirect taxes. A major tax reform in 2005 has made tax planning and restructuring even more important than before.

THE KEY ISSUE IN THE TAX REFORM WAS THE INTRODUCTION OF A DISTINCTION BETWEEN SHARES OWNED BY CORPORATE ENTITIES AND SHARES OWNED BY PRIVATE INDIVIDUALS.

9.1 General

Norwegian companies are subject to corporate income tax, social security contributions (employer's contributions) and value added tax (VAT). Partnerships and limited partnerships are legal but not taxable entities. Partners are taxed individually and directly on their share of the income. Individuals are liable for tax if they reside in Norway. The tax rates for individuals range from 7.8% to 47.8%. The corporate income tax rate is 28%. Norwegian companies and individuals residing in Norway are taxed on the basis of their worldwide income.

A tax reform was passed in 2004/2005. The key issue in the reform was the introduction of a distinction between shares owned by corporate entities and shares owned by private individuals. Following the reform, dividends paid to corporate entities and gains on shares earned by such entities are tax exempt. As a consequence, such entities cannot deduct capital losses from the sale of shares. All dividends paid to individual shareholders exceeding a minimum tax exempt allowance are subject to double taxation. As a consequence of the reform, recognition of income and expenses depends to a greater extent than previously on the business organisation, so that tax planning and restructuring has become even more important than before.

9.2 Taxation of resident companies and the "participation exemption rule"

9.2.1 General

All companies incorporated under Norwegian law are subject to the corporate tax system. Foreign entities resident in Norway are liable to pay income tax here if certain criteria are met. Generally, if liability for the company's debt is limited to its capital, the foreign entity will be taxable in Norway.

The level of income tax for companies is a flat rate of 28%.

9.2.2 The participation exemption rule

As mentioned above, following the tax reform in 2005 a distinction is made between shares held by corporate entities and shares held by private individuals. Dividends paid to corporate entities and capital gains from the sale of shares by such entities are tax exempt. Consequently, such entities cannot deduct capital losses from the sale of shares. This is referred to as the participation exemption rule.

The participation exemption rule applies to the following Norwegian entities and to the foreign equivalents of such entities (for companies resident abroad, see

NORWEGIAN ACCOUNTING LAW PROVIDES THAT CURRENT ASSETS SHALL BE VALUED AT THE LOWEST OF COST OR REAL VALUE.

Chapter 9.8): private and public limited companies, savings banks and other owner-occupied financial companies, mutual insurance companies, co-operatives (including housing co-operatives), unit trusts, inter-municipal companies, companies and other entities wholly owned by the State, associations, foundations, municipalities, county municipalities and some bankrupt estates.

To a certain degree, partnerships are also subject to the participation exemption rule (see Chapter 9.6).

The participation exemption rule also applies to entities that are subject to special tax regimes for the shipping industry, electrical power industry and offshore petroleum industry. However, application of the rule in these cases is subject to special rules.

The following income and losses are tax exempt:

- gains or losses upon realization of owner shares in private and public limited companies, partnerships, savings banks and other owner-occupied financial companies, mutual insurance companies, co-operatives, unit trusts, inter-municipal companies and the foreign equivalents of these entities
- legally distributed dividends
- gains or losses upon realization of derivatives if the derivative's underlying object is an owner share as mentioned in the first bullet point.

Distribution by a company of part of its property as dividends to its shareholders

is in principle deemed to be a taxable advantage for the company. However, the participation exemption rule also applies when a company distributes shares as dividend to its shareholders. Consequently, this advantage is exempt from the company's taxation.

The participation exemption rule does not apply to income from companies resident in low tax countries outside the EEA or from portfolio investments in companies resident outside the EEA. Nor does it apply to gains or losses on realization of owner shares in a partnership, if the partnership's value of shares in companies resident in low tax countries outside the EEA and of portfolio investments in companies resident outside the EEA, exceeds 10 per cent of the partnership's total value of shares at the time of realization.

9.3 Valuation of assets

9.3.1 Norwegian accounting law

Norwegian Accounting law provides that current assets shall be valued at the lowest of cost or real value (net realisable value).

Financial statements are based on the historical-cost concept. Receivables are classified as current assets to the extent that they are due within the fiscal year.

Securities are normally valued at the lower of cost or market value. Inventory is valued at the lower of cost or market value using FIFO or weight-averaged cost. FIFO must be used for tax purposes.

Fixed assets must generally be valued at cost.

Goodwill can only be capitalised when it is acquired by purchase or inclusion of an external activity via acquisition.

Research and development, market surveys and test operations, etc. can only be capitalised if such costs will substantially increase the future value of the company. Deferred taxes are recorded using the full liability method.

9.3.2 International Financial Reporting Standards (IFRS)

The valuation rules mentioned above do not apply to accounting entities applying International Financial Reporting Standards. IFRS primarily values assets at fair value, as opposed to historical cost reporting as described above. In practice, the different starting points in the two financial reporting regimes should not be exaggerated, as IFRS often allows historical cost valuation as an option in each individual accounting standard.

9.4 Deductions

In general, all expenses related to the earning, maintenance and securing of taxable income are deductible as business expenses. However, gifts and representation expenses are not deductible.

Even though income on shares is no longer taxable pursuant to the participation exemption rule, expenses relating to such income are deductible, except for purchasing and selling costs.

As a general rule, interest on debts is deductible irrespective of whether the loan is connected to the earning, maintenance or securing of a taxable income.

The cost of fixed assets must be capitalised for tax purposes if the value exceeds NOK 15 000 and its expected economic lifetime is more than three years. Fixed assets that have a lesser value or that have a shorter expected economic lifetime than three years, fall outside the

rules for compulsory capitalisation. Inter-company charges are fully deductible as long as they are sufficiently documented.

The tax system also makes provision for depreciation for fixed capitalised assets. Property, plant equipment and certain intangible assets are depreciable for tax purposes. Goodwill included in the sale price when buying a business is also depreciable for the buyer. The declining balance method is used for depreciations. Fixed assets are allocated to different groups. The depreciation rate varies between 2% and 30%.

Subject to certain requirements, tax losses can be carried forward indefinitely.

9.5 Affiliated companies

A company is deemed to be an affiliated company if the parent company owns more than 50 % of its shares. These companies form an affiliated group, referred to in Norwegian as a "konsern". The group as such is not a taxable entity and each affiliated company is taxed individually. Consolidated balance sheets are not relevant for tax purposes in Norway. However, income may be transferred between affiliated companies through group contributions.

As a general rule, group contributions, both paid and accrued, are deductible by the payer company subject to the following requirements:

- The recipient and the payer companies must be Norwegian entities. Group contributions between two or more subsidiaries in Norway are also deductible notwithstanding that the parent company is a foreign entity. In this context, a Norwegian branch of a foreign entity resident in the EEA is treated as a Norwegian entity.
- Both the recipient and the payer companies must be members of a group where the parent company owns at least 90% of the shares in the affiliated companies and has a corresponding number of votes at the shareholders' general meeting.
- Both the receiving and the distributing company must report

the group contribution on a specific form attached to the tax returns.

- A company that has income that falls within the scope of the Petroleum Revenue Tax Act cannot reduce its income by making a group contribution.

Group contributions may be used by the recipient company to offset tax losses.

Transfer prices between affiliated companies must be fixed on an arm's length basis. New reporting and documentation requirements for companies that are involved in transactions with affiliated companies were passed by Parliament in June 2007.

In relation to these rules an affiliated entity of the taxpayer is defined as an entity falling within one of the following categories:

An entity that the taxpayer directly or indirectly owns or controls with at least 50 %

- a. A person or entity that directly or indirectly owns or controls the taxpayer with at least 50% (hereafter referred to as **b-affiliates**)
- b. An entity that a b-affiliate directly or indirectly owns or controls with at least 50%, and
- c. A b-affiliate's parents, siblings, children, grand children, spouse, cohabitant, spouse's parents and cohabitant's parents, in addition to companies that these directly or indirectly, own or control with more than 50%

According to the new rules all companies will have to submit a particular form with information regarding transactions with affiliated companies. The form will be submitted to the tax authorities in an attachment to the tax return. These general reporting requirements are expected to apply at the submission of the tax returns for the income year 2007.

In addition the tax authorities may request additional documentation. The tax payer will then have 45 days to provide adequate documentation for the tax authorities to consider whether prices and conditions





of the transactions between the affiliates satisfy the arm's length requirement. Such documentation has to be kept by the companies for at least 10 years after the income year. This obligation is expected to have effect as of the income year 2008.

However, an entity is exempted from this extended documentation requirement, if it together with the affiliate entity has

- less than 250 employees, and either
- has a sales income that does not exceed NOK 400 million, or
- has a balance sheet amount that does not exceed NOK 350 million

However, the taxpayer will not be exempted from the extended documentation requirement if the affiliate is resident in a state where Norway is not entitled to the affiliate's income and wealth information according to an international treaty. Nor will the exemption apply if the taxpayer is

taxable according to the petroleum tax law.

The new reporting and documentation rules for transfer pricing transactions apply correspondingly to transactions between entities resident in Norway and their foreign branches and between foreign entities and their Norwegian branches.

9.6 Partnerships

Partners are liable for individual or corporate income tax on partnership shares, depending on whether they are individual or corporate legal entities. Foreign participants in Norwegian partnerships are subject to the same rules as Norwegian participants.

Partners are taxed annually on the profits earned by the partnership. The assessment basis for the taxation of partnership profits is the total revenue or loss attributable to each partner according to the partnership agreement. If no agreement exists, the partners will be liable in equal shares.

To some extent, partnerships are subject to the participation exemption rule. Dividends received by a partnership and gains or losses on shares will not form part of the assessment basis at the annual taxation of the partners. If the partnership forwards the income to its partners, taxation on the distribution will be triggered only if the partner is an individual (see below).

Following the tax reform in 2005, an additional tax is assessed upon any profits distributed to partners that are individuals. Distributions beyond a certain "protective allowance" form part of the partner's ordinary taxable income and are thus taxed at a rate of 28%. The effective rate of tax on distributions to partners, when both the annual taxation of the partnership's profits and the taxation on distributions are taken into account, is 48.16%.

There is a limit on the partnership losses that partners in limited partnerships can deduct from other income. The limit is fixed at each partner's share of the partnership's taxable net values plus any uncalled portion of the partner's capital contribution. The limit is also adjusted for any overcharge or undercharge on the purchase price of the partner's share.

Gains from the sale of a partnership share are taxed as ordinary income in the year of sale. Losses are deductible accordingly. The taxable gain or deductible loss equals the net remuneration for the share, less realization cost and the input value of the share. Unused protective allowance can be deducted in the taxable gain. The input value equals the sum of the share's net cost, buying costs and the shareowner's net capital contributions to the partnership in the owner period, adjusted for changes in the basis of the protective allowance.

9.7 Capital gains and dividends

Capital gains are generally deemed to be ordinary taxable income and, correspondingly, losses from such sales are deductible. However, for corporate shareholders, the participation exemption rule contains important exemptions (see

NORWEGIAN BRANCHES OF FOREIGN COMPANIES ARE LIABLE FOR TAX IN THE SAME WAY AS ORDINARY NORWEGIAN COMPANIES AND ARE SUBJECT TO THE SAME TAX RATES

Chapter 9.2.2).

From 1 January 2006, capital gains from the sale of shares and dividends exceeding a minimum risk-free profit on capital (the “protective allowance”) forms part of the individual shareholder’s ordinary taxable income. As the profits in the distributing company will already have been taxed at the rate of 28%, the effective rate of tax on dividends exceeding the protective allowance is 48.16%.

The system of taxation of individual shareholders creates an incentive to finance investment in shares by taking up a loan. To counteract this, interest on loans from individuals to companies is subject to double taxation, in that interest exceeding a protective allowance is counted twice in the ordinary taxable income.

Non-resident shareholders who do not conduct business in Norway are not liable to tax on gains resulting from the sale of shares in Norwegian companies. However, special rules apply if the seller has previously been a Norwegian resident.

9.8 Taxation of non-resident companies

While companies resident in Norway are generally taxed on the basis of their worldwide income, companies resident abroad are only taxed on their economic activities in Norway (economic source income). Thus, all business activities in Norway are taxable except when exempted by a tax treaty. In accordance with the OECD Model Tax Convention, Norwegian tax treaties contain a “permanent establishment” requirement for Norwegian tax liability. Sales

subsidiaries, for instance, are treated as Norwegian companies for tax purposes. The same is usually the case for foreign companies that in any other way employ staff in Norway.

Representatives that buy and sell in their own name and are totally independent from the non-resident entity that they represent will generally not be considered a permanent establishment for the foreign principal. Independent representatives are generally not considered a permanent establishment unless they have the power to bind the principal. If they are deemed to be dependent representatives, they may be liable for tax on the Norwegian source income.

Norwegian branches of foreign companies are liable for tax in the same way as ordinary Norwegian companies and are subject to the same tax rates.

As far as withholding tax on dividends paid to foreign companies is concerned, the participation exemption rule applies to companies resident in the EEA. Thus, a company that receives dividends from a Norwegian resident company, or receives gains from the sale of shares in such company, is not liable to tax on such income/gain if it is resident within the EEA and otherwise meets the requirements of an entitled company (see Chapter 9.2.2). Correspondingly, these companies cannot deduct losses from the sale of shares in a Norwegian company.

9.9 Cross-border transactions

Dividends paid by a Norwegian company to a non-resident shareholder are generally subject to a 25% withholding tax (WHT) unless otherwise determined by a tax treaty. Norway has an extensive

network of tax treaties with withholding taxes on dividends ranging from 0 to 25%.

If the shareholder is a company resident within the EEA, the participation exemption rule ensures that the shareholder does not have to pay withholding tax. However, the exemption does not apply to individual shareholders.

A group contribution from a Norwegian company to a non-resident affiliated company is not deductible for tax purposes. (For group contributions to or from branches, see Chapter 9.5)

Transfer prices between affiliated companies must be fixed on an arm’s length basis. Profit transfers that differ from normal transfers between independent undertakings are unlawful. If a transaction does not appear to have been effected on an arm’s length basis, the tax authorities will make an estimate of what would normally have been included in the transaction on a “regular” basis, and will base the tax assessment on this estimate. New legislation has been passed, providing for new reporting and documentation obligations for companies that are involved in transactions with affiliated companies (see Chapter 9.5).

Transactions between affiliated entities are subject to a reversed burden of proof if one of the entities is resident outside the EEA area. The reversed burden of proof will also apply to entities resident in EEA countries if there is no treaty between Norway and this country providing for the exchange of information regarding a taxpayer’s income and wealth.

NORWAY HAS A LARGE NETWORK OF TAX TREATIES FOR THE AVOIDANCE OF DOUBLE TAXATION

9.10 Avoiding double taxation

Norway has a large network of tax treaties for the avoidance of double taxation.

Most tax treaties entered into since 1991 are based on the credit method. In the absence of treaty provisions, the Taxation Act provides for double taxation relief in accordance with the credit method.

The credit method provides for double taxation relief based on the following principles:

- Foreign taxes are deductible as long as the income is deemed to have its origin in the state where the foreign tax is paid.
- Credit deductions are limited to the foreign income's proportional part of the calculated Norwegian tax on the tax subject's accumulated worldwide income. Furthermore, the deduction is limited to the foreign taxes actually paid.
- The rules apply to both credit under the tax legislation and to credits governed by tax treaties. Under the tax treaties, the credit deductions are limited to the tax that the foreign state can lawfully impose on the taxpayer under the foreign legislation.
- According to the provisions of the Taxation Act, taxes paid in foreign countries must be documented in writing in order to be approved for counter-accounting by the tax authorities.

Credit deduction may not exceed a proportional part of the Norwegian tax attributable to each of the following categories of foreign income:

- a. income from business in low tax jurisdictions and income taxed according to the Norwegian CFC rules,
- b. income from the exploitation of petroleum abroad,
- c. other foreign income.

The deduction is limited to tax paid in the source country within each income category.

Foreign tax not credited in Norwegian tax one year may be carried forward for five years within each of the three income categories. However, the carry forward credit may not exceed the maximum credit in the year in which the right to credit arises. Total credit deduction to be carried forward for each year may not exceed the maximum credit deduction for that year. Effective from 2008, tax credit can also be carried back to the previous income year.

9.11 Value Added Tax

The current general VAT rate is 25%. Special VAT rates apply to the supply of passenger transport services, letting of rooms, travel agencies and cinema tickets and are currently 8% respectively. For foodstuffs the special VAT rate is 14%.

Persons engaged in trade or business and whose annual turnover from the supply of taxable goods and services exceeds a given threshold (normally NOK 50 000) are obliged to register for VAT. Foreign businesses that are established or resident in Norway are liable for VAT in the same way as Norwegian businesses and must be registered for VAT if the conditions for registration are met.

Foreign businesses that only supply goods or services from abroad to recipients in Norway are normally not liable for VAT in Norway. However, the Norwegian importer may be liable for VAT. Indeed, as a general rule, an importer of goods is

liable for VAT. An importer of services is liable for VAT (reversed charge) only if the service would be liable to VAT if supplied in Norway and if the service can be supplied from a remote location (intangible services). For services that cannot be supplied from a remote location, the foreign business must be registered for VAT. The supply of goods, with a contractual place of delivery in Norway, will oblige the foreign business to register for VAT in Norway. If the foreign business supplying goods and services is neither established nor resident in Norway, the business shall be registered for VAT through a representative.

VAT paid on purchased goods and services ("input VAT") is deducted from VAT received on sold goods or services ("output VAT"). If the first exceeds the latter, a refund will be paid to the company for the VAT period in question. VAT periods are bi-monthly and a strict reporting scheme applies to all businesses registered in Norway.

The supply of certain goods and services, including the supply and letting of real property, the supply of health services and the supply of financial services are exempt from VAT. The suppliers of such goods and services are not liable for VAT and cannot deduct input VAT from the exempt part of the business.

In addition, a VAT rate of 0% applies in some cases. This means that even though input VAT is deducted, no output VAT is charged. The zero-rate applies, amongst other things, to exports of goods and services, newspapers, books and periodicals.

Foreign businesses can apply for a refund on VAT paid on the purchase of goods and services in Norway, and on the import of goods to Norway.

9.12 Tax procedures

Companies are required to file their tax returns by 31 May in the year following the income year, with the opportunity to extend the same to 30 June upon application. In principle, all foreign entities operating in Norway directly must file tax returns. Hence, the duty to file tax returns also applies to branches and other forms of direct representation in Norway. Tax returns must be prepared by the company's accountant and approved by the company's auditor.

Tax assessments may be appealed. Any differences between the tax return and the assessment are subject to appeal. Grounds for appeal may be wrongful interpretation of the tax laws, misunderstandings of the facts filed with the authorities and/or errors in procedure by the tax administration, provided the error could have influenced the outcome of the assessment.

Companies are taxed in arrears and pay their taxes in three instalments in the year following the income year. One third of the total income tax paid in the year prior to the income year is paid on 15 February in the year following the year of income. Another third is paid on 15 April. The excess tax is paid following assessment. The excess tax is subject to an interest rate of 1.7% on amounts exceeding one third of the total tax payable.

Individuals must normally file their tax returns by 30 April in the year following the income year. Returns do not need to be confirmed by an auditor. The return must be filed on a standard form.

Tax audits are carried out on a random basis by tax inspectors. The inspectors are authorised to review all the books of the operation of the business in Norway. Audits may cover one or more of the previous ten business years.

There are administrative penalties for submitting misleading tax information to the tax authorities. The basic penalty is a surcharge of 30%. In cases of gross negligence or wilful fraud, the surcharge may be increased up to 60%. Furthermore, criminal sanctions provide for fines and imprisonment up to two years for

individuals who provide fraudulent information to the tax authorities.

9.13 Accounting and audit requirements

Accounting requirements for limited companies and other entities are laid down in detail in the Accounting Act 1998. General partnerships with an annual turnover exceeding NOK 5 million and limited companies are obliged to submit annual accounts. Parent companies must, in addition, prepare consolidated accounts.

Generally, the financial accounts must satisfy the requirements set out in the Accounting Act and good accounting practice (Norwegian Generally Accepted Accounting Principles). Norwegian financial accounting law is to a great extent harmonized with the EU accounting directives. The Norwegian Accounting Association issues financial accounting standards and defines what is regarded as good accounting practice. Norwegian financial accounting standards are strongly influenced by international financial accounting standards, particularly accounting standards issued by the International Accounting Standards Board (IASB).

As of the fiscal year 2005, application of the International Financial Reporting Standards (IFRS) is mandatory for the consolidated accounts of listed companies. This requirement also applies to companies that have issued bonds or other securities that are listed on the stock exchange. These companies also have an option to apply IFRS for the company accounts.

Companies that are not listed on the stock exchange may apply IFRS for the preparation of consolidated and company accounts.

The Accounting Act also allows the application of a simplified IFRS regime for small and medium sized enterprises. The material content of this regime has not yet been established. The intention is that the IASB project for accounting standards for small and medium sized enterprises will provide material solutions for this option in the future.

Irrespective of whether or not financial reporting follows NGAAP or IFRS, it must be reported in Norwegian and apply Norwegian currency.

Accountable entities must have an appointed auditor who is fully independent of the company. The auditor must sign the tax return. All statutory audits must be conducted by accountants holding qualifications approved by the Norwegian authorities. The accountant may either be a state-certified or registered auditor.

The financial year coincides with the calendar year. The annual accounts and the directors' report must be prepared before 30 June in the year following the financial year. The annual accounts must include a balance sheet, a profit and loss account, a cash flow statement and explanatory notes and footnotes detailing special disclosures. A copy of the annual accounts must be submitted to the Register of Company Accounts together with the directors' report and the auditor's report within one month after the adoption of the annual accounts. If accounts are not received by the Register within six months of the date on which they are due, forced liquidation will be initiated by the Register.

All EU legislation concerning auditors, including the International Financial Reporting Standards (IFRS), has been implemented into Norwegian law in accordance with the EEA Agreement.



INTERNATIONAL ISSUES

Norway is not a member of the European Union, but is a party to the Agreement on the European Economic Area. It is also a member of the World Trade Organisation. International treaties and conventions play an increasingly important role in Norwegian legal and everyday life.

10. International Issues

10.1 International agreements in the area of commercial law

Treaties, conventions and other international agreements to which Norway is party are not directly enforceable against private individuals or enterprises in Norway. They are only binding on the Norwegian State as such. In order to be binding on private individuals or enterprises, they must first be transposed or implemented into Norwegian law. Similarly, the rulings of international courts that are binding on the Norwegian State in accordance with international public law do not impose any direct rights or obligations on private parties.

In practice, international treaties, conventions and judgements etc., play an increasingly important role in Norwegian legal and everyday life. The most important example is the Agreement on the European Economic Area with the European Union (the "EEA Agreement"). Pursuant to the EEA Agreement, Norway is obliged to transpose the European Council regulations word by word as Norwegian secondary legislation. Norway is also required to implement many of the European Council directives into Norwegian law. On the other hand, the decisions of the EFTA Court are not binding in the Norwegian courts and only provide Norwegian courts with non-binding guidance on interpretation of EEA legal questions.

Foreign judgements will only be recognised and enforced in Norway if there is a bilateral or multilateral agreement with the foreign state in question concerning the mutual recognition and enforcement of judgements. The Norwegian courts will not recognise and consequently will not enforce a decision of a foreign court purely on the basis of comity. Norway is a party to the European Convention on the Recognition and Enforceability of Judgments in Civil and Commercial Matters signed at Lugano on 16 September 1988 (the "Lugano Convention"). Norway also has bilateral treaties on recognition and enforcement of court rulings with Great Britain and Germany, and a number of bilateral and international treaties on the recognition and enforceability of judgements in limited areas of private law. Norway is also party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards signed in New York on 10 June 1958.

In order to facilitate and assist in transnational civil proceedings, Norway has entered into a number of bilateral and international agreements and conventions on mutual assistance in civil proceedings. Amongst others, Norway is party to the Hague Convention relating to civil procedure of 1 March 1954, the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of 15 November 1965 and the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters of 18 March 1970.

THE EEA EXTENDS THE SINGLE MARKET LEGISLATION, WITH THE EXCEPTION OF AGRICULTURE AND FISHERIES MANAGEMENT, FROM THE 25 EU MEMBER STATES TO NORWAY, ICELAND AND LIECHTENSTEIN

10.2 The EEA Agreement

Norway's relations with the European Union are mainly governed by the EEA Agreement, which entered into force on 1 January 1994. Originally, the Agreement was entered into between the European Community and the then 12 Member States of the European Community on the one hand, and the EFTA States with the exception of Switzerland (Norway, Finland, Iceland, Liechtenstein, Sweden and Austria) on the other. Since then Austria, Finland and Sweden have become full members of the European Union. The EEA was maintained because of the wish of the three remaining countries - Norway, Iceland and Liechtenstein - to participate in the Internal Market without assuming full EU membership. The Agreement gives Norway, Iceland and Liechtenstein the right to be consulted by the Commission during the formulation of Community legislation, but not the right to a voice in decision-making, which is reserved exclusively for Member States. All new Community legislation in areas covered by the EEA is integrated into the Agreement through an EEA Joint Committee decision and subsequently becomes part of the national legislation of the EFTA States.

The EEA extends the Single Market legislation, with the exception of Agriculture and Fisheries Management, from the 25 EU Member States to Norway, Iceland and Liechtenstein. The EEA is concerned principally with the four fundamental pillars of the Internal Market, "the four freedoms", i.e. freedom of movement of goods (excluding agriculture and fisheries, which are included in the Agreement only to a very limited extent), persons, services and capital. Horizontal provisions relevant to these four freedoms in the areas of social policy, consumer protection, environment, company law and statistics complete the extended internal market. Norway and the other EFTA States are obliged to adopt Community legislation in these areas. Pursuant to Article 3 of the EEA Agreement, which enshrines the principle of solidarity which is the foundation of the European Union, Norway and the other EFTA States have a duty to take all appropriate measures, whether particular or general, to ensure fulfilment of the obligations arising out of the Agreement and to refrain from taking any measure that would jeopardize the attainment of the objectives of the Agreement. The many details of the Agree-

ment and its annexes and Protocols emulate the European Community without actually involving membership of the EC. Moreover, the EFTA States offer to share the financial burden of the Community.

As one of the primary obligations under the Agreement is to ensure equal conditions of competition, the substantive competition rules of the Agreement correspond to the Community *acquis* in this area. This covers the rules concerning cartels, abuse of dominant positions, merger control, state monopolies and state aid. The Agreement also includes areas which have an impact on the competitive position of enterprises, such as consumer protection, environment and certain elements of company law.

In addition to the obligation to accept the Community *acquis* in the fields of the four freedoms, the Agreement contains provisions to allow cooperation between the Community and the EFTA States in a range of Community activities: research and technological development, information services, the environment, education, social policy, consumer protection, small and medium sized enterprises, tourism,



the audio-visual sector and civil protection. Where the EFTA States are admitted to participate in these programmes, they contribute to the budgets of the programmes in question and participate in the committees that manage them, but with no right to vote. The EFTA states also make a financial contribution towards the reduction of economic and social disparities.

The EEA Agreement is implemented through a set of special institutional arrangements. There is an EEA Joint Committee, whose main function is to adopt decisions extending Community regulations and directives to the EFTA States. The Community is represented by the Commission in the Joint Committee. Decisions in the Joint Committee are taken by agreement between the Community and the EFTA States, which have to speak with one voice. The Joint Committee may set up sub-committees, which prepare the decisions of the Joint Committee and where discussion of different aspects of the Joint Committee's work can take place. There are currently five such sub-committees.

The EEA Council meets twice a year. It is

attended by the members of the General Affairs and External Relations Council, the Ministers for Foreign Affairs of each of the EFTA States and from the current and forthcoming EU presidencies. It is chaired for six months, on a rota basis.

The successful operation of the EEA Agreement depends upon uniform implementation and application of the common rules in all the 28 EEA States. A two-pillar system of supervision has therefore been devised, whereby the EC Member States are supervised by the European Commission and the EFTA States are supervised by the EFTA Surveillance Authority. With regard to its surveillance function, the EFTA Surveillance Authority has been given powers corresponding to those of the Commission. There is close contact and co-operation between the Commission and the Authority. The main task of the EFTA Surveillance Authority is to ensure that EEA rules are properly enacted and applied by the EFTA States. In general, Norway and the other EFTA States are obliged to notify the Authority of their transposition of EEA provisions into national law. If a State does not transpose and apply the EEA rules correctly, the

Authority will intervene. The Authority may eventually initiate infringement proceedings which, as a last step, may bring the matter before the EFTA Court. In the fields of competition, state aid and public procurement, the powers of the EFTA Surveillance Authority mirror the extended competencies of the European Commission in these fields. The EEA Agreement also entrusts the EFTA Surveillance Authority with a number of tasks of an administrative character, which within the EU are performed by the European Commission.

A two-pillar structure has also been established for judicial control; the EEA Agreement also establishes an EFTA Court, which operates in parallel to the Court of Justice of the European Communities. The EFTA Court has jurisdiction only over the EFTA States. It is mainly competent to deal with infringement actions brought by the EFTA Surveillance Authority against an EFTA State with regard to the implementation, application or interpretation of an EEA rule, for the settlement of disputes between two or more EFTA States, for appeals concerning decisions taken by the EFTA Surveillance Authority and for giving advisory (non-



binding) opinions to courts in EFTA States on the interpretation of EEA rules. Thus, the jurisdiction of the EFTA Court mainly corresponds to the jurisdiction of the Court of Justice of the European Communities over EC States.

In order to enlarge the EEA at the same time as the EU and so as not to disturb the good functioning of the Internal Market, an EEA Enlargement Agreement was negotiated between the Community and its Member States, the EFTA States and the Acceding Countries. The EEA Enlargement Agreement came into force on 1 May 2004, thus allowing for the simultaneous enlargement of the EU and the EEA. Most of the elements of the EEA Enlargement Agreement are technical adaptations, but one of the major substantial results of the enlargement negotiations was a ten-fold increase in the financial contribution of the EFTA States, in particular Norway, to social and economic cohesion in the Internal Market (1167 M€ over five years, 600 M€ from all three EEA-EFTA States and 567 M€ as a bilateral Norwegian contribution). Another element of the EEA Enlargement Agreement was that the Community would open additional quotas

for certain marine and agricultural products from the EFTA States. The enlargement of the EU on 1 January 2007 with Bulgaria and Romania as two new member states has not yet resulted in a new EEA Agreement.

In addition to the EEA Agreement, Norway has an association agreement with the EU on the implementation, application and development of the Schengen Acquis, which entails passport-free travel across the borders between member states, extended police cooperation and common external borders. In addition, Norway participates in Europol, Eurojust and a number of research and development programmes, educational programmes, cultural programmes and regional development programmes.

10.3 The World Trade Organisation

Norway is a party to the agreement on World Trade Organisation (“WTO”). Together with the EEA Agreement, the WTO Agreement is Norway’s most important free trade agreement. However, WTO law is not implemented into Norwegian law and is therefore only binding on the Norwegian State.



Wiersholm, Mellbye & Bech, advokatfirma AS - M.N.A.
Ruseløkkveien 26. P.O. Box 1400 Vika, NO-0115 Oslo. T: +47 210 210 00. F: +47 210 210 01. www.wiersholm.no
Bank Account No: 6011.05.43908. Reg. No: 981 371 593