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## **THOMMESSEN KREFTING GREVE LUND AS**

### **OSLO**

Hakon VII's gate 10  
PO Box 1484 Vika  
NO-0116 Oslo

Tel +47 23 11 11 11

### **BERGEN**

Strandgaten 209  
PO Box 1970 Nordnes  
NO-5817 Bergen

Tel +47 55 30 61 00

### **LONDON**

42 New Broad Street  
GB-London EC2M 1JD

Tel +44 20 79 20 30 00

MEMBER  
**LEX MUNDI**  
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## 1 THE COUNTRY AT A GLANCE



Norway forms the Western and the Northern part of the Scandinavian Peninsula and has common borders with Sweden, Finland and Russia. Norway is a mountainous and coastal nation with a land area of about 125,100 square miles (325,000 km<sup>2</sup>), excluding overseas territories. The population of Norway was estimated at approx. 4.6 mill people as at 1 January 2005.

Oslo, the capital and largest city in Norway, is located in the South East and had a population of approx. 529,000 as at 1 January 2005 (1,023,000 including the Oslo metropolitan area). Other principal cities include Bergen (239,000), Trondheim (156,000) and Stavanger (114,000).

Norwegian is the official language and is closely related to the other Scandinavian languages. The majority of the population speak English and many speak German.

Norway belongs to the central European time zone, i.e. one hour ahead of Greenwich Mean Time, and has summer time from April to October.

## **2 INVESTMENT PRINCIPLES AND GENERAL CONSIDERATIONS**

### **2.1 Political system**

Norway is a constitutional monarchy with a parliamentary system of government. The executive power of the government is formally vested in the King, King Harald V, who exercises his authority through a cabinet, known as the Council of State, which presently consists of the prime minister and 19 cabinet ministers. The King formally appoints the ministers, including the prime minister, and selects them in accordance with the recommendation of the Storting (Parliament).

A new Government was instated on 10 October 2005 under Prime Minister Jens Stoltenberg. It is made up of a coalition between the Labour Party, with 10 cabinet members, the Socialist Left Party, with 5 cabinet members and the Centerparty, with 4 cabinet members. The coalition partners hold a majority in Parliament. New elections in Norway will take place in September 2009.

The legislative power is vested in the Storting, which, when passing legislation, is divided into two chambers, the Odelsting and the Lagting.

Norway has voted twice against joining the European Union (EU) (1972 and 1994), but has since 1 January 1994, been a member of the European Economic Area (EEA). The EEA consists of the EU countries as well as three European Free Trade Association (EFTA) countries, namely Iceland, Liechtenstein and Norway.

### **2.2 Legal system**

Norway has a written constitution - "Grundloven" – which dates back to 1814 and is based on Montesquieu's ideas of division of power into legislative power, executive power and judicial power. The legal system in Norway is generally based on the concept of written statutes, but with some influence of common law principles.

### **2.3 Economic system**

Norway's gross domestic product (GDP) per capita (approx. NOK 367,000/USD 56,830 in 2004) is among the highest in the world. The economy in Norway is based on private ownership although the Government holds major stakes in several Norwegian companies of importance (Norsk Hydro, Statoil and Telenor among others). Norway is an open economy with total exports and total imports in 2004 amounting to MNOK 736,578 and MNOK 498,464 respectively, of its 2002 GDP totalling MNOK 1,687,983. Norway recorded a current account surplus equal to 0,5 % of GDP in first quarter 2005.

Norwegian industry has traditionally been based upon Norway's natural resources and abundant hydroelectric power. Today Norway is a diverse industrial society with a well developed service sector. Norway's petroleum industries such as crude oil and gas production, as well as pipeline transportation, have grown and had a significant effect on the Norwegian economy since the early 1970's. Today Norway is the largest supplier of natural gas to the Western European energy market. Norway's primary manufacturing industries are pulp and paper products, metals, shipbuilding, industrial chemicals, machinery and electric equipment. Within the service sector, shipping still maintains a leading position.

### **2.4 Court system**

See section 19.1 below.

## **2.5 Financial system**

The currency unit in Norway is Norwegian krone (NOK).

The following tables show the average rates for USD in terms of NOK at year end for the periods indicated, as quoted on the Oslo Børs:

2000: 9.07

2001: 9.01

2002: 7.97

2003: 7.12

2004: 6.74

With effect from October 1990 the Norwegian krone was linked to ECU. Following the tensions within the EMS (the European Monetary System) arising in the fall of 1992, the consequent devaluations and departures of several currencies from Exchange Rate Mechanism (ERM) and the decisions of Finland and Sweden to permit their respective currencies to float, the Ministry of Finance temporarily suspended the Norwegian Central Bank's (Norges Bank) obligation to intervene. In January 1993 a Royal Decree was adopted that allowed the Norwegian krone to float.

Today the monetary policy is set forth in a regulation of May 1994. Originally the aim was to maintain a stable exchange rate against European currencies. However, during the latter years emphasis has been placed on maintaining a low inflation rate. As a non-member of the EU, Norway remains outside the EMU (European Monetary Union), which became effective 1 January 1999. As at 16 August 2005 one Euro equalled NOK 7.95.

## **2.6 Culture**

Norway is a modern European country. In spite of its limited population, the nation has contributed significantly to European culture, for instance Henrik Ibsen (literature), Edvard Grieg (music) and Edvard Munch (paintings). Of more recent date should be noted the playwright Jon Fosse. Oslo presently boasts housing one of the world's leading symphony orchestras. Norway was host to the Winter Olympic Games in 1952 (Oslo) and in 1994 (Lillehammer), and Norwegian soccer players are sought after by leading European teams.

The education level in Norway is high, based on 10 years mandatory schooling, and with approx. 56.6 % (as at 2001) of the population taking supplementary education. Approximately 23,5% of the population (as at 1 October 2003) holds a university degree.

The state religion in Norway is Protestant-Lutheran, and the majority of the population belong to this church, which is administered by the State through a special Ministry.

## **3 INVESTMENT FRAME WORK**

Norwegian authorities encourage foreign investments to take place in Norway, although there are no special incentives for foreign enterprises establishing themselves in Norway.

### **3.1 Sector Restrictions**

There are certain sectors in which specific regulations apply to investors:

- a) Acquisition of waterfalls, power supply rights and mining rights, are subject to concession under the 1917 Industrial Concession Act;
- b) Acquisition of land and real estate, or long term leases - more than 10 years - are subject to the 2003 General Concession Act. These regulations apply to direct acquisitions as well as indirect acquisitions when buying companies that own real estate or hold long term leases.
- c) Traditionally, only Norwegian financial institutions could operate in Norway. However, under the EEA Treaty, which came into effect on 1 January 1994, the financial sector has been liberalised and financial institutions from other EEA countries may now establish Norwegian branches and provide trans border services in accordance with ordinary EU directives and regulations. Investors, Norwegian or foreign, may purchase up to 10% of the share capital in a Norwegian financial institution without having to obtain permission from the Ministry of Trade and Industry. There are several exemptions from the ownership/voting restrictions, for example that a foreign financial institution may own a subsidiary in Norway.
- d) The regulation of the oil industry originally contained conditions with preference for Norwegian industry. This system disappeared with the coming into effect of the EEA Treaty. However, direct investments in petroleum exploration and exploitation will still be subject to a special governmental license, as required by the 1996 Petroleum Act.

Following the coming into effect of the EEA Treaty in 1994 most Sector Restrictions are practised on a non-discriminatory basis towards persons from EU states and EFTA states (except Switzerland). However, the EEA Treaty does not apply to the agricultural sector and the specific set of regulations concerning acquisition of Norwegian farmland and forest remains in effect. For all practical purposes it is very difficult for non-Norwegian citizens to acquire such land unless they are willing and able to take up permanent residence in Norway.

### **3.2 Exchange Control**

Effective from 1 July 1990 most exchange control regulations in Norway were abolished. There are no longer any licensing requirements for currency transactions, but there remains a reporting obligation required primarily for statistical and tax purposes. All currency transactions should be made through local commercial banks, which will attend to the reporting obligations. In case of an acquisition of shares by a foreign entity, it is the Norwegian seller's obligation to report the payment as described above.

### **3.3 Competition and Anti-Trust**

As an EEA member state, Norway has adopted the general competition and anti-trust regime of the EU. The 1993 Competition Act was replaced by a new Competition Act as of May 2004. In general these regulations prohibit concerted practices or agreements, which might influence prices or competition as well as attempts at market sharing. There are comprehensive amendments to the merger control rules as set out in the new Competition Act. For further clarification on the new merger control rules see section 9.3 below.

## **4 SENSITIVE AREAS**

In general foreign investors do not meet many sensitive or uncertain areas of investment policies in Norway. However, the following sections might be of interest for a foreign investor.

#### **4.1 Implications of labour law**

Trade unions have traditionally held a prominent position in Norway, and it is a characteristic feature of the Norwegian labour law system that strong emphasis is placed on the central organisations of employers and employees respectively, and on the collective agreements between these parties.

The Norwegian employment legislation encompasses a wide variety of issues, such as: (a) employee representation in the governing bodies of companies, (b) safety measures regarding the working environment, (c) regulations regarding maternity leave and leave during children's sickness, (d) working restrictions, (e) termination of employment, (f) holiday entitlement (25 days per calendar year) and, (g) restrictions on the use of short term employment contracts and the operation of labour distribution agencies. We refer to chapter 16 for further details.

#### **4.2 Environmental Protection**

The 1981 Norwegian Environmental Protection Act sets out rules and regulations concerning the protection of the environment. The Ministry of Environment administers the Act and the regulations. These regulations are generally adjusted to comply with the prevailing directives of the EC. However, certain supplementary national rules will apply, for instance, the requirement that an investor must prepare - at the planning stage - a comprehensive analysis of possible environmental effects following the erection of plants and other industrial installations of a certain magnitude.

### **5 DIRECT SALES**

#### **5.1 General**

In general, Norway does not have many restrictions on the importing of goods, except for live animals and a wide range of agricultural commodities. However, import of a number of products requires an import license. The need for a license depends partly on the origin of the goods and partly on the type of goods. The most detailed import license requirements are those on clothes, textiles and raw materials for the textile industry. Textiles originating from the Far East are given the greatest consideration. Import licenses are, however not difficult to obtain. Please note that Norway has ratified CITES (Convention on International Trade of Endangered Species).

#### **5.2 Who may import?**

In general, anyone may order goods from abroad. Consumers ordering commodities directly from abroad will receive the shipment through the customs office and will have to clear all taxes before the shipment is released. Companies frequently receiving supplies from abroad and professional transporters may obtain a credit agreement with Customs, allowing for the payment of taxes to take place at a later stage.

#### **5.3 Import taxes**

All shipments to Norway must be cleared through the customs office for duties, excise taxes and VAT. The VAT will be deductible by the recipient provided the goods are intended for use in a VAT chargeable business. In general, goods - apart from agricultural products - originating from an EEA state are free from any import duty and apart from such imports, the usual custom rates range from 5% to 10%. The rates are applied on a stipulated import value of the goods in question, in general based on the invoice value.

## **5.4 Excise tax**

Excise taxes are substantial and represent a vital part of the government's revenue. Excise taxes are levied on several commodities including alcohol, soft drinks, sugar, candy, cars, mineral oil, gas and coal. Excise taxes are levied on the producer and/or the importer of the commodity.

## **5.5 VAT**

Any import of products and most services to Norway are subject to VAT (presently levied at the rate of 25 %). The VAT is based on the import value plus customs and excise taxes levied on import. The party liable to the customs office is the owner of the goods at such time when the goods cross the border. This will mainly be determined on the basis of the agreement between the parties.

A foreign supplier supplying costs insurance and freight ("c.i.f.") to Norway is considered performing a VAT chargeable supply in Norway. If "c.i.f." supplies are made on a regular basis, the supplier is subject to registration in Norway for VAT purposes. In the absence of a place of business in Norway, the registration must be made by way of a Norwegian representative. Such representation alone will not, however, create a basis for income tax in Norway.

If the goods are sold ex factory or f.o.b. abroad, the purchaser will be the importer and as such be responsible for the customs clearance.

Particulars of the VAT regime are described in chapter 15 below.

## **5.6 International organisations**

Norway is member of a number of international organisations, including the Organisation of Economic Co-operation and Development (OECD) and the International Energy Bureau (IEA). Norway was also a party to the General Agreement on Tariffs and Trade (GATT) and since 1994 has been a member of the World Trade Organisation (WTO) and of the EFTA since the organisation was founded. On 1 January 1994 Norway became a member of the EEA, creating close links with the European Union without becoming a fully-fledged EU member.

Norway has double taxation treaties with most countries. The treaties are based on the OECD model thus foreign companies will not be liable for Norwegian taxation unless operations are conducted through a permanent establishment in Norway.

# **6 EXPORTS FROM NORWAY**

## **6.1 Basic Policy on Exports from Norway**

No licenses are required for commercial transactions with foreign countries. However, certain products deemed to be of strategic importance - such as armaments and certain kinds of electronics, as well as certain agricultural goods - are subject to export regulations. Details may be obtained from the Foreign Office Section for Export and Import Control, P.O. Box 8121 Dep., N-0032 Oslo (telephone +47 22 24 36 36).

## **6.2 Export Incentives**

The major export incentives are channelled through three institutions:

- Innovasjon Norge
- Eksportfinans A/S
- Garantiinstituttet for Eksportkreditt (GIEK)

Innovasjon Norge is a state owned company with a network of offices abroad. Apart from assisting exporters in obtaining contracts in the respective markets, it may also grant certain financial support for export ventures. You may enquire at your local Norwegian Embassy for the nearest Innovation Norway representative.

Eksportfinans A/S is a private institution owned by the larger commercial banks. It grants loans for export purposes on standard OECD-terms, which require a cash payment of at least 15% of the purchase price from the customer to the exporter. Due to low interest funding, Eksportfinans is able to grant loans at interest rates below the ordinary market rate.

GIEK is a public institution that grants guarantees for the securing of export loans, provided that the goods or services to be exported are of Norwegian origin for at least 70% of the export value. Insurance against political and commercial risks may be obtained for up to 80% of the export value. Furthermore, cash contributions may be obtained to partly cover marketing campaigns.

## **7 REPRESENTATIVES – DISTRIBUTORS - FRANCHISERS**

### **7.1 Agents**

The 1993 Commercial Agents Act regulates the legal position of commercial agents in Norway and is adapted to correspond with the EEC directive No 86/653/EEC of 18 December 1986. Thus, in principle, the legal status of commercial agents is the same in Norway as in the European Union.

The Commercial Agents Act applies to agents, i.e. intermediaries who act in the name of the principal. Thus agreements concluded by the agent bind only the principal, and not the agent. The agent is not an employee of the principal and unless otherwise agreed, the agent does not acquire any additional rights that an employee would have.

The Commercial Agents Act sets out certain mandatory rights and obligations, such as the right to have an agreement in writing, the fundamental obligations of the agent and his principal, the right to compensation if either party does not fulfil their obligations in terms of the Commercial Agents Act or their obligations in accordance with the agency agreement, the right to receive commission, rights in connection with the termination of the agreement and restriction of competition between the agent and the principal after the termination of the agreement.

The agent is entitled to commission during the duration of the agreement, and under certain conditions also after the termination of the agreement. During the duration of the agreement, the agent is entitled to commission on all sales based on orders obtained by him as well as sales obtained by others if the agent previously has obtained corresponding orders from the contracting party in question. The same applies if the contracting party in question belongs to a territory or group of customers, which has been assigned to the agent. If the conclusion of a sale after the termination of the agreement is due to the efforts of the agent, he is entitled to commission even after the termination of the agreed period.

The parties may agree on the commission in their individual agreements. In the absence of such agreement, the agent is entitled to the commission that is customary for the goods in question in the place where the agent is operating. If no customary commission can be determined the commission will be set at a reasonable level.

Agency agreements may be concluded for a predetermined period or for an indefinite period. If the duration of the agreement is not determined both parties may terminate the agreement at any time. The notice period is one month during the first year of the agency agreement, thereafter

increasing by one month per year to a maximum of 6 months. The parties may not agree on shorter notice periods. Longer notice periods may be agreed upon provided that the termination period is equally long for both the principal and the agent.

In case of termination, the agent may be entitled to compensation provided the agent has not terminated the agreement or is in breach of the agreement. However, the agent is entitled to terminate the agreement without losing its right to compensation if the termination is as a result of circumstances relating to the principal or if as a result of the agent's age, illness or otherwise it is unreasonable to require any further activity from the agent. Furthermore, this is subject to the fact that the agent has brought the principal new customers or significantly increased the volume of business with existing customers. The level of the compensation shall be reasonable and not exceed one years commission calculated from the agent's average annual commission over the preceding 5 years.

The agency agreement may include a competition clause restricting the business activities of the agent following termination of the agreement. Such clauses are valid for a maximum period of 2 years and may be revised under the 1918 Contracts Act.

A foreign company will in general only be subject to income tax on sales in Norway if the agent constitutes a permanent establishment of the company in Norway. An independent agent does not constitute a permanent establishment.

## **7.2 Distributors**

The main difference between agents and distributors is that the distributor concludes contracts in his own name and for his own account.

There is no statute act in Norway, which explicitly deals with distribution agreements. However, the general provisions in the Contracts Act and the Competition Act may be relevant to distribution agreements. Furthermore, the European Community's competition rules may be applicable if such an agreement has an influence on the common market. The application of the European Community's competition rules are extended to the EFTA market through the agreement establishing the EEA agreement, as from 1 January 1994. Thus, the EEA rules apply to distribution agreements that have an influence on competition and trade between the EU and/or EFTA countries.

It is customary to include provisions in distribution agreements concerning inter alia exclusivity, marketing activities, trademarks, sale prices of the principal, termination of the agreement and non-competition during and after the expiry of the agreed contract period.

It is unclear as to what extent a distributor may claim compensation for losses suffered due to the termination of an agreement if the agreement does not deal with this issue. In practice, Norwegian courts have accepted claims for compensation in cases where the principal has acted in breach of the agreement or in breach of general principles of law.

## **7.3 Franchising**

No statute explicitly governs franchising. The Contracts Act and the Competition Act are, however, relevant also in this context. Furthermore, the European Community's competition rules relating to franchising apply if the agreement has an influence on the EU market, and if there is an effect on the EEA market.

## **8 INTELLECTUAL PROPERTY**

### **8.1 In general**

Norwegian legislation provides protective rights in all main fields of intellectual property including patents, trademarks, designs and utility models, copyright and topography of semi-conductors. The statutes governing these respective subjects have to a great extent been harmonized with the corresponding European Community legislation.

Norway has signed and ratified the Paris Convention 1883 (1967 version), the Arrangement of Nice 1957 (1977 version), the Locarno Union 1968, the Patent Co-operation Treaty 1970, the Strasbourg Agreement on Classification of Patents 1971, the Budapest Treaty 1977, the Berne Convention 1886 (Paris text – 1971), the Universal Copyright Convention 1952 (Paris text – 1971), the Convention establishing the World Intellectual Property Organization 1967, the Rome Convention 1961, the Phonogram Convention 1971, the European Convention on the protection of TV Broadcasting 1960, the Protocol relating to the Madrid Agreement 1989 concerning international registration of trademarks and the TRIPS Agreement.

### **8.2 Patents**

#### a) Subject matter and requirements in order to obtain a patent

In order to obtain a patent on an invention the invention must be capable of being exploited in industry and exhibit novelty and inventive step. ("Novelty" means that the invention has not been made available to the public before the filing date). Methods for surgical treatment, therapy or diagnosis performed on animals or humans, scientific theories and mathematical methods, and inventions contrary to morality or public order are not patentable in Norway. Additionally, Norway does not grant patents for plant and animal varieties, or essential biological methods for propagating plants or animals. On the other hand, patents can be granted for inventions relating to a product that consists of or contains biological material or a method for producing, treating or utilizing biological material. Biological material that is isolated from its natural environment or produced with the help of a technical method can be the object of an invention even if it already exists in nature. "Biological material" is understood to be material that contains genetic information and which can reproduce itself or can be reproduced in a biological system.

#### b) Duration, working requirements and annuities

In Norway patent protection lasts for twenty years from the application date, subject to the payment of annuities. These annuities range from NOK 550 (USD 85) gradually increasing to NOK 5,900 (USD 913). Additional patents (granted on applications filed prior to 1980) last for the duration of the main patent without having to pay annuities. A compulsory license may be granted if three years have elapsed from the grant of the patent and four years from the filing of the patent application, if the invention has not been worked to a reasonable extent in Norway.

#### c) Procedure, time and costs

To obtain a patent in Norway, an applicant must file a patent application with the Norwegian Patent Office. Non-residential applicants must appoint a Norwegian representative. The application is examined for novelty and inventive step by the Patent Office. If the application complies with the prescribed requirements and there are no other obstacles, the applicant is notified that a patent may be granted. Within two months from this notification, the applicant has to pay a fee. Thereafter, the application will be accepted. After having published the decision that the application is accepted, the Patent Office grants the patent. At the same time, the Patent Office publishes a patent specification, and all documents of the application shall from that date (when the patent was granted) be available to the public. (After 18 months from the filing date, or possibly from the

date that priority was claimed, the documents are made available to the public even if the patent has not yet been granted). Any person may file an opposition to a granted patent within nine months from the date of grant of the patent. An opposition to a granted patent based on a patent being notified contrary to morality or public order must be filed within three years from the date of grant of the patent. If an opposition is filed relating to the granted patent being contrary to morality or public order, more than nine months after the date of grant of the patent, the opposition is subject to the payment of a fee. In addition, the decision of the Patent Office may be challenged at any time before the courts. Generally it seldom takes less than two years to obtain a patent registration in Norway. The filing costs range from NOK 4,000 (USD 619) upwards, excluding professional fees.

### **8.3 Trademarks**

#### a) Subject matter and requirements for protection

Protection can be obtained by registration or through extensive use. Service marks, certification marks and association marks can also be registered.

#### b) Duration and use requirements

Trademark protection lasts ten years from the date of registration and is renewable for periods of ten years. If the trademark holder has not taken the registered trademark into use in relation to the goods for which it has been registered within five years from the date of registration or if the use has been interrupted for five consecutive years, the registration may be annulled by a court ruling.

#### c) Procedure, time and costs

Applications for the registration of a trademark must be filed with the Norwegian Patent Office in Oslo. Non-resident applicants must appoint a Norwegian representative. The application (with enclosures and all documents pertaining to the application) is available to anyone. If the application is not in the prescribed form or if there are other obstacles that prevent registration, the applicant will be notified by the Patent Office. The applicant is given the opportunity to make necessary corrections. If the applicant does not respond within the time limit set, the application is considered withdrawn. However, the application may be resumed upon the applicant's response within two months after the expiration of the time limit, subject to the payment of a fee. If the application is in the prescribed form, and if there are no other obstacles that prevent registration, the trademark will be registered. Notice of the registration is published. Thereafter, any person may file an opposition to the registration within two months from the date of publication. The Patent Office may reject the opposition or take into account the opposition. The decision of the Patent Office can be challenged before the courts. Generally, it seldom takes less than nine months to obtain the registration of a trademark in Norway. The costs of filing trademark registrations for a single mark in three classes is from NOK 2,300 (USD 356) upwards, excluding professional fees.

### **8.4 Industrial designs and models**

A new Design Act that is harmonised with the Directive 98/71/EC of 13 October 1998 relating to the legal protection of designs, came into force in Norway on 1 May 2003. It involves inter alia that a part of a product may also be protected as a design, that a design shall be protected by a design right to the extent that it is new and has individual character and that the period of legal protection is extended from a maximum of 15 years to 25 years.

a) Subject matter and requirements for protection

The appearance of a product or a part of a product may be protected as a design. To obtain protection the design must be new and it must have individual character. Protection cannot be obtained for features of the appearance of the product which are merely governed by technical function.

b) Duration and use requirements

Designs have protection for periods of five years or for those periods of five years for which the applications are applied, from the date of application. The protection period can be renewed for additional five year periods, up to a maximum 25 years, subject to the payment of a fee. The protection period for spare parts is maximum five years. There are no working requirements.

c) Procedure and costs

Design applications are filed with the Norwegian Patent Office. Non-resident applicants must appoint a Norwegian representative. The application must show the design in its entirety. The application is examined by the Patent Office for compliance with the formal requirements only. If required by the applicant, the application is also examined by the Patent Office for other obstacles to the right to design, including novelty. However, the outcome of the supplementary examination is for the applicant's information only, and will have no influence on the registration. The costs of registering an industrial design are from NOK 1,300 (USD 200) upwards, excluding professional fees.

Some protection for industrial designs will also be enjoyed under the 1972 Marketing Control Act. This protection is not subject to any registration.

## 8.5 Copyrights

a) Formalities and duration

In Norway there are no formalities for copyright protection. Registration is not possible and notice is not necessary, but may be advantageous. Copyright protection commences the moment the work is created and lasts during the lifetime of the author plus seventy years after the author's death. Neighbouring rights are protected for shorter periods, i.e. the rights of performers as well as film- and phonogram producers and broadcasting companies are protected for 50 years; databases and "catalogues" are protected for 15 years whereas photographic pictures (photographs not fulfilling the criteria for being a photographic work) are protected for 15 years after the death of the photographer, but not less than 50 years from the making of the photograph.

b) Subject matter

Copyright protection extends to any work in the field of literature, science or art created through intellectual effort and originality. Mere labour or skill is insufficient to justify copyright protection. The 1961 Copyright Act grants copyright protection to a non-exhaustive list of works, including writings of all kinds, oral lectures, stage performance works, musical works, paintings, drawings, sculptures, architectural designs and buildings, maps, cinematographic work and software programs.

c) Copyright protection of software

Norwegian copyright law grants protection to computer software extending to the source code, the object code, and screen displays, although screen displays may be regarded as "temporary reproduction" which are not protected. Software protection does not require the deposit or disclosure of source code.

d) Moral and other related rights

The moral rights prescribed by the Berne Convention are incorporated in the Copyright Act. Thus, the author has a right to be named and is protected against a presentation of the work to the public in a way or in a context that violates the literary, scientific or artistic reputation or characteristic of the author or the work. This right can be waived only if a permitted use is restricted with respect to its kind and extent. In any event, the author is entitled to demand either that the presentation does not occur under his name or that it is made clear that the changes do not stem from him. Even after the expiry of the copyright protection the government has the right to forbid such presentations or presentations which otherwise may harm public cultural interests. The author's heirs can also assert all rights that can be asserted by the author.

e) Compulsory licenses

The Copyright Act provides compulsory licenses for specific purposes, such as fixations of works for health institutions, homes for the elderly etc., the making of copies for certain disabled persons as well as reproduction of minor parts of works which have been published more than five years ago for the use in collective works intended for use in religious service and education. In addition the Copyright Act contains important and wide-ranging provisions regarding collective licenses for photocopying and retransmission of works that are included in a broadcast.

## **8.6 Topography of semi-conductors**

Protection is granted to new topography of semi-conductors without any requirement of registration or notification.

## **8.7 Trade secrets**

Trade secrets and know-how are protected under the 1972 Marketing Control Act. There are no formalities required for protection of trade secrets in Norway, and there are no time limits on such protection.

## **8.8 Licensing**

a) Governmental approval

Intellectual property licenses or payments of royalties need not be approved or registered with a government agency. Patent licenses and transfers must be registered in the Patent Register in order to be protected against conflicting licenses (and transfers) to other parties.

b) Royalty

The government imposes no limitation on royalty rates, but unjustified and unreasonably high royalty may, in special cases, be revised under the rules of the Contract Act and Competition Act.

c) Currency restrictions and withholding or other taxes

There are at present no withholding taxes or other taxes imposed on the payment of royalties to entities outside of the country provided the royalties are normal and stipulated on an arm's length basis. There are no restrictions on the transfer of intellectual property.

# **9 DIRECT INVESTMENT**

## **9.1 Methods of direct investment**

In Norway foreign investors may carry out business on a permanent basis either through a branch office or through a separate legal entity. Such separate legal entity may be a limited company or a

general or limited partnership. A separate legal entity may either be incorporated from scratch or acquired through the purchase of an established entity.

M & A operations are well known and are generally performed in accordance with internationally recognised standards. Specific procedures and governmental approvals may apply depending on the circumstances.

Joint ventures may be structured by the incorporation of a limited company acting as the joint venture company, with its shares distributed among the joint venture participants and the relationship between the participants governed by a shareholder's agreement. Alternatively, a joint venture may be established by means of a partnership. It should be noted that although not formally structured as a separate legal entity by the participants, many joint venture agreements do in fact constitute partnerships as defined by the 1985 Partnership Act.

An option when structuring a joint venture set-up, provided that the participants are companies established in accordance with the laws of any of the EEA states, is to establish a European Economic Interest Grouping (EEIG). Such grouping may be registered on the basis of EU directive 2137/85, as incorporated in Norwegian law, and may have its registered address in Norway.

There is no preferred method of direct investment. The choice of method will depend on the specific circumstances in each case, including considerations as to tax, liability and capital structure.

## **9.2 Restrictions on foreign investors**

Statutory limitations on foreign ownership of Norwegian businesses have been abolished. Therefore the previous distinction between freely transferable and restricted shares has become obsolete.

To supplement the liberalisation in respect of ownership there has also been a relaxation of the regulatory regime regarding directorships. Previous restrictions pertaining to Norwegian citizenship and domicile have been abandoned in favour of a principle of non-discrimination among EEA citizens resident in EEA states.

## **9.3 Registration and notification requirements**

All Norwegian companies shall be registered with the Register of Business Enterprises ("Foretaksregisteret") as well as with the Central Coordinating Register for Legal Entities ("Enhetsregisteret"), which is a central database in Norway. (For limited companies see chapter 11 below.) The same registration requirements apply to branches of foreign entities (see chapter 14 below). Furthermore, a foreign legal entity must be registered if it undertakes business activities of a permanent nature in Norway, irrespective of whether or not a subsidiary, branch or physical office has been set up in Norway.

Furthermore, a VAT registration certificate from the tax authorities will be required if the foreign entity is to sell its products or services in the Norwegian market.

If the foreign legal entity wants to employ local employees it must also be registered as an employer with the tax authorities.

As a result of Norway being part of the EEA through its membership in the EFTA, commercial activities in Norway are subject to a two-pronged system of competition rules:

- the 2004 Competition Act applies to commercial activity that is undertaken, has an effect or is liable to have effect within the realm of Norway;

- the competition rules of the EEA Agreement apply to commercial activity with an EEA dimension.

The competition rules of the EEA Agreement mirror those of the EC Treaty, and have been implemented into Norwegian legislation.

The competition rules of the Competition Act and the EEA agreement include prohibitions against cartels and abuse of dominance. Infringements may be sanctioned by *inter alia* fines and imprisonment.

Furthermore, the Competition Act contains rules on merger control, applicable to "concentrations". A concentration shall be deemed to arise when two or more previously independent undertakings or parts of undertakings merge or control is acquired of the whole or parts of one or more other undertakings. The latter alternative also includes the creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity.

The criterion for prohibiting a concentration is the creation or strengthening of a significant restriction of competition. Provided that the requirements are fulfilled, the Competition Authority will also intervene against an acquisition of holdings in an undertaking, even if the acquisition will not lead to control of that undertaking.

The Competition Act introduced a pre-merger notification system, pursuant to which concentrations involving undertakings with an annual turnover in Norway exceeding certain thresholds are subject to a mandatory notification to the Competition Authority by way of a short form standardized notification. Such concentrations need be notified no later than when a final merger agreement has been concluded or control has been acquired.

Within 15 working days after having received the standardized notification, the Competition Authority may order the submission of a complete notification. If such a submission is not required, the concentration is automatically considered cleared. The ordering of a submission of a complete notification triggers case-handling deadlines for the Competition Authority, as well as a standstill obligation on the part of the involved undertakings.

An acquisition of minority holdings in an undertaking is not subject to mandatory notification, but may be notified voluntarily for clarification as to whether intervention will be considered. In such a case, the requirements of complete notification must be met. Moreover, the Competition Authority may impose on the purchasers of a minority holding an obligation to submit a complete notification within three months after a final acquisition agreement. This will also trigger a standstill obligation.

In total, it may take 100 working days from the submission of complete notification until a final decision by the Competition Authority. Should the parties propose remedies, an additional 25 days will be included. The Competition Authority's decision in a merger case may be appealed to the Ministry and subsequently to the courts.

#### **9.4 Types of legal entities**

The most important types of Norwegian legal entities are as follows:

##### a) Limited companies

The shareholder's liability for a limited company is limited to the share capital of the company in question. There are two types of limited companies: Private Limited Companies ("aksjeselskaper", abbreviated "AS") and Public Limited Companies ("allmennaksjeselskaper", abbreviated "ASA").

Limited companies are required to register with the Registrar of Business Enterprises within three months of incorporation, and until such registration has taken place the person(s) dealing on behalf of the company will be personally liable for the obligations of the company. The registration fee is NOK 6000 (USD 930).

Payment of dividends by a limited company is restricted to its accumulated net profits less any funds that are required to fulfil certain applicable statutory requirements.

The regulations concerning limited companies are described in more detail in chapter 11.

b) General partnership ("*Ansvarlig selskap*", abbreviated "ANS")

The partnership and the relationship between the partners are governed by the Partnership Act, supplemented by the partnership agreement. The partners will be jointly and severally liable for all obligations of the partnership. However, the partnership agreement may provide that the partners, although having unlimited liability, shall only be liable for a pro rata share of the obligations of the general partnership ("*Selskap med delt ansvar*", abbreviated "DA").

Both individuals and legal entities may be partners.

A partnership must keep accounts in accordance with the 1998 Accounting Act and such accounts are, with some exceptions, to be audited in accordance with the 1999 Auditing Act. However, unlike limited companies, it is not necessary for the annual accounts to be filed with the Registrar of Company Accounts, provided that the partnership falls within the Accounting Act's definition of small enterprises. This implies that the accounts of such partnerships do not have to be published.

All general partnerships are required to register with the Registrar of Business Enterprises, and the protection offered partners by using the "DA" form does not become effective as against the creditors of the partnership until so registered. The registration fee is NOK 2500 (USD 387).

The general partnership as such is not liable for income tax. Taxes are levied proportionately on each individual partner. There are no statutory restrictions on the payment of "dividends" from the partnership to its partners.

If the partnership is created to perform a function of limited duration or scope it is often labelled a "joint venture". This does not have any bearing upon its legal status as the requirements of the Partnership Act apply to all commercial activities performed on behalf of two or more individuals/legal entities in the sense that such individuals/entities have unlimited liability for the obligations incurred during such activities. Likewise, if one or more of the participants have limited liability, while at least one participant has unlimited liability, the relationship will be governed by the Partnership Act as a limited partnership.

c) Limited partnership ("*Kommandittselskap*", abbreviated "KS")

A limited partnership is governed by the Partnership Act. A limited partnership must consist of one or more *general partners* and of one or more *limited partners*. Both the general and the limited partners may be either legal entities or individuals. The general partners have unlimited liability, whereas the limited partner's liability is limited to an amount fixed by the partnership agreement. At least 40 % of the company capital shall be locked-up capital to be paid to the limited partnership and which the partners may not freely dispose of. There is a minimum capital requirement of at least NOK 20.000 (USD 3,100) for each participating limited partner. A limited partnership shall not be registered with the Registrar of Business Enterprises before at least 20% of the individual partners' obligation of payment has been paid to the limited partnership. An

additional 20% must be paid at least two years after registration. The limited partnership's funds may not be distributed to the partners to a larger extent than the limited partnerships net capital according to the balance sheet for the last accounting year exceeding 40% of the company capital.

In most cases there is only one general partner, being a private limited company with the minimum permitted share capital (see chapter 11 below). At least one general partner must provide at least 10% of the company's capital, own at least 10% of the limited partnership's net capital at all times and have at least as great part of the profit and deficit.

With some modifications, a limited partnership is subject to the same rules that apply to general partnerships, including the rules on registration and taxation. The registration fee is NOK 6000 (USD 930).

## **10 NORWEGIAN BUSINESS ACQUISITIONS BY FOREIGN CORPORATIONS**

### **10.1 General remarks**

Norwegian businesses can be purchased by an acquisition of assets or shares. Alternatively, a transaction may take place through a statutory merger between Norwegian limited liability companies. Shares may be acquired either through the transfer of existing shares or through the subscription of newly issued shares by an increase in the share capital of the issuing company.

This section will focus on the acquisition of shares in Norwegian limited companies. As to restrictions on foreign investors, please refer to chapter 9.2 above.

### **10.2 Relevant statutory provisions**

Acquisitions of shares or assets will at the outset be governed by the parties' own agreement. The agreement will be supplemented by general principles of contractual law including the 1988 Sales of Goods Act. The 1997 Securities Trading Act is also relevant, in particular with regard to listed companies, as is the 1997 Limited Companies Act which includes provisions for the protection of minority shareholders that may be of relevance.

### **10.3 Employees**

In the case of the acquisition of assets one should note that as far as employees are concerned, Norway has implemented the EU directive relating to the safeguarding of employees' rights in the event of a transfer of undertakings etc., into Norwegian law. Thus, the position will generally be that the relationship between the employees and the acquirer will be treated as if the acquirer had stepped into the shoes of the original employer. This implies that the purchaser in all material respects takes over all the seller's rights and obligations towards any employees of the transferred undertaking, regardless of what the parties have agreed between themselves. Furthermore, it should be noted that an acquisition per se is an insufficient ground for dismissing an employee. However, in the event of dismissal being "reasonably justified" based upon economic, technical or organisational grounds, such dismissal will not be deemed to fall within the scope of the rules of compensation for unfair dismissal. The courts construe the "reasonably justified" qualification narrowly.

### **10.4 Transfer of shares**

#### *10.4.1 Companies with shares registered in VPS*

Notification is required by the seller to the Central Securities Register for companies registered in the Norwegian Central Securities Depository (*Verdipapirsentralen* or *VPS*). This applies to all public limited companies and all companies listed on the Oslo Børs.

#### *10.4.2 Companies with shares not registered in VPS*

Any purchase of shares should be reported by the acquirer to the company having issued such shares as soon as possible following the completion of the transaction. The company will then take note of the transfer of ownership of the shares in its shareholders register. Only when such registration has taken place will the acquirer be able to exercise all rights attached to the newly acquired shares.

#### **10.5 Financial assistance**

The 1997 Limited Companies Acts contains restrictions as to financial assistance, such as the provision of a loan from a limited company for the purpose of the borrower (or another person acting in concert with him) to acquire shares in such a company. Furthermore, such restrictions are also applicable for the granting of security in connection with such share acquisition. The same restrictions apply in respect of the acquisition of shares in any parent or subsidiary of the company that grants financing or security. Financial support of this nature is unlawful irrespective of whether it is extended prior to, during, or subsequent to the acquisition.

In addition to the above general financial assistance prohibition, the Limited Companies Act restricts a Norwegian limited liability company from granting credit to, or providing security for the obligations of its shareholders beyond its distributable reserves (free equity) and then, further provided, that satisfactory security for repayment has been established.

#### **10.6 Disclosure obligation relating to purchase/sale of shares**

As is the case in other comparable jurisdictions, public offers to buy shares in listed companies are subject to certain disclosure obligations. In respect of listed companies, the 1997 Securities Trading Act requires shareholders to notify the Oslo Børs immediately upon having acquired shares and/or rights to shares which, together with their previous shareholdings and those of certain related parties, represent the equivalent of, or more than 5, 10, 20, 33  $\frac{1}{3}$ , 50, 67  $\frac{2}{3}$  or 90 % of the share capital or the votes in the company (the 5 % threshold entered into force on 1 January 2003). A corresponding notification requirement is imposed on a seller falling below such thresholds when disposing of shares.

#### **10.7 Mandatory offer requirements**

Norwegian law requires that any person, entity or group acting in concert, that acquires more than 40 % of the voting rights of a Norwegian company listed on Oslo Børs, shall make an unconditional general offer to acquire the whole of the outstanding share capital of that company. The offer is subject to approval by Oslo Børs before submission of the offer to the shareholders. The offer must be in cash or contain a cash alternative at least equivalent to any other consideration offered. The offering price per share must be at least as high as the highest price paid by the offeror in the six-month period prior to the date the 40 % threshold was exceeded, but equal to the market price if the market price was higher when the 40 % threshold was exceeded. A shareholder who fails to make the required offer must within four weeks dispose of sufficient shares so that the obligation ceases to apply. Otherwise, Oslo Børs may cause the shares exceeding the 40 % limit to be sold on public auction. A shareholder who fails to meet with such requirements cannot, as long as the mandatory bid requirement remains in force, vote on his shares or exercise any rights of share ownership unless a majority of the remaining shareholders approve, other than on the right to receive dividends and preferential rights in the event of a share capital increase. In addition, Oslo Børs may impose a daily fine upon a shareholder who fails to make the required offer.

## **10.8 Compulsory acquisition**

If a shareholder, directly or via subsidiaries, acquires shares representing more than 90 % of the total number of issued shares as well as more than 90 % of the total voting rights attached to those shares, then the majority shareholder would have the right (and each remaining minority shareholder of that company would have the right to require the majority shareholder) to effect a compulsory acquisition for cash of any shares not already owned by the majority shareholder. The compulsory acquisition would result in the majority shareholder becoming the owner of the shares of the minority shareholders with immediate effect.

Upon effecting the compulsory acquisition, the majority shareholder would have to offer the minority shareholders a specific price per share. The determination of the price per share would be at the discretion of the majority shareholder. Should any minority shareholder not accept the offered price, such minority shareholder may, within a specified period of not less than two months, request that the price be set by the Norwegian courts. The cost of such court proceedings would normally be charged to the account of the majority shareholder, and the courts would have full discretion in determining the consideration due to the minority shareholder as a result of the compulsory acquisition.

Due to the mandatory offer obligation described above, an acquisition of a listed company is most often first carried out by a conditional voluntary offer. The conditions which are most often imposed are those of acceptance grade, satisfactory due diligence, ordinary conduct, regulatory consents and other necessary approvals. The consideration under a voluntary offer can be in other than cash, for example shares in the offeror. The offeror can determine the length of the offer period and may extend the offer period if this has been provided for in the offer document. The offer document in respect of a voluntary offer is also subject to the requirements as set out in the 1997 Securities Trading Act and must be subject to prior approval from Oslo Børs.

Lastly, it should also be noted that a voluntary offer does not relieve the offeror from the mandatory offer obligation when the offeror acquires more than 40% of the votes of the company (unless the voluntary offer is made unconditional and satisfies the requirements for a mandatory offer in all respects).

## **10.9 Antitrust/Merger control**

Norwegian competition law may affect both share-based and asset-based acquisitions, as well as mergers. Under the 2004 Competition Act, the Competition Authority will have an obligation to intervene against transactions if the transaction will result in, or reinforce a substantial reduction of competition.

The 2004 Competition Act contains provisions for a mandatory notification system. Please see Section 9.3 above for a more detailed account of the proposed notification requirements.

## **10.10 Transfer taxes and duties**

No stamp duty or other transfer tax is payable upon the sale of shares in Norwegian limited companies.

In respect of asset sales including the transfer of real estate or leaseholds, a stamp duty of 2.5% of the market value of the real estate in question - or the aggregate rental for the first 20 years - is levied on the buyer. Asset-based acquisitions are also subject to certain registration taxes in respect of the transfer of ownership of motor vehicles and aircraft. Mergers are usually tax effective, as usually no tax consequences will arise for the companies or their shareholders. In respect of other relevant tax considerations, reference is made to chapter 15 below.

## 11 INCORPORATION OF A COMPANY

This section will deal with the private limited company ("*aksjeselskap*", abbreviated "AS") as well as the public limited company ("*allmennaksjeselskap*" abbreviated "ASA"), as the two types of Norwegian companies with limited liability. Such companies are governed by the 1997 Private Limited Companies Act and the 1997 Public Limited Companies Act. Limited. Companies must keep accounts in accordance with the general terms of the Accounting Act as required in the abovementioned Limited Companies Acts.

When a company is incorporated, but not yet registered with the Register of Business Enterprises, the person(s) who act(s) on behalf of the non-registered company will assume joint and several liability for the company's obligations in the event that the registration of the company does not take place. This risk can be avoided by acquiring a "shelf company" instead of setting up a new company.

Only one *incorporator* is required to form a limited company. The incorporator(s) must sign a Memorandum of Association, as well as Articles of Association.

The *minimum share capital* is NOK 100,000 (USD 15,500) in respect of private limited companies and NOK 1 million (USD 155,000) in respect of public limited companies, of which the entire amount must be paid-up prior to registration. No taxes are levied in Norway on the contribution of share capital to Norwegian limited companies.

The Public and Private Limited Companies Acts requires that certain issues are dealt with in the company's *Articles of Association*, for example: the company name, the company purpose, the amount of share capital, the number of board members and issues to be treated by the annual general meeting of the company.

The company must have a *Board of Directors* composed of at least three members. However, if the share capital of a private limited company is less than NOK 3,000,000, the board may consist of only one or two directors. In the latter case it is required that at least one deputy member of the board is appointed as well.

The *company's employees* may be entitled to elect one representative and one observer as well as deputy members to the Board of Directors, provided that the company does not have a supervisory board and has more than 30 employees. If such company has more than 50 employees, such representation may be increased to one third of the members of the Board of Directors, with a minimum representation of two members as well as deputy members. If such company has more than 200 employees, the employee representation is further strengthened. Companies with fewer than 200 employees may opt for either a one-tier or a two-tier management system. If there are more than 200 employees in the company, there is an obligation to create a two-tier management system unless 2/3 of the employees and the company agree otherwise.

If a Norwegian limited company is the parent company to a group of companies, all the employees of Norwegian companies in the group may be cumulated when calculating whether the above thresholds have been exceeded, and all such employees may be granted the right to vote in the elections for representatives to the board of the parent company.

All public limited companies must have a *managing director*. Private limited companies must have a *managing director*, provided that the share capital is more than NOK 3,000,000. The managing director is legally responsible for the day-to-day management of the company and may in this respect always act on behalf of the company.

The managing director and at least half the members of the Board of Directors must be Norwegian residents or EEA citizens resident within the EEA. Exemptions may be granted by the Ministry of Trade and Industry and such exemptions are in practice granted, either in respect of the requirement regarding the composition of the Board of Directors or in respect of the requirement regarding the managing director.

One or more *auditors* must be elected to audit the company's accounts in accordance with the Auditing Act.

Limited companies are required to hold ordinary *general meetings* annually and not later than six months after the end of the financial year. Otherwise, extraordinary general meetings may be held whenever required by the Board of Directors, by the auditor and by shareholders representing at least 10 % of the share capital in a private limited company or 5 % in a public limited company. Any shareholder may be represented by proxy, and if explicitly provided for in the Articles of Association, general meetings can be held outside of Norway.

A limited company may have only one *shareholder*, but may have more. If the limited company has only one shareholder, it is not necessary to issue more than one share. Shares shall be registered in the company's shareholder registry on the name of a specific person or legal entity.

In general shares of public limited companies are freely transferable, unless restrictions are stipulated in the Public Limited Companies Act, the Articles of Association or a shareholders' agreement. Certain types of *restrictions as to transferability* are specified in detail by the Private Limited Companies Act and apply to the shares of most private limited companies. Such restrictions relate to transfers being subject to the reasonable consent of the Board of Directors and to transfers being subject to a right of first refusal. These restrictions may, however, be deviated from in the Articles of Association.

As a main rule all shares rank equally in respect of their rights, including voting rights. However, the Articles of Association may provide for more than one *class of shares*. The difference in the rights attached to the shares usually relates to the entitlement to dividends, the rights to assets upon liquidation and/or the voting rights in the company. It is possible to have non-voting share classes. However, certain resolutions made at the general meeting may only be made by a qualified majority both of the votes cast and of the share capital represented at the general meeting.

A limited company may, subject to free equity, acquire up to 10 % of its *own shares* except in the case of an acquisition of another business entity by merger or otherwise, in which case the excess number of shares must be sold or cancelled within two years. There is a corresponding restriction on the ability of a limited company to accept its own shares as security, as well as the ability of a subsidiary to acquire shares in its parent company or to accept such shares as security. Such restrictions are also applicable to foreign subsidiaries of Norwegian parent companies and in the case of Norwegian subsidiaries of a foreign parent company.

## **12 EXCHANGE CONTROLS**

With effect from 1 July 1990, most exchange control regulations in Norway were abolished.

There are no longer any licensing requirements for currency transactions, there is only an obligation to report currency payments in excess of NOK 25,000 to the Norwegian Central Bank ("Norges Bank") unless payment is made through a Norwegian bank authorised to make currency

payments. In the latter case, such bank will be required to report the payment. The reporting requirements are maintained primarily for statistical and tax supervision purposes.

No foreign currency restrictions apply: to the repatriation of capital invested in Norway, to the purchase of foreign exchange, to the repatriation of earnings made in Norway, or in respect of payments in local currency to employees, suppliers, etc.

## **13 DISSOLUTION**

### **13.1 General**

Insolvency in the main - but not necessarily - leads to the cessation of business. Dissolution proceedings may also lead to criminal charges and pecuniary liabilities for partners or directors and officers of limited companies. If the equity of a company is at any given time less than what would appear to be required on the basis of its current exposure and/or such equity is at any time deemed to constitute less than 50 % of its registered share capital, the Board of Directors is required to take immediate action to address the situation. Such circumstances may give rise to a call for recapitalization, reorganisation under insolvency legislation or dissolution. There is no duty on the shareholders to recapitalize the company, but the directors may become subject to criminal prosecution and financial liability should they subsequently be deemed negligent in having continued operations without appropriate correctional action.

A Norwegian business entity can be dissolved by *voluntary liquidation* in accordance with regulations in the Private Limited Companies Act, the Public Limited Companies Act or the Companies Act, or by *compulsory liquidation* in accordance with the insolvency legislation. (In addition, the insolvency legislation provides for a *voluntary debt settlement*). Norwegian insolvency legislation is contained in the Bankruptcy Act, which sets out the various procedures to be followed and the Recovery Act containing provisions regulating priority of claims and revocation of certain pre-liquidation transactions.

The Bankruptcy Act sets out three different procedures: voluntary debt settlement (which may include a suspension of payments), compulsory composition arrangements and bankruptcy.

### **13.2 Voluntary Debt Settlement**

The debtor company may obtain a limited moratorium by filing a petition with the local district court asking for the courts protection during a negotiation period of three months, which may be extended at the discretion of the court in exceptional cases. The opening of debt negotiations will be made public. During this period no creditors may enforce their claims against the debtor, be it individually or collectively, save for the collective call for bankruptcy by at least three creditors whose aggregate claims must represent at least 40 % of all known claims.

The court will appoint a supervisory committee (1-4 members) to assist the debtor in restructuring its business. The committee will notify all known creditors that debt negotiations have been instigated. Given the task as supervisors, the committee- in contrast to the liquidator in a bankruptcy - may as a general rule not dispose of the assets of the debtor. Their approval however, is required for all significant transactions of the company.

As well as being subject to the approval of the debt restructure committee, the debtor's proposal for restructuring his business will also be submitted to all known creditors for approval. Such proposal may include (i) suspension of payments, (ii) partial write-off of debt, (iii) full or partial liquidation of the company without relief for uncovered debts, (iv) full or partial liquidation of the company with relief for uncovered debts or (v) a combination of any remedy set out in (i) - (iv).

If **all** creditors approve the proposal, then this forms a voluntary composition arrangement, which is notified to the local district court and the proceedings are terminated. An approved voluntary composition arrangement will allow the company to continue its operations. If, however, the proposal is rejected, the company may apply for compulsory composition arrangements or open bankruptcy proceedings, which will then take effect retrospectively from the day the debtor filed for a voluntary debt settlement.

### **13.3 Compulsory Composition Arrangement**

Compulsory composition arrangements may comprise of: (i) suspension of payments, (ii) partial write-off of debt, (iii) full or partial liquidation of the company with relief for uncovered debts subject to a minimum coverage, or (iv) a combination of any remedy set out in (i) - (iii).

Compulsory composition proceedings will be opened by the local district court following a petition from the debtor or the debt restructure committee, provided the proposal receives support as set out above in section 13.2. The opening of proceedings is published in the Norwegian Gazette and a newspaper commonly read at the company's place of business. All claims originating prior to the opening of the proceedings shall be reported to the committee.

The committee may reject claims and seek revocation of transactions under the Recovery Act.

A compulsory composition arrangement must yield a minimum payment of 25 % to each creditor. A proposal requires the approval of 60 % of the voting creditors - representing at least 60 % of the aggregate unsecured debt - if a minimum settlement of 50 % is offered. If the proposal is for less than 50 % settlement, a 75 % majority is required. The decision will be binding on all creditors save certain public claims and claims secured by mortgage/lien.

### **13.4 Bankruptcy**

Bankruptcy proceedings are opened following a petition to the local district court from a creditor or the debtor itself. In both cases it must be demonstrated to the court's satisfaction that the debtor is insolvent, i.e. the company is displaying a continued inability to pay debts as and when they fall due, while at the same time the liabilities exceed the assets. The court shall request a deposit to secure court fees and basic costs related to the proceedings. The deposit is in the sum of NOK 42,250 (USD 6550 ). (If bankruptcy is opened following a petition from the debtor or an employee, no deposit is required)

Both the decision to open bankruptcy proceedings and the naming of the court appointed liquidator to be approved by the creditors are published in the Norwegian Gazette and a newspaper commonly read at the company's place of business. A creditors' committee assists the liquidator. Proceedings generally follow internationally recognised standards with regard to the assessment and ranking of claims, testing and revocation of transactions made within a certain period prior to opening of bankruptcy proceedings or suspension of payments, continued operation of the company at the risk of creditors and/or disposal of assets.

The liquidator, with the assistance of the creditors' committee, will issue a report outlining the result of investigations made as to the previous management of the company and the cause of insolvency as well as the management of the estate. This report may be submitted to the public prosecutor for further investigations and filing of criminal charges, if necessary.

The bankruptcy proceedings are closed by the final distribution of dividends as approved by the court, and the company is stricken from the Registrar of Business Enterprises' register. It should be

noted that private persons remain liable for the part of their debts that remain uncovered from the dividends.

## **14 BRANCHES**

### **14.1 Registration procedures**

All Norwegian branches of foreign legal entities must be registered with the Norwegian Registry of Business Enterprises (*Foretaksregisteret*). The application must be signed by an authorised signatory of the relevant foreign legal entity.

The application must include the following information:

- a) A formal resolution by the foreign legal entity of which the Norwegian branch is created (the "Foreign Entity") resolving to establish the Norwegian branch.
- b) Name, type of legal entity and head office address of the Foreign Entity of which the Norwegian branch is created.
- c) Information as to who is authorised to sign on behalf of the Foreign Entity.
- d) The names of the members of the Board of Directors of the Foreign Entity and the contact person for the Norwegian Branch, including birth dates and home addresses. If a board member of the foreign entity does not already hold a D-number, he/she will have to fill in a separate application form for D-number. The D-number is used for registration purposes only with the Norwegian Registry of Business Enterprises.
- e) If the Foreign Entity is a limited liability company: its authorised share capital, as well as information regarding the amount of share capital that has been paid in.
- f) The memorandum and articles of association of the Foreign Entity.
- g) The name and address of any registry in which the Foreign Entity has been registered in its own jurisdiction, and the registration number.
- h) Trading name and business address of the Norwegian branch.
- i) Type of business activities to be performed by the Norwegian branch.
- j) The name of the branch manager, if any, and of the members of the Board of Directors of the branch, if any (as well as their birth dates and addresses). A Norwegian branch does not need to have a board or managing director/branch manager.
- k) The extent to which any of the persons mentioned under j) will be granted the authority to sign on behalf of the Foreign Entity.
- l) Name of auditor of the Norwegian branch, if any.

In principle the Norwegian Registry of Business Enterprises will require all information to be filed in Norwegian. The application may need to be supplemented by other information that the Norwegian Registry of Business Enterprises requires to confirm the correctness of the information specified

under a) – l). If the branch shall conduct business in Norway that is subject to VAT (i.e. an entity that sells goods or services in Norway against compensation, currently with a turnover of more than NOK 50,000), the branch will receive further information from the Norwegian Registry of Business Enterprises on the procedures for paying such taxes. Further requirements will also apply if the branch is going to have employees in Norway.

The Foreign Entity is liable for all the obligations of the branch.

The fee for the registration of a branch of a foreign entity with the Norwegian Registry of Business Enterprises is NOK 2,500 (approx. USD 389 per 29. August 2005). Registration fee for a limited company with the Norwegian Registry of Business Enterprises is NOK 6,000 (approx USD 930).

## **14.2 Accounting**

A Norwegian branch that carries out a business taxable in Norway is obliged to perform bookkeeping and to prepare annual accounts. Appointment of a statutory auditor is required if the turnover of the branch is MNOK 5 or more.

## **14.3 Tax**

Reference is made to chapter 15 below.

# **15 TAXATION**

## **15.1 Introduction**

Since 2002, work has been in progress in Norway on an extensive tax reform. The primary objective has been to reduce the difference in tax rates calculated upon income from labour and income from capital. In addition, various other amendments has been implemented as a consequence of Norway's obligations under the EEA Agreement.

The Government's tax reform proposal was passed by the Norwegian Parliament (Stortinget) in 2004 and 2005. The main points of the reform are:

Introduction of the "Shareholder Model" for individual shareholders as of 1 January 2006. The Shareholder model implies that dividends distributed to individual shareholders, will be taxable as general income at a flat tax rate of 28 %. The shareholder will not be entitled to a tax credit under the Norwegian imputation method (to be abolished). Instead, individuals will be entitled to deduct a calculated allowance when calculating their taxable dividend income. The allowance will be calculated on a share by share basis, and the allowance for each share will be equal to the cost price of the share multiplied by a risk free after tax interest rate.

Introduction of the "Exemption Model" for limited liability companies. The Exemption Model implies that dividends and gains on shares derived by limited liability companies are exempt from Norwegian tax. Correspondingly, losses derived from the sale of shares are not deductible for such shareholders. The Exemption Model also comprises distributions from partnerships to limited liability companies and the realisation of shares in partnerships by such companies. The Exemption Model only applies to dividends and gains on shares in limited liability companies/partnerships resident for tax purposes within EEA, and companies resident outside EEA provided the country is not defined as a low tax jurisdiction and the shares have been held for a minimum of two years and represent at least 10 % of the capital and votes of the company.

The Exemption Model was effective as of 1 January 2004 in respect of dividends and as of 24 March 2004 in respect of gains and losses on shares in limited liability companies. The Exemption

Model will be effective as of 1 January 2006 in respect of distributions from and the realisation of shares in partnerships.

Introduction of the "Participation Model" for participants in partnerships. The Participation Model is mainly based on the same principles as the Shareholder Model.

The current rules applying to sole proprietorships is amended, but the general taxation principles remain unchanged, i.e. tax is paid irrespective of whether funds remain in the business or are extracted.

## **15.2 Taxable income**

Corporations and individuals resident in Norway for tax purposes are taxed on their global income. Tax liability extends to all kinds of income derived from business activities, capital or personal services. Residents are also liable to pay tax on gains on equity instruments, debentures, bonds and similar instruments, as well as certain receivables and gains due to changes in exchange rates of foreign currencies and losses are deductible

Pursuant to the Exemption Model, dividends on shares and gains derived by limited liability companies from the realisation of shares and financial instruments (derivatives) with shares as the underlying object are exempt from Norwegian taxation. The same applies to gains from the realisation of shares in partnerships or distributions from partnerships to its partners. Any losses resulting upon realisation will not be tax deductible.

Non-residents are taxed on Norwegian source income. Norwegian source income subject to tax in Norway includes:

- Net wealth and income from business activities which the non-resident carries out or participates in, and which is performed in or managed from Norway;
- income from real estate property and other property, including movable property situated in Norway;
- dividend distributions from Norwegian companies;
- income from personal services provided in Norway;
- certain pensions or directors' fees received from Norwegian companies or other entities;
- income from business activities or personal services related to oil and gas activities on the Norwegian continental shelf.

An individual or company not resident in Norway for tax purposes is generally not liable for tax in Norway in respect of the sale of shares in Norwegian limited liability companies (and losses are not deductible). Nevertheless, tax liability in Norway save for a tax treaty regulating otherwise may arise if: (i) the shares are effectively connected to a business carried out in Norway by the shareholder, or (ii) the shareholder has previously been resident in Norway for tax purposes, and the sale takes place within five years after such shareholder was generally liable for tax in Norway.

## **15.3 Resident in Norway**

A **corporation** is resident in Norway for tax purposes if the place of the corporation's effective management, and in particular the management at Board level, is situated in Norway. Thus, a

foreign incorporated company may be regarded as resident in Norway for tax purposes if its place of effective management is in Norway. However, if a corporation is incorporated in Norway, the corporation will normally be deemed to be resident in Norway for tax purposes although a substantial part of management of the company takes place outside Norway. The residency of the shareholders is in principle not relevant.

**Partnerships** ("*Ansvarlig selskap*") and Limited Partnerships ("*Kommandittselskap*") are normally considered transparent entities for tax purposes, and the partners are taxed for their proportional part of the income and net wealth of the partnership.

**Individuals** are resident in Norway for tax purposes if he or she stays in Norway for one or more periods exceeding 183 days in total during any 12-month period or 270 days during any 36-month period.

For individuals who have become resident in Norway for tax purposes, their resident status will only cease to exist if;

- a) he or she documents that he or she has not stayed in Norway for one or more periods exceeding 61 days in total during the relevant income year, and
- b) he, she or close family has not owned or controlled a residence in Norway (house, apartment or similar).

For individuals who have been resident in Norway for tax purposes for 10 years or more, their resident status will only cease to exist if he or she can document that he/she has not stayed in Norway for one or more periods exceeding 61 days in total for three consecutive income years. The Norwegian tax liability will in such case cease to exist as from the expiration of the third income year.

Under no circumstances will tax residence in Norway cease as long as the individual or close family owns or controls a residence in Norway (house, apartment or similar).

An employee who works outside Norway for at least 12 consecutive months, will not cease to be resident in Norway for tax purposes, and will therefore be subject to Norwegian income tax on income derived from work performed in the other state. However, he or she will receive a tax credit for foreign paid taxes.

#### **15.4 Income tax rates**

The *regular income tax rate* for individuals and corporations is 28 %. The regular income tax rate applies to capital gains, as capital gains are treated as ordinary income. All capital gains upon sale of shares are subject to tax and correspondingly, losses are deductible from ordinary income (outside the Exemption Model).

In addition, a *personal income tax* or "*surtax*" is charged on salaries in excess of NOK 381,000 (approximately USD 57,000) for single persons or NOK 393,700 (approximately USD 59,000) for taxpayers with dependants. The *surtax* rate is 12 %. Moreover, on salaries in excess of NOK 800,000 (approximately USD 121,000) additional surtax of 3.5 % is levied. The surtax is based on gross income with minimal deductions. Due to the relatively low thresholds, the tax applies to individuals with both moderate and high salaries. Along with the employees' part of *social security contribution* of 7.8 % (also calculated upon gross income), the marginal income tax rate for income from personal services is 51.3 % (28 % regular income tax plus up to 15.5 % "surtax" plus 7.8 % social security contribution). For self employed individuals the said security contribution is increased to 10.7 %.

The regular tax rates also apply to *non-residents with Norwegian source income*. There is a withholding system for dividend distributions, see below.

### 15.5 Deductions and losses

In the case of business profits, expenses connected to the business are deductible, both for corporations and individuals. Expenses not connected to the business activity, are in principle not deductible. However, interests are always deductible.

For the calculation of surtax on salaries, certain basic and minimum deductions are available.

Most assets are depreciable according to the declining balance method. Depreciation allowances vary and the maximum rates (as of the income tax year 2005) are as follows:

<b>Group</b>	<b>Rates</b>
a) Office equipment	30 %
b) Acquired goodwill	20 %
c) Trucks, buses, taxis, etc	20 %
d) Cars and general business equipment	20 %
e) Ships and drilling rigs	14 %
f) Aircrafts	12 %
g) Installations for the distribution of electric power and electro technical equipment in energy companies	5 %
h) Constructions, buildings, hotels etc	4 % (8 %)
i) Office buildings	2 %

Losses in connection with business activities are deductible, also against income from other activities. Losses that are not connected to business activities are normally not deductible. However, losses from the sale or other disposition of shares in limited liability companies are always deductible for shareholders who are individuals.

Deductible losses can be carried forward and set off against taxable income for subsequent years for a period of up to 10 years. Losses to be carried forward will in principle not be affected by shareholder transactions, such as a sale of a substantial part of the shares or a merger. However, if the ownership of a company has been wholly or partly changed, either by a merger or any other transaction, and the main motivation for the transaction is achieving tax benefits, the right to carry forward accumulated losses as well as losses for the year in which the transaction takes place, will be lost. Furthermore, when a company is subject to the remission of debts, losses to be carried forward are reduced by the amount of released debts. The losses to be carry forward lapses when the loss-generating business ceases or is sold. The losses may then (upon the cessation of business) be carried back for a period of two years.

### 15.6 Group contributions

Companies within the same group may make contributions in order to set off taxable income in one group company against losses in other group companies. Companies are deemed to be part of the same group if the ownership directly or indirectly between them, exceeds 90 % of the capital and votes. Such contributions will also create an obligation to pay the actual amount, but not

necessarily at the same time. The obligation may remain as a debt between the two companies. Contributions cannot be made to companies resident outside Norway for tax purposes. However, group contributions can be made between two companies resident in Norway for tax purposes if they are owned (more than 90 %) by the same parent company, even though the parent company is not resident in Norway for tax purposes.

## **15.7 Tax period**

The calendar year is the mandatory tax year. On application, a corporate taxpayer may be granted a divergent tax year if certain requirements are met. Normally, Norwegian subsidiaries of foreign parent companies are allowed to use a divergent tax year, matching the parent company's financial year.

## **15.8 Dividend distributions**

### *15.8.1 Norwegian Shareholders*

Dividends distributed from limited liability companies resident in Norway for tax purposes to individual shareholders also resident in Norway for tax purposes ("Norwegian personal shareholders"), are taxable as general income for such shareholders at a rate of 28 %. However, Norwegian personal shareholders are for the income year of 2005 entitled to a tax credit under the Norwegian imputation system. The tax credit corresponds to the tax payable by the shareholder on the dividends received. This implies that Norwegian personal shareholders are effectively not subject to taxation on dividend distributions from Norwegian companies.

Effective as of 1 January 2006, new legislation will be introduced whereby the imputation system is abolished. Dividends distributed to Norwegian personal shareholders from limited liability companies resident in Norway for tax purposes will then be taxable under the Shareholder Model. The shareholders will not be entitled to a tax credit. Instead, the shareholder will be entitled to deduct a calculated allowance when calculating their taxable dividend income. The allowance will be calculated on a share by share basis, and the allowance for each share will be equal to the cost price of the share multiplied by a risk free interest rate after tax. Any part of the calculated allowance one year exceeding the dividend distributed on the share will be added to the cost price of the share and included in the basis for calculating the allowance the following year.

Dividends distributed from limited liability companies resident in Norway for tax purposes to shareholders who are limited liability companies resident in Norway for tax purposes ("Norwegian corporate shareholders") are exempt from Norwegian taxation under the Exemption Model.

### *15.8.2 Non-resident shareholders*

Dividends distributed from limited liability companies resident in Norway for tax purposes to shareholders resident outside Norway for tax purposes ("non-resident shareholders"), are as a general rule subject to withholding tax at a rate of 25 %. The withholding tax rate of 25 % is normally reduced through tax treaties between Norway and the country in which the shareholder is resident. The withholding obligation lies with the company distributing the dividends.

Non-resident shareholders who are individuals resident within the EEA are exempt from Norwegian withholding tax on dividends received from Norwegian companies in 2005. Effective as of 1 January 2006, new legislation will be introduced whereby non-resident personal shareholders resident within the EEA will be liable to withholding tax, but entitled to apply for a partial refund of the withholding tax, equal to a calculated allowance similar to the calculated allowance used by Norwegian personal shareholders, cf. above.

Dividends distributed to non-resident shareholders who are limited liability companies resident within the EEA for tax purposes are exempt from Norwegian withholding tax.

Dividends distributed to foreign partnerships are as a general rule subject to withholding tax at a rate of 25 %. The partners in the partnership may be entitled to a reduction of the withholding tax rate through tax treaties. However, this depends on each partner's specific situation and must therefore be assessed on a case by case basis.

Nominee registered shares will be subject to withholding tax at a rate of 25 % unless the nominee has obtained approval from the Tax Directorate for the dividend to be subject to a lower withholding tax rate. To obtain such approval, the nominee is committed to file a summary to the tax authority including all beneficial owners that are subject to lower withholding tax. Non-resident shareholders that have suffered a higher withholding tax than the rate determined by the applicable tax treaty may apply to the Norwegian tax authorities for a refund of the excess withholding tax deducted.

If a non-resident shareholder is carrying on business activities in Norway and the relevant shares are effectively connected with such activities, the shareholder will be subject to the same taxation as Norwegian shareholders, as described above.

## **15.9 Taxation on realisation of shares**

### *15.9.1 Norwegian shareholders*

Sale, redemption or other disposal of shares is considered a realisation for Norwegian tax purposes. A capital gain or loss generated by a Norwegian personal shareholder through a disposal of shares is taxable or tax deductible in Norway. Such capital gain or loss is included in or deducted from the basis for computation of general income in the year of disposal. The general income is taxable at a rate of 28 %. The gain is subject to tax and the loss is tax deductible irrespective of the duration of the ownership and the number of shares disposed of.

The taxable gain or loss is equal to the sales price less transactional expenses and the Norwegian personal shareholder's tax base on the shares. The Norwegian personal shareholder's tax base is equal to the cost price of the shares adjusted according to the so-called RISK-rules (RISK is the Norwegian abbreviation for the variation of the company's retained earnings after tax during the ownership of the shareholder). The RISK amount is computed at the end of each fiscal year, and the adjustment takes place as per 1 January of the following year. Shares owned by shareholders not resident in Norway for tax purposes are not subject to RISK adjustments, see below.

Effective as of 1 January 2006, new legislation will be introduced whereby the RISK system will be abolished for Norwegian shareholders. From said date, the capital gain derived by Norwegian personal shareholders from realisation of shares will be calculated as the consideration received less the cost price of the share (including RISK-adjustments per 1 January 2006). From this capital gain, Norwegian personal shareholders will be entitled to deduct a calculated allowance when calculating their taxable income. The allowance for each share is equal to the total of allowance amounts calculated for dividends for this share for previous years (cf. above) less dividends distributed on this share. The calculated allowance may only be deducted in order to reduce a taxable gain calculated upon the realisation of the share, and may not be deducted in order to generate or increase a loss for tax purposes.

If the shareholder owns shares acquired at different points in time, the shares that were acquired first will be regarded as the first to be disposed of, on a first-in first-out basis.

Norwegian shareholders who are limited liability companies are not taxable in Norway on capital gains derived from realisation of shares, and losses related to such realisation are not tax deductible.

#### *15.9.2 Non Resident shareholders*

Gains from the sale or other disposition of shares by a non-resident shareholder will not be subject to taxation in Norway unless the non-resident shareholder (i) is a non-resident personal shareholder who holds the shares in connection with the conduct of a trade or business in Norway or (ii) is a non-resident personal shareholder who has been a tax resident of Norway within the five calendar years preceding the year of the sale or disposition (and whose gains are not exempt pursuant to the provisions of an applicable income tax treaty).

### **15.10 Payments of interest and royalties**

There is no withholding tax under domestic law on payment of interest and royalties.

### **15.11 Tax structuring of mergers and acquisitions**

The tax aspects of a merger or an acquisition may have vital consequences. The tax position of both the seller and the acquirer will have to be examined carefully before the final transaction structure is established. Purchases of assets, rather than purchases of shares will be subject to considerably different tax treatment for both the seller and the acquirer.

#### *15.11.1 Asset acquisitions*

Gains from selling assets are, as a main rule, taxable income for the seller. Losses are deductible. The buyer will obtain a new tax base (often subject to depreciation) equal to the purchase price for each asset.

When selling depreciable assets, the taxation of gains and losses depends on which "depreciation group" (see 15.4 above) the assets belong to. When selling assets in group e) (ships), f) (aircrafts), g) (installations for energy distribution), h) (constructions and buildings and hotels) or i) (office buildings) at least 20 % of any taxable gain calculated upon the realisation will be taken to income and taxed every income tax year based on the declining balance method. The same will normally apply to goodwill. Correspondingly, up to 20 % of any losses from selling the same assets may be deducted every income tax year based on the declining balance method.

When selling assets belonging to the other depreciation groups, the taxation/deductions of realised gains and losses may/will also be postponed by using the declining balance method. The gain or loss will be taxed through reduced or increased depreciations for the actual depreciation group. If the balance becomes negative, an amount equal to at least the depreciation percentage rate of the balance shall be taxed every year.

#### *15.11.2 Share acquisitions*

For limited liability companies and similar entities, the realisation of shares is exempt from Norwegian taxation under the Exemption Model. Thus, a sale of shares will not lead to any tax consequences for the seller who is a limited liability company. If the seller is an individual, the sale of shares is subject to Norwegian taxation, ref above.

The purchase of shares is not a taxable event in Norway, and no transfer tax or stamp duty is currently applied to such transfers.

## **15.12 Other international tax issues**

### *15.12.1 Relief from double taxation*

Individuals and companies resident in Norway for tax purposes are taxed on their worldwide income. In order to avoid international double taxation with regards to foreign income and net wealth, a tax credit in Norwegian tax for taxes paid to foreign jurisdictions is available. Norway has adopted the general overall method with regard to limitation of the foreign tax credit. In practice the credit is limited to the Norwegian tax rate of 28 % multiplied by the foreign source income.

In addition to claiming a tax credit for dividend withholding tax, Norwegian limited liability companies holding at least 10 % of the capital as well as the votes of a foreign company (subsidiary) during a period of at least two years, can claim a tax credit for foreign corporate tax paid by the foreign subsidiary to the country in which it is resident. The underlying tax credit regime also applies to a second tier subsidiary if the second tier subsidiary is resident in the same state as the first tier subsidiary and the Norwegian parent company indirectly owns at least 25 % of the second tier subsidiary. Taxes paid by the subsidiaries to a third state are not creditable against Norwegian tax.

### *15.12.2 Norwegian treaty network*

Norway has a well-developed tax treaty network with more than 80 states. All OECD countries are covered. Most treaties are drafted based on the OECD model. Several of the treaties with developing countries have tax sparing provisions. Norway does not have any limitation on benefits clauses in its tax treaties.

The treaties have originally and for most categories of income been based on the exemption method. However, after the adoption of the credit method in Norwegian domestic law in 1992, the general method of preventing double taxation in new tax treaties are based on the credit method. Norway is also constantly amending older treaties so as to be in line with the credit method.

### *15.12.3 CFC rules*

Current Norwegian CFC legislation (the Norwegian term is "NOKUS") applies if 50 % or more of the capital in a foreign company, trust or similar resident in a low tax jurisdiction is held or controlled directly or indirectly by Norwegian tax residents. In such cases, the Norwegian tax residents will be taxed for their proportional part of the income and net wealth of the foreign company, trust etc.

A "blacklist" of low tax jurisdictions have been introduced.

### *15.12.4 Transfer pricing rules*

According to Norwegian domestic law the taxable income of a Norwegian tax payer may be increased if the taxable income has been reduced due to a joint interest with another related party. Thus, any transaction between related parties not based on arms length principle can be adjusted by the Norwegian tax authorities in order to comply with the arms length principle.

The Norwegian tax treaties also have transfer pricing provisions drafted in the same manner as the OECD model, enabling tax authorities to make appropriated adjustment on a discretionary basis if it can be established that prices between related parties are not at arm's length. Normally, such provisions do not obligate Norwegian Authorities to conclude an agreement with the other state in the case of double taxation or to make appropriate adjustments in the case of adjustments in the other state.

There are presently no standard rules as far as the transfers of pricing policies of international groups are concerned. Normally, the results will not be examined further if the profits are at a

reasonable level compared to the company's turnover and the general conditions of the business in question. There is a growing trend, however, particularly in the oil industry, to adjust profits on the basis that prices are not at arm's length. The determination of arm's length prices has traditionally been based on the OECD transfer pricing guiding lines.

#### *15.12.5 Thin capitalisation*

Interest payments are fully deductible in Norway, and there is no withholding tax on interest payments to foreign creditors. If the debt/equity ratio of a company does not reflect the debt/equity ratio that would have been acceptable to a third party creditor, interest deductions may be denied. There is no particular rule of thumb to be applied as to the debt/equity ratio. The factual circumstances and the risks and the nature of the business in question will have to be examined on a case-to-case basis.

#### *15.12.6 Expatriate employee's*

There is no special expatriate tax system available to individuals assigned on a temporary basis to work in Norway. However, a non-resident individual is entitled to a standard deduction of 15 % of gross income if this is more advantageous than the standard and itemised deductions available for residents.

#### *15.12.7 Special tax regimes*

There are specific tax provisions for several kinds of business, but only the rules applicable to the exploration of submarine petroleum resources and for ship-owning companies may be classified as special tax regimes for specific branches.

##### 15.12.7.1 Shipping companies

*Qualifying shipping companies* may elect a deferred tax regime instead of the ordinary tax regime. Under the deferred tax regime, profits from shipping business are exempt from tax, but dividend distributions from the shipping company to a company outside the tonnage tax regime will trigger taxation on the grossed-up amount of the distribution. Companies electing the deferred tax regime must pay a rather moderate tonnage tax. Further details are given in section 17.2 below.

##### 15.12.7.2 Petroleum tax

In addition to the general income tax of 28 %, a special *petroleum tax* of 50 % applies to income from oil and gas production and from pipeline transportation.

### **15.13 Other taxes**

#### *15.13.1 Net wealth tax*

Individuals are subject to a marginal net wealth tax rate of 1.1 %. Net wealth tax is levied on the assets held by the tax payer on 1 January in the assessment year.

#### *15.13.2 Property tax*

A property tax on real estate is levied by local municipalities at the maximum rate of 0.7 % of the taxable value of the property. Usually the estimated value is 20 % - 40 % of the fair market value of the property.

#### *15.13.3 VAT and Investment tax*

Norway has a VAT system that is closely related to the VAT system within the EEC. The overall rate is 25 %. Enterprises that carry out VAT liable activities must register with the VAT registry. VAT paid by a VAT registered enterprise on purchased goods or services is deductible as input VAT. In

addition to the VAT, special sales taxes are levied on certain goods such as motor vehicles, tobacco, alcohol and gasoline.

#### 15.13.4 Pay roll taxes

Pay roll taxes, i.e. employer's part of social security contributions are levied at the rate of 14.1 %. In certain areas of Norway the rate is lower, depending on which area the business is situated in. For salaries exceeding approximately NOK 960,000 (approximately USD 147,000) an extra 12.5 % is levied on the excess amount, bringing the marginal pay roll tax up to 26.6 %.

#### 15.13.5 Inheritance and gift tax

Inheritance or gift tax is levied upon transfer of items of capital from individuals to related persons. The rate is progressive from 0 to 30 %. For inheritance and gifts from parents to children, the maximum rate is 20 %.

#### 15.13.6 Stamp duty

There is a 2.5 % registration tax (similar to stamp duty) upon the transfer of real estate, calculated on the basis of the market price. The stamp duty only becomes effective if the transfer is recorded in the Public Real Estate Register. If the transfer is the result of a merger or de-merger, no stamp duty is payable. At the moment, no stamp duty or other transfer taxes or duties are payable upon the sale of shares in Norwegian companies. This also applies when the company's only asset is real estate.

## 16 LABOUR

The working population is about 2.4 million. 116,000 are unemployed or on government-sponsored working programs (Aug 2005). The general level of education is relatively high, see section 2.6.

About 60 % of all employees in Norway are members of trade unions, and in private sector about 50% of all jobs are with employers who are members of employer associations. Thus, *collective agreements* supplement legislation on several issues, including wages, working conditions, benefits and co-influence in the working place. As collective agreements are compulsory if applicable, they should never be ignored.

In addition to the terms of the employment contract and applicable collective agreements, labour law consists of several *compulsory statutes* and regulations providing considerable protection of the employee. The 1977 Working Environment Act provides strict requirements regarding protection against unfair dismissals, in addition to safety and working environment health standards. The Working Environment Act also provides extensive regulation as to the maximum regular working hours, the maximum use of overtime and the permissibility of shift- and night-work. However, the Working Environment Act does not stipulate a minimum hourly wage - salaries are left to individual and collective agreements. The Working Environment Act is to be replaced with new and revised legislation as of 1 January 2006, but there are no indications that the general principles accounted for below will be altered to a great extent.

All employees are entitled to 25 days of *paid vacation* per year (or 4 weeks and one day, as Saturdays are included). In addition comes public holidays, of which there are presently 10 per year. Employees over 60 years of age are granted an additional week of vacation. The vacation pay is 10.2 % of the annual pay, 12.5 % for employees over 60 years. Most employees covered by collective agreements now have 5 weeks paid vacation.

During *sickness*, employees are entitled to 100 % of their ordinary salary from their employer pursuant to the 1997 National Insurance Act. However, if the sickness period lasts longer than 16

days, the National Insurance Authority takes over the responsibility to pay the sick employee for a period of up to one year. There is a cap corresponding to approximately NOK 365.000 per year. Sickness must be evidenced by an examination by a medical doctor if it lasts longer than three working days.

The ordinary statutory *retirement age* under the National Insurance Act is 67 years; however, retirement may be accelerated under collective agreements. An employer's contribution to the National Social Security Scheme is set out in chapter 15 above.

In case of childbirth, employees are entitled under law to 43 weeks *maternity/paternity leave* with full pay from the National Insurance Authorities, or 53 weeks leave with 80% pay. The parents may divide the total leave of 43/53 weeks between themselves as they wish, all though part of the leave is reserved for the mother and father respectively. (Three weeks prior to and six weeks after birth for the mother and five weeks for the father). Similar rights, but reduced, apply in case of adoptions. Collective agreements may offer additional maternity/paternity leaves with or without pay.

The Working Environment Act extensively regulates termination of employment contracts. All categories of employees, including CEO's, are in principle subject to the same regulations. CEO's may, since March 2003, in advance and with binding effect waive the statutory termination protection, provided a severance payment is agreed. Termination must be made in writing, and its contents must conform to strict requirements in the Working Environment Act to be effective. Unless otherwise agreed in writing, the notice period is 1-6 months depending on the employee's age and seniority, calculated as full calendar months starting from the first day of the month following the day in which the employee was given the dismissal notice. Furthermore, a termination of employment must have just and reasonable cause under law, connected with the undertaking or the employee. The implications of this justification requirement are complex, and it is generally recommended to seek legal advice **before** initiating termination of an employment contract under Norwegian law. In addition, disputes regarding the legality of terminations are subject to several specific procedural rules, which aim at protecting the employee from unjust terminations and make legal protection effective. One important example is the employee's right to remain in his job to continue to earn a salary until the courts, regardless of whether the notice period has been exceeded, finally decide upon the legality of the dismissal.

Parts of the Norwegian regulations (for example on working hours, safety and working environment) generally apply fully to *foreign nationals* employed in Norway, unless the assignment here is very temporary. No regulation requires a certain amount of Norwegian employees or that part of the payroll is paid to Norwegian employees. However, nationals from countries outside of the EEA area must obtain a *residence and work permit*, from a Norwegian consulate, **prior** to entering the country and taking up employment. Permits may be issued if, for example, the applicant possesses skills, which are not available locally, and group work permits may be obtained. In addition, Norway has implemented provisional work permit regulations for employees from 8 of the 10 East European countries (not Malta and Cyprus) which entered the EU 1 May 2004. Employees from the new member states must document a job offer in Norway before a work permit is granted. In general, the immigration policy is neither particularly restrictive nor liberal. Nationals from certain countries need visas before entering Norway.

## **17 SHIPPING**

### **17.1 Norwegian International Ship Register**

#### *17.1.1 The Register*

The Norwegian International Ship Register ("NIS") was established pursuant to the International Ship Register Act. The International Ship Register Act is supplemented by the regulation relating to the Registration of Ships of 30 July 1992, no. 592. NIS is a central register located in Bergen, together with the staff of the Norwegian Ordinary Ship Register ("NOR").

#### *17.1.2 Eligibility*

In terms of the International Ship Register Act, section 1, both Norwegian owned and foreign owned vessels can be registered in NIS. A bareboat charter party cannot be registered in NIS. Dual registration into or out of NIS is therefore not permitted.

Pursuant to the International Ship Register Act, section 1, the following vessels may be registered in NIS:

*"Self-propelled passenger and cargo ships and hovercraft, as well as drilling platforms and other movable installations, may on request be registered in the Norwegian International Ship Register when not registered in any other country's ship register."*

The International Ship Register Act, section 1 contains certain requirements with respect to the ship owner's nationality. If these requirements are not met, the vessel may nevertheless be registered in NIS if the vessel is managed by a Norwegian company and the ship owner appoints a Norwegian process agent.

#### *17.1.3 Trading Area Limitations*

Vessels entered into NIS are subject to trading area limitations as set out in the International Ship Register Act, section 4:

*"Ships registered in the Norwegian International Ship Register are not permitted to carry cargo or passengers between Norwegian ports or to engage in regular scheduled passenger transport between Norwegian and foreign ports. For the purpose of this Act, oil and gas installations on the Norwegian continental shelf are regarded as Norwegian ports."*

The extent of the trading area is further regulated in Norwegian regulations. The regulation on restriction of the trading area for passenger vessels of 9 July 1993 no. 596, states that NIS registered passenger vessels cannot transport passengers on a fixed route between the Nordic countries. The regulation on extended trading area for cargo ships of 11 August 1989 no. 802, states that a NIS registered cargo ship can transport such cargo as it is built or equipped for, between Norwegian ports when the ship is en route to or from a foreign port and the transport is not part of a fixed transport route.

#### *17.1.4 Crew*

Vessels entered into NIS are required to have a manning certificate, which is issued by the Maritime Directorate.

A new regulation (no. 687), concerning qualification requirements and certificate rights for personnel on board Norwegian ships, fishing vessels and mobile offshore units entered into force on 1 July 2003. The regulation implements the requirements of the STCW-1995 Convention, the EU

Directive 92/29/EEC on the minimum safety and health requirements for improved medical treatment on board vessels and the EU Directive 2001/25/EEC on the minimum level of training of seafarers. Pursuant to section 4-2 of the regulation, the master of a ship of 250 gross tonnage or upwards shall be a Norwegian national or a national of a country to which the EEA Treaty applies.

Pursuant to a regulation of 17 December 1993 no. 1162, the ship owner of a NIS-registered vessel is obliged to have a guarantee in place ensuring payment of compensation in the event of disablement or death, for payment of wages in the event of the employer's bankruptcy or liquidation and for the coverage of repatriation costs. The guarantee should as the main rule be in the amount of NOK 500,000.00 for ordinary vessels and NOK 2,000,000.00 for passenger vessels.

The International Ship Register Act, section 6, requires that collective bargaining agreements are entered into containing provisions on wages and general working conditions for employees on NIS registered vessels.

#### *17.1.5 Classification Society Requirements*

Vessels to be entered into NIS must be classed into one of the following approved classification societies: American Bureau of Shipping, Bureau Veritas, Det Norske Veritas, Germanischer Lloyds or Lloyd's Register of Shipping.

## **17.2 The Norwegian Shipping Taxation Schemes**

### *17.2.1 Introduction*

The Norwegian Tonnage Tax Regime was enacted by the Norwegian Parliament on 28 June 1996 and it entered into force as from 1 June 1996, now incorporated in the 1999 Norwegian Tax Act, chapter 8. Under the Norwegian shipping taxation regime, income can be exempted from regular income taxation if earned by ship-owning companies fulfilling certain conditions.

Ship-owning companies may elect whether or not to enter into the tonnage tax regime.

### *17.2.2 Some important requirements*

Only Norwegian joint stock companies (aksjeselskap/allmennaksjeselskap) may enter into the regime. On the other hand, there are no requirements as to what flag the vessels are to fly under, if owned by such a company.

Joint stock companies under the regime may participate in partnerships and other entities transparent for tax purposes, if such entity by itself qualifies under the regime, including foreign companies in low tax jurisdictions, in which the shareholder is taxed in Norway (NOKUS). There are no requirements that the other partners are qualified.

To qualify under the regime, the joint stock company is only entitled to possess the following assets: (i) vessels in traffic, (ii) moveable installations for use in petroleum activities, (iii) financial assets with the exception of non-listed companies and partnerships (if such entities do not qualify under the regime) and further purchase and sale options with respect to shares in such non-listed entities, (iv) shares in companies and partnerships which qualify under the regime. Such participation must be at least 3% of the capital during the whole income year.

Furthermore, a joint stock company under the regime is under an obligation to at all times own a vessel in traffic or a moveable installation for use in petroleum activities or at least a participation of at least 3% in a company or partnership being in possession of such vessel or installation.

A joint stock company within the regime cannot perform any other activity than to operate and to hire out vessels in traffic and moveable installations for use in petroleum activities. Neither can a joint stock company under the regime have employees. The whole crew has to be employed by another company, regardless of whether the company is related or not. A contract for management services therefore has to be entered into.

### *17.2.3 Taxation of the Company and Tonnage Tax Rates*

Net income from qualifying vessels and moveable installations owned or leased by a joint stock company under the regime is exempted from general income tax (hereunder corporate tax). The exemption also applies to capital gains upon sale or other disposals of qualifying assets.

As a substitute for income tax there is levied a net tonnage tax computed per day per ship. The daily rates are on a very modest level and are as follows:

NOK 0	for the first 1,000 net ton, thereafter
NOK 50	per 1,000 net ton up to 10,000 net ton, thereafter
NOK 33	per 1,000 net ton up to 25,000 net ton, thereafter
NOK 16	per 1,000 net ton

Financial income is not exempted and is taxed at the regular rate which for the time being is 28%. A qualifying company cannot have other categories of income in addition to the shipping income.

## **18 INTERNATIONAL RELATIONSHIPS**

Norway is a party to the EFTA. The EFTA countries concluded a free trade agreement with the then EEC, which resulted in the abolishing of most customs duties and quotas on trade between EFTA countries and between EFTA countries and the EEC.

As one of the EFTA countries, Norway became a contracting party to the agreement that established the EEA. The EEA Treaty came into effect on 1 January 1994, and extended EU rules relating to the internal market to also cover EFTA countries. This implies that the rules on free movement of goods, capital and labour, as well as the freedom of business establishment, were applicable in Norway from 1994. However, the EEA Treaty does not cover the agricultural area or the fishing industry.

Norway is also party to the Schengen agreement, which allows free travel between the member states.

As a non-EU member, Norway remains outside of the Euro currency zone.

Norway is a member of the General Agreement on Tariffs and Trade (GATT) and the World Trade Organisation (WTO). Norway retains the competence to negotiate and conclude new agreements under the GATT umbrella or other international agreements notwithstanding the EEA Treaty. Norway is also a member of the Organisation for Economic Co-operation and Development (OECD).

Norway is subject to the jurisdiction of the EFTA-court in matters relating to the EEA Treaty, as well as to the jurisdiction of the International Court of Justice, residing in Hague, the Netherlands, in disputes arising between states.

Norway has ratified the European Convention on Human Rights. The Act of Human Rights implements the convention. Norway has also been a member of NATO since its inception.

## **19 DISPUTE RESOLUTION**

### **19.1 Court system**

Norway has a three level court system. Most commercial matters are finally decided following a one or two level trial. The ordinary court of law comprises the Courts of First Instance (66 courts), the Courts of Appeal (6 courts) and the Supreme Court.

The 1915 Civil Procedure Act stipulates the regulations for conducting civil cases before the courts. Preparation and pleading of cases are based on the adversarial system and oral pleading in the main hearing. As a rule, main hearings are public, but exceptions may be granted. When rendering a judgment the court shall state the reasons for the decision, including the reasoning of dissenting judges, if any. The main rule is that a judgment may only be appealed to the higher court, such appeal must be filed within one month from it being served on the parties.

A lawsuit may always be filed at the *home venue* (domicilium) of the respondent - for companies at their registered main place of business. Otherwise *forum loci solutionis* is recognised and cases involving real estate may be based - and sometimes shall be based - on *forum rei situs*. Since Norway has ratified the *Lugano Convention* on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters, its forum rules will apply.

In most minor cases it is generally a pre-condition for filing a lawsuit that the parties have tried to reach agreement before a Conciliation Board (one for each municipality). However, most commercial disputes, where lawyers represent the parties, will commence directly in a Court of First Instance.

In Courts of First Instance, two laymen may assist a judge, when requested by one party or when it is considered appropriate by the court. In certain circumstances the laymen may be drawn from panels of experts. Trial by jury is unknown in civil cases.

Proceedings in the Courts of Appeal are conducted in front of a panel of three judges. Again, an element of laymen (two or four) may be included upon the request of one party. In commercial matters the Courts of Appeal will hear cases involving a disputed value exceeding NOK 20,000 (USD 3,100). Exceptions may be granted.

A judgement from the Court of Appeal may be appealed to the Supreme Court, which will only hear cases after the case has been screened and accepted by the Appeal Committee consisting of three Supreme Court judges.

The Norwegian Parliament has enacted a new Civil Procedure Act that will enter into force on 1 January 2007. The new act will allow class actions in certain instances but is otherwise based on the 1915 Civil Procedure Act.

### **19.2 Arbitration**

Only matters that the parties are free to settle with binding effect may be subject to arbitration. Arbitration is widely used in Norway to settle commercial disputes and arbitration proceedings frequently takes place in the English language. A new Arbitration Act came into force on 1 January 2005. The Arbitration Act is based on the UNCITRAL model law and contains basic rules for the establishing of an arbitration panel, the arbitration procedure as well as regulations for subsequent

control by the courts. As a general rule an arbitration award cannot be challenged except in a few narrowly defined events where basic legal safeguards have been disregarded.

Norway has ratified the New York Convention on Recognition and Enforcement of Arbitration Awards (conditional on reciprocity and that the subject matter of the dispute is not immovable property situated in Norway or a right in or to such property). Certain specific rules apply to consumer relationships.