

THE LEGAL PERSPECTIVE

# Real estate investment in Norway

# Some peculiarities of the country

- A binding agreement between the parties is deemed to have been concluded when the main terms are agreed upon. A written and signed agreement is no general condition for the parties to be bound. No notarial or other public registration is required for a binding agreement to exist.
- There is very little mandatory legislation governing the sale and purchase and lease of commercial real estate. Standard form contracts issued by industry organisations are widely used as basis both for sale and purchase and lease agreements in the commercial real estate market. The same applies to construction agreements.
- Almost all commercial real estate transactions are structured as a sale of the shares in the property-owning entity due to the exemption method (a share sale is tax free for a corporate seller). The buyer is normally granted a discount for the loss of depreciation for tax purposes as a result of acquiring the shares and not the property directly.
- Any circumstance that is fairly disclosed in the data room and otherwise provided by the seller and its representatives in a transaction will generally be considered to be known to the buyer. The concept of
- A floating charge over all the assets of a company as such is not permitted, as opposed to charges over specific classes of assets. It is possible to register a pledge over an ideal share of a real property, but not in a limited physical share of the property.
- Financial assistance may only be provided by the target company up to the amount of the assets which the company may use for the distribution of dividends. Several other statutory conditions and procedures apply for the financial assistance to be legal.
- In addition to the actual polluter, both the current and previous owners and occupiers of a property may be ordered by the environmental authorities to ensure the removal of any contamination at the property.

## Main documents to be drawn up in the context of a transaction

- Bid letter drafted by the buyer or its advisers and bid acceptance letter drafted by the seller or its advisers. Alternatively, or in addition to bid/acceptance letters, a LOI drafted by both parties and their advisers. The bid/acceptance letter and/or LOI should set out all assumptions, qualifications and conditions for the buyer's offer, including due diligence, financing, board or investment committee approval, contract etc.
- A sale and purchase agreement. The first draft is typically prepared by the seller's lawyer. The agreement can be drafted in Norwegian and/or English. The agreement will typically contain provisions regarding calculation of the purchase price, conditions precedent, seller's warranties and indemnities and remedies in the event of breach of contract.
- In an asset deal, transfer of the legal title to the property occurs by registration of a title deed in the Land Register. The title deed is a standard form document in Norwegian. The seller's signature needs to be confirmed by two witnesses.
- In a share deal, transfer of the ownership of the shares occurs by the buyer notifying the target company of the acquisition.

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# 1. Ownership of real estate

## 1.1 Full ownership

Full ownership is the most complete and comprehensive right over real estate. However, it is important to note that the use of the property may be limited by public laws and regulations (for example laws regarding environmental issues, rights of neighbours, preservation of cultural or historical buildings), planning regulations, and private third party rights. It is therefore advisable to look into these aspects in advance of a prospective purchase. Ownership of the property includes title to all of the constituent parts of the property, including any structures erected on the property, the airspace above the property and those areas beneath it (unless the rights/ownership to these areas have expressly been separated from the land and transferred to a third party).

The property may be owned in full by one or more persons, companies and/or other legal entities. Co-ownership (sameie) of property is subject to special laws and regulations pertaining to the use and sale of the co-owned property. Co-ownership will, however, usually be regulated by a co-ownership agreement entered into between the owners, which is recognised in law.

Title to ownership of real estate is registered in the Land Register (grunnboken). There is no legal obligation to transfer the title when acquiring property in Norway, however such a transfer is required to obtain legal protection for the buyer.

## 1.2 Ground lease/leasehold

The ownership of a property usually includes the ownership of the buildings/structures erected on the property. It is not uncommon in Norway, however, for the ownership of the property and the buildings/structures erected on it to be separated by way of a ground lease (tomtefeste) with the separate parts to be owned by different parties. The Norwegian ground lease model is based upon the tenant essentially leasing the ground from the owner of the property by entering into a ground lease agreement. The tenant may then erect buildings/structures on the property, and ownership of these buildings is held by the tenant. Ground leases are therefore usually entered into for long periods of time, typically 50 to 100 years, and in many cases include a right to extend the lease for an additional period(s).

The tenant under a ground lease agreement will usually be allowed to transfer ownership to the buildings, along with their title as the tenant, to a new owner of the ground lease.

Ground leases are governed by the Norwegian Ground Lease Act (Tomtefesteloven), and widespread caselaw. Ground leases will often raise complicated judicial questions in relation to the interpretation and enforcement of the leases.

## 1.3 Units

A special kind of ownership for shared premises is established through the Norwegian Property Unit Ownership Act (Eierseksjonsloven). A property with a building erected on it may be divided into units (eierseksjoner), such as apartments and premises for business purposes, which are owned by individuals or legal entities. The common parts of the property, such as the structure of the building, staircases and entrances, are then jointly owned by the collective group of independent unit owners.

As with full ownership, title to such units is registered in the Land Register.

For housing purposes, the ownership of such units can also be structured as a housing cooperative (borettslag) pursuant to the Norwegian Housing Cooperative Act (Borettslagsloven).

## 1.4 Restrictions

In general, foreign investors are not subject to any limitations on the acquisition of property.

The only formality in this regard is that potential buyers, of any nationality who are intending to buy Norwegian real estate must, in certain cases, apply for a concession from the local authority. This is a formal requirement to allow buyers to obtain title in the Land Register. In reality, this rarely constitutes a problem for investors.

# 2. Acquisition of ownership

## 2.1 Formal requirements

An agreement for the sale and purchase of real property, as with most other agreements, is considered to be legally binding between the parties, and thus the parties are not required to take any further steps to protect their interests. Agreements can be entered into both in writing and orally, but agreements of greater importance are normally executed in writing between professionals. Under Norwegian law, a binding agreement between the parties is deemed to have been concluded when the main terms are agreed upon. In order to avoid being legally bound by an agreement before it is written down and signed by the parties, it is customary to inform the other party that the agreement cannot be considered as entered into before it is signed and/or approved by the Board of Directors.

In order to perfect the title and obtain legal protection (rettsvern) for the buyer of the property from creditors of the seller, previous owners, and other disposals of the property by the seller, the transfer of ownership and thus the title to the property needs to be registered in the Land Register. The Land Register keeps a record of each property in Norway, including who holds the formal title to the property. The date of registration of the transfer triggers the change of title holder within the Land Register. Even though such registration is not a legal requirement for the purchase of a property to be effective, deeds of transfer are usually led with the Land Register in order to obtain legal protection against third parties.

A buyer of property can rely on, and is protected by, the contents of the Land Register and its accuracy, as long as the buyer is not, or should not have been aware of the content being incorrect. Ownership may thus be acquired and registered in good faith (bona fide; aktsom god tro).

## 2.2 Asset deals

Property can be acquired directly by a buyer from the owner. In order for the purchaser to obtain legal protection for its ownership, the title to the property must be registered in the name of the buyer in the Land Register.

The purchase agreement is usually based upon Norwegian market standards and is amended to fit the specific transaction.

In most cases, the parties are assisted by specialist lawyers throughout the transaction, for example when drafting the relevant documents, negotiating the sale agreement, financing the transaction and completing the transfer.

It is highly advisable for the buyer to carry out a due diligence review of the property prior to completion of a property transfer agreement. Such due diligence should cover:

- (a) all legal aspects such as title to property, easements, encumbrances, agreements with neighbouring owners, environmental aspects, planning/zoning law aspects, building/construction law, previous contracts and any lease agreements;
- (b) specific environmental aspects, which will be investigated by specialist environmental investigators;
- (c) the physical state of existing buildings by specialist technical investigators; and
- (d) any permissible future development by architects/real estate advisors, especially if future development is a key factor in the buyer's decision to buy the property.

Typically, in a property transaction, to ensure that title to the property is transferred to the buyer and is perfected, the parties will engage a settlement agent to document the settlement between the parties. The settlement agent will ensure that the transfer of the property and the securement of title take place following the payment of the purchase price to the settlement agent's account. When the title is perfected, the purchase price is paid to the seller. The settlement agent usually registers a mortgage document on the property which includes a seller's non disposal clause, meaning that the seller may not register any new documents, including title transfers, without the settlement agent's consent. The mortgage document is removed from the Land Register when the transaction is completed. The cost of using a settlement agent is usually not substantial.

It is also possible to perform the settlement of the transaction directly between the parties.

Where deeds of transfer are filed in the Land Register, registration is normally subject to stamp duty at the rate of 2.5% of the property value which is paid by the buyer to the Norwegian Mapping Authority. It is usually the gross value of the property that forms the basis of the stamp duty calculation, although there are some exceptions.

In addition, there are some minor charges for the registration of title deeds, as well as any mortgage deeds, that are usually paid by the buyer. By contrast, the seller must, in most cases, pay income tax at a rate of 22% of any profit made from the sale of the property (see paragraph 7.6 below).

## 2.3 Share deals

Another way to acquire real estate is to purchase the legal entity which owns the property. In Norway, such entities are usually organized as private limited liability companies (Aksjeselskap, AS), which are similar to private limited companies recognised in other jurisdictions.

Historically, for tax purposes, such entities were often structured as limited partnerships (kommandittselskap, KS; or, selskap med delt deltakeransvar, DA) or general partnerships (ansvarlig selskap, ANS). However, since most of the tax advantages for such partnership companies have now been removed from the Norwegian tax system, businesses tend to opt for a private limited liability company (AS) structure.

The owners of the private limited liability companies (AS) are not personally responsible for the company's debts or obligations.

In order to transfer the shares of the property owning company from the seller to the buyer, the parties have to enter into a share purchase agreement. The transfer of the shares may be executed by a settlement agent or directly between the parties. Usually, a settlement agent is used to ensure that the execution of the share transfer takes place as planned. Although the buyer usually acquires 100% of the shares in the company, some buyers may buy smaller percentages of the shares. In the latter case, a shareholders' agreement is often entered into in order to regulate the terms of the shared ownership of the property company.

Due diligence undertaken prior to a share deal, should, in addition to the points mentioned in paragraph 2.2, cover the following issues:

- (a) all legal aspects relating to the shares in the company owning the property, such as pre-emption rights, encumbrances, articles of association etc;
- (b) annual accounts of the company;
- (c) income tax forms and VAT reports for the company;
- (d) debts and risks of the company;
- (e) all contractual rights and obligations, whether written or oral, that bind the company; and
- (f) whether the property company has employees and any associated liabilities.

The private limited liability company (AS) is obliged to maintain a register of shareholders. The shareholders register shall include information on the identity of the shareholders and states whether there are any encumbrances over the shares. When purchasing the shares

a notification of the acquisition shall be sent to the company by the buyer. This notification will secure legal protection for the buyer from competing buyers or the seller's creditors. It is however of great importance that proper due diligence is performed in share deals to ascertain that the seller owns the shares and that they are not subject to any unknown encumbrances.

Furthermore, change of ownership of shares in a private limited liability company requires the consent of the company unless it is specified in the articles of association that the shares are freely transferable. The company's consent is given by the Board of Directors. The other shareholders of a private limited liability company also have a right of first refusal over any transfer of shares unless otherwise specified in the articles of association.

The share purchase agreement to be entered into is not subject to any mandatory requirements. It is, however, common to base the share purchase agreement on Norwegian market standards, that are amended to fit the specific transaction. The market standards include proposed wording governing the purchase price calculation, guarantees, conditions precedent and remedies in the event of breach.

Assuming the seller itself is a private limited liability company, the seller will not, in most cases, be subject to any taxation on profit from the sale of the shares in the private limited liability company (see paragraph 7.7 below).

It is quite common in Norway to take out a warranty and indemnity (W&I) insurance, in particular if the seller is to be liquidated shortly after completion of the transaction. Usually the insurance is structured as "buyer side" cover, where the buyer is insured under the policy, and the coverage is based upon the buyer's knowledge. The insurance premium is usually around 1-2% of the insured amount but can be higher depending on the known risks that are insured. If W&I insurance is to be a part of the transaction, this should be considered prior to completion, at some point between due diligence and the conclusion of the share purchase agreement.

## 2.4 Public auctions

For specialist investors, purchasing a property at a public auction is also an option. Those properties that are listed for sale at auction are often the subject of an enforced sale, such as sale pursuant to a Court order or a sale where there has been a default under a Land Charge.

Commercial property is, however, rarely available at public auctions in Norway, mainly because other work-out strategies are preferred by both property owners and banks.

# 3. Other rights to property

## 3.1 Easements

Under Norwegian law, encumbrances can be established over property in favour of any third parties where the encumbrance is expressly linked to the property. Any rights which merely impose obligations on the current owner of the property (i.e. a personal obligation) cannot be registered as an interest over the property in the Land Register.

An encumbrance could, for example, involve the creation of rights of way for the owner of neighbouring property, certain rights of use of the property (positiv servitutt) or prevention of use (negativ servitutt), and prevention of or permission for construction projects and ground leases (see paragraph 2.1 above), to give just a few examples. Easements can be for a limited or unlimited time period, and are often used to create rights of way, to establish rights to erect and maintain electrical, water, sewage or other supply lines and to prevent or control development of property.

The property may also be encumbered by limited personal easements, whereby a particular person or entity is entitled to specified rights which are directly connected with the property. If, however, the easement relates purely to the property owner as opposed to the property itself, such right cannot be registered in the Land Register. These limited personal easements are for example, used to ensure that long term leases are protected in the event that the landlord becomes insolvent, or to give a person or entity a right of use of the property for as long as the person or entity exists.

All easements must be registered in the Land Register in order to obtain legal protection from the owner's creditors and to prevent the easement from being extinguished upon a sale to a bona fide third party. Certain formal requirements must be followed when registering easements in the Land Register. It must be noted, however, that written and oral agreements pertaining to easements are legally binding between the parties, even without being registered in the Land Register, yet such agreement will not obtain legal protection against third parties.

## 3.2 Mortgages

Mortgages over real property are widely used in Norway as security for claims against the owner of the property or as security for the obligations of a third party, for example loans financing the acquisition or operation of property.

When granting security, however, the Norwegian Limited Liability Companies Act must be adhered to in order that the mortgage is valid for the purpose of share deals or when granting a mortgage as security for the obligations of group companies.

Mortgages do not depend on the existence of an underlying claim, and they can be transferred to a new mortgagee. However, in the vast majority of cases, a mortgage will be linked to an underlying claim through an agreement or security purpose declaration.

In order legally to perfect the mortgage, it must be registered in the Land Register. Without such registration, the mortgage will not be protected from other creditors seeking rights over the property or other disposals of the property by the title holder.

## 3.3 Pre-emption rights and options

A property owner can grant someone an option to purchase the property (kjøperett) on certain agreed terms, typically within a specified period of time as set out in an option agreement between the parties. The option typically gives the beneficiary a right to unilaterally to invoke the right to purchase the property during the option period.

Alternatively, pre-emption rights or rights of first refusal (forkjøpsrett), can be given by the property owner/title holder to third parties. In doing so, the owner will typically give the third party a right to purchase the property before it can be sold to another person, usually on the same terms agreed by the owner with the other person.

Options to purchase, pre-emption rights and rights of first refusal are all governed by the Norwegian Act on Options and Pre-Emption Rights (Løsningsrettsloven). It must be noted, however, that rights of this kind cannot be granted for a term exceeding 25 years under Norwegian statute.

An agreement establishing these rights is binding on both parties, subject to the fulfilment of common law and regulations that govern agreements in Norway. In order to obtain full legal protection these rights need to be registered in the Land Register.

### 3.4 Non registrable rights

Under Norwegian law, anybody is free to enter into any contract with any third party, covering a variety of obligations and rights which relate to a particular property, but which are personal in nature. However, rights which are personal in nature are not registrable in the Land Register (as mentioned in paragraph 3.1).

In an asset deal, the rights and obligations created by such contracts will not pass to the buyer due to their personal nature. Only rights registered in the Land Register will pass to the buyer when ownership is transferred, unless the buyer has, or should have, actual knowledge of the unregistered right associated with the property.

In share deals, however, such personal contractual rights and obligations can be passed to the buyer, as the company who entered into the contract is itself acquired by the buyer. Thus, in share deals, it is necessary to undertake due diligence

with regard to the possible existence of any such contracts or other arrangements with third parties. Appropriate representations and warranties should be included in any share purchase agreements.

### 3.5 Public easements

There is no specific register for the registration of public easements in Norway, and therefore all such rights should also be registered in the Land Register.

There are, however, certain mortgages that are deemed to have legal protection without registration (legalpant), typically limited mortgages in favour of the Norwegian Government securing the payment of taxes and fees by the owner of the property.



# 4. Zoning and planning law permits

Norwegian strategic planning/zoning is governed by a combination of statutory law and governmental policy. The main legislative framework for planning and building permits is the Planning and Building Act (Plan – ogbygningsloven), along with appurtenant regulations.

The law allows the state, county and municipality to regulate land use within their area of responsibility. In turn, responsibility for regulating the development and use of property lies with the county and municipal authorities. A certain amount of national political influence also exists by way of guidelines and statements contained within government White Papers.

The municipalities have an obligation to control local urban development by creating municipal master plans (kommuneplan), zoning plans (områdeplan) and detailed zoning plans (detaljregulering).

The municipal master plans set out the superior guidelines in relation to zoning, along with detailed zoning plans and national and local guidelines and targets for the planning and building sectors in each municipality. The municipal master plan must cover all geographical areas within the municipality.

A zoning plan sets out guidelines for land use within a smaller geographical area and is used if demanded in the municipal master plan.

The detailed zoning plan outlines the detailed terms of land usage in a small geographical area, often consisting of just a few pieces of real estate. The terms of land use can focus on the type of development permitted, building height and size, aesthetic qualities, restrictions on the use and development of property, order of development and parking provisions.

A building permit is required to build or make significantly alterations to an existing building. The municipality can refuse building consent if the proposal is not in accordance with the Planning and Building Act, appurtenant regulations, or the stipulations of the zoning plan or detailed zoning plan. However, the planning and building authorities may grant a dispensation and allow a project to commence even if it is not in accordance with the relevant plan(s).

# 5. Environmental liability

Under the Norwegian Pollution Control Act (Forurensningsloven), the polluter, the current owner of the property, the current user and all former owners and users of a property may be ordered by the competent authorities to carry out mandatory steps to decontaminate land.

Should any contamination of a property render it necessary to undertake decontamination measures, the competent authorities will seek to prosecute the polluter. If the polluter cannot be identified or prosecuted, the current owner or the user of the property will usually be held liable.

The current owner or the user will then have to seek recourse against the actual polluter.

The law is such that there is no way of avoiding the possibility of being prosecuted by public authorities in these circumstances. This sometimes has a detrimental effect on the sale of properties with known contamination difficult to achieve because of the difficulty of sufficiently securing recourse for the buyer against the seller.

The Norwegian Environment Agency maintains a register detailing information available in relation to potential soil contamination.

This register is an important source of information which should be investigated prior to the acquisition of any property. However, if the property is not registered or if no contamination issues are raised within the Environmental Agency's register, this does not necessarily mean that the property is free from contamination.

It is highly advisable to undertake prudent environmental investigation and specialist advice prior to any acquisition of property.

# 6. Leases

## 6.1 Type of leases

Norwegian law differentiates between three main types of leases;

- (a) ground leases (governed by the Norwegian Ground Lease Act);
- (b) leases for residential premises (governed by the Norwegian Tenancy Act (Husleiloven); and
- (c) leases for commercial premises (also governed by the Norwegian Tenancy Act).

Ground leases are used as a means for structuring the ownership of buildings (ground tenants' ownership) and land (held by the landowner and leased to the ground tenants), while leases of commercial and/or residential premises only entitle the tenant to use the leased property. The legal differences between these forms of lease are substantial.

This paragraph focuses only on commercial and residential leases.

## 6.2 Duration

Residential leases in Norway can be entered into for either a fixed term or an indefinite period of time. Commercial leases, on the other hand, are almost solely entered into on a fixed term basis, typically for 5-10 years. Commercial leases will often also include rights of renewal for the tenant.

As a main rule, residential leases, cannot be entered into for less than three years. Aside from this restriction, a lease may be entered into for as many years as the parties see fit, but longterm leases may in some cases give rise to tax and other legal issues that need to be addressed.

In residential leases entered into for an indefinite period of time, there is a strong legal framework for the protection of tenants. For example, the landlord is normally excluded from recovering possession of property under the lease, except in exceptional circumstances (e.g. if there is a clear need for the landlord to use the premises, essential renovation work is required, or if there is a material breach on part of the tenant, etc.).

## 6.3 Rent

In commercial leases the rent is usually calculated per square metre, including a proportionate share of the common areas of the building (where a building is let to several tenants). The rent for retail premises is often based upon the tenant's revenue, with an agreed minimum rent as the lowest payable rent. By contrast, rent for residential leases is usually agreed between the parties, and not directly connected to the number of square metres.

Value added tax (VAT) is a separate consideration. Rental payments are, on the whole, exempt from VAT. Landlords of commercial premises can in many cases elect to charge VAT on rents payable by registering in the Norwegian VAT Register, which will enable the deduction of input VAT subject to certain limitations.

## 6.4 Rent indexation/adjustment

Generally, commercial rents are adjusted according to the Norwegian Consumer Price Index (Konsumprisindeksen), although it should be noted that the Consumer Price Index does not necessarily move in line with market rents. The rents are normally indexed annually based on the changes in the Consumer Price Index, but it is common for leases to incorporate alternative indexation clauses into their lease.

For residential leases, the Norwegian Tenancy Act provides a legal platform for both full yearly indexation of rent based on the changes in the Consumer Price Index and statutory adjustment as long as certain terms are met.

## 6.5 Operating expenses and maintenance costs

In Norwegian commercial leases the tenant will usually be obliged to carry out and cover all costs in relation to internal maintenance, maintenance of technical installations and reinstatement costs upon expiry of the lease term (excluding normal wear and tear), for the property. The landlord, on the other hand, will usually be obliged to carry out and pay for the maintenance of the structure and exterior of the property and the replacement of technical installations when maintenance is no longer economic.

The tenant is, in most cases and except for changes made by the tenant, not obliged to restore the leased premises to its original standard. Hence, the rent paid by the tenant covers normal wear and tear during the lease term, provided that the tenant has performed its internal maintenance duties throughout this period.

In addition to rent, the tenant will usually also pay common costs and service charges, which cover certain operating expenses for the property as a whole as well as costs relating to common areas. Service charges usually include energy consumption (e.g., heating, ventilation and lighting) and cleaning and maintenance relating to the common areas. In addition, certain services and costs relating to the building as a whole are categorised as common costs.

Each lease is entered into on the basis of negotiations between the landlord and the tenant and therefore it is common for the parties to deviate from these maintenance norms.

An increasing number of Norwegian municipalities charge a form of property tax, which will normally be covered by the landlord (i.e., it will not be reimbursed by the tenants via the service charge), unless otherwise specifically agreed.

As a result of Norway's strong consumer protection laws, residential leases are subject to clear regulations in relation to additional maintenance costs that can be imposed on the tenant in addition to the rent.

## 6.6 Assignment/transfers

Under the Norwegian Tenancy Act, a tenant cannot generally transfer its rights or obligations under the tenancy agreement to anyone else without the landlord's consent.

Depending on the wording of the respective lease, the landlord may be free to withhold consent or may be obliged not to withhold it unreasonably.

## 6.7 Subleases

Tenants under a fixed term lease do not have the right to sublet without prior written consent from the landlord according to the Norwegian Tenancy Act. However, the landlord is normally obliged to give consent if there are no objective grounds for withholding it. If consent is refused and the landlord cannot demonstrate that there were objective grounds for this refusal, the tenant can terminate the lease by giving three months' notice unless the lease explicitly states otherwise.

In commercial leases, it is possible to deviate from the Norwegian Tenancy Act. Thus, it is not uncommon for the lease to entitle the landlord freely to withhold consent to subletting, or even, in some cases, for the tenant to be given an automatic right to sublet the premises.

## 6.8 Guarantees/deposit accounts

It is commonly agreed in both commercial and residential leases that the tenant shall provide a guarantee or deposit account, which the Norwegian Tenancy Act allows for if this is included as a term in the lease agreement. For commercial leases, the security is normally equal to six months' rent including service charge and VAT and is often provided by the tenant's parent company.

## 6.9 Termination

Commercial leases for a fixed term cannot ordinarily be terminated throughout the duration of the fixed term, unless a walk-away clause or premature termination clause is agreed upon.

On the other hand, commercial leases for an unspecified time period are not common, but they do include a termination right for both parties. The Norwegian Tenancy Act does not provide any pre-conditions that the landlord or tenant must adhere to in order to terminate an indefinite lease. Generally speaking, the termination period will be three months, unless otherwise agreed.

Residential leases for an unspecified time period can usually only be terminated by the landlord in the circumstances mentioned in paragraph 6.2. In addition, the tenant has the right to terminate. The termination period will usually be three months, unless a longer period is agreed upon. Fixed term leases cannot be terminated, unless agreed between the tenant and the landlord.

In exceptional circumstances, both residential and commercial leases can be terminated immediately if either party materially breaches its obligations under the lease, in particular (in the case of the tenant) the obligation to pay rent.

## 6.10 Sale of leased property

If leased property is sold, this will not usually affect the lease in any way. The benefits and burdens under the lease are inherited by the new owner as the legal successor of the former tenant.

# 7. Tax

## 7.1 Transfer taxes

When title to property in Norway is transferred, the transaction will be subject to stamp duty at a rate of 2.5% of the market value of the property at the time the transfer takes place.

A share transaction, however, will not trigger stamp duty, as the same company continues to possess title to the property and there is no stamp duty on shares. Furthermore, a company can be part of a tax neutral restructuring exercise (e.g. mergers, demergers) without triggering stamp duty. Consequently, Norwegian stamp duty regulations are of greater benefit to share deals as opposed to standard property asset deals.

## 7.2 Value Added Tax

The transfer of real estate is exempt from VAT.

In addition, VAT is not generally charged when property is rented out, and this exemption covers letting of both developed and undeveloped plots of land, plants and industrial buildings and smaller parts thereof.

Any goods and services supplied as part of the letting, for example electricity, water, cleaning and maintenance service will also be exempt from VAT.

It must be noted, however, that the exemption does not extend to holiday lets and the letting of car parking spaces, among other things. If the landlord rents out property to be used for operations that are liable to VAT, the landlord can apply for voluntarily registration in the VAT register. A voluntary registration in the VAT register gives the landlord a right to deduct input VAT on purchases for his VAT liable business. As a direct consequence of this registration, VAT must be added to the rent payable by tenants. The tenant will however have the right to offset the input VAT either partly or in full, depending on the use of the premises in VAT liable business.

If there is a change in the use of the property or if the property is transferred to a new owner, the owner may be obliged to reverse the deducted input VAT. This obligation applies for a period of 10 years, from the acquisition or completion of the property. This is called the adjustment period. In general terms, the adjustment rules mean that a reduction in the right to deduct input VAT will be triggered if the relationship between the use of the property and the activities that are liable to VAT is reduced at some point during the 10-year adjustment period. If the use of the property for activities that are liable to VAT is increased, this may give rise to an increased ability to deduct input VAT.

If the property is damaged by fire or completely demolished, the adjustment rules do not apply. Further, no adjustment can be made if an enterprise which was previously VAT exempt becomes liable to VAT as a result of a legislative amendment.

The adjustment provisions do not impact the owner's ability to deduct input VAT immediately on acquisition as the provisions merely apply to events after the acquisition.

The adjustment provisions are applicable to so called 'capital goods', which are defined in the Value Added Tax Act (Merverdiavgiftsloven). Machinery, fixtures and fittings and other operating assets for which the input VAT on the cost price amounts to at least NOK50,000 are capital goods, with the exception of vehicles that are exempt from VAT when resold. This limit applies to each individual acquisition.

Real property that has been subject to construction works, extension or alteration, for which input VAT amounts to at least NOK100,000, is also capital goods. Input VAT on costs relating to operational matters, maintenance and repairs to real property is on the other hand not covered by the scheme. If more than one construction project is carried out on a property in the same year, the cost of each project shall be added together to determine whether the NOK100,000 limit has been reached.

On transfer of real property, the property is deemed to have passed on to non-deductible use, and the deducted input VAT for the rest of the adjustment period must be reversed. However, such adjustments can be prevented if the party who takes over the real property also takes over the adjustment obligation.

An adjustment shall also be made where capital goods are transferred as part of a going concern. This is considered equivalent to transferring capital goods to a non-deductible purpose. In this case too, adjustments will not be necessary if the adjustment obligation is transferred by an agreement between the seller and the buyer.

## 7.3 Other real estate taxes

Local municipal authorities may levy property tax on real estate in Norway, which can vary between 0.1 to 0.7% of the taxable fiscal value of the property.

The tax is based on the assessed value of the property based on a specific property tax valuation. For residential property, the property tax may be levied on a wealth tax basis. Each municipality is free to decide whether or not to levy property tax, and Norwegian municipalities have the option to tax only commercial properties.

Property tax is deductible for corporate income tax purposes.

## 7.4 Taxation of rental income from real estate

Income from rental business is taxable at the rate of 22% and the tax rate is the same irrespective of whether the business is being performed by a partnership or a company. The amount of tax payable will be based on net rental income. As a general principle, all expenses incurred for the purpose of obtaining, maintaining or securing taxable income are deductible, including amortisation, maintenance, administrative expenses and interest.

Buildings, hotels and restaurants for example are depreciated using the declining balance method at a rate of 4% per annum. Office buildings are depreciated at a rate of 2% per annum and permanent technical installations in buildings, including sanitary installations and elevators etc. are depreciated at a rate of 10% per annum. Plots and buildings for residential uses are not deductible.

The depreciation is based on either the purchase price or the construction costs plus the initial acquisition costs. Costs related to maintenance can be deducted directly and are not subject to depreciation.

Interest expenses are as a general rule, deductible. However, there is a limit on the level of interest expense that can be deducted for intra-group loans (see paragraph 7.9).

Losses on intragroup loans are not deductible if the debtor is a limited company, investment fund, inter-municipal company or a transparent company, in which the creditor owns (directly or indirectly, or together with other group companies) at least 90% of the shares. Certain claims are exempt from this rule, such as accounts receivable, claims which have already been subject to income tax and claims arising from certain mergers/demergers.

Losses of any kind may be set off against income from all sources including capital gains, whilst net operating losses may be carried forward indefinitely. The right to carry the losses forward is not affected by changes in the ownership of the company or any form of reorganisation, provided that exploitation of the loss was not deemed as the main objective for the transaction.

Any tax losses carried forward may also be used to offset gains arising from the termination or sale of the business in which they were incurred. It is also possible for losses to be carried back for a period of two years from when the business ceased.

In order to avoid international double taxation, Norway has entered into a series of double-taxation treaties with other countries. Most Norwegian tax treaties are based on the OECD model convention.

Under these treaties, rental income from real estate is generally taxable in the country in which the real estate is located. This rule also applies if the real estate is owned

by a company. Double taxation is avoided either by exempting the income from taxation in the country where the investor is resident or by giving tax credit for taxes paid in Norway in the country of residence.

## 7.5 Taxation of dividends from a company owning real estate

Dividend income from a Norwegian company is subject to taxation depending on the legal status of the shareholder.

Corporate shareholders (i.e. limited liability companies and similar entities) resident in Norway is exempt from taxation on dividends under the exemption method, without any holding period requirements. However, 3% of the exempt dividends must be added back to the taxable income figures of the company as deemed expenses incurred with respect to the exempt dividends. If the recipient of the dividend owns more than 90% of the shares of the affiliated companies and a corresponding level of voting rights at a general shareholder's meeting, the 3% claw back rule does not apply.

Individual shareholders resident in Norway is subject to 37.84% income tax rate (the nominal rate is 22% but the taxable income is multiplied with a factor of 1.72) for dividend income exceeding a tax-free allowance. The tax-free allowance is calculated for each individual shareholder on the basis of the cost price of each of the shares multiplied by a risk-free interest rate which is determined every year by the Ministry of Finance. The rate corresponds to the interest rate applied to three-month government loans, after tax. For 2025, the applicable rate was 3.6%. Any tax-free amount which exceeds the value of dividends received may be carried forward and set against future dividends or capital gains.

Non-resident shareholders are, as a main rule, subject to withholding tax at a rate of 25% on dividends distributed by Norwegian companies. The withholding rate of 25% is often reduced in tax treaties between Norway and other countries. Generally, the treaty rate does not exceed 15%.

However, there is also a tax exemption for corporate shareholders resident within the EEA, provided that the shareholder meets the requirements of a substance test. This means that the corporate shareholder must be properly established in an EEA country and that they perform real economic activities there.

Individual shareholders who are resident in the EEA may apply individually to the Norwegian tax authorities for a refund of an amount corresponding to the calculated tax-free allowance in respect of each individual share, cf. above regarding individual shareholders resident in Norway. However, the deduction for the tax-free allowance does not apply in the event that the withholding tax rate, pursuant to an applicable tax treaty, leads to a lower taxation on the dividends than the withholding tax rate of 25% calculated on the gross dividend less the tax-free allowance.

## 7.6 Taxation of capital gains on real estate

Gains made on the sale of real estate in Norway are subject to tax in Norway at the rate of 22%, irrespective of whether the owner of the property is tax resident in Norway for tax purposes and regardless of whether the owner is a company or a partnership. Any loss on real estate is tax deductible.

The capital gain is calculated by deducting the tax basis price of the property and any costs incurred from the sale price of the property.

It is also possible to defer any capital gains made through real estate owned in connection with a business. In order to facilitate this a gain/loss account must be set up, which must be depreciated at a rate of 20% per annum on a declining balance basis. If the balance is negative, 20% may be deducted as expenditure whilst if the balance is positive, at least 20% must be treated as income.

If real estate is sold as an asset transfer (as opposed to indirectly through shares in the company that owns the real estate), the buyer should obtain a step-up of the tax basis price up to the buyer's tax cost price for the property, and thus higher amortization amounts going forward.

Under most Norwegian double taxation treaties, capital gains generated from the sale of real estate is taxable in the country where the real estate is located.

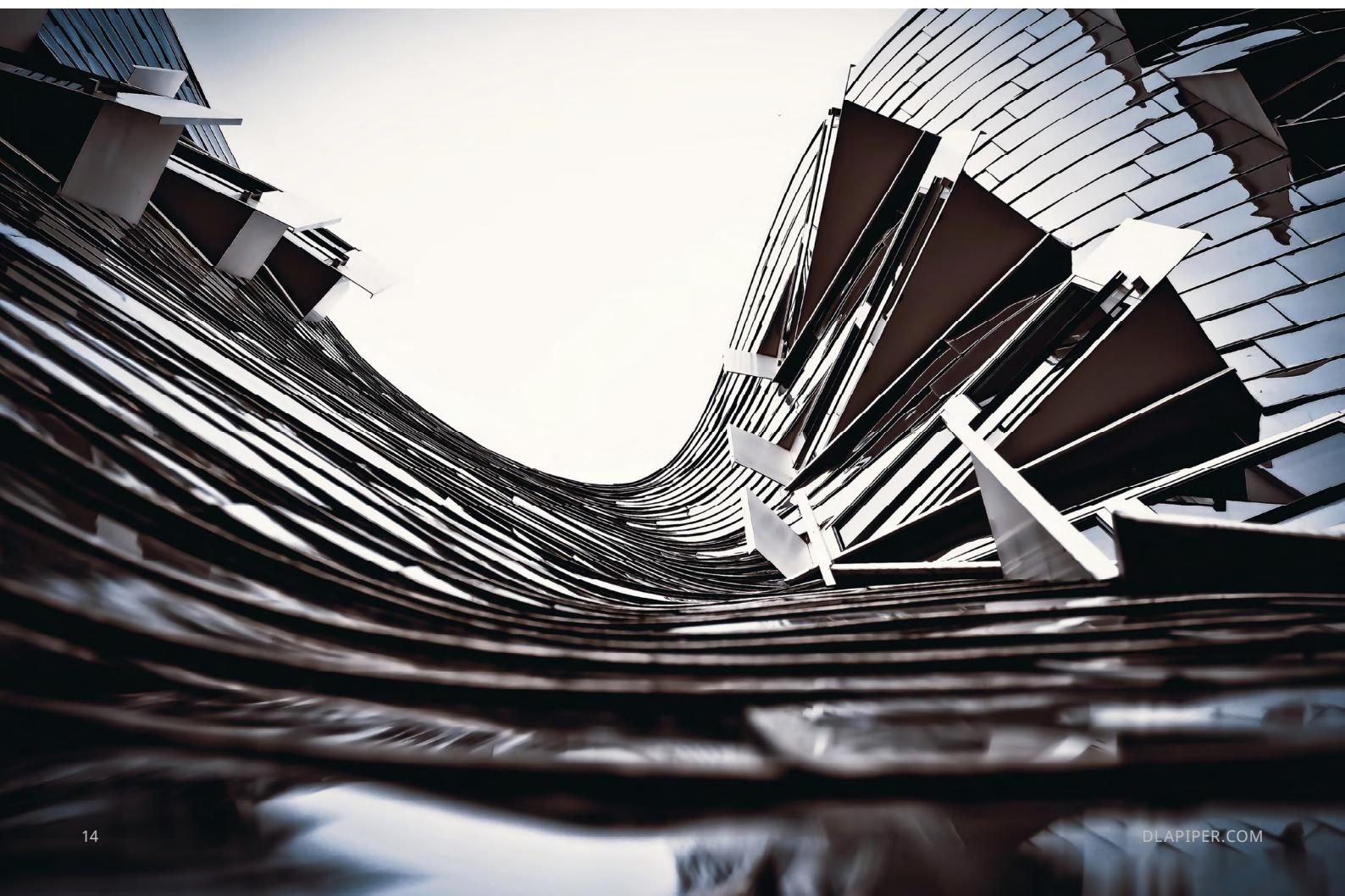
## 7.7 Taxation of capital gains from the disposal of shares in a company owning real estate

Corporate shareholders are exempt from taxation on gains on shares. The participation exemption applies to all shareholdings, including portfolio investments. There is no minimum ownership or holding period requirements. Any losses on shares qualifying under the exemption are not deductible.

Gain on shares held by private shareholders is taxable at a rate of 37.84% (the nominal rate is 22% but the taxable income is multiplied with a factor of 1.72). The capital gain should be calculated by deducting the purchase price of the shares and any unused tax-free allowance from the sale price of the share (see paragraph 7.5). The tax-free amount is calculated per share and cannot be used to create a capital loss, nor set off against other shares.

Unlike a direct sale of property, a sale of shares will not entitle the buyer to readjust the tax base value of the property for amortization purposes etc.

Norway does not impose withholding tax on capital gains from the disposal of shares. Foreign corporate shareholders should not be subject to Norwegian tax on capital gains derived from the disposal of shares in Norwegian real estate companies. Foreign individual shareholders may be subject to Norwegian capital gains tax on shares if the shares are held in connection with business activities in Norway.





## 7.8 Taxation of gain on disposal of partnership interest in a partnership owning real estate

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A Norwegian partnership is a legal person but is considered transparent for tax purposes. This means that net profits or losses, as well as net assets, are attributed to the individual partners in proportion to their share in the partnership or in accordance with the partnership agreement.

The net income of a partnership is calculated under the same rules and principles as for limited liability companies. Thus, taxation of rental income and gains from the sale of real property is treated in the same way as described above.

For partners which are corporate entities, 3% of distributions from partnerships are taxable income at 22%.

For partners who are individuals, distributions from partnerships are taxable at a rate of 37.84% (the nominal rate is 22% but the taxable income is multiplied by a factor of 1.72).

Any gain generated following the disposal of a partnership interest is taxed in accordance with the interest itself, not the collective partnership assets.

If the partner is a private limited company, the exemption method should apply on the disposal of the partnership interest (see paragraph 7.7).

If a gain is made by an individual partner following the disposal of their partnership interest, this gain will be chargeable to tax at a rate of 37.84% (the nominal rate is 22% but the taxable income is multiplied with a factor of 1.72).

Capital gains generated through investment in Norwegian assets by a non-resident company may be taxable in Norway if the interest to which they relate is connected to business taxable in Norway.

## 7.9 Limitation rules for deduction of interest

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Norway has interest deduction limitation rules which may limit the amount of interest that are deductible.

The interest limitation generally applies to all net interest expenses exceeding 25% of the company's taxable income, less tax depreciation and net interest costs (taxable EBITDA), unless one of two exemptions apply.

The first exemption is a de minimis rule for Norwegian part of groups where net interest expense in Norway does not exceed a threshold of NOK25 million. For Norwegian companies which are not part of a group the threshold is NOK5 million.

The second exemption is an equity escape clause applicable for groups where the interest limitation does not apply if the Norwegian company or the Norwegian part of the group has an equity ratio which is no more than two percentage points lower than the equity ratio of the group as a whole.

For group companies, the above exemptions do not apply to net interest expenses to related parties outside the group.

Where the company is unable to deduct all interest expenses in any year, the "unused" interest expenses may be carried forward for a period of 10 years.

## 7.10 Real estate investment trusts

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There is no specific legal or tax framework for Real Estate Investment Trusts in Norway.

# 8. Real estate finance

Real estate finance involves financing or refinancing acquisitions or developments of real property where the debt is secured against the capital value of the property and serviced by rental income. Real estate finance is provided by banks but may occasionally be obtained from private investors and debt funds. For more sizeable deals, the Norwegian bond market offers an alternative source of finance.

## 8.1 Interest rate risks

Regardless of whether commercial property financing is made on a long – or short-term basis, there is a risk of rising interest rates. Such risks may be mitigated by selecting fixed interest periods, but the borrower is still exposed to interest rate fluctuation on an extension of the loan or additional financing. This can be hedged against derivatives, particularly interest rate swaps. If the financing is made through a bank, hedging is normally arranged by the lender but may occasionally be provided by a separate financial institution.

For the most common type of interest rate swap ("plain vanilla"), the borrower agrees to pay a fixed rate to the counterparty whilst receiving a floating rate indexed against a reference rate (most commonly a three-month NIBOR in respect of Norwegian kroner). Consideration received from the counterparty is used for payment of floating interest to the lender. The borrower thereby eliminates the risk of rising interest rates whilst abandoning any gain on falling interest rates.

## 8.2 Collateral

### 8.2.1 PROPERTY

Security over property is almost always required by a credit provider. To be valid, the security interest must be registered in the Norwegian Land Register. Registration is straightforward and based on a standardised mortgage form, which must be witnessed. Alternatively, if certain conditions are met, the mortgage may be registered electronically. Registration can take up to a week, and it has therefore become market practice to require registration prior to completion of a transaction, with an undertaking from the credit provider to deregister the security should completion not occur. In addition, the registered security interest can normally be assigned without the mortgagor's consent in the event of an assignment of the underlying claim.

If the borrower is in default, the credit provider and the security provider may agree on how to realise the value of the property to repay the secured obligations. In lieu of such agreement, the credit provider must follow the procedures set out in the Norwegian Enforcement Act (Tvangsfullbyrdelsesloven) which include a 14 days' notice period and confers the ability to dispose of the property to the enforcement authorities.

### 8.2.2 SHARES (PRIVATE LIMITED LIABILITY COMPANIES)

It has become common to own commercial property through special purpose vehicles (SPV). For credit providers this offers an additional layer of collateral protection with a quicker, and less expensive method of enforcement than for security over property. In contrast to regulated enforcement by the enforcement authorities, the parties are free to agree on the enforcement procedures for share security under the Norwegian Financial Collateral Act (Lov om finansiell sikkerhetsstillelse), provided that the realisation and valuation are made on commercially reasonable terms. Such enforcement may mean that the credit provider acquires the shares without further notice. The Norwegian Financial Collateral Act is an implementation of Directive 2002/47/EC on Financial Collateral Arrangements and only applies to credit providers who are classed as financial institutions (and certain other institutions).

### 8.2.3 TRADE RECEIVABLES

Credit providers may occasionally require direct security over rental income. It is not, however, common to take security over the claims under an individual lease which requires notice to be served to the tenant. Instead, the property-owning company may create a floating charge over all of its trade receivables and rental income, capturing amounts owed under all leases. No individual notices are sent to the tenants until enforcement, and the charge is perfected by registration of a standardised factoring agreement with the Norwegian Movables Register (Løsørerregisteret). It should be noted that a trade receivables charge may be subject to provisions under leases which limit the ability of the chargor to create security.

### 8.2.4 BANK ACCOUNTS

Bank accounts may also be charged, for instance in order to create a cash sweep mechanism. A valid charge is perfected by serving a notice on the bank where the account is held, save that no such notice is required if the bank where the account is held is also the secured party. Unlike in certain

other jurisdictions, the validity of the charge does not require the bank accounts to be blocked, allowing a more flexible security structure. A charge over a bank account is instead enforced by serving a notice of assignment to the bank with which the account is held.

#### **8.2.5 OPERATING ASSETS**

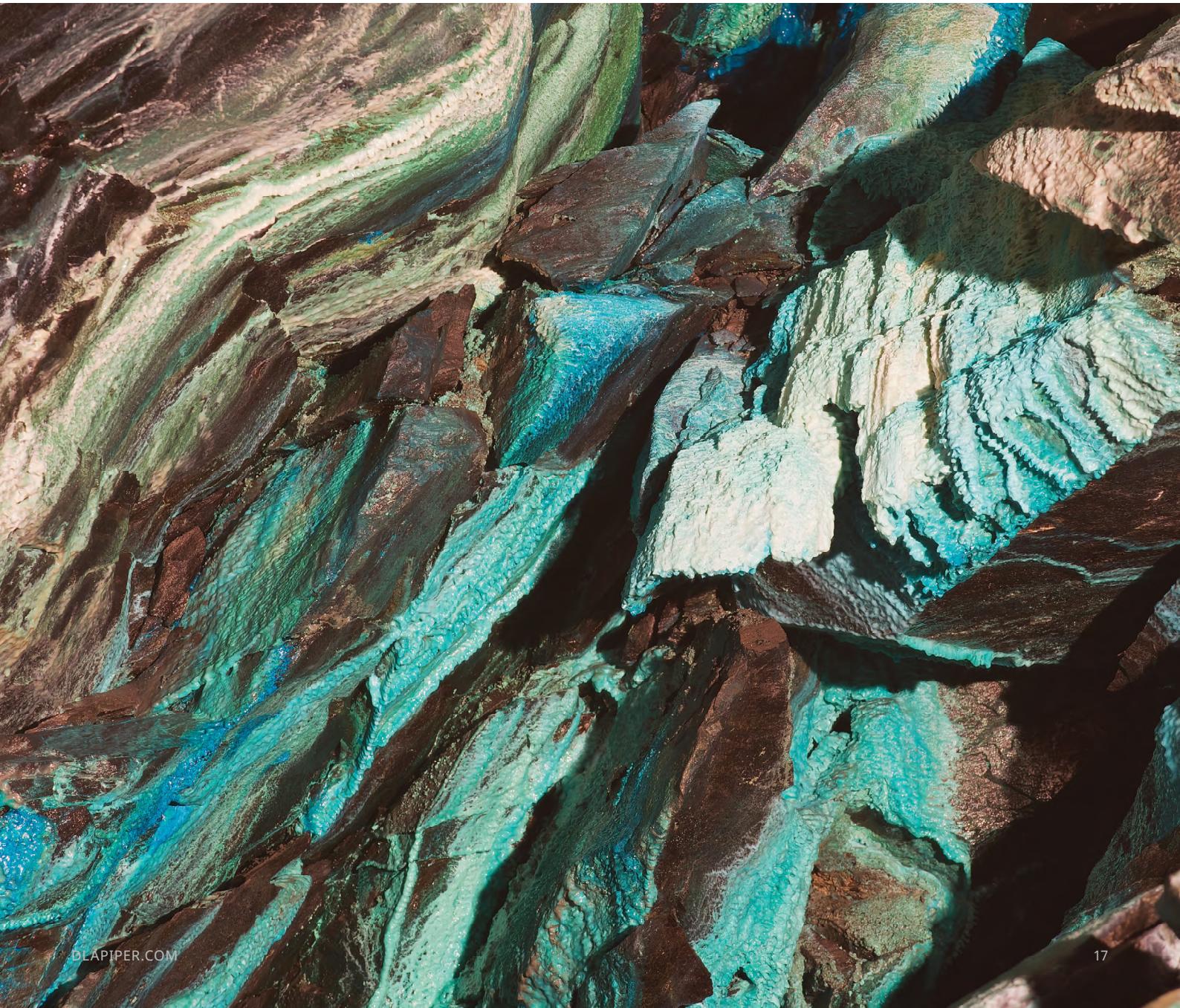
To fully capture the value of a property, a credit provider may wish to create a further charge over loose operating equipment which is not integrated into the property. Thus, the property-owning company may provide a floating charge over all of its operating assets, which include machinery and equipment as well as IP rights and certain other rights. The charge will be perfected upon registration in the Norwegian Movables Register and enforcement is similar to that over real property.

#### **8.3 Financial assistance**

A Norwegian private limited company may provide financial assistance, like granting a security interest in connection with the acquisition of its shares or the shares in its holding companies. However, the company must ensure that the financial assistance procedure set out in the Norwegian Companies Act (Aksjeloven) section 8-10 is complied with.

The main aim of the procedure is to ensure that the provision of financial assistance is in the interest of the company. To achieve this aim, the Board of Directors of the company is required to prepare a report and make a declaration to that effect. These must be approved by the General Meeting of the company and registered with the Register of Business Enterprises. There are also several other requirements that must be complied with.

A company considering providing financial assistance in connection with an acquisition should take into account the complexity of the financial assistance procedure and take appropriate measures to ensure compliance.



# Glossary

TERM	EQUIVALENT
<b>Aksjeselskap</b>	Private limited liability company
<b>Aktsom god tro</b>	Bona fide, in good faith
<b>Borettslag</b>	Housing cooperative
<b>Detaljregulering</b>	Detailed zoning plan
<b>Dokumentavgift</b>	Stamp duty
<b>Eierseksjoner</b>	Units
<b>Eierseksjonsloven</b>	Property Unit Ownership Act
<b>Forkjøpsrett</b>	The right to acquire the property triggered
<b>Forurensningsloven</b>	by a prior sale of the property
<b>Grunnboken</b>	Pollution Control Act
<b>Husleieloven</b>	Land Register
<b>Kommuneplan</b>	Tenancy Act
<b>Konsumprisindeksen</b>	Municipal master plan
<b>Legalpant</b>	Norwegian Consumer Price Index
<b>Løsøreregisteret</b>	Mortgages that are deemed to have legal protection without registering in the Land Register
<b>Lov om finansiell sikkerhetsstillelse</b>	Norwegian Movables Register
<b>Merverdiavgiftsloven</b>	The Norwegian Financial Collateral Act
<b>Områderegulering</b>	The Norwegian Value Added Tax Act
<b>Pant</b>	Zoning plan
<b>Plan-og bygningsloven</b>	Mortgage
<b>Rettsvern</b>	Planning and Building Act
<b>Sameie</b>	Legal protection for the acquisition of
<b>Servitutter</b>	property/land
<b>Tomtefeste</b>	Co-ownership of property/land
<b>Tomtefesteloven</b>	Easements

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# About DLA Piper

With more than 600 lawyers globally, DLA Piper boasts the world's largest real estate practice and is consistently top-ranked around the world. As real estate develops into a truly global industry, the ability to quickly and efficiently provide legal services in structuring crossborder investments and transactions is paramount. DLA Piper clients value the team's global resources, regional strength and local delivery, and include private and public companies, institutional investors and government entities.

In Norway DLA Piper has one office in Oslo, with a large core transaction team consisting of approximately 25 lawyers – with years of experience in the local real estate industry. They advise on all stages of the real estate investment and development cycle and work with many large Norwegian and international clients. Our lawyers are also active members of and contributors to the business communities and industry associations that have a key role in shaping the future of the Norwegian real estate industry.

In short, we operate as "one team, no borders", providing a real advantage to clients in Norway and beyond.

