

# Norway

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## 1. Types of company with limited liability and applicable legislation

Norwegian corporate law is based on two acts: the Act on Private Limited Companies (*Aksjeselskap – AS*) and the Act on Public Limited Companies (*Almennaksjeselskap – ASA*). Both acts were passed by Parliament on June 13 1997 and took effect on January 1 1999. The two acts are largely similar in structure and content, and are divided into the same chapters. Where this chapter makes reference to a statutory provision, that provision applies to both corporate forms, unless otherwise indicated.

The Act on Private Limited Companies has been subject to important changes, the latest of which was in July 2013. The purpose of the changes has been to make limited companies more competitive, as many foreign businesses and even some Norwegian entities have preferred to enter the Norwegian market using a branch of a foreign enterprise.

The construction with a branch of a foreign company (NUF) can be a legitimate and useful tool for some businesses, but has also been utilised in schemes to evade income tax and VAT in Norway. Therefore, the requirements regarding the formation and running of private limited companies have been relaxed in order to make the structure easier to control, and to make businesses elect this structure for doing business in Norway.

Upon incorporation, the founders select the corporate form through which they wish to carry out their business activities. Small companies are normally organised as private limited companies, while large companies often choose to establish themselves as public limited companies. Companies wishing to conduct business as a public limited company must expressly state this in the articles of association. Where a private limited company is formed, Chapter 15 of the Act on Private Limited Companies regulates how conversion to a public limited company may be effected.

The main differences between private limited companies and public limited companies are as follows:

- Only public limited companies may invite subscriptions from the general public in order to obtain new share capital. A private limited company must issue shares to a limited and identified group of investors.
- The minimum share capital of a private limited company is Nkr30,000, while for public limited companies it is Nkr1 million. The share capital must be paid in before the company can be registered in the company register.
- As a general rule, the shares in a public limited company are freely negotiable. The articles of association may stipulate that the consent of the

board of directors is required for all share transfers, and that the shareholders shall have a right of first refusal when ownership to shares is transferred.

- The acquisition of shares in a private limited company requires the consent of the board of directors, although the articles of association can stipulate that such consent is not necessary. Unless the bylaws provide otherwise, the shareholders in a private limited company have a right of first refusal when ownership to shares is transferred.
- The shares and shareholders of a public limited company must be registered in the National Register of Securities. This is optional for a private limited company.
- Up to half of the share capital of a public limited company may take the form of non-voting shares or shares with limited voting powers. A private limited company can freely limit the voting rights of its shares.
- The formation rules and procedures for private limited companies and public limited companies are largely identical. However, the documentation requirements regarding capital contributions in kind are greater for public liability companies, both at formation and when increasing equity.
- In certain cases a shareholder in a private limited company can demand that the company redeem his shares. A public limited company can redeem small shareholdings (ie, less than Nkr500), subject to approval from the Ministry of Justice.
- In a private limited company with fewer than 20 shareholders, the board can convene a general meeting without the shareholders being present. However, if a shareholder objects to this procedure, a general meeting must be held. In a public limited company, a general shareholders' meeting must be held in order to adopt valid resolutions.
- There are different requirements regarding the constitution of the board of directors and for the management.
- In general, more stringent requirements regarding equity, accounting and financial reporting apply to public limited companies than to private limited companies.

## 2. **Incorporation procedure**

The only legal way in which to incorporate a private limited company or a public limited company is by simultaneous formation. Simultaneous formation means that the drafting of the memorandum of association and the subscription of shares take place at the same time. All of the share capital must be paid in before the company can be registered in the company register. Registration papers must be submitted to the register within three months of incorporation. If the company pays its own incorporation costs, these costs can be paid from the share capital.

The share capital and other equity can be paid either in cash or in kind, both at formation and upon subsequent capital increases. The valuation procedures applicable to in-kind contributions are quite rigorous.

## 2.1 Proceedings prior to incorporation

### (a) *Name registration*

It is not possible to register a company name prior to registration of the company itself. In some instances, the name may be registered as a trademark. Interested parties can inquire at the Company Register as to whether a name is legal or already in use. If the name is already in use, the company cannot be registered under the same name.

### (b) *Capital contributions*

Contributions to the company equity cannot be made before the formation meeting. Normally, the equity is committed at the formation meeting and paid in during the first couple of weeks after the meeting.

### (c) *Declaration of foreign investment*

There is no requirement to declare foreign investment at the time of formation.

### (d) *Tax number for foreign directors*

Non-Norwegian individuals who are directors or employees of a Norwegian company must register for tax purposes in Norway. The Central Census Office will duly issue a so-called 'D-number' – an 11-digit number which incorporates the individual's date of birth.

## 2.2 Incorporation

### (a) *Bylaws*

Essential clauses: The bylaws must specify:

- the company's name;
- the municipality in which the company will have its office;
- a description of the company's corporate purpose and the business activities it will carry out;
- the amount of the share capital, the number of shares and the par value of one share;
- whether the company's shares will be entered in the National Register of Securities.

Clauses not foreseen by law: The founders and shareholders of a company are at liberty to add to the articles of association more or less anything they wish. The most usual clause that is not required by law is one specifying when and how the shareholders' right of first refusal shall apply if ownership to shares is about to be transferred.

### (b) *Execution of public deed*

Once the formation meeting has been conducted and the equity has been paid in, the registration papers are sent to the Company Register in Brønnøysund.

Alternatively, the registration can be done electronically, on the website 'Altinn'. Upon registration, the Company Register issues a company certificate or letter of good standing containing the key information registered and the company's organisation number.

(c) ***Tax and VAT identification number***

The National Register for Entities (which is separate from, although located in the same place as the Company Register) issues a nine-digit organisation number which is used for identification for both tax and value added tax (VAT) purposes.

(d) ***Indirect taxes, incorporation fees and other levies***

Registration of a company with the Company Register in Norway costs some Nkr6,000 when registered on paper and some Nkr5,500 when registering electronically. In addition, there are legal fees and, where appropriate, auditors' fees totalling from Nkr10,000 upwards, depending on the complexity of the company to be incorporated and registered.

Whether a company must register for VAT purposes depends on the nature of the business conducted. As the reach of government and the state increases, more and more types of business activity now fall within the scope of the VAT Act. The standard rate of VAT is currently 25%. However, the rate varies depending on the kind of service/product provided, down to 7% for airline tickets.

The VAT account must be filed every two months by the tenth day of the month after the month following the end of the two-month period (eg, the January to February VAT account is due on April 10). In the VAT account, incoming (paid) VAT is deducted from outgoing (charged) VAT, and the balance is received or must be paid quickly after the account has been filed.

**3. Number of shareholders**

There are no requirements regarding the minimum or maximum number of shareholders. A company can be the sole shareholder of another company, which is then a subsidiary of the first company.

A public limited company must have at least three directors on the board. A private limited company can have a board consisting of only one director.

**4. Corporate name – limitations**

The name of a company cannot contain terms contrary to law or be offensive to the public. The name must be distinctive (ie, not already in use by someone else).

The name of a private limited company must contain the designation 'Aksjeselskap' or 'AS'.

The name of a public limited company must contain the designation 'Almennaksjeselskap' or 'ASA'.

**5. Corporate domicile**

The bylaws must specify the municipality in which the company's registered office will be located. This is normally where the company will be considered to have its

domicile. A company can change its domicile by moving its offices to a new location. The bylaws should be changed and the change registered accordingly.

## **6. Corporate purpose**

The corporate purpose must be stated in the bylaws. If the purpose changes or new business activities are initiated after incorporation, the bylaws must be changed and the change registered accordingly.

## **7. Capital stock**

### **7.1 Minimum capital requirement**

For a private limited company, the minimum share capital is Nkr30,000 (approximately €3,500). For a public limited company, the minimum share capital is Nkr1 million (approximately €130,000).

### **7.2 Nature of contributions**

Capital contributions are normally made by cash payment. However, capital contributions in kind are also allowed; in such cases the company's auditor must confirm the value of the contribution in kind.

### **7.3 Partial payments**

The committed share capital must be paid in its entirety before the company can be registered.

### **7.4 Representation of shares**

Norway abolished share certificates with the Companies Acts of 1999.

Private limited companies are now obliged to keep an updated log of all issued stock of the company. The log must show the name, address and date of birth of each shareholder, as well as the number of shares and percentage of shares held. The log must be available at all times at the company's premises. It is the board of directors' responsibility to ensure that the log is kept up to date at all times. The log can be stored on an electronic medium.

Public limited companies are obliged to subscribe to the Register of Securities, which contains the same information as the logs of private limited companies.

### **7.5 Transfer of shares**

#### **(a) Restrictions**

Unless the bylaws provide otherwise, the board of a private limited company must approve all transfers of shares. In contrast, the shares of a public limited company are freely transferable, unless the bylaws provide otherwise.

When the share capital is increased in a public or private limited company, the existing shareholders have a right of first refusal to subscribe to the new shares.

The bylaws can contain a clause granting a right of first refusal to existing shareholders in case of a transfer of ownership to one or more of the company shares.

**(b) Formalities**

A shareholder that wishes to sell all or some of his shares in a private limited company must report the transfer to the board of directors, unless relieved of this duty by the bylaws. The board of directors may oppose the transfer if it finds that the transfer would be detrimental to the development of the company. Otherwise, the board must approve the transfer and enter the new owner of the shares in the shareholder log.

The shares of a public limited company are normally freely transferable. A copy of the contract note must be sent to the Register of Securities for registration.

The bylaws of both types of company can include a clause granting a right of first refusal to existing shareholders in case of a transfer of shares. Where such a clause is included, the transferor must notify the board of directors that he has received an offer on some or all of his shares. The board must then inform the other shareholders about the offer without undue delay. If a shareholder matches the offer, the transferor must transfer the shares in play to him; where more than one shareholder matches the offer the shares in play are split between the offering shareholders in proportion to their previous holdings. The bylaws will specify deadlines for each step and can also deviate from this procedure.

**8. Equity**

**8.1 Equity-capital ratio**

The board of directors have a general duty to act if the equity drops below what must be considered a sound level, taking risks and the size of the company's business activity into account.

In this regard, an equity level below 50% of the share capital is always considered unacceptable, prompting the board to take action.

When it finds the equity levels are lacking, the board must call a general meeting, inform the meeting of the economic situation and suggest remedies. If no remedy can be found, the company is deemed bankrupt and the board must call in the receivers.

**8.2 Convertible bonds**

The general meeting can decide, by a two-thirds majority, to enter into agreements on convertible loans. The conditions of the convertible loan must be decided by the general meeting. For a private limited company, only existing shareholders or specifically named persons and entities can be invited to participate in a convertible loan. A public limited company can invite the public or an undefined pool of investors to participate.

**9. Administration**

**9.1 General shareholders' meeting**

**(a) Quorum requirements**

**Attendance:** If the general meeting has been legally called, there is no lower limit on the number of attendees to achieve a quorum.