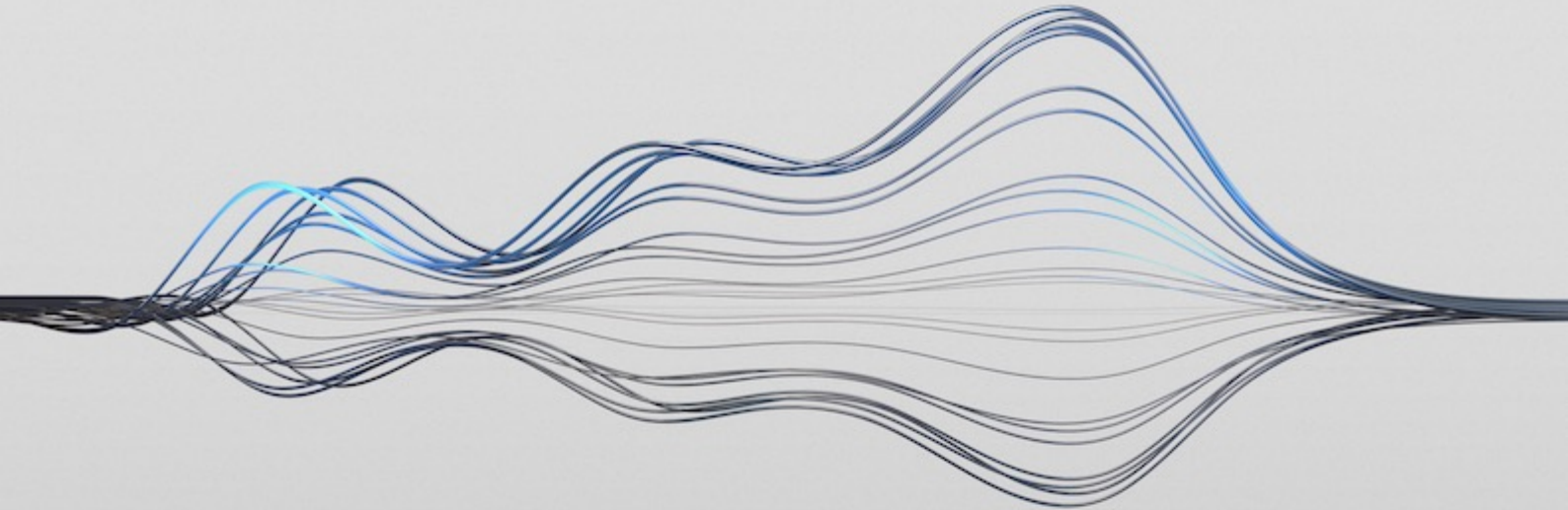


NORWAY

Global Guide to Directors' Duties





Norway

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Corporate entities

What type of company is typically used in group structures?

In Norway, a private limited liability company will normally be the corporate entity of choice in a group structure.

Types of director

What is a "director"?

There is no complete definition of "director" under the Norwegian Private Limited Liability Companies Act. However, reference to a director is typically to a member of the company's board of directors, which is responsible for the organisation of a company and management of the company's affairs.

Further, the general manager of a private limited liability company may be referred to as the "managing director".

What are the different types of director?

There are two types of director:

- A board of directors whose members usually are appointed by a shareholders' meeting and must be registered with the Norwegian Register of Business Enterprises.
- A managing director (general manager) who may be appointed by the board of directors and, if so, must be registered with the Norwegian Register of Business Enterprises. For a private limited liability company, it is not mandatory to have a managing director.

If the number of employees in a company exceeds 30 employees, and the company has not established a corporate assembly, employees have the right to be represented in the board of directors and elect their representatives themselves. In companies with more than 200 employees the company is required to have employee representatives, provided that it has been agreed that the company shall not have a corporate assembly.

Eligibility

Who can be a director?

Only persons over the age of 18 may be elected as members of the board of directors.

At least 50% of board members must reside in an EEA state, the United Kingdom of Great Britain and Northern Ireland, or the Swiss Confederation. If appointed, the general manager must also reside in an EEA state, the United Kingdom of Great Britain and Northern Ireland, or the Swiss Confederation. It is not possible to have a legal person (e.g., a company) serving as a member of the board of

directors or as a managing director.

Anyone employed in the company at the date of election may serve as an employee representative and anyone employed in the company on the election date may vote on their election.

Requirement for gender representation on the board of directors

For private limited liability companies (AS) (and certain other legal entities) of a certain size (measured in income and number of employees on the balance sheet date of the company's annual accounts), new requirements for gender representation on the board of directors were introduced from 1 January 2024. For such companies that have at least three board members, the new requirements (which vary depending on the number of board members) mean that a maximum of between 67 and 50 per cent of these board members may be of the same gender. In practice, the requirement means that the board of directors in companies subject to the gender composition requirements must have at least 40 per cent of each gender represented on the board.

There are transitional provisions which provide for a gradual introduction of these requirements:

1. companies with operating revenues and financial revenues that cumulatively exceed NOK 100 million have until 31 December 2024 to comply;
2. companies with more than 50 employees have until 30 June 2025 to comply;
3. companies with more than 30 employees have until 30 June 2026 to comply;
4. companies with operating revenues and financial revenues that cumulatively exceed NOK 70 million have until 30 June 2027 to comply; and
5. companies with operating revenues and financial revenues that cumulatively exceed NOK 50 million have until 30 June 2028 to comply.

There are separate requirements for gender composition of deputy board members, and for board members and deputy members elected by and from among the employees.

Minimum / maximum number of directors

For private limited liability companies (AS) there must be a minimum of one director in the board of directors. For companies with a corporate assembly, the minimum number of board members is five. There is no maximum.

For public limited liability companies (ASA) the board of directors must have a minimum of three directors, or five in companies with a corporate assembly. There are also similar gender composition requirements for the board of directors as have been introduced for private limited liability companies.

Appointment and removal

How are directors appointed?

Directors are elected by the general meeting of the company. All shares have the right to vote at the general meeting unless they are considered non-voting shares pursuant to the articles of association.

The articles of association may provide that the general meeting's right of election shall be transferred to others, but this is rarely used. More than half of the board of directors must in any case be elected by the general meeting unless the right to elect is assigned to a corporate body stipulated in the articles of association. The right of election may not be transferred to the board of directors or to a member of the board of directors.

The elected directors must be registered in the Norwegian Register of Business Enterprises. For the registration of non-Norwegian individuals, a certified passport copy, application for d-number (i.e., a personal identification number for foreign individuals) and a registration form must be filed with the Norwegian Register of Business Enterprises. The election of a new director is effective from the date of election by the general meeting.

The election of employee representatives is managed by an election committee (*valgstyre*), which is to be formally established by the company in collaboration with the employee representatives. The election must take place every second year.

How are directors removed?

The members of the board of directors serve for two years. Board members can be removed by the body that elected the director. This does not apply for a board member that has been elected by the employees. The removal decision must be registered with the Norwegian Register of Business Enterprises by filing a registration form.

Any member of the board of directors can retire before its period of service has expired. A director who wishes to resign must notify the company's board of directors and the body that elected the director in advance and file a notification form with the Norwegian Register of Business Enterprises.

Board / management structure

Typical management structure

A Norwegian private limited liability company normally has at a management level, a system consisting of a board of directors and a general manager (managing director).

The company must have a board of directors, comprising of one or more members. If the board of directors consists of at least two directors, the board of directors must have a chairperson. The chairperson is elected by the board unless the chairperson has been appointed by the general meeting. If the board of directors only consists of one person, such director is automatically registered as the chairperson.

In Norwegian private limited liability companies, the board of directors can choose to have a general manager. If one is appointed, the general manager is responsible for the day-to-day management of the company. If a managing director is not appointed, these tasks and obligations will fall to the board of directors.

In Norwegian public limited liability companies, it is obligatory to have a general manager.

How are decisions made by directors?

The board of directors must deal with matters in meetings unless the chairperson of the board finds that the matter can be submitted in writing or dealt with in some other adequate manner. Minutes must be kept of all board meetings.

The board of directors forms a quorum when at least half of the directors are present. A resolution of the board of directors requires the supporting vote of a majority of the directors who participate in the consideration of a matter. In addition, the board may only adopt resolutions if all members of the board of directors have, wherever possible, been invited to participate in the proceedings. In the event of a tie, the chairperson of the board has the casting vote. Those who vote in favour of a proposal which entails a change must however always make up more than one third of all the members of the board of directors.

In companies where the employees are represented on the board of directors, the board of directors must issue instructions detailing the board of directors' activities and procedure. The instructions must, inter alia, include rules as to which matters that are to be dealt with by the board of directors and the functions and duties of the general manager towards the board. The instructions must also include rules for notices of meetings and proceedings at meetings.

Authority and powers

The board of directors jointly represents the company towards external parties and has the authority to sign on behalf of the company.

The board of directors may authorise directors, the general manager or named employees to sign on behalf of the company. Such authorisation may be included in the articles of association, which may also restrict the board of directors' powers to grant authorisation to sign for the company. The right to sign on behalf of the company may not be limited in another manner than individuals acting jointly. The signatory right must be registered with the Norwegian Register of Business Enterprises. The general manager represents the company in relation to the day-to-day management of the company.

As far as third parties are concerned, the board of directors and a managing director can bind the company and enter into contracts on its behalf even if there are internal limits on their power to do so (e.g., in respect of internal policies and protocols). However, a legal act may be considered void as against the company if the company, under certain circumstances, shows that the third party realised or ought to have realised that the authority had been exceeded.

Delegation

The board of directors can delegate certain duties to one or more directors in the board or to other persons. However, the board of directors must act with care and regularly check that delegation can be maintained.

Once a duty has been delegated, the board of directors still has a supervisory responsibility. The same rule applies to a managing director when delegating a duty.

Duties and obligations of directors

What are the key general duties of directors?

There are three key duties of the board of directors:

- **Management of the company.** The board of directors must ensure the proper organisation of the business of the company. The board of directors must draw up plans and budgets for the company's business. The board of directors may also lay down guidelines for the business. The board of directors must keep itself informed of the company's financial position and is obliged to ensure that its activities, accounts, and capital management are subject to adequate control.
- **Supervisory responsibility.** The board of directors must supervise the day-to-day management and the company's business in general.
- **Duty to act in the event of capital deficiency of insolvency.** If the equity is presumed to be less than adequate in terms of the risk and scope of the company's business, the board of directors shall forthwith deal with the matter. The board of directors must within a reasonable time call a general meeting and report to it on the company's financial position and propose remedying measures. If the board of directors does not find measures to ensure adequate equity, it must propose the dissolution of the company.

What are directors' other key obligations?

The directors must fulfil their obligations with the company's best interest in mind, and not abuse their position in the company. Abuse would include the following:

- Members of the board of directors may not adopt any measure which may tend to give certain shareholders or others an unreasonable benefit at the expense of other shareholders or the company.
- The directors and general manager may not comply with any resolution of the general meeting or another company body if the resolution is contrary to statutory law or the company's articles of association.

Transactions with the company

There are certain restrictions concerning a board member's and a general manager's ability to transact with the company.

Neither a board member nor the general manager may participate in the discussion or decision of any matter which is of such particular importance to them or any related party that they must be deemed to have a special and prominent personal or financial interest in the matter.

Nor may a member of the board of directors or general manager participate in any decision to grant a loan or other credit to themselves or to issue security for their own debt.

Liabilities of directors

Breach of general duties

The company, a shareholder or others may hold the general manager and/or a member of the board of directors personally and jointly liable for any damage which they, in the capacity mentioned, have intentionally or negligently caused such party.

Members of the board of directors or a general manager who intentionally or negligently infringe any provision issued in or pursuant to the Norwegian Private Limited Liability Companies Act may be punished by fines or in aggravating circumstances by imprisonment for up to one year. Complicity will be similarly punished.

Liabilities on insolvency

It is the responsibility of the board of directors to submit any petition for debt negotiations or bankruptcy proceedings in relation to the company. The board of directors represents the company as bankruptcy debtor in bankruptcy proceedings. Directors who knowingly or negligently allow a company to carry on trading when it is insolvent may be held liable for fraudulent or wrongful trading.

Other key risks

Personal liability for directors may, in certain circumstances, arise under Norwegian legislation including that relating to environmental and health and safety, employment, consumer protection and bribery/anti-corruption. In certain cases, criminal liability may arise.

Protection against liability

How can directors be protected from liability?

The company can take out a directors & officers insurance for the board of directors, which is common in Norway. Usually, this insurance is taken out for the whole board of directors, and not for single members of the board of directors.

The general meeting can adopt a resolution to approve an agreement between the company and members of the board of directors that governs or restricts their liability. The general meeting can also adopt a resolution of no liability, but this can only be done for specific actions, not in general. A resolution of no liability is only effective between the company and the board of directors, which means that shareholders and others still may hold the board of directors liable.

What practical steps can directors take to avoid liability?

Directors should:

- Make sure they fully understand the resolution they are voting for or against, especially what the consequences may be and how the resolution may affect the company's financial situation and shareholders. If the director does not fully understand, the director should seek further information to clarify the situation.
- Keep records. The directors should ensure that written records of board proceedings are kept, and make them as detailed as possible, including the reasons for the decisions that were taken, whether any alternatives were considered, and also any disagreement amongst the board members and the reasons for that.
- Act in the best interest of the company on which board they serve, and not necessarily in the interest of a group of companies. Whilst group interests and that company's interests are usually aligned, this may not always be the case (e.g., when their group company's solvency is adversely impacted). It is important to keep communication and reporting lines as open and clear as possible between parent and subsidiary companies when issues may arise and seek appropriate advice.
- Monitor the financial situation of the company, and immediately prepare a balance sheet for liquidation purposes where there is reason to believe the shareholders' equity or liquidity is less than adequate. If the balance sheet evidences that the shareholders' equity is not adequate, the board shall immediately take further actions (see [What are the key general duties of directors?](#)).
- Ensure that all transactions are made on arms' length terms.

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