NORWAY

Investment rules of the world

DLA PIPER

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Investment Rules of the World

With input from across our global network, this guide covers key legal topics for different financial activities and projects and gives you an overview of the points you may consider when initially looking at financing or investing in particular jurisdictions. Please contact us if you would like to discuss any legal issues or solutions for your business. We also welcome your feedback about this guide via investmentrules@dlapiper.com.

Norway

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Capital markets and structured investments

Issuing and investing in debt securities

Are there any restrictions on issuing debt securities?

There are restrictions on offering and selling debt securities under both Norwegian and EU law, the latter of which is almost always incorporated into Norwegian law.

Unless certain exclusions or exemptions apply, it is unlawful to offer debt securities to the public in Norway or to request that they are admitted to trading on a regulated market operating in Norway unless an approved prospectus has been made available to the public.

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What are common issuing methods and types of debt securities?

In Norway the most common debt securities are bullet bonds, where the interest is paid at regular intervals until the full amount is due, whereupon the entire par value is payable.

There are several types of debt securities in Norway. Some common forms include:

- different types of bonds with varying repayment and interest rates, such as coupon bonds, zero-coupon bonds, secured bonds, covered bonds, unsecured or senior bonds, government bonds, and convertible and contingent convertible bonds; and
- short-term loan certificates that are tradable debt securities.

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What are the differences between offering debt securities to institutional / professional or other investors?

The Norwegian prospectus rules do not make a distinction between professional and other investors for the purposes of its disclosure requirements but do include different disclosure regimes by reference to the minimum denomination of a single security.

However, for more information, see Issuing and investing in debt securities – requirement for prospectus. Section 7-4 number 8 of the Securities Trading Act of 2007 states that the provision of section 7-2 does not apply where the offer is addressed to professional investors pursuant to further rules laid down by the ministry in regulations.

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When is it necessary to prepare a prospectus?

Section 7-2 of the Securities Trading Act 2007 states that where an offer to subscribe for or purchase transferable securities is addressed to 150 or more persons in the Norwegian securities market, and involves an amount of at least €1 million calculated over a 12-month period, a prospectus shall be prepared in accordance with the rules of chapter 7 of the Securities Trading Act chapter 7. The same applies where an offeror residing in Norway makes an offer in another European Economic Area (EEA) state and the prospectus requires approval pursuant to section 7-7 of the Securities Trading Act. Chapter 7 implements the EEA directives (EF) 2003/71 and (EF) 2004/809.

It is also necessary to prepare a prospectus upon admission to trading of transferable securities in a Norwegian regulated market place, including increases of capital in companies with quoted shares. The same applies where an issuer residing in Norway seeks admission to trading on a regulated market in another EEA state and the prospectus requires approval pursuant to the provisions of section 7-7 of the Securities Trading Act of 2007.

Section 7-4 number 8 of the Securities Trading Act of 2007 states that the provision of section 7-2 does not apply where the offer is addressed to professional investors pursuant to further rules laid down by the ministry in regulations.

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What are the main exchanges available?

There are two equity markets in Norway. Oslo Børs (Oslo Exchange Market) is the only regulated market for securities trading. For companies that do not meet the requirements of the Oslo Exchange Market, there are is another licensed and regulated market called Oslo Axess. There are also unregulated and multilateral trading facility (MTF) marketplaces such as Merkur Market, Oslo Connect and Nordic ABM.

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Is there a private placement market?

There is a private placement market in Norway. Private placements are popular where the prospectus rules do not need to be complied with.

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Are there any other notable risks or issues around issuing or investing in debt securities?

Issuing debt securities

Issuers are required to take responsibility for prospectuses for debt securities. Misleading statements in, or omissions from, any applicable offering document may give rise to both civil and criminal liability under Norwegian law. Norway has various investor protection statutory provisions relevant to liability for an inaccurate offering memorandum. There are also general fraud statutes and liability may also arise under common law through a civil action for deceit, negligent misstatement or misrepresentation.

Investing in debt securities

Debt security terms and conditions typically confer significant discretions on the trustee. The trustee will represent the interests of the debt security holders, and will be the only party who can take legal action, whether against the issuer's board of directors or the issuer itself. The conditions also provide for meetings of investors to consider matters affecting the investors' interests. These provisions typically permit defined majorities to bind all investors including investors who did not attend and vote at the relevant meeting and investors who voted against the majority.

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Establishing and investing in debt / hedge funds

Are there any restrictions on establishing a fund?

Yes.

Establishing a fund or the fund management and marketing of units in funds towards the public, among other things, are regulated activities under the Securities Fund Act of 2011 or the Alternative Investment Fund Managers Act of 2014 and therefore subject to supervision by the Norwegian Financial Supervision Authority.

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What are common fund structures?

Common forms of funds include:

- Securities Funds (open-ended and closed-ended funds as well as fund-in-fund structures);
- National Funds (Norwegian fund structure according to chapter 6 in the Securities Fund Act of 2011);
- Special Funds (Norwegian fund structure according to chapter 7 in the Securities Fund Act of 2011);
- Undertakings for Collective Investments In Transferrable Securities (UCITS);
- Hedge funds, private equity funds, investment companies and real estate funds (Alternative Investment Funds (AIFs)); and
- Exchange-Traded Funds listed on the Oslo Stock Exchange.

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What are the differences between offering fund securities to professional / institutional or other investors?

Retail funds

Retail funds, including Undertakings for Collective Investments in Transferrable Securities (UCITS), are subject to a strict regulatory regime, including obligations with regard to the fund management and the investments of the securities fund's assets (ie allocation and investment limits and requirements as to liquidity of the investments). Special investor protection rules apply and it is required to provide key investor information and meet language requirements.

The retail funds are offered to non-professional investors and are subject to strict investor protection rules. Note that certain categories of funds cannot be offered to non-professional investors. A non-professional investor means any investor not considered as a professional investor, or one who may upon request be treated as such.

Institutional/professional funds

Professional funds are offered to professional investors and a professional client who meets two of the following three criteria: a total balance sheet of €20 million, turnover of €40 million or own capital of €2 million. In practice, in Norway, this often refers to non-UCITS funds, being hedge funds, private equity funds, investment companies and real estate funds, which fall into the category of Alternative Investment Funds (AIFs) and are therefore subject to the Alternative Investment Funds Managers Act of 2014. The regulatory framework is better suited for professional investors and does not set the same restrictions on the investments made by the fund.

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Are there any other notable risks or issues around establishing and investing in funds?

Establishing funds

In general, the legal framework for establishing fund structures is complex and there are many risks to be taken into account.

A new entrant to the fund market will need to obtain the necessary license(s) from the regulator and set up an organization (incl. control bodies) which fulfils various suitability requirements. It will also have to manage the fund in compliance with the applicable regulations. The marketing and distribution of fund products to the public are subject to particular rules (for more information, see Establishing and investing in debt and hedge funds – establishment). It is also important for the fund incorporator to select the optimal fund structure to fit the fund product(s) intended for sale and the targeted fund investors.

For investors there are a lot of risk factors to take into consideration and an investment fund can generally reduce the risk of being exposed to a single security as it allows them to invest in a portfolio of securities, meaning a drop in the value of a single investment will not necessarily cause the value of the whole investment to collapse. That being said, all investments carry a varying degree of risk and investing in funds involves many of the same risks as any other investment. The value of an investment may rise or fall and the previous performance of a fund is not a guarantee of its future performance. Further, return and risk almost always go hand in hand; generally, an investor must take a greater risk to achieve greater returns. The risks that apply will often be determined by the classes of assets that the fund invests in and the selection of investments that the manager makes. Other risk factors that may impact on the performance of a fund include market risk, regulatory, economic and political risks (especially if the fund invests in non-EU markets, emerging markets etc), counterparty risk (if a counterparty defaults, that may impact on the fund's position), currency risk and gearing risks (if the fund borrows or utilizes derivatives to increase potential returns), diversification risk and liquidity risk. Liquidity risk is the risk that positions cannot be realized at a particular point in time both in relation to the manager's ability to buy and sell positions for the fund and the investor's ability to buy or sell units in the fund. The fund investor should carefully consider the fund's risk profile and the policies employed by the fund. Note that all risk indicators are usually based on historical data or assumptions.

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Managing and marketing debt / hedge funds

Are there any restrictions on marketing a fund?

Yes.

The units of a fund can be marketed by investment firms, licensed alternative investment fund managers or securities funds as well as banks to a certain extent. Other regulated entities may also be entitled to market units in a fund in cooperation with the manager.

The Securities Fund Act of 2011 and the Alternative Investment Fund Managers Act of 2014 set out the marketing regimes applicable for funds. They also provide exemptions for some of these marketing requirements where marketing is aimed at professional investors. In addition, the laws differentiate between securities' funds and alternative investment funds (AIF). AIFs are more suited for professional investors, therefore there are restrictions in relation to the marketing of such funds to non-professional investors. Where the AIF fund is marketed to professionals and it is below certain set fund thresholds, then a marketing permit from the Norwegian Financial Supervisory Authority is not needed. Where marketing is done towards non-professional investors, then the management is required to apply for a special marketing license.

The Undertakings for Collective Investments in Transferrable Securities (UCITS) directive has been incorporated into Norwegian legislation. This enables fund promoters to create a single product for marketing in all EU member states and on the completion of the appropriate notification procedure, a UCITS established in one member state can be sold in any other. A UCITS intending to market in another member state must complete and submit to its home regulator a notification which must include certain specified information, including copies of key investor documents. The home regulator then completes a notification file which is sent in a regulator-to-regulator transmission, following which the UCITS can be sold in the other member state.

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Are there any restrictions on managing a fund?

The Securities Funds Act of 2011 and its related regulations set several requirements in relation to management of funds. The Norwegian Financial Supervisory Authority oversees and provides licensing for all securities fund management companies. To receive such authorization, certain statutory requirements must be met, and various restrictions arise on manager structuring, investment limits, organization of the activity, risk management etc. This Act also incorporates specific regulations regarding UCITS, incorporating the UCITS directive. Alternative Investment Fund Managers (AIFMs) are also subject to regulation under the Alternative Investment Fund Managers Directive (as implemented in Norway).

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Entering into derivatives contracts

Are there any restrictions on entering into derivatives contracts?

Yes.

Investment services provided on a professional basis must be provided by undertakings authorized to do so by the Ministry of Finance. The authorization shall indicate which investment services and ancillary services the investment firm may provide. An investment firm shall apply to the Norwegian Financial Supervisory Authority for approval before it offers ancillary services beyond those indicated by the authorization. However, the following entities are exempted from the authorization requirement:

- the Central Bank of Norway;
- the National Insurance Scheme Fund;
- public authorities that manage public debt;
- management companies for securities funds;
- insurance companies;
- pension funds;
- depositories of securities funds, pension funds and alternative investment funds;
- undertakings authorized to operate as an options clearing house, clearing house or regulated market; and
- managers of alternative investment funds.

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What are common types of derivatives?

Common types of derivatives include options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash, commodity derivatives, credit derivatives and financial contracts for differences.

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Are there any other notable risks or issues around entering into derivatives contracts?

In order to ensure close out netting, the derivatives agreements must be in writing and provide for valuations at market prices. In addition the derivatives must be of the kind described in the Norwegian Securities Trading Act 2007.

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Debt finance

Lending and borrowing

Are there any restrictions on lending and borrowing?

Lending

Lending is a regulated activity, and unless the available exemptions apply, a lender will need to be authorized by the Norwegian Financial Supervisory Authority (FSA) to conduct such business. There are particular restrictions around how:

- the loans are marketed, originated and sold;
- lenders administer the loans on an ongoing basis; and
- to deal with borrowers who fall behind with their payments.

Foreign lenders may conduct business in Norway by establishing Norwegian subsidiaries and having these apply for authorization from the FSA. Special rules apply for entities that are authorized and seated in another European Economic Area state. Such entities may conduct business in Norway by passporting their licenses to Norway or through a branch.

Norwegian company law contains restrictions as to financial assistance. Section 8-7 of both the Private Limited Liability Companies Act of 1997 and the Public Limited Liability Companies Act of 1997 limit a Norwegian limited liability company's ability to grant credit for the benefit of its shareholder or a party closely related to a shareholder, or for the benefit of a shareholder of another company in the same group or any of its closely related entities. Such credit may only be granted:

- within the limits of the assets which the company may legally use for distribution of dividends (free equity); and
- if adequate security is furnished for the claim for repayment or recovery or within companies in the same group of companies.

There are certain exceptions to the rule mentioned above. The following credit may be granted outside the limits of the assets which the company may legally use for dividends:

- credit of customary duration in connection with commercial agreements;
- credit or security for the benefit of the parent company or other group company; and
- credit or security in favor of a legal person that has a controlling interest as set out in section 1-3 over the company, or in favor of a subsidiary of such a legal person, provided that the credit or security serves the group's economic interests.

Note that the requirement concerning adequate security shall not apply if the legal person is a state, municipality or county municipality.

Section 8-10 of both the Private Limited Liability Companies Act and the Public Limited Liability Companies Act limit a Norwegian limited liability company's ability to provide financial assistance or security in connection with the acquisition of shares in that company or any of its holding companies.

Borrowing

Borrowing is generally not regulated in Norway.

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What are common lending structures?

Lending in Norway can be structured in a number of different ways to include a variety of features depending on the commercial needs of the parties.

A loan can either be provided on a bilateral basis (a single lender providing the entire facility) or syndicated basis (multiple lenders each providing parts of the overall facility).

Syndicated facilities by their nature involve more parties, are more highly structured and involve more complex documentation. Larger financings will typically be done on a syndicated basis with one participant in the syndicate taking the lead in coordinating and arranging the financing.

Loans will be structured to achieve specific objectives, eg term loans, working capital loans, equity bridge facilities, project facilities and letter of credit facilities.

Loan durations

The duration of a loan can vary between:

- a term loan, provided for an agreed period of time but with a short availability period;
- a revolving loan, provided for an agreed period of time with an availability period that extends nearer to maturity of the loan and which may be redrawn if repaid;
- an overdraft, provided on a short-term basis to solve short-term cash flow issues; or
- a standby or a bridging loan, intended to be used in exceptional circumstances when other forms of finance are unavailable, and often attracting a higher margin.

Loan security

A loan can either be secured, unsecured or guaranteed. For more information, see Giving and taking guarantees and security.

Loan commitment

A loan can also be:

- committed, meaning that the lender is obliged to provide the loan if certain conditions are fulfilled; or
- uncommitted, meaning that the lender has discretion whether or not to provide the loan.

Loan repayment

A loan can also be repayable on demand, on an amortizing basis (in instalments over the life of the loan) or scheduled (usually meaning the loan is repayable in full at maturity).

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What are the differences between lending to institutional / professional or other borrowers?

Lending to institutional/professional borrowers is subject to less regulatory oversight and so less burdensome from a compliance perspective. The Financial Contracts Act of 1999 chapter 3 contains several provisions that aim to protect consumers.

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Do the laws recognize the principles of agency and trusts?

The concept of a trust is not recognized under Norwegian law. However, the agency function is widely used and generally accepted under Norwegian law.

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Are there any other notable risks or issues around lending?

Generally

Loan agreements and other finance documents are subject to general contractual principles under Norwegian law, such as principles of revision of unfair contract terms. Certain statutory rules applying to financial institutions may also have implications to a lender, such as the mandatory requirement to include a maximum liability for a security interest or guarantee in order to ensure its validity if that security interest or guarantee is given in favor of a financial institution (other than in respect of security provided for the borrower's own debt).

Specific types of lending

Norwegian law poses certain challenges in the context of project finance and certain other types of asset lending transactions as security cannot as a general rule be granted over contracts as such (only monetary claims arising under a contract), requiring careful structuring of these types of transactions.

Standard form documentation

Most Norwegian law syndicated finance transactions are governed by documentation based on recommended forms published by the Loan Market Association (LMA), but adapted for the Nordic market excluding or reducing the scope of a number of provisions in the standard template. Bilateral finance transactions are sometimes made using a simplified form of the LMA standard, but will most often be documented on bank standard form documentation prepared in-house.

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Are there any other notable risks or issues around borrowing?

Borrowers should be aware of the potential implications of the EU's Bank Recovery and Resolution Directive (BRRD), which outlines certain measures for dealing with failing financial institutions.

The BRRD applies to financial institutions incorporated in the European Economic Area (EEA), but does not apply to EEA branches of non-EEA incorporated entities.

Article 55 of the BRRD gives authorities the power to 'bail in' obligations of failed EEA financial institutions and to postpone the enforcement of early termination rights against the affected institution. 'Bail in' describes a variety of write down and conversion powers, such as the power to convert certain liabilities into shares or cancel debt instruments. In the case of English or other EEA law contracts, such powers override what the contracts says. In the case of non-EEA law contracts, there are requirements to incorporate such provisions into the contract.

The BRRD is under consideration by the Ministry of Finance, but has not yet been implemented into Norwegian law and no deadline has been set as of today. However, Norway already has rules with effects similar to BRRD.

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Giving and taking guarantees and security

Are there any restrictions on giving and taking guarantees and security?

Guarantees

Guarantees are extensively used in Norway, and can be considered as a highly heterogeneous instrument. Guarantees may be issued by both private individuals/companies, credit institutions and public entities. They may guarantee both existing and future liabilities. The underlying claim may be a claim for money, contribution in kind or performance. Norwegian law recognizes the concept of on-demand guarantees. Recent court practice suggests, however, that careful structuring of on-demand instruments will be required to ensure their enforceability.

In the event that the guarantee is provided by a consumer in favor of a finance institution as the beneficiary, certain mandatory rules set out in the Financial Contracts Act of 1999 will apply. These rules contain:

- certain information requirements applicable to the beneficiary before entry into the guarantee;
- an obligation to dissuade the guarantor (if required);
- requirements in respect of the specific content of the guarantee document (eg information on the maximum guaranteed amount);
- certain notification requirements of the beneficiary (eg when security is not furnished as premised, in the event of default and deferral of payment); and

- restrictions in respect of when the guarantee may be enforced (The beneficiary may not make a claim against the guarantor until legal steps have been initiated to obtain a basis for enforcement against the principal. As a result of this, a consumer may not grant a traditional on-demand guarantee or an unconditional guarantee where the beneficiary is a financial institution.).

The same rules are applicable for non-consumer guarantees where the beneficiary is a financial institution (regardless of the type of guarantee provided). However, most of these rules are non-mandatory and routinely waived in guarantee agreements.

The guarantee must:

- be entered into in writing;
- contain details of the size of the maximum guaranteed amount; and
- contain information in respect of mortgages or other security for the beneficiary's claim, whether the guarantee shall encompass older debt, and, if so, whether the principal has defaulted on such debt, as well as other circumstances which the guarantor in accordance with honesty and good faith is entitled to be informed of.

General rules in respect of contractual invalidating factors also apply to guarantees and securities.

Note also that Norwegian company law contains financial assistance restrictions. Section 8-7 of both the Private Limited Liability Companies Act of 1997 and the Public Limited Liability Companies Act of 1997 (together the Limited Liability Companies Acts) limit a Norwegian limited liability company's right to grant credit and security (including guarantees) for the benefit of its shareholder or a party closely related to a shareholder or for the benefit of a shareholder of another company in the same group or any of its closely related entities. Such guarantees may only be granted:

- within the limits of the assets which the company may legally use for distribution of dividends (free equity); and
- only if adequate security is furnished for the claim for repayment or recovery.

The restrictions described above apply to a company's right to issue security for the benefit of a member of the board of directors, general manager or a member of the corporate assembly of the company or another company within the same group of companies, or any of their related parties, with certain exceptions in respect of issuing security for the benefit of employees.

There are, however, certain other important exceptions from the restrictions discussed above where:

- the security is of customary duration in connection with commercial agreements;
- the security is provided for the benefit of the parent company or another company within the same (Norwegian) company group;
- the security is granted in favor of a legal person that has controlling interest over the company, or in favor of a subsidiary of such legal person, provided that the credit or security shall serve the group's economic interests; or
- the security is granted for the benefit of a shareholder (owning less than 5% of the share capital in private companies and less than 1% in public companies) or related parties when the debtor is employed with the company or another company of the same group, such employment is his main occupation and the security is granted in accordance with customary rules for financial assistance to employees.

Pursuant to section 8-10 of the Limited Liability Companies Acts, a company may only provide security (hereunder provision of a guarantee) in connection with a third party's acquisition of shares or a right to shares in the company or the company's parent company within the scope of the funds that the company may use for distributing dividend and only if certain formal requirements are met, such as approval from the general meeting with 2/3 majority and satisfactory security for the recourse claim.

Exceptions to this restriction may be granted by regulations or individual decisions made by the King.

A transaction in violation of the financial assistance restriction is null and void, however, such invalidity may not be asserted against a counterparty in good faith. In extreme cases, a violation of the financial assistance restrictions may lead to criminal charges.

As guarantees are frequently granted from one company on behalf of other companies in the same group, the formal procedures set out in section 3-8 of the Limited Liability Companies Acts are of relevance. As a general rule, agreements between a company and its shareholders, the parent of the company's shareholders, or a person closely related to these, will not be binding upon the company unless the agreement is approved by a shareholders' meeting of the company.

In addition to this, there are also further formalities which must be complied with, such as:

- the requirement of a formal statement from the board of directors containing, *inter alia*, a declaration that the compensation that the company receives by providing the guarantee corresponds reasonably with the value of providing the guarantee (and a confirmation from the company's auditor regarding the same); and
- registration of the transaction in the Norwegian Register of Business Enterprises.

There are certain important exceptions from the main rule, such as agreements that are entered into in the course of the ordinary business of the guarantor on customary terms and conditions (eg cash pooling arrangements), agreements where the guarantor's consideration has a real value below 1/10 of its share capital (1/20 for public companies) and guarantees issued by a guarantor which is a 100% owned subsidiary of the legal person In favor of whom the security is granted, provided, however, that the security is given to serve the group's financial interests.

The main risk of non-compliance with section 3-8 is that the agreement (ie the guarantee) may be deemed void and not binding on the company, and any performance according to such an agreement shall be returned.

Pursuant to section 3-9 of the Limited Liability Companies Acts, transactions between companies of the same group shall be based on customary business terms and principles. To the extent that the value of the benefit/payment received by a Norwegian limited liability company in providing a guarantee does not correspond with the value of contribution provided by the company, such transactions may also be considered illegal distribution of dividends pursuant to the Limited Liability Companies Acts section 3-6. The consequence of an illegal distribution is that the distribution must be reversed, ie the guarantee will be invalid (with a reservation for a receiving party in good faith). An illegal contribution may also be subject to claims for compensation for loss or criminal sanctions.

It should be noted that even though interest expenses, as a general rule, are tax deductible, certain limitations apply to interest relating to intra-group loans, and guarantees and security granted in favor of a closely related entity.

Security

By agreement, a mortgage may be validly created only where authorized by the Mortgage/Liens Act of 1980 or other statue. In addition, a mortgage may not be validly attached as a whole to all the present and future property of the mortgagee.

When a right cannot be assigned, or can be assigned only on certain conditions, the same limitation applies in respect of attaching a lien to the right. However, one may always pledge the shares in a limited liability company unless the contrary is stipulated in the company's articles of association.

If a person owns only parts of an asset, this part may be pledged, but only if it is pledged in its entirety (ie if the person owns 50% of a property, then the entire 50% must be pledged).

A mortgage must set out the maximum amount (in Norwegian Krone, or in foreign currency for which a stock exchange rate is normally quoted in Norway) secured by such mortgage and is perfected by registration in a register of real property or in the movable property register.

Please see the rest of this answer in respect of guarantee limitations for further restrictions that apply equally to taking security.

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What are common types of guarantees and security?

Common forms of guarantees

Under Norwegian law, guarantees have traditionally been classified into three main categories;

- conditional guarantees (*simpel garanti*);
- unconditional guarantees or sureties (*selvskyldnerkausjon*); and
- on-demand guarantees (*påkravsgaranti*).

There are also other types of guarantee which lie between these guarantees and where the degree of independence between the guarantee and the underlying obligation varies. Each guarantee must be assessed and interpreted in accordance with its specific content /wording.

Common forms of security

In Norway, security may not be validly attached as a whole to all the present and future property of the mortgagee.

Norwegian law states that security may be established in *inter alia* these forms and objects:

- Ownership and special rights in real property or unspecified parts of real property (including property comprised of the mortgage on a lease of land and houses thereon, mortgage of an owner section and leases of dwelling) may be mortgaged.
- Possessory liens may be created by agreement on movables that cannot be entered in a real property register.
- Liens on movables that can be entered in a real property register and accessories of such movables acquiring legal protection by being entered in the proper register.
- Business enterprises may create non-possessory liens on operating assets (*driftstilbehør*) that are used in or are designed for their business operations (such liens are created together with liens on ownership of or a registered and assignable right to use the real property to which the business relates).
- Business enterprises may create non-possessory liens – combined or individual – on motor vehicles that are used or intended for use in the business operation, and mobile construction machines that are used or intended for use in the enterprise's contractor business.
- Movables that are used or intended for use in agriculture operations but which are not accessories to real property and goods that are produced in the operations, can be separately attached with non-possessory liens.
- Movables that are used or intended for use in commercial operations conducted from fishing, whaling or sealing vessels, but which are not accessories of a vessel, may be separately attached with non-possessory liens.
- Business enterprises may create non-possessory liens on their stocks of goods used in the business (*varelager*).
- In connection with the sale of movable objects, a lien may by agreement be imposed on said objects as security for the seller's claim on the purchase price with the addition of interests and costs, or loans which a third party has granted to the buyer for full or partial payment of claims and which the lender has paid out directly to the seller.
- Securities, such as negotiable promissory notes and similar documents, share certificates and life policies, may be attached with possessory liens.
- A claim or a right evidenced by a redemption paper which is not a security may be attached with liens.
- Shares that are not registered in a securities register may be pledged unless the contrary is stated in the company's articles of association.
- Non-negotiable monetary claims on a named debtor may be attached with liens, as may non-negotiable money claims that will arise against a named debtor in a specifically mentioned legal situation.
- A business enterprise may conclude an agreement to assign, assign for security purposes or attach the non-negotiable money claims which it has or acquires in its business or a specific part thereof. It is not necessary that the debtors are named.
- Some authorizations may be pledged (see for instance section 20 of the Aquaculture Act (*Akvakulturloven*) and section 6-2 of the Petroleum Act (*Petroleumsloven*)).
- Vessels and aircraft may be pledged.

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Are there any other notable risks or issues around giving and taking guarantees and security?

Giving or taking guarantees

In a judgment from 2012 (Rt. 2012 s. 1267), the Norwegian Supreme Court concluded that a payment guarantee was not an on-demand guarantee, but a surety only, under which the guarantor could invoke debtor objections to the payment obligations, despite the fact that the guarantee included language customarily used in on-demand guarantees in the international business arena.

The case considered a guarantee that had been written in English. The dispute centered on the nature of the guarantee; the guarantor claimed it was an on-demand guarantee, whereas the debtor claimed it was meant to be seen as a surety only. The guarantee did not say explicitly what kind of guarantee it was but contained some wording often found in on-demand guarantees, ie 'irrevocably and unconditionally guarantee', 'as their own debt', 'immediately due on first demand', and 'honored forthwith'. The Supreme Court held that it had to look at the guarantee as a whole and that, on this basis, the guarantee left doubt as to whether it was a surety or an on-demand guarantee, and that such doubt should dis-benefit the party who had drafted it. The effect of this judgment is that, under Norwegian law, there are stricter requirements as to the contents of an on-demand guarantee in order to obtain the intended legal effect of such a guarantee, compared to what seems to have been the general assumption among practitioners and legal authors. It is therefore important to ensure that on-demand guarantees are drafted using language which removes any doubt as to their classification and legal effects, ie by saying explicitly that it is in fact meant to be an on-demand guarantee.

Giving or taking security

Pursuant to section 3-1 of the Partnerships Act of 1985, a limited partnership may not acquire its own shares, and cannot by agreement establish a security in its own shares. A subsidiary may not obtain shares in the parent company or by agreement establish a security in such shares. Any agreement to the contrary will be void. In addition to this, section 3-5 of the Partnership Act of 1985 stipulates that the partnership's right to receive capital cannot be assigned, nor can it be deposited as security for debt or subjected to distrain for the obligations of the partnership.

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Financial regulation

Law and regulation

What are the main laws and regulations that apply to entities that are involved in finance and investments generally?

Generally

Financial Institution Act (*Finansforetaksloven*) 2015

Consumer credit

Financial Contracts Act (*Finansavtaleloven*) 1999

Corporations

Partnerships Act (*Selskapsloven*) 1985
Private Limited Liability Companies Act (*Aksjeloven*) 1997
Public Limited Liability Companies Act (*Allmennaksjeloven*) 1997

Funds and platforms

Alternative Investment Fund Managers Act (*AIF-loven*) 2014
Securities Fund Act (*Verdipapirfondloven*) 2011

Mortgages

Mortgage/Liens Act (*Panteloven*) 1980

Other key market legislation

Money Laundering Act (*Hvitvaskingsloven*) 2009
Securities Trading Act (*Verdipapirhandelloven*) 2007
Stock Exchange Act (*Børsloven*) 2007
Financial Collateral Act (*Lov om finansiell sikkerhetsstillelse*) 2004
Enforcement Act (*Tvangsfullbyrdelsesloven*) 1992

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Regulatory authorization

Who are the regulators?

The Norwegian Financial Supervisory Authority (*Finanstilsynet*) (the FSA) is responsible for the supervision and follow-up of banks, finance companies, mortgage companies, insurance companies, pension funds, investment firms, securities fund management and market conduct in the securities market, stock exchanges and authorized market places, settlement centers and securities registers, estate agencies, debt collection agencies, external accountants and auditors. *Finanstilsynet* is an independent government agency that builds on laws and decisions emanating from the Parliament (*Stortinget*), the Government and the Ministry of Finance (*Finansdepartementet*) and on international standards for financial supervision and regulation.

The Norwegian Ministry of Finance is responsible for planning and implementing Norwegian economic policy and for coordinating the work with the Fiscal Budget. The Ministry of Finance is the complaints body for the FSA.

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What are the authorization requirements and process?

Depending on the type of firm, a firm must apply to the Norwegian Financial Supervisory Authority (*Finanstilsynet*) (FSA) or the Norwegian Ministry of Finance for authorization.

The regulators must assess whether the application meets the required threshold conditions within six months of the submission of the complete application.

The application fee depends on the type of the application.

The regulator will also approve key individuals in their roles.

Authorized firms and individuals are registered on the Authorization Register (*Konsesjonsregisteret*), which is provided by the FSA online on their home page.

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What are the main ongoing compliance requirements?

The firm must have started its business within one year from the day the authorization was granted, and must still be active. Threshold conditions (such as fulfilling the governance and capital requirements as well as being compliant with the terms of the authorization) are an ongoing compliance requirement for authorized firms.

Failure to comply with the capital requirements and more detailed regulatory rules can result in sanctions for firms and regulated individuals, and loss of authorization.

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What are the penalties for failure to be authorized?

A person undertaking a regulated activity without being authorized or exempt, commits a criminal offence and is liable to imprisonment.

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Regulated activities

What finance and investment activities require authorization?

Financial activities may only be conducted by authorized banks, credit institutions and finance undertakings. When stipulated in the Financial Institution Act 2015 chapter 5, foreign credit institutions may also 'passport' their and/or conduct financial activities in/to Norway.

'Financial Activities' means the granting, intermediating or furnishing of guarantees for credit or otherwise participating in the financing of activity other than one's own, except for:

- business related to public institutions or a fund that is intended for special credit purposes;
- business conducted by a foundation that does not have as its purpose to conduct business activities, or the county administrator's management of financial assets pursuant to the act on custody (*Vergemålsloven*);
- credit or guarantees provided on behalf of the company's or the group's employees;
- credit provided by the seller of a good or service;
- business conducted as a financial agent or a financial advisor; or
- financial services that are conducted only in isolated cases.

Examples of finance and business activities that require authorization include banks, credit institutions, finance undertakings, payment institutions, electronic money institutions, insurance companies, life insurance companies, general insurance companies, credit insurance companies, pension funds and loan intermediaries.

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Are there any possible exemptions?

Yes.

'Financial Activities' that are exempt include:

- business related to public institutions or a fund that is intended for special credit purposes;
- business conducted by a foundation that does not have as its purpose to conduct business activities, or the county administrator's management of financial assets pursuant to the act on custody (*Vergemålsloven*);
- credit or guarantees provided on behalf of the company's or the group's employees;
- credit provided by the seller of a good or service;
- business conducted as a financial agent or a financial advisor; or
- financial services that are conducted only in isolated cases.

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Do any exchange controls or other restrictions on payments apply?

Norway does not operate any foreign currency controls.

For cases of money transferring from non-EU member states, imports of foreign currency may need to be declared in the custom declarations, but there is no legal restriction on moving money in and out of the country.

Note, however, that there may be anti-money laundering and tax considerations to take into account.

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What are the rules around financial promotions?

The Marketing Control Act 2009

Where financial products or services are marketed to consumers in particular, but also to a small extent to businesses, the Marketing Control Act of 2009 will apply unless otherwise stated. This Act and related regulations contain rules aimed at protecting consumers, by ensuring for example that the total price of products or services are clear and unambiguous, and also that the seller does not use misleading communications or omit to inform of important details regarding the services or products.

The Financial Contracts Act of 1999 applies to contracts and assignments concerning financial services with financial institutions or similar institutions, unless otherwise provided by or pursuant to law. This Act regulates specifically what information must be provided to consumers when marketing loan and credit agreements.

In addition, the Consumer Ombudsman has provided extensive guidelines in relation to marketing of specific financial products aimed towards consumers, for example credit cards. There are also certain market standards or agreements established in Norway that set requirements for promotions of certain financial products, which can also secure fair comparisons of these.

Where transferable securities are being offered, a prospectus may be required, and these rules will provide more detailed information regarding how such securities can be promoted.

The Financial Institution Act 2015

The Financial Institution Act of 2015, chapter 2 part III says that banks need to use the word 'bank' in their company name. The same rule applies to *sparebanker*. No entities other than banks and *sparebanks* may use such wording. Similar rules apply in the case of insurance companies.

Rules relating to a financial institution's relationship to customers and related financial promotions are set out in chapter 16 of the Financial Institution Act 2015.

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Entity establishment

What types of legal entity are generally used to undertake financial or investment activity?

Generally

The most common types of legal entities that are used to undertake financial or investment activity (ie banks, pension funds, credit institutions etc) are limited liability companies (*aksjeselskap*) (denoted by the suffix AS), public limited liability companies (*allmennaksjeselskap*) (denoted by the suffix ASA) and Norwegian savings banks (*sparebank*).

Funds

Investment funds and fund managers are limited liability companies, public limited liability companies, or similar foreign companies.

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Is it possible to conduct lending or investment business through a branch or establishment?

Yes.

Foreign lenders may conduct business in Norway by establishing Norwegian representative offices (NUF) subsidiaries and have these apply for authorization from the Norwegian Financial Supervisory Authority. Credit institutions, insurance companies, pension funds, payment institutions and electronic money institutions that are seated and authorized in another European Economic Area state may passport the licenses from their home jurisdiction to Norway and conduct business in Norway without getting a separate license here.

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FinTech

FinTech products and uses

What are the most common technology products and FinTech applications used or being developed in the finance and investment marketplace?

Peer-to-peer funding platforms and marketplace lending

There is no strict definition for marketplace lending given the wide variety of entrants and financing techniques involved. The principal characteristics of new marketplace lenders, however, would include:

- operating from or through a non-bank lending platform established as a specialist corporate or special purpose vehicle (SPV) based structure;
- applying technology to leverage and optimize the lending platform and user experience; and
- connecting borrowers and lenders through the platform, rather than applying funding arising from a wider deposit-based relationship.

Marketplace lending is still in its early days in Norway and we only see a few platforms in the market. The main obstacle for growth in the Norwegian market is most likely to be the regulatory regime, which is quite demanding.

HOW ARE MARKETPLACE LENDING PLATFORMS FUNDING THEMSELVES?

Marketplace lending includes peer-to-peer (P2P) type structures, often operated through an electronic platform provider as well as crowdfunding. The increase in demand for credit through these marketplace platforms has also been appealing to larger pools of available capital, such as private equity and venture capital funds, as well as institutional sponsors. Funding platforms will now often be backed by institutional finance in addition to, or rather than, individual investors on a traditional P2P basis.

Blockchain, smart contracts and cryptocurrencies

WHAT IS BLOCKCHAIN?

Blockchain provides a new approach to holding and authenticating data. It is a database operating through distributed ledger technology in which data is recorded on computers, by way of a P2P mechanism, based on pre-agreed consensus algorithms in the applicable participating network. It is a form of database where data is stored in the chain, in either fixed structures called 'blocks' or algorithm functions called 'hashes'.

Each block includes unique features such as its unique block reference number, the time the block was created and a link back to the previous block. Each block is reviewed by a number of nodes and the block is only added to the database if the node reaches consensus that the block only contains valid transactions. Content includes digital assets and instructions which reflect the transactions and parties to those transactions. The ability to track previous blocks in the chain makes it possible to identify transactions back to the first ever transaction completed, enabling parties to verify and establish the authenticity of the assets in the latest block. This makes blockchain exceptionally accurate and secure.

Specialist users on the system apply advanced computing software to identify time stamped blocks, verify the accuracy of the blocks using sophisticated algorithms and add the verified blocks to the chain. As the number of participants increases, the replication of the data over a wider base makes it harder for any person to alter the data in the chain. Any attempted addition or modification to the

information on a block needs to be approved by all users in the network and verification of any block can only happen through a 'proof of work' process. This process requires vast amounts of computing power, making it practically impossible to insert fake transactions into a block.

As a result, the data is identified and authenticated in near real-time, providing a permanent and incorruptible database sufficiently robust to operate as a store of value (eg in the case of cryptocurrencies such as bitcoin) or providing an indisputable record, for example, relating to securities transfer.

Blockchain is a decentralized system, created and maintained by users of the network rather than being dependent on any central or third party intermediary. It may be public and open ('permissionless' or 'unpermissioned') or structured within a private group ('permissioned').

Permissionless blockchains include bitcoin and ethereum, in which anyone can set up a node that once authorized, can validate, observe and submit transactions. The identities of the participants are not known (other than the unique and random identities known as an 'address'). Permissioned ledgers restrict participation in the network and only the specific participants are given access and are known within the network. The network is private, and only organizations that have been authorized can participate and view transactions.

WHAT IS A CRYPTOCURRENCY?

The European Central Bank definition of a cryptocurrency is that it is a digital representation of value that is neither issued by a central bank or public authority nor necessarily attached to a fiat currency, but is issued by natural or legal persons as a means of exchange and can be transferred, shared or traded economically. The oldest and best-known cryptocurrency is bitcoin (itself based on the bitcoin platform) although many other cryptocurrencies now exist. For example, the most widely-known alternatives to bitcoin include ether, based on the ethereum platform and litecoin (these cryptocurrencies are now actively traded with a large developing infrastructure for holding, pricing and exchanging currency).

Initial coin offerings and token-based products

WHAT IS AN INITIAL COIN OFFERING (ICO)?

ICOs are a form of digital currency or token using blockchain technology. ICOs are often a means by which funds are raised for a new blockchain or cryptocurrency venture. ICOs come in a wide variety of forms and may be used for a wide range of purposes. Some forms of ICOs may be directed at customers or suppliers as a form of loyalty program or a form of access or purchasing power (preferential or otherwise) in respect of assets of the issuer's business. Other forms may be more focused on raising initial funding. It is essential to examine the legal and regulatory basis for any ICO as an unauthorized offering of securities is illegal and may result in criminal sanctions in a number of jurisdictions.

Typical attributes provided by tokens will include:

- access to the assets or features of a particular project;
- the ability to earn rewards for various forms of participation on the platform; and
- prospective return on the investment.

Key aspects to consider will include the:

- availability and limitations on the total amount of the tokens;
- decision-making process in relation to the rules or ability to change the rules of the scheme;
- nature of the project to which the tokens relate;
- basis and security of underlying technology;
- amount of coin or token that is reserved or available to the issuer and its sponsors and the basis of existing rights; and
- compliance with law and all regulatory requirements.

Artificial intelligence and robo advisory systems

Automated financial advice tools, also known as 'robo advisors' are software tools driven by artificial intelligence (AI) that provide a variety of investment advice services from portfolio selection to personal finance planning. The systems are generally operated on a platform /personal dashboard basis; a user can input a set of personalized data to be processed by the AI algorithms which produce optimized outcomes around specified parameters. Although generally of application in the asset management sector, AI and automated advice tools also impact in the banking and private wealth advisor sectors; the implications include decreased human involvement, although recent trends have included a growth in popularity of hybrid structures which combine AI and human inputs.

Data analysis and cloud computing

Cloud computing enables delivery of IT services through internet-based tools and applications, rather than direct connection to a physical server. Cloud-based storage makes it possible to save masses of data to remote servers, accessible through the internet, rather than by way of a physical connection. With the vast data processing and storage capabilities offered by cloud computing technology and virtually no infrastructure barriers to entry, there are a number of applications in building and running FinTech businesses and the technology has had a significant impact in recent years.

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Are there any restrictions, specific laws, regulations or procedures that apply to FinTech products?

General financial regulatory regime

The Norwegian Financial Supervisory Authority (*Finanstilsynet* or FSA) is the conduct regulator for firms providing financial products and services in both retail and wholesale markets.

GENERAL

A person must not carry on a regulated activity in Norway unless authorized or exempt (known as the general prohibition). A financial activity requires regulatory authorization when: it is identified as a specified activity, it is carried on by way of business in Norway and it does not fall within any of the available exemptions. Where FinTech products and/or applications involve financial activity which requires regulatory authorization, the firms providing such products and/or applications must be authorized by the FSA.

POINT OF CONTACT AT THE FSA

The Norwegian Ministry of Finance has proposed to establish a contact point at the FSA for guidance of FinTech companies. The Ministry of Finance believes that the emergence of new players, new technologies and new business models creates the need for guidance and clarifications in areas where current rules are based on well-known business models and methods of production. The proposal is currently under assessment at the FSA.

Electronic payments platforms and regulation of peer-to-peer lenders

The emergence of new entrants, who are using technology to provide financial services in new ways can be seen in Norway. The rise of FinTech as a separate industry also reflects a change in the way that the supply-side is interfacing with customers in Norwegian markets. For example, in the payment services and financing segments, new players are entering the market and offering financial services outside the established financial system, at the same time as financial undertakings are developing competing services within the system.

ELECTRONIC PAYMENT PLATFORMS

A number of FinTech businesses are offering electronic payment platforms to rival the traditional payment systems and the introduction of new regulations recognizes the rise in such businesses, with the aim of creating a more level playing field for payment services providers, while addressing the need for enhanced security and customer protection.

All participants in a payment system will be regulated by the Norwegian Financial Institutions Act of 2015 (*Finansforetaksloven* or Financial Institutions Act), if the participant is deemed to perform payments services.

E-MONEY

The Financial Institutions Act regulates e-money institutions and issuance of e-money. E-money is defined as electronically (including magnetically) stored monetary value, represented by a claim on the issuer, which is issued on receipt of funds for the purpose of making payment transactions. E-money must be accepted by a person other than the electronic money issuer and include pre-paid cards and electronic pre-paid accounts for use online. Firms issuing e-money must be authorized with the FSA.

PEER-TO-PEER LENDERS

Lending is a regulated activity in Norway, and unless any exemptions apply, a lender will need to be authorized by the FSA to conduct such business.

Businesses conducting brokerage of loans must notify the FSA of their business. Loan brokers are subject to certain requirements in the Financial Institutions Act and is, among other things, obligated to give the lenders and borrowers information concerning the terms and conditions of the loans.

Regulation of payment services

Where a Norwegian business provides payment services, as a regular occupation or business activity in Norway, it will require authorization by the FSA to become an authorized payment institution under the Financial Institutions Act. Failure to obtain the required authorization is a criminal offence.

In order to become authorized by the FSA, a payment services business will need to meet certain criteria, including, in relation to its business plan, initial capital, processes and procedures in place for safeguarding client funds, sensitive data and money laundering and other financial crime controls.

There is ongoing legislative work in Norway with a new Financial Contracts Act (*Finansavtalelov*). The new law will among other European Union regulations, implement the European Union Payment Services Directive II.

Application of data protection and consumer laws

The Norwegian Data Protection Act 2000 (*Personopplysningsloven* or DPA) regulates the processing of personal data in Norway. The DPA implements the European Data Protection Directive of 1995. Where a business determines the purposes and manner in which any personal data is processed, it will be regulated by the DPA and have certain notification and compliance obligations.

The European General Data Protection Regulation (GDPR) is due to replace the DPA from 25 May 2018. It is proposed that a new data protection act will therefore replace the existing DPA. The GDPR introduces some new obligations and is more specific than the current DPA on certain issues, including mandatory notifications where a breach occurs and provide for severe monetary sanctions for breach.

The Norwegian Marketing Act 2009 (*Markedsføringsloven* or Marketing Act) regulates unsolicited direct marketing by electronic means and other special categories of marketing. The proposal for a new Regulation on Privacy and Electronic Communications by the European Commission is, however, expected to lead to amendments to the Marketing Act, if the regulation is implemented in Norway.

Money laundering regulations

The Norwegian Act on Money Laundering and Terrorist Financing (*Hvitvaskingsloven*) imposes certain obligations on financial institutions and others who perform services on their behalf, such as credit institutions, investment firms and payment service providers. The obligations generally include customer due diligence and a duty to report suspicious activities, and are intended to prevent money laundering and terrorist financing.

New anti-money laundering legislation, based on the European Union's Fourth Money Laundering Directive, is currently under development and a revised act is expected to be presented to the Norwegian parliament before the end of 2017. It is assumed that the new act will take greater account of the new service providers created through the development of FinTech. The FSA is responsible for supervising entities' adherence, under both current and future legislation.

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What type of funding arrangements and incentives are available to FinTech businesses?

Early stage

SEED INVESTMENT

Initial investment in FinTech businesses may be provided by family and friends of the founders and other high-net-worth individuals (often known as business angels) in return for an equity stake. An example is the FintechAngels at TheFactory. Such seed investment is often used to fund the establishment and early growth of the business before larger investment is available. The investing individuals may also provide know-how and expertise to assist in the company's development. The seed investors would typically not require the same controls over the business as, for example, venture capital providers.

CROWDFUNDING

Crowdfunding has also been introduced in the Norwegian market. This type of funding may be appropriate for a FinTech business in the early stages. It involves members of the public investing in a business by pooling their resources through an intermediary platform.

The Norwegian market has primarily reward-based crowdfunding, which provides investors with a tangible benefit, such as early access to a platform or an application that the business is developing.

ACCELERATORS

There are various incubators or accelerators in the Norwegian market which offer support, facilities and funding for startups, often in return for an equity stake. For example, TheFactory operates as an accelerator, incubator and mentor for FinTech companies and offers an investment up to NOK 350,000 in return for 5%-to-12% equity.

GOVERNMENT PROGRAMS

Innovation Norway (*Innovasjon Norge*) is the Norwegian Government's most important instrument for innovation and development of Norwegian enterprises and industry. Innovation Norway supports companies in developing their competitive advantage and encouraging innovation. The organization also provides services for startup companies, such as mentoring and startup grants. More information can be found here.

Venture capital and debt

Venture capital funding is a type of equity investment, usually targeted at early stage FinTech companies with an established business and some trading history. Venture capital provides a viable alternative to traditional lending given that the business is unlikely to have the tangible asset base or long track record needed, to attract traditional debt funding from financial institutions.

Corporate venture capital (CVC) is a type of venture capital and involves an equity investment by a corporate fund. The benefit of having a CVC as an investor for a FinTech startup is that the fund is able to share its knowledge and expertise of the FinTech sector with the company and act as an advisor.

An additional funding option is venture debt, which is typically offered as a convertible bond or loan.

Peer-to-peer platform funding

An alternative form of funding is by way of peer-to-peer (P2P) lending platforms, which bring individual borrowers and lenders together without the involvement of traditional banks. P2P lending does not involve equity investments, and instead interest is paid on the money borrowed. This is relatively new in the Norwegian market, but is anticipated that we will see more and more of this type of funding in the future.

Senior bank debt and capital markets funding

SENIOR BANK DEBT

Once a FinTech company is established and has a track record, bank debt becomes a more viable source of funding, either on a secured or unsecured basis depending on the creditworthiness and asset base of the business. In contrast to capital markets funding which is often covenant-lite, bank funding will generally involve the imposition of financial covenants and controls that will apply over the life of the facility. Bank finance may be particularly important for working capital, overdraft, accounts management and general liquidity purposes.

CAPITAL MARKETS FUNDING

Norway has both debt and equity capital markets which are accessible to businesses (usually of a certain size).

Raising finance by way of an Initial Public Offering (IPO) is a popular funding arrangement for FinTech companies that have grown to a certain size. An IPO is the initial sale of company shares on a public exchange, such as the Oslo Stock Exchange (*Oslo Børs*).

Oslo Axess and Merkur Market provide alternatives to the Oslo Stock Exchange. Oslo Axess is a regulated market, suitable for companies that have less than three years of history and who seek a quality stamp and other benefits associated with listing on a regulated market. Merkur Market is a multilateral trading facility and an option for all types of companies, ranging from newly incorporated growth companies, to savings banks or mature industry companies, that do not satisfy the listing requirements, or do not wish to be fully listed on a regulated market.

CONVERTIBLE BONDS/LOAN NOTES

A popular funding tool for startup companies, including FinTech businesses, is to issue convertible bonds or loan notes, which are essentially a hybrid between debt and equity. Convertible instruments begin as a loan accruing interest and are convertible into shares in the issuing company at prescribed prices in certain circumstances.

Incentives and reliefs

SkatteFUNN R&D tax incentive scheme is an initiative designed to stimulate research and development (R&D) in Norwegian trade and industry. Businesses and enterprises that are subject to taxation in Norway are eligible to apply for SkatteFUNN.

The incentive is a tax credit and comes in the form of a possible deduction from a company's payable corporate tax. Small and medium sized businesses that satisfy the relevant requirements can obtain tax relief in respect of up to 20% of their project costs, and larger businesses that satisfy the relevant requirements can obtain tax relief in respect of up to 18% of their project costs. More information about the SkatteFUNN R&D tax incentive scheme can be found here.

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Portfolio sales

Loan transfers and portfolio sales

What are common ways of buying and selling loans?

Buying and selling loans is very common.

A loan can be sold on an individual basis or packaged up with other loans and sold as a portfolio pursuant to overarching terms.

Loan transfers between professionals are commonly documented using standard form contracts made available by the Loan Market Association. For more complex transactions, a more bespoke form of sale and purchase agreement would tend to be used. The form and content of the transfer documentation will depend on the nature of the loan assets being sold.

Note also that lending is a strictly regulated activity in Norway and that in principle assuming a creditor position as part of a loan sale and purchase process can trigger an authorization requirement (subject to any applicable exemptions).

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What are the main considerations when transferring a loan and related security?

There are a number of issues to consider before transferring a loan or portfolio of loans. These issues are often covered as part of a due diligence exercise by the seller's legal advisors. Some of the key considerations include:

- **confidentiality** – whether the seller of the loan is allowed to disclose information relating to the loan to a potential purchaser;
- **data protection** – whether there is any personal data or other restricted information in the loan that should not be disclosed to a potential purchaser;

- **lender eligibility** – whether there are any restrictions around the type of entity to which the loan can be transferred;
- **undrawn commitments** – whether there are any continuing obligations for further funding or other material obligations on the part of the lender that may fall on the transferee or reduce claims made by the transferee;
- t**ransfer mechanics** – whether there are any steps that need to be taken to transfer the loan in accordance with its terms; and
- **consent** – whether a transfer requires the consent or notification of any other parties.

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Projects

Financing / investing in energy / infrastructure

To what extent are energy and infrastructure assets publicly or privately owned?

Generally

Generally speaking, Norway has been reluctant to open up to the privatization of core infrastructure; and most transport infrastructure, the electricity grid and large hydropower production assets are publicly owned. Telecoms infrastructure, apart from the emergency network is generally privately owned and operated. Whilst ownership may be private, owning and/or operating relevant infrastructure will in most cases be subject to authorizations and concessions.

Energy

There are no restrictions on private ownership of energy assets, apart from 'large' hydropower assets (above 10MW) that must be at least two thirds publicly owned and controlled. Whilst ownership may be private, owning and/or operating relevant energy infrastructure will in most cases be subject to special authorizations and government concessions.

Statnett SF is the state-owned enterprise responsible for building and operating the central grid. Statnett SF is the transmission system operator (TSO) for the central grid and owns more than 90% of it.

The Ministry of Petroleum and Energy (MPE) has the overall responsibility for managing the energy and water resources in Norway. The MPE's job is to ensure that this management is carried out according to the guidelines provided by the Storting and the Government. The Ministry's Energy and Water Resources Department has ownership responsibility for Statnett SF.

The Norwegian Water Resources and Energy Directorate (NVE), which reports to the MPE, is responsible for managing domestic energy resources, and is also the national regulatory authority for the electricity sector. The NVE is also responsible for managing Norway's water resources.

The total length of the Norwegian gas pipeline network is about 8,300 kilometres. Most of the gas transport infrastructure is jointly owned through the partnership Gassled, while Gassco is the neutral and independent operator.

Gassled is a private joint venture that owns most of the gas infrastructure on and serving the Norwegian continental shelf (including pipelines, platforms, onshore processing plants and receiving terminals abroad).

The Norwegian gas transport infrastructure includes several receiving terminals in other countries. Norway and those countries where gas from the Norwegian shelf is landed have concluded agreements regulating their rights and obligations in this connection.

Telecoms infrastructure

Telecoms infrastructure, apart from the emergency network, is generally privately owned and operated.

The electronic communications sector in Norway is regulated through both sector-specific and general laws and regulations. Although not a EU member, Norway is required, as a member of the European Economic Area (EEA), to adhere to the EU's regulatory framework to the extent that EU directives are adopted by the EEA pursuant to the Agreement on the European Economic Area. The Electronic

Communication Act (the ECA) and regulations adopted pursuant to the ECA implement the EU regulatory framework for the electronic communications sector in Norway. The competent regulatory authority in Norway is the Norwegian Communications Authority.

Transport infrastructure

Transport infrastructure such as road and rail networks (and related infrastructure) are publicly owned.

Norway has approximately 98 airports. Of these, 45 are owned by the government through its airport operator, Avinor. Airports used only for general aviation (GA) are owned by a mix of municipalities, aviation clubs and private companies.

Public (sea) ports are generally municipally owned, with limited private ownership interests in isolated instances.

The main governing body in respect of transport infrastructure is the Norwegian Ministry of Transport and Communications, which performs operations through numerous subsidiaries. Tasks related to public transport and some roads have been delegated to the counties and municipalities.

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Are there special rules for investing in energy and infrastructure?

Generally

No, but the ownership and/or operation (or related activities) is generally subject to special authorizations and Government concessions.

Energy

Special regulations and restrictions apply to investments into 'large' hydropower assets (above 10MW).

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What is the applicable procurement process?

Generally

Public procurement in Norway is governed by a set of rules that are meant to ensure fair competition, integrity and predictability in the procurement process, and the equal treatment of providers.

Norwegian legislation distinguishes between tender invitations for contracts above and below the European Economic Area (EEA) Public Procurement Thresholds. Above the EEA thresholds, Norway is obliged to follow the relevant EU regulations through the Agreement on the European Economic Area. Tender invitations for contracts above these thresholds are advertised in the English language in the EU official journal and the TED database.

Below the EEA thresholds, national rules govern the procurement process. These are in general simplified versions of the implemented EU regulations. In Norway there is also a national threshold of NOK 1.1 million. Invitations to tender for contracts above the national threshold must be made public in the Norwegian official database, *Doffin*. Under the national threshold, the employer is allowed to choose a procedure which ensures a minimum level of competition.

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What are the most common forms of funding / investing in energy and infrastructure?

Funding

The most common forms of funding for energy and infrastructure include balance sheet lending and project finance (including PPP).

Investing

The most common forms of investing in energy and infrastructure include direct equity investments.

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Restructuring

Enforcement and sanctions

When can there be regulatory investigations?

When the authorities consider that an authorized firm or regulated individual may have breached the ongoing compliance requirements, it will launch a formal investigation. This may result in regulatory sanctions.

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What regulatory penalties may apply?

Where a breach has taken place, the Norwegian Financial Supervisory Authority or the Norwegian Ministry of Finance may impose a financial penalty or censure, or withdraw regulated status against the firm and/or regulated individuals. The regulator will publicize these penalties.

In addition to this, ordinary penalties and sanctions may be imposed by the Norwegian police.

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What criminal penalties may apply?

Following formal investigation, the regulators have powers to impose criminal penalties in certain cases, including:

- insider dealing and misleading statements and practices;
- breaches of the Money Laundering Act of 2009; and
- conducting regulated activities when not authorized.

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Tax

Tax issues

Are stamp, registration, transfer or other similar taxes applicable?

Are there stamp, registration, transfer or other similar taxes payable on the advance, transfer or assignment of a loan?

No stamp, registration, transfer or other similar taxes are payable on the advance, transfer or assignment of a loan.

Are there stamp, registration, transfer or other similar taxes payable on the taking, transfer or assignment of a mortgage, debenture or other security?

Mortgages over Norwegian real estate must be registered at the Land Registry (*Statens Kartverk*) to ensure legal protection against third parties. The fee for such registration is NOK 525.

Mortgages granting security over moveable property (eg vehicles, capital assets, inventory) must be registered in the Register of Mortgaged Moveable Property (*Løsøreregisteret*) to ensure legal protection against third parties. The fee for such registration is NOK 1,051 when registered electronically and NOK 1,516 when registered on paper.

Mortgages granting security over aquaculture permits must be registered in the Register of Aquaculture (Akvakulturregisteret) to ensure legal protection against third parties. The fee for such registration is NOK 1,450.

Are there stamp, registration, transfer or other similar taxes payable on the issue, transfer or assignment of a debt security (eg a bond)?

No stamp, registration, transfer or other similar taxes are payable on the issue, transfer or assignment of a debt security.

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Do tax authorities take priority on enforcement?

On the enforcement of security, do tax authorities take priority over secured lenders or secured debt security holders (eg secured bond holders)?

No.

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Is withholding tax on interest payments applicable?

Is there withholding tax on interest payments under a loan?

No. There is no withholding tax on interest payments.

If so:
What is the rate of withholding?

N/A.

What are the key exemptions?

N/A.

Would the same analysis apply to interest payments under a debt security (eg a bond)?

N/A.

Last modified 20 Oct 2017

Are foreign lenders and debt security holders subject to tax on interest payments?

Will the lender be taxed on interest payments under a loan in the jurisdiction of the borrower (other than by way of the application of withholding taxes (if any)), assuming the lender is not otherwise resident in that jurisdiction for tax purposes (eg by virtue of incorporation, residence or local branch)?

No.

Would the same analysis apply to interest payments under a debt security (eg a bond)?

Yes.

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