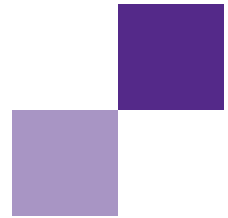


Doing business in Norway



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LEGAL SYSTEM

1. What is the legal system (civil law, common law or a mixture of both)?

The legal system is based on a mixture of common law and civil law, with emphasis on civil law.

FOREIGN INVESTMENT

2. Are there any restrictions on foreign investment (including authorisations required by central or local government)?

Foreign investment is encouraged. However, specific regulations apply in the following sectors:

- The acquisition of waterfalls, power supply rights and mining rights are subject to concessions (*Industrial Concession Act 1917*).
- The acquisition or long-term lease (more than ten years) of land and real estate are subject to concessions (*General Concession Act 2003*).
- In terms of the Agreement on the European Economic Area (EEA Agreement), effective from 1 January 1994, financial institutions from other EEA countries can establish Norwegian branches and provide cross-border services.
- Direct investments in petroleum exploration and exploitation require a special government licence (*Petroleum Act 1996*).

Since the EEA Agreement came into force, most sector restrictions are practised on a non-discriminatory basis towards persons from EU and European Free Trade Association (EFTA) member states (except Switzerland). However, specific regulations concerning acquisition of Norwegian farmland and forest remain. In practice, it is difficult for non-Norwegian citizens to acquire such land unless they are willing and able to take up permanent residence in Norway.

3. Are there any exchange control or currency regulations?

Exchange control has been abolished. However, a central electronic register for information relating to currency exchange and currency transactions has been established. All banks and financial institutions must report currency exchanges and currency transactions to the Register. In addition, the Customs and Excise Department must report currency transactions that are subject to declaration (*Currency Control Act 2004*). Persons selling shares have a reporting obligation to the central Share Register (run by the tax authorities). Money laundering activities are restricted (*Money Laundering Act 2003*).

4. What grants or incentives are available to investors? Are any of these aimed specifically at foreign investors?

Various grants and incentives are available to investors depending on the type of business. However, none apply to foreign investors.

BUSINESS VEHICLES

5. What is the most common form of business vehicle used by foreign companies to conduct business in your jurisdiction?

In relation to this vehicle, please state:

- **Registration formalities (including timing).**
- **Minimum (and maximum) share capital.**
- **Whether shares can be issued for non-cash consideration, such as assets or services (and any formalities).**
- **Any restrictions on the rights that can attach to shares.**
- **Any restrictions on foreign shareholders.**
- **Management structure and any restrictions on foreign managers.**
- **Directors' liability.**
- **Parent company liability.**
- **Reporting requirements (including filing of accounts) and cost of compliance.**

The most common form of business entity used by foreign companies is a private limited company (PLC).

- **Registration formalities.** A PLC must be registered with the Register of Business Enterprises and the Central Co-ordinating Register for Legal Entities within three months of incorporation by filing:
 - its memorandum and articles of association; and
 - a standard completed form.

A VAT registration certificate is required if the foreign entity sells its products or services in Norway.

Registration costs NOK6,000 (about US\$951) and takes approximately ten days for the Register of Business Enterprises and two days for the Central Co-ordinating Register for Legal Entities.

If the foreign legal entity employs local employees, it must be registered as an employer with the Registrar for Employees and Employers at no cost.

- **Share capital.** The minimum share capital is NOK100,000 (about US\$15,856). There is no maximum.
- **Non-cash consideration.** This is permitted, subject to strict rules in relation to appreciation and approval by an external auditor.
- **Rights attaching to shares.** Restrictions can be imposed by any of the following:
 - the Limited Liability Companies Act 1997;
 - the articles of association;
 - the shareholders' agreement.
- **Foreign shareholders.** There are no restrictions on foreign shareholders, except in certain regulated industries (see *Question 2*).
- **Management structure.** The board of directors must consist of at least three people, except where the share capital is less than NOK3 million (about US\$475,680), in which case the board can comprise only one or two directors supplemented by at least one deputy. The managing director or chief executive officer (CEO) and at least half the members of the board must be Norwegian residents or EEA citizens resident within the EEA. Exemptions may be granted.
- **Directors' liability.** A CEO is legally responsible for day-to-day management. Directors and CEOs can be held liable for breaches of:
 - fiduciary duties;
 - statutory requirements;
 - criminal law.
- **Parent company liability.** Parent companies are only liable for the acts of subsidiaries as shareholders, except where the corporate veil can be pierced. Each company is treated as a separate entity.
- **Reporting requirements.** An annual tax return must be submitted. The annual accounts must be filed with the central Registrar of Accounts before 1 July of each year. Changes to the particulars of the company must be reported.

EMPLOYEES

6. What are the main laws regulating employment relationships?

The main laws regulating the employment relationship are the:

- Workers' Protection Act 2005.
- Holiday Act 1988.
- National Insurance Act 1997 (in some cases).

Norwegian employment law consists in general of several compulsory statutes and regulations, providing protection for employees. Irrespective of choice of law, specific mandatory minimum standards (such as, working environment, working hours and gender equality) usually apply as a matter of public policy.

Foreign employees

Foreign employees are subject to Norwegian employment law, unless their stay is short and temporary.

Norwegian employees abroad

In general, Norwegian employment law applies if the working relationship, subject to an overall evaluation, is regarded to have a predominant connection to Norway. Participation in the national insurance scheme is conditional on meeting the specific criteria laid down in the National Insurance Act.

7. Is a written contract of employment required? What, if any, other terms are likely to govern the employment relationship?

A written employment contract is mandatory. Statutory law and collective bargaining agreements, if applicable, also govern the contract.

Statutory law regulates, among others:

- Working environment.
- Health and safety.
- Working hours.
- Employee representation.

- Leave of absence.
- Dismissals.
- Transfers of undertakings.
- Holidays and holiday pay.
- Sick leave and sick pay.
- Gender equality.

In principle, the parties can regulate working conditions in collective bargaining agreements. In addition, general obligations of loyalty and trust apply.

8. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?

If the company has more than 30 employees, and when requested by a majority of them, employees are entitled to representation on the board of directors. The number of board members which the employees are entitled to elect (which is limited to one-third) varies with the total number of employees and depends on whether the company has a corporate assembly (that is, a distinct body in the Norwegian company structure comprising individuals elected by shareholders and employees). If the company does have a corporate assembly (which is mandatory for companies with more than 200 employees), the employees are entitled to elect one-third of the members of the corporate assembly.

Generally, employees are entitled to be informed and consulted through elected representatives in relation to corporate transactions. Collective bargaining agreements can provide for further employee rights.

9. What statutory rules govern the termination of individual employment contracts?

Dismissal

Employees cannot be dismissed unless there is an objectively justifiable reason based on the circumstances of the business, the employer or employee.

Norwegian employment law makes a distinction between fair, or justified, dismissals and unfair, or unjustified, dismissals. If a dismissal is considered fair or justified, the employment relationship is terminated (in accordance with certain procedures) without further liability. If a dismissal is considered unfair or unjustified, the dismissal is, if required by the employee, invalid and the parties to the employment contract maintain their contractual obligations. In such cases the employee is usually entitled to compensation.

In general, a dismissal will be considered fair or justified if it is based on reductions in production or reorganisation making the employee superfluous (provided that no suitable alternative employment is available within the company), or if it is based on reasons which the employee is liable for and these reasons are considered to be a material breach of his contractual obligations.

Pregnancy, gender, political views, sexual orientation, membership of a trade union, disability or age are not considered reasonable causes for dismissal.

Unless otherwise agreed in collective bargaining agreements, one month's notice (14 days during the probationary period) applies to either party. A longer notice period can apply depending on the employee's age and length of service.

An employee is entitled to his normal wages during the notice period.

Remedies

Employees can challenge the validity of a dismissal and demand negotiations with the employer. If negotiations fail, the employee can bring an action in the courts claiming that the dismissal is invalid. If the dismissal is ruled invalid, an employee can claim compensation.

During the period of negotiations and subsequent legal proceedings, the employee is usually entitled to remain in his post and receive his normal salary.

10. Are redundancies/mass layoffs regulated? If so, please give details.

In principle, redundancies and mass layoffs are no different from other dismissals (see *Question 9*).

However, the Worker's Protection Act contains specific obligations to provide information to the Public Employment Service and the employees' representatives. The employer must also consult with the employees' representatives with a view to reaching an agreement to avoid mass layoffs or to reduce the number of persons made redundant.

11. In relation to employees, what constitutes tax residency in your jurisdiction?

If an employee stays for more than 183 days in any 12-month period or tax year (or more than 270 days in any 36-month period) he is considered to be tax resident in Norway, unless an applicable double tax treaty provides otherwise. Special rules apply to the Norwegian continental shelf.

12. What income tax or social security contributions must the following pay:

- Tax resident employees?
 - Non-tax resident employees?
 - Employers, in relation to their employees?
-

Tax resident employees

Employees must pay, on their global income:

- Regular income tax of 28%, with certain tax deductions and allowances.
- Additional personal income tax of 9% on salaries over NOK394,000 (about US\$62,472) (the threshold is NOK400,000 (about US\$63,424) for 2007).
- An additional tax of 3% on salaries over NOK750,000 (about US\$118,920) based on gross salaries with minimal deductions (the threshold is NOK650,000 (about US\$103,064) for 2007).
- National insurance contributions (NICs) of 7.8% of their gross income.

Non-tax resident employees

In general, non-tax resident employees are taxed on all income derived from work performed in Norway, unless double tax treaty limitations apply.

Employers

Employers must pay:

- NICs at a rate of 14.1% on employees' gross salaries (reduced rates may apply in certain remote areas).
- Mandatory occupational injury insurance.

13. Do foreign employees require work permits and/or residency permits? If so, how long does it take to obtain them and how much do they cost?

Nationals from EU or EEA member states (except those listed below) can work without permits for a maximum of three months, after which they must obtain a residency permit (but not a work permit).

Citizens from Poland, the Czech Republic, Hungary, Estonia, Latvia, Lithuania, Slovakia and Slovenia must obtain work permits before working in Norway.

Nationals from non-EU or EEA member states must obtain work permits before entering Norway for employment purposes.

The application fee is NOK800 (about US\$127) for both the residency permit and the work permit. The processing time is one month for nationals from EU or EEA member states and one to three months for nationals of other countries.

TAX

14. In relation to business entities, what constitutes tax residency in your jurisdiction?

If a business entity's place of effective management is deemed to be in Norway, it is considered tax resident.

15. What proportion of a tax resident business entity's income is taxed and what are the main taxes that potentially apply (including rates)?

Income tax

This is taxable on the entity's worldwide income at a rate of 28%.

Petroleum tax

A tax of 50% applies to income from oil and gas production and from pipeline transportation.

Value added tax (VAT)

VAT is charged on goods and services supplied in Norway by businesses, and on imported goods. The standard rate is 25% (see *Question 21*).

Stamp duty

Stamp duty land tax of 2.5% is calculated on the fair market value of transferred real estate property in the Public Real Estate Register.

NICs

National insurance contributions (employers) (see *Question 12, Employers*).

Property tax

A tax on real estate may be levied by local municipalities at the maximum rate of 0.7% of the taxable value of the property.

16. How are the activities of non-tax resident business entities taxed?

Companies resident outside Norway for tax purposes are subject to taxation (at a rate of 28%) on their Norwegian-sourced income. Norwegian-sourced income includes:

- Income from business activities which the foreign company carries out, or participates in, and is performed in, or managed from, Norway.
- Income from real estate property and movable assets situated in Norway.

- Dividends distributed 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.

Individuals who carry out or participate in business activities performed in or managed from Norway are also subject to a marginal net wealth tax rate of 1.1%, calculated on the assets held in Norway on 1 January in the year of assessment.

17. Please explain how each of the following is taxed:

- **Dividends paid to foreign corporate shareholders.**
- **Dividends received from foreign companies.**
- **Interest paid to foreign corporate shareholders.**
- **Intellectual property (IP) royalties paid to foreign corporate shareholders.**

- **Dividends paid.** Dividend paid are subject to a withholding tax of 25%, although this may be reduced under relevant tax treaties. Withholding tax is not levied on non-resident corporate shareholders within the EEA.

If a non-resident corporate shareholder carries on business in Norway, and the shares are effectively connected to such a business, the dividends are exempt from withholding tax.

Nominee registered shares are subject to a withholding tax of 25%, unless the Norwegian Tax Directorate has approved a lower rate.

Non-resident shareholders that have paid a higher rate of withholding tax than set out in an applicable tax treaty can apply to the tax authorities for a refund.

- **Dividends received.** Dividends received by companies that are tax resident in Norway are usually subject to ordinary income tax at 28%.

Dividends received from companies resident within the EEA are exempt from tax. Dividends received from companies resident outside EEA are exempt from taxation only if the receiving shareholder holds a minimum of 10% of the shares and voting rights in the foreign company for a period of at least two years (including the time when the dividend was received).

Dividends received from companies in low tax jurisdictions are subject to taxation of 28%, regardless of the duration of ownership or the percentage of shares held by the Norwegian company.

Dividends received by individuals that are tax resident in Norway are also subject to taxation at a rate of 28%. Such individuals will be entitled to deduct a calculated allowance when calculating their taxable dividend income (regardless of the distributing company's residency).

- **Interest paid.** No withholding tax is levied on interest paid to foreign shareholders or creditors. Interest paid is fully deductible for the distributing company.
- **IP royalties paid.** Foreign corporate shareholders are not subject to withholding tax in Norway.

18. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)? If so, please give details.

The tax authorities can refuse a company deduction on interest if the company is thinly capitalised.

19. Are there any controlled foreign company rules? If so, please give details.

The profits of a subsidiary can be imputed to a parent company that is tax resident in Norway under the Norwegian controlled foreign company (CFC) rules. The CFC rules apply to Norwegian shareholders in companies resident in low tax jurisdictions, if Norwegian resident shareholders own or control 50% or more of the capital of the foreign company. The CFC rules also apply to Norwegian residents who own or control trusts and who receive a benefit from them.

20. Are there any transfer pricing rules? If so, please give details.

Transactions between companies must be on an arm's length basis, in accordance with Organisation for Economic Co-operation and Development (OECD) guidelines.

21. How are imports and exports taxed?

Exports are subject to VAT, but are generally zero rated.

Imports are subject to VAT at the same rate as if the goods were supplied in Norway.

Customs and excise duty may be payable on imports and exports.

22. Is there a wide network of double tax treaties? If so, please give details.

Norway has tax treaties with more than 80 jurisdictions, including all OECD countries. Most treaties are based on the OECD Model Tax Convention on Income and Capital.

COMPETITION

23. Are restrictive agreements and practices regulated by competition law in your jurisdiction? If so, please give brief details.

The Competition Act 2004 prohibits:

- Agreements between (or decisions by) associations of undertakings, or any other form of co-ordination, with the intention of effecting the prevention, restriction or distortion of competition.
- The abuse of a dominant position.

These prohibitions are enforced by the Competition Authority, which can impose:

- Compulsory fines.

- Infringement penalties.
- Criminal sanctions.
- Amendments to an anti-trust agreement.

Special rules apply to EEA cross-border transactions.

INTELLECTUAL PROPERTY

24. Please outline the main intellectual property rights that are capable of protection in your jurisdiction. In each case, please state:

- **Nature of right.**
 - **How protected.**
 - **How enforced.**
 - **Length of protection.**
-

Patents

- **Nature of right.** To be patentable, an invention must:
 - be new;
 - involve an inventive step;
 - be capable of industrial application;
 - not be specifically excluded by statute, and
 - be of a technical character, technical effect and be capable of reproduction.

A patent holder has the exclusive right to exploit the invention commercially.

- **How protected.** Patents are protected by registration with the Patent Authority.
- **How enforced.** This is governed by the Patent Act 1967. Rights are enforced by the patent holder by bringing a claim for breach before the courts. Remedies available include:
 - fines or imprisonment (not exceeding three months);
 - damages;
 - the alteration, destruction, confiscation or surrender of the infringing object.

- **Length of protection.** A maximum period of 20 years from the application date, provided that renewal fees are paid annually.

Trade marks

- **Nature of right.** To be registered as a trade mark, a trade mark must:

- be capable of graphical representation; and
- distinguish goods or services of one undertaking from another.

A trade mark holder has the exclusive right to use the trade mark for goods or services of an industrial or commercial establishment.

- **How protected.** Trade marks are protected by registration with the Trade Mark Authority, or through extensive use.
- **How enforced.** The Trade Mark Act 1961 sets out methods of enforcement. Rights are enforced by the trade mark holder bringing a claim for breach before the courts. Remedies include:
 - fines or imprisonment (up to a maximum of three months);
 - damages; and
 - the obligation to remove the mark or confiscation.
- **Length of protection.** Protection is for ten years from date of registration, renewable for ten-year periods. Rights obtained through extensive use are protected as long as the mark is in use.

Registered designs

- **Nature of right.** To be registered, a design must:
 - be new;
 - have individual character; and
 - relate to the appearance of a product or part of a product.

The creator of a registered design has the exclusive right to exploit the design.

- **How protected.** Designs are protected by registration with the Patent Authority.

- **How enforced.** The Designs Act 2003 sets out the methods of enforcement. Rights are enforced by the design holder by bringing a claim for breach before the courts. Remedies available include:

- damages;
- the alteration, destruction or confiscation of the infringing design; or
- imprisonment (maximum three months).

- **Length of protection.** Protection is for a maximum of 25 years, subject to the payment of renewal fees every five years.

Unregistered designs

- **Nature of right.** Unregistered designs are protected under the Marketing Control Act 1972. Copying distinguishing marks, products, catalogues, advertising material or any other production (including unregistered designs) in such a way that it is considered an unfair exploitation of the efforts or results of another person and entails the risk of confusion, is prohibited.

Additional protection exists outside Norway, from the date that the design is first made public within the EU. This protection only extends to protection against copies and is valid for three years.

- **How protected.** Protection arises automatically.
- **How enforced.** The right holder must bring a claim before the courts. In general, the remedies available include:
 - injunctions and fines;
 - imprisonment (a maximum of six months); and/or
 - damages.
- **Length of protection.** No fixed term of protection applies.

Copyright

- **Nature of right.** Copyright can exist in a work that is literary, scientific or artistic, irrespective of the manner or form of expression. The following are also protected by copyright:
 - databases and catalogues;
 - photographic pictures;
 - dramatic and musical works.

Copyright gives the author the exclusive right to reproduce the work or make it available to the public.
- **How protected.** There are no registration requirements. Copyright protection commences automatically when work is created.
- **How enforced.** The Copyright Act 1961 sets out the methods of enforcement. Rights are enforced by the copyright holder bringing a claim for breach before the courts. Remedies available include:
 - fines;
 - imprisonment (a maximum of three months); and/or
 - damages.
- **Length of protection.** The length of protection depends on the work:
 - literary, dramatic, musical and artistic work: 70 years after the author's death;
 - rights of performers, film and phonogram producers and broadcasting companies: 50 years from when it was first made public;
 - databases and catalogues: 15 years from the year that the work was created;
 - photographic pictures: 15 years after the death of the photographer, but not less than 50 years from the making of the photograph.

Confidential information

- **Nature of right.** This is a right provided for in a contract or, in relation to trade secrets, under the Marketing Control Act.
- **How protected.** Protection is obtained through the actions of the right holder.
- **How enforced.** The right holder must bring a court action for breach of confidence, if the right was provided for in a contract or under the Marketing Control Act. Remedies available include fines and/or imprisonment for up to six months.
- **Length of protection.** There is no fixed term of protection, but the information must remain confidential for it to be protected.

MARKETING AGREEMENTS

25. Are marketing agreements regulated in your jurisdiction? If so, please give brief details in respect of the following arrangements:

- **Agency.**
 - **Distribution.**
 - **Franchising.**
-
- **Agency.** The Commercial Agents Act 1992 regulates the legal position of commercial agents in Norway, which is the same as in the EU.
 - **Distribution.** There is no statute in Norway that explicitly deals with distribution agreements. However, the general provisions in the Contracts Act 1918 and the Competition Act may be relevant. EC competition rules may also be applicable.
 - **Franchising.** The position is the same as for distribution (*see above, Distribution*).

E-COMMERCE

26. Are there any laws regulating e-commerce (such as electronic signatures and distance selling)? If so, please give brief details.

The E-commerce Act 2003 regulates electronic trade and other information services.

The Distance Selling Act 2000 regulates the sale of goods and services to consumers, when the seller or service provider acts in its ordinary course of business and through distance selling.

The Electronic Signatures Act 2001 regulates the safe and effective use of electronic signatures.

DATA PROTECTION

27. Are there any data protection laws? If so, please give brief details.

The Personal Data Act 2000 protects a natural person's right to privacy in the processing of personal data.

PRODUCT LIABILITY

28. Are there any laws regulating product liability and product safety? If so, please give brief details.

The liability of a producer for damage caused by a product made, or supplied for sale, as part of his profession, business or equivalent activity cannot be disclaimed. A claim for damages on other grounds is not restricted (*Product Liability Act 1998*).

The Sales of Goods Act 1988 implies various terms into contracts for the sale of goods in the course of business (for example, that goods are of satisfactory quality and correspond to their description).

The Consumer Protection Act 2002 provides additional protection to consumers.



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