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ESTABLISHING A BUSINESS ENTITY IN NORWAY

ILN CORPORATE GROUP



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## ESTABLISHING A BUSINESS ENTITY IN NORWAY



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## Different Business Entities

### 1.1 Introduction and outline

Enterprises in Norway may be organized in several ways; the most common are limited liability companies, partnerships and sole proprietorship.

When selecting the appropriate business form in Norway, the choices are mainly between the above mentioned three structures. If the activities are of a non-profit or voluntary nature, a club, association, or foundation may also be an alternative.

The key factors to consider when choosing a particular business entity type are volume, risk, earning potential and taxation. Also, the availability of a particular entity type depends on the number of owners. A single owner may operate as a sole proprietor or a limited liability company. If there are two or more owners of the business, by definition it cannot be a sole proprietorship, but it may be an unlimited or

limited partnership, or a limited liability company.

### 1.2 Limited liability company

In Norway, limited liability companies are independent legal entities, like limited companies in the U.K. and US. A limited liability company can be organized either as a private or as public company.

Public company shares may, contrary to private company shares, be negotiable on stock markets. The minimum share capital for a private company is NOK 30 000, -. For a public company it is NOK 1 000 000, -.

The owners of a limited company have no personal responsibility for the company's obligations. Their economic risk is limited to the share capital contributions made to the company. Creditors can only file claims against the company, not the shareholders.

If your business operates on a medium to large scale with some risk, we recommend that you organize as a limited liability company.

### 1.3 Partnerships

Partnerships may be organized as an unlimited liability partnership or a limited liability partnership. Both are an association of two or more partners who are jointly or severally liable for the enterprise's total liabilities.

The unlimited liability partnership in Norway is called an "ANS". In an ANS partnership, the partners are personally liable for the enterprise's total debt (joint and several liability). Debt that one partner is unable to pay may be claimed in full from any one of the other partners.

The limited partnership is called "DA". The partners jointly are personally liable for the enterprise's total liabilities, but each partner is only liable in proportion to his or her ownership



interest in the partnership. Creditors cannot claim coverage for more than 10 % of their debt from a partner who has a 10% ownership in the partnership, even if the other partners are unable to settle their part of the debt.

Another form of limited partnership is "KS". This type of business is a hybrid of unlimited liability partnership's and limited liability companies. One or two "general partners" have unlimited personal liability covering the partnership's obligations. The "KS" is a legal entity and is itself liable for all its obligations.

### 1.4 Sole proprietorship

Sole proprietorship is a form of enterprise in which a 'physical person' is liable for a business. This means that he or she is financially liable for all the enterprise's liabilities and obligations.

The owner (physical person) has the full right to decide over the enterprise. There are no special rules or separate acts of law regulating sole proprietorships. However, if the enterprise has more than 30 employees, certain special requirements apply.

If your business operates on a small to medium scale with little volume and risk, we recommend that you organize the business as a sole proprietorship.

## 2. Steps and timing of establishment

### 2.1 Introduction

When establishing an enterprise in Norway, the founder is required to notify the authorities. The same applies when a company takes on employees, and when it starts to sell goods or services that are liable to VAT.

In all of these situations, the enterprise must register with the Brønnøysund Register Centre's Central Coordinating Register for Legal Entities. The various agencies collaborate on exchanging information, so that one can fill in and send the form *Coordinated Registration Notification* to

notify the Brønnøysund Register Centre, the Norwegian Labour and Welfare Administration (NAV) and the tax office at the same time.

In the following we will give a brief overview of steps to incorporate before establishing an enterprise.



### Limited liability company (AS/ASA)

The procedure for forming a limited liability company starts with drawing up a memorandum.

The memorandum must state the company's articles of association and bylaws, specify the company name, state the names and other relevant details of the founders, number of shares to be subscribed for by each founder, the amount payable for each share and the time of settlement.

The memorandum also must state the members of the Board. Furthermore, it should indicate whether the company should have an auditor and if so, the name of the auditor.

The company must be registered in the Brønnøysund Register Centre's Central Coordinating Register for Legal Entities within three months after the memorandum is signed. At this point, it is a requirement that payment of the company's capital is made to the full extent.



Finally, the company must have an official name containing the abbreviation “AS” for private limited liability company, and “ASA” for public limited liability company.

### 2.3 Partnerships (ANS/DA)

The procedure for forming a partnership, involves that the participants enter into a partnership agreement. The partnership is established when the partnership agreement is signed by all participants.

No equity is required to start a partnership company. This is because the personal responsibility of the participants is deemed sufficient to protect creditors' commitments. It depends upon the participants' own assessment of funding requirements whether and to what extent they should have initial capital.

The partnership agreement must be registered in the Register of Business Enterprises. The partnership must have an official name containing the abbreviation “ANS” or “DA”.

### 2.4 Partnerships (KS)

The procedure for forming a (KS) partnership is like the procedures used when forming an ANS or a DA. Unlike the ANS and DA, each limited partner must make a deposit of at least 20,000 NOK within a specified time limit when establishing the company.

A limited partnership must have a certain partnership capital, divided into one or more general partner shares and one or more limited partner shares. At least two-fifths of the share capital shall be bound capital, which shall be paid to the company, and which the participants cannot freely dispose of. The general partner must make a deposit amounting to a minimum one tenth of the share capital, own at least one tenth of the Company's net wealth at any time and have at least the same share in profits and losses.

The agreement must be registered in the Register of Business Enterprises. A "KS" cannot be registered until at least one-fifth of each participant's contribution obligation has been paid to the company. Furthermore, it is required that an additional one fifth is paid within two years after the foundation. The partnership must have an official name containing the abbreviation “KS”.

### 2.4 Sole proprietorship (ENK)

The formal requirements to form a Sole proprietorship are that the owner must be 18 years of age. He or she does not have to reside in Norway. However, the enterprise is required to have an address in Norway. The owner of a sole proprietorship is not obliged to set aside funds (capital contributions) for the enterprise, since he or she in any event is personally liable.

For tax purposes, a sole proprietorship is assessed together with the person who owns it. This means that the net profit of the business is liable to tax as part of the owner's total income, including, for example, income from employment. Likewise, the net loss will be deductible.

All sole proprietorships can register free of charge with the Central Coordinating Register for Legal Entities, and will then be assigned an organization number. Sole proprietorships are also entitled to register with the Register of Business Enterprises. This is subject to a charge.

If a sole proprietorship has at least five employees or is a wholesale or retail enterprise, registration with the Register of Business Enterprises is mandatory. Upon registering with the Register of Business Enterprises, the enterprise will be issued a certificate of registration.

The name of the sole proprietorship must contain the surname of the owner.



### **3. Governance, Regulation and Ongoing Maintenance**

#### **3.1 Requirements for local shareholding/directors**

##### **3.1.1 Private limited liability companies**

A limited liability company (AS) must have a board of directors.

As a rule, a limited liability company shall have a board consisting of at least one member. The company may have a general manager. If the company does not have a general manager, the chairman of the board is responsible for the day-to-day management of the company.

The Limited Liability Companies Act contains detailed rules relating to: the company's board of directors, the board's responsibilities, appointment of a general manager, election of board members and deputy board members, the board's duties, term of office, resignation and removal before the end of the term of office, and remuneration of board members.

##### **3.1.2 Public limited liability companies**

A public limited liability company (ASA) must have a board of directors consisting of at least three members, and if the company has a corporate assembly, the board must have at least five members. The board of directors is subject to a requirement for gender representation. The company is also required to have a general manager.

##### **3.1.3 Partnerships**

The partnership meeting is the highest authority of partnerships. There is no requirement for the partnership to have a board of directors or a managing director. Should the partners decide to have a board of directors or a managing director, the

Norwegian Partnerships Act contains rules for their organization.

All the partners are authorized to sign on behalf of the company, unless otherwise stipulated in the partnership agreement or where there is a board of directors. All partners are eligible to vote at the partnership meeting, and all decisions must be unanimous, unless the partnership agreement provides otherwise.

In a "KS", the partners are the limited partnership's highest authority. However, unlike in the unlimited liability partnership, the partners cannot participate in the administration of the partnership. The limited partners must leave the day-to-day administration to the general partner(s) or the board of directors.

#### **3.2 Minority shareholders' rights and protection**

##### **3.2.1 Limited- and public limited companies**

In limited liability companies, it is not unusual that a majority and a minority disagree on how to run the company. This is because the basic principle of the Corporation law is that decisions are made by majority vote. A minority must generally accept the majority's decision.

Norwegian Private Limited Liability Companies Act, however, has some rules that protect the minority. The law includes, among other things, rules for "starvation" of the minority, the right to require notice of an extraordinary general meeting, the right to require an investigation, the right to demand a new election of auditors and the right to assert claims on behalf of the company. Most of these rights require a minority stake of at least 10% of the share capital.



### 3.2.2 Partnerships

In partnerships, all partners are members of the partnership meeting. For the partnership meeting to reach a decision, the decision must be unanimous. Unless otherwise agreed to, company shares can only be transferred to a new owner with the consent of all the other participants. However, each participant can, with six months written notice, terminate its participation and demand to be released by the company.

## 4. Foreign Investment, Thin Capitalisation, Residency and Material Visa Restrictions

### 4.1 Possible barriers for an offshore party

There is freedom of establishment for businesses in Norway. That means that you do not have to reside in Norway in order to set up a business here. If you wish to establish and operate a business, you need to have a Norwegian D-number and a Norwegian business address. A D-number is a temporary number assigned to, but not limited to, foreign nationals liable for tax in Norway.

If you do not have employees, or do not reside in Norway, you must have a Norwegian representative who is liable for the payment of direct and indirect taxes.

If no economic activity is being conducted, the contact person may reside abroad.

If you wish to start a sole proprietorship, you must register with the police or with a service center for foreign employees. This does not apply if you are from another Nordic country.

If you come from a country outside the EU/EEA area, a special residence permit may be obtained if you wish to set up business as self-employed in Norway.

## 4.2 Possible capitalisation obligations

### 4.2.1 Limited liability companies

To set up a new limited liability company, the founders must complete the above-mentioned procedures before the business can start to operate. The purpose of the formal requirements is to ensure that funding, liability and rights are unambiguously agreed up on between the founders, and to provide adequate security for customers and suppliers.

The limited company must have a share capital of at least NOK 30 000. Before registration, an auditor or a financial institution must confirm that the share capital has been paid in full. The notification to the Register of Business Enterprises shall confirm that the company has received the share capital contributions. If the share capital contributions are to be paid exclusively in cash, a financial institution may confirm that payment has been made. The company may cover the formation costs, but the costs must not exceed the share capital contributions.

A public limited liability company must have a share capital of at least NOK 1,000,000.00, and the company must have a board of directors consisting of at least three members. The board of directors is subject to a requirement for gender representation. The company is required to have a general manager.

### 4.2.2 Unlimited liability partnership and sole proprietorship

In Unlimited liability partnerships, it is up to the partners to agree on whether to make partnerships contributions. The law does not require such contributions. The partners may also agree to contribute assets other than cash, for example objects for use in the



business activities. In a partnership, the capital contributions are not as important in relation to the outside world as the situation is with regard to a limited company. The partners must in any case use private funds to cover any debt, if necessary. It is therefore important that the partners make sure that sufficient capital has been set aside to secure the company financially. That will reduce the risk of any of the partners having to use private funds to cover debt. It will also reduce the likelihood of conflicts between the partners.

In limited liability partnership's (KS), the partners must make partnership contributions as mentioned above. For the general partner(s), the situation is otherwise quite like the situation regarding unlimited liability partnerships. The limited partner's role, however, is far more passive than the role of a participant in the ANS. A limited partner has only a limited liability for company debts. This means that he / she cannot be held personally responsible for obligations incurred by the company, and that he / she is not obliged to provide higher contributions to the company than what is required by the foundation of the company.

In a sole proprietorship, the proprietor, who is a physical person, is liable for the business. This means that he or she is financially liable for all the enterprise's liabilities and obligations. The owner is not obliged to set aside funds (capital contributions) for the enterprise, since he or she in any event is personally liable.

#### **4.2.3 VAT**

Foreign businesses that start up business activities liable to VAT in Norway must calculate and pay VAT in the same way as Norwegian companies.

VAT is payable on all sales of goods and services, except those that have been specifically exempted by law. Certain goods and services are exempt from VAT on sales, or subject to a so-called 'zero rate'. Among other things, this applies to the sale of goods and services to other countries, to certain ships and aircraft and for use in offshore petroleum activities. Businesses with these types of sales must be registered in the VAT Register.

The importation of goods and services to Norway is also liable to VAT. Norwegian Customs and Excise collect VAT on the imported goods. VAT on imported services is subject to certain limitations: Businesses and public institutions must calculate and pay VAT on purchases of services provided from abroad. In other words, it is the recipient's duty to calculate and pay VAT in such cases. Examples of services that can be remotely provided include electronically provided services, consultancy services and various information services.

The standard VAT rate is 25%. A VAT rate of 15% is levied on the sale of food. The rate is 8% for passenger transport. The same applies to hotels and other businesses that rent out rooms, apartments, and vacation homes to tourists.

Foreign businesses that sell goods or services in Norway, must register with the VAT Register when the value of sales and withdrawals liable to VAT exceeds NOK 50,000 during a 12-month period.

Foreign businesses that sell goods or services in Norway without having a place of business or a place of residence here must be registered through a representative. If the foreign national registers through a representative, he or she will have the rights and obligations that follow from ordinary





registration in the VAT Register. The representative must have a place of residence or a place of business in Norway.

A foreign business that is registered in the VAT Register (directly or through a representative), is obliged to comply with all applicable Norwegian accounting legislation. The foreign business has a duty to submit VAT returns to the tax office for each reporting period. Businesses with sales of less than MNOK 1 in the course of a calendar year can apply for permission to submit a VAT return once a year (annual VAT return).

### **4.3 Restrictions on remitting funds outside of the jurisdictions (withholdings, etc.)**

#### **4.3.1 Share dividend**

When a company generates a profit, some of the company's returns may be distributed as dividends to shareholders.

Distribution from Norwegian limited liability companies can only take place subject to the rules relating to dividend, capital reduction, merger or demerger and repayment on dissolution of a company. The general meeting decides whether or not dividends shall be distributed.

Any transfer of value whereby shareholders benefit, directly or indirectly, is classified as a distribution. The value shall be calculated using the fair value on the transfer date.

In partnerships, all profits and losses are shared equally among all partners. There are no restrictions in terms of the shareholders non-distributable equity as there is in limited liability companies. However, there is a formal requirement that the financial statements are approved by a partnership meeting before the distribution takes place.

### **4.3.2 Tax**

#### **4.3.2.1 Limited liability companies**

The profit from limited liability companies is taxed at a rate of 24%. When profit is being distributed to personal shareholders, tax is calculated after the deduction of a risk-free return, referred to as the shareholder model. This means that a further 29,76% tax is levied on the profit, after the deduction of the deductible risk-free return.

Foreign shareholders who receive dividends from a Norwegian corporation pay income tax (withholding tax) to Norway at the rate of 25%. Foreign shareholders who have been living in Norway, pay tax on gains from shares in the Norwegian company until five years after that he or she moved from Norway. A tax treaty may limit the right to demand such tax on gains.

#### **4.3.2.2 Partnerships**

Partnerships are not separate taxable entities. The partners are responsible for the partnership's tax payments. The net profit is taxed at a rate of 24%. When the profit is distributed to a physical partner, tax is calculated on the distributed amount after the deduction of paid tax. This more or less equals the maximum tax rate in a limited liability company. Any remuneration for work will reduce the calculated profit.

#### **4.3.2.3 Sole Proprietorships**

As the proprietor of a sole proprietorship, you are responsible for the enterprise's tax payments. The enterprise is not a separate taxable person. The proprietor pays advance tax for each period as soon as the income arises, and payment forms for advance tax are sent to the proprietor



four times a year. The tax office calculates the amount of tax payable based upon the profit for the previous year.

#### **5. NUF - Norwegian-registered foreign enterprises – An alternative form of conducting business activities in Norway.**

A foreign enterprise that wishes to do business in Norway, can register a branch of the foreign enterprise in Norway.

If a branch is set up in Norway, the foreign company is liable for the business conducted by the Norwegian branch. If the branch does not operate from a fixed place of business in Norway, and is liable for VAT according to the provisions of the VAT Act, a Norwegian value added tax representative must be registered by the authorities.

If Norway does not have an agreement with the country of the trader on the exchange of information and mutual assistance in the recovery of claims, the representative will be jointly and severally liable for payment of VAT.

The branch will normally be liable to tax in Norway and will otherwise have to comply with Norwegian regulations. In order to employ foreigners, residence permits must be issued.

No equity requirement applies to the establishment of a branch. However, foreign enterprises conducting business in Norway are obliged to register with the Register of Business Enterprises.

#### **6. Are you considering doing business in Norway?**

If you have any questions on doing business in Norway, we invite you to contact our office and let one of our lawyers assist you. You are always welcome to visit our webpage, [www.oklandco.no](http://www.oklandco.no).

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